

Contract No: \_\_\_\_\_

## **DEVELOPMENT AGREEMENT**

*among*

**CITY OF CINCINNATI,**  
an Ohio municipal corporation;

**BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO,**  
an Ohio political subdivision;

and

**CINCINNATI CH (OH), LLC,**  
a Delaware limited liability company

Project Name: Convention Center Hotel Project  
(251 W. Fifth Street and 240 W. Fourth Street, Cincinnati, Ohio)

Dated: \_\_\_\_\_, 2026

## **DEVELOPMENT AGREEMENT** (Convention Center Hotel Project)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into effective as of the Effective Date (as defined on the signature page hereof) among the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "City"); the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, acting for and on behalf of Hamilton County, Ohio, a political subdivision of the State of Ohio, 138 E. Court Street, Room 603, Cincinnati, Ohio 45202 (the "County") and **CINCINNATI CH (OH), LLC**, a Delaware limited liability company, 303 Peachtree Center Avenue NE #575, Atlanta, Georgia 30303 ("Developer").

### Recitals:

A. In 2022, the City and the County appointed Cincinnati Center City Development Corporation, an Ohio nonprofit corporation ("3CDC") as master developer for the redevelopment of the City-owned Convention Center (the "Convention Center") and certain properties surrounding the Convention Center (collectively, the "Convention Center Project Area"), including (i) (a) an approximately 0.512 acre parcel of land located at 251 W. Fifth Street (Hamilton County Auditor's Parcel ID 145-0001-0316-00); and (b) an approximately 1.198 acre parcel of land located at 240 W. Fourth Street, Cincinnati, Ohio 45202 (Hamilton County Auditor's Parcel ID 145-0001-0102-00), which parcels are currently owned by the Port of Greater Cincinnati Development Authority, an Ohio port authority and political subdivision (the "Port") and are operated as surface parking lots located across from the Convention Center, and (ii) a to-be subdivided portion of Home Alley, being the western 5 feet of Home Alley, all as more particularly depicted and described in Exhibit A (Site Plan; Legal Description(s)) hereto (together, the "Property").

B. In furtherance of its development and management responsibilities pertaining to the Convention Center and the Convention Center Project Area, 3CDC by and through its affiliate 3CDC Development Manager LLC, an Ohio limited liability company ("Development Manager") issued a Request For Proposals (the "Convention Center Hotel RFP") seeking developers to undertake the design, development, and construction of a new private first-class, premium-branded convention center hotel to be located in the Convention Center Project Area.

C. In March 2023, after reviewing the expressions of interest received in response to the Convention Center Hotel RFP, Development Manager recommended to the City and the County that Developer be selected to enter into negotiations with 3CDC, the City, and the County with respect to the advancement of the Convention Center Hotel Project (as defined below) and certain incentives and contributions related thereto.

D. Developer's proposal generally provided for the design, development, installation, construction and equipping of a first-class, premium branded, full-service convention center hotel situated on the Property and being generally comprised of (i) approximately 700 hotel rooms; (ii) approximately 63,000 square feet of meeting space; (iii) an approximately 17,000 square foot outdoor event area; (iv) approximately 4,500 square feet of leasable ground floor commercial space; (v) full service amenities, and (vi) an attached elevated pedestrian walkway, which will connect the hotel to the Convention Center and the Whex Garage located at 210 W. Fourth Street (collectively, the "Convention Center Hotel Project"). Developer's proposal further provided for the day-to-day management and operation of the Convention Center Hotel Project by a hotel operator with a national reputation for quality of management and operation of first class "national flag" hotels (the initial hotel operator and any and all future hotel operators hereinafter collectively referred to as "Hotel Operator").

E. In 2025, 3CDC, Developer, the City, and the County completed negotiations pertaining to the development of the Convention Center Hotel Project, and identified certain incentives, contributions, and commitments to be extended by the City, the County, and the Port to assist with the financial feasibility of the Convention Center Hotel Project, which are comprised of (i) with respect to the City, (a) the City TIF Incentive (as defined below), (b) the City TOT Service Payments (as defined below), (c) the NCA Formation Assistance (as defined below), and (d) the City Convention Center Hotel Assistance (as defined below); (ii) with respect to the County, the County TOT Service Payments (as defined below); and (iii) with respect to

the Port, (a) the issuance and sale of the Revenue Bonds (as defined below); (b) the sale and transfer of the Property to Developer; and (c) cooperation to facilitate the Port Authority Arrangement (as defined below) (collectively, the foregoing assistance shall be referred to as the **“Public Party Convention Center Hotel Assistance”**).

F. Concurrent with the negotiations pertaining to the Public Party Convention Center Hotel Assistance, Developer entered into a Purchase and Sale Agreement with the Port to acquire title to the Property and in cooperation with Development Manager, the City, and the County, applied for and secured (i) \$40,000,000 in transformational mixed-use development tax credits (the **“TMUD Credits”**), and (ii) \$47,000,000 in direct assistance from the State of Ohio (the **“State”**) by and through the State’s Department of Development and the Ohio Strategic Community Investment Fund (the **“State Assistance”**).

G. After closing on the acquisition of the Property and the issuance and sale of the Revenue Bonds, Developer intends to advance the development plan for the Convention Center Hotel Project, as more particularly described on Exhibit B (Scope of Work, Budget, and Sources of Funds) hereto.

H. In addition to the Convention Center Hotel Project, Cincinnati Hotel Owner (OH), LLC, an affiliate of Developer, has also recently acquired Westin Cincinnati hotel, located at 21 E. Fifth Street in the Central Business District of Cincinnati (the **“Westin”**), which the parties anticipate will provide additional support to the Convention Center.

I. Developer anticipates that the Convention Center Hotel Project will result in the creation of (i) approximately 3,519 full-time equivalent temporary construction jobs with a total payroll of approximately \$259,273,000; and (ii) upon completion, approximately 571 full-time equivalent permanent jobs with an estimated annual payroll of \$63,417,000.

J. In furtherance of the City’s urban redevelopment and economic development goals as well as its authorized economic development purposes under Section 13 of Article VIII of the Ohio Constitution, which include the creation or preservation of jobs and employment opportunities and improving the economic welfare of the people of the State, and based upon the recommendations of Development Manager and the City’s Department of Community and Economic Development (**“DCED”**), the City has determined that the Convention Center Hotel Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and that it is desirable to make the hereinafter defined and described City Convention Center Hotel Assistance.

- (i) To facilitate the construction and development of the Convention Center Hotel Project and the creation and retention of jobs within Cincinnati, the City intends to exempt improvements to the Property from real property taxation under Section 5709.41 of the Ohio Revised Code (**“ORC”**) for 30 years (the **“TIF Exemption Period”**) by ordinance (the **“TIF Exemption”** and the **“TIF Ordinance”**, respectively). The City will receive from the Hamilton County Treasurer the semi-annual statutory service payments paid (or caused to be paid) initially by Developer and thereafter by future owners of the Convention Center Hotel Project and generated from the Convention Center Hotel Project pursuant to the TIF Exemption, in the amount that would have been owed but for the TIF Exemption (**“Statutory Service Payments”**; the payments received by the City in the form of Statutory Service Payments, less the fees and charges described in subsections (a)-(c) below, being referred to herein as the **“Project TIF Revenue”**), and use the same, (a) first, to pay any fees charged by the Hamilton County Auditor or any other governmental entity (the **“Collection Fees”**), (b) second, to satisfy the City’s obligation to the Board of Education of the Cincinnati City School District (the **“School Board”**) under that certain Agreement by and between the City and the School Board dated April 28, 2020, (c) third, to pay the City’s fees described in Section 14(D) of this Agreement, and (d) fourth, to make payments to the Port and/or OEBF (as defined below) (or the applicable trustee(s)) in the amount necessary to pay principal, interest, and other amounts due with respect to the Revenue Bonds (the **“Revenue Bond Obligations”**). The service agreement to be

entered into by and between the City and Developer following the Effective Date hereof shall be substantially in the form of Exhibit C (Form of Service Agreement) hereto (the “**Service Agreement**”). Collectively, the transactions described in this Recital J(i) shall be referred to as the “**City TIF Incentive**.”

- (ii) Pursuant to ORC Section 5739.093 and in furtherance of the creation of jobs within Cincinnati, the City intends to by ordinance (the “**TOT Exemption Ordinance**”) designate the Convention Center Hotel Project as a convention center headquarters hotel (as defined in ORC Section 5739.093), and provide, for a period of 30 years (the “**City TOT Exemption Period**”), (a) the exemption of the Convention Center Hotel Project from the City’s (i) 1.50% transient occupancy tax established by the City pursuant to ORC Section 5739.08(A); (ii) 1.50% transient occupancy tax established by the City pursuant to ORC Section 5739.08(A); and (iii) 1.00% transient occupancy tax established by the City pursuant to ORC 5739.09(B)(2) (collectively, the “**City Exempt Qualifying Lodging Taxes**”); and (b) through the execution and delivery of a City Exempt Qualifying Lodging Taxes Service Agreement in the form attached hereto as Exhibit D-1 (Form of City TOT Service Agreement) (the “**City TOT Service Agreement**”), the imposition of the requirement for Developer to make certain payments in lieu of City Exempt Qualifying Lodging Taxes (the “**City TOT Service Payments**”) to be assigned and pledged to the Port and/or OEBF (or the applicable trustee(s)) to facilitate the payment of the Revenue Bond Obligations, with any and all surplus City TOT Service Payments in any given year to be first applied by the City as a credit against the outstanding balance of the Loan, subject to the limitations set forth herein, and thereafter be retained by the City or returned to the City, as applicable, and used for any lawful purpose.
- (iii) To further assist with the development and financing of the Convention Center Hotel Project, the City has determined to assist and cooperate with the formation of a new community authority (the “**Convention District NCA**”) pursuant to ORC Section 349.01., et. seq. (the “**NCA Act**”), which assistance and cooperation shall include the consideration of a petition in accordance with the NCA Act by City Council as well as the appointment of initial trustees to the board of the new community authority. The parties further contemplate that the City will execute and deliver a declaration (the “**Convention District NCA Declaration**”) providing for the assessment of a “community development charge” in an amount equal to 1.0% of gross sales at the Convention Center. It is contemplated that the proceeds derived from the “community development charge” (the “**Convention District NCA Charges**”) due under the Convention District NCA Declaration will be assigned by the Convention District NCA to the Port and/or OEBF (or the applicable trustee(s)) to facilitate the payment of the Revenue Bond Obligations (collectively, the “**NCA Formation Assistance**”).
- (iv) In furtherance of the orderly development of the Convention Center Hotel Project, the City and Developer will enter into a Real Estate Agreement (as defined below) providing for the vacation of certain rights-of-way, grants and conveyances of certain real property interests at and around the Property to facilitate the Convention Center Hotel Project as further described herein (collectively, the “**Real Estate Assistance**”).
- (v) As additional assistance to the Convention Center Hotel Project, the City has further agreed to extend a loan to Developer to pay a portion of the costs of the Convention Center Hotel Project in an amount not to exceed \$50,000,000 (the “**Direct City Assistance**”), on the terms and conditions set forth in this Agreement.
- (vi) Finally, the City has further agreed to loan funds received by the City as a State of Ohio Capital Budget grant and interest earnings thereon to aid with development of the Convention Center Project Area, including the Convention Center Hotel Project,

in the form of a forgivable loan in an amount not to exceed \$[48,000,000] (the “**Pass-Through City Assistance**”) and, together with the City TIF Incentive, the City TOT Service Payments, the NCA Formation Assistance, the Real Estate Assistance, and the Direct City Assistance, the “**City Convention Center Hotel Assistance**”), on the terms and conditions set forth in this Agreement.

K. In order to create the TIF Exemption under ORC Section 5709.41, the City must have held fee title to the Property prior to the enactment of the TIF Ordinance. Accordingly, Developer will convey or cause to be conveyed fee title to the Property to the City for \$1.00 at Closing (as defined below), and the City will immediately re-convey the Property to Developer (or the Port on behalf of Developer) thereafter for \$1.00, in each case on, and subject to, the terms of this Agreement.

L. The City has determined that re-conveying the Property to Developer for \$1.00 is appropriate because the City will receive the Property for the same amount, and the conveyance of the Property back to Developer is necessary to facilitate the Convention Center Hotel Project.

M. The City has determined that eliminating competitive bidding in connection with the re-conveyance of the Property to Developer is appropriate because the Property is under contract to be acquired by Developer and Developer’s willingness to initially convey or cause to be conveyed the Property to the City is contingent upon the City’s agreement to promptly re-convey the Property to Developer and to no other party.

N. The Property is currently included in the tax increment financing district known as District 1 – Downtown South/Riverfront District Incentive District (the “**TIF District**”), established by Ordinance No. 412-2002, passed by City Council on December 18, 2002, pursuant to ORC Section 5709.40. In order to facilitate the TIF Exemption, the City anticipates removing the Property from the TIF District.

O. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the conveyances described in this Agreement at its meeting on September 5, 2025.

P. In furtherance of the County’s economic development goals as well as its authorized economic development purposes under Section 13 of Article VIII of the Ohio Constitution, which include the creation or preservation of jobs and employment opportunities and to improve the economic welfare of the people of the State, and based upon the recommendations of Development Manager and County Administrator (or authorized representative), the County has determined that the Convention Center Hotel Project is in the vital and best interests of the County and the health, safety, and welfare of its residents, and that it is desirable to make the hereinafter defined and described County Convention Center Hotel Assistance:

- (i) Pursuant to ORC Section 5739.093 and in furtherance of the creation of jobs within the County and the State, the County Board of Commissioners has enacted a resolution on [ ] (the “**County TOT Exemption Resolution**”), which designated the Convention Center Hotel Project as a convention center headquarters hotel (as defined in ORC Section 5739.093), and provided, for a period of [30] years (the “**County TOT Exemption Period**”), (a) the exemption of the Convention Center Hotel Project from the County’s (i) the 3.50% transient occupancy tax established by the County pursuant to ORC Sections 5739.09(D) and (X)(4); (ii) the 3.00% transient occupancy tax established by the County pursuant to ORC Section 5739.09(A)(1), and (iii) the 1.00% transient occupancy tax established by the County pursuant to ORC Section 5739.09(X) (collectively, the “**County Exempt Qualifying Lodging Taxes**”); and (b) through the execution and delivery of a County Exempt Qualifying Lodging Taxes Service Agreement in the form attached hereto as Exhibit D-2 (Form of County TOT Service Agreement) (the “**County TOT Service Agreement**”) the imposition of the requirement for Developer to make certain payments in lieu of County Exempt Qualifying Lodging Taxes (“**County TOT Service Payments**” and, together with the Project TIF

Revenue, the City TOT Service Payments, and the Convention District NCA Charges, the “**Pledged Revenues**”) to be assigned and pledged to the Port and/or OEBF (or the applicable trustee(s)) to facilitate the payment of the Revenue Bond Obligations, with any and all surplus County TOT Service Payments in any given year to be applied to the outstanding balance of the Loan, subject to the limitations set forth herein, and thereafter to be retained by the County or returned to the County, as applicable, and used for any lawful purpose.

Q. As a material inducement to the City and the County to enter into this Agreement, Developer will (i) undertake the Convention Center Hotel Project resulting in the creation of construction jobs and increased payroll receipts; (ii) implement and comply with the hereinafter described and defined Inclusion Plan; (iii) subject the Convention Center Hotel Project and the **Property** to the Restrictive Covenant (as defined below) and each of the Convention Center Hotel Project and the Westin to the applicable Room Block Agreement (as defined below); (iv) incorporate the Convention Center Hotel Project, the Property, and the Westin into the Convention District NCA; and (v) make or cause to be made an estimated capital investment of approximately \$500,000,000, inclusive of all public and private sources.

R. The parties currently anticipate that the Convention Center Hotel Project will be financed in part through the issuance and sale of revenue bonds by the Port and the State, by and through the Ohio Enterprise Bond Fund (“**OEBF**”) with (i) the Port issuing one or more series of senior special obligation development revenue bonds, with no series having a term in excess of the maximum maturity allowable at law for such series, in a principal amount not to exceed \$130,000,000.00 (the “**Senior Revenue Bonds**”) pursuant to a trust indenture, cooperative agreement(s), service agreement(s), and related documents (collectively, the “**Senior Revenue Bond Documents**”), (ii) OEBF issuing one or more series of subordinate special obligation development revenue bonds, with no series having a term in excess of the maximum maturity allowable at law for such series, in a principal amount not to exceed \$25,000,000.00 (the “**Subordinate Revenue Bonds**” and, together with the Senior Revenue Bonds, the “**Revenue Bonds**”) pursuant to a trust indenture, cooperative agreement(s), service agreement(s) and related documents (the “**Subordinate Revenue Bond Documents**” and, together with the Senior Revenue Bond Documents, the “**Revenue Bond Documents**”), and (iii) in each case, the applicable issuer (the Port or OEBF) will make the net proceeds from the Revenue Bonds available to Developer to pay for a portion of the costs of the Convention Center Hotel Project in accordance with the Revenue Bond Documents.

S. As used herein, the term “**Project Documents**” means, collectively, this Agreement, the Service Agreement(s), the Completion Guaranty (as defined below), the Note (as defined below), the Indemnity Agreement (as defined below), the Marriott Room Block Agreement (as defined below), the Restrictive Covenant, the Revenue Bond Documents, the City TOT Service Agreement, the County TOT Service Agreement, the Real Estate Agreement, the State Grant Agreement (as defined below), the DACA (as defined below) and any and all other agreements pertaining to the Convention Center Hotel Project entered into by the City or the County on the one hand, and Developer, on the other hand, or any instruments or other documents pertaining to the Convention Center Hotel Project made by the City and/or the County in favor of Developer or by Developer in favor of the City and/or the County, in each case, until the date that the same expires or is terminated pursuant to its terms.

T. In recognition of the importance and value of including diversity, equity, and inclusion efforts for development projects within the Convention Center **Project Area**, the City, the County, and Development Manager developed a plan and established goals to maximize inclusion efforts within the Convention Center Project Area (the “**Inclusion Plan**”), which was created pursuant to a certain *Development Management Services Agreement* dated June 14, 2023 (the “**Services Agreement**”). In furtherance thereof, in completing the Convention Center Hotel Project, Developer will ensure that all contractors, subcontractors, and consultants on the Convention Center Hotel Project comply with the applicable provisions of the Inclusion Plan for a project of the size and scope of the Convention Center Hotel Project and utilize best efforts to achieve participation at a level of 20% for minority-owned business enterprises and 10% for women-owned business enterprises, with an additional aspirational reach goal of an additional 5% each.

U. The City's execution of this Agreement and the other Project Documents, as applicable, was authorized by Cincinnati City Council by Ordinance No. \_\_\_\_-20\_\_\_\_, passed by Cincinnati City Council on \_\_\_\_\_, 202\_\_\_.

V. The County's execution of this Agreement and the other Project Documents, as applicable, was authorized by the County Board of Commissioners by resolution enacted on \_\_\_\_\_, 202\_\_\_.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. DUE DILIGENCE INVESTIGATIONS.**

(A) Due Diligence Materials to be Provided to the City and the County. Following the Effective Date and at such time as due diligence materials become available, Developer, at its sole expense, shall obtain and deliver (or cause to be obtained and delivered) to the City and the County any such information for review, including, without limitation, copies of inspection, engineering, and environmental reports, geotechnical reports, title reports, surveys, and other materials prepared by third party professionals obtained by Developer prior to Closing that pertain to the Convention Center Hotel Project. Such information should include evidence satisfactory to the City and the County that Developer has obtained or will obtain (a) good and marketable fee simple title to the Property, (b) sufficient financial resources to commence and complete the Convention Center Hotel Project consistent with Section 3(G) hereof, and (c) such other information and documents pertaining to Developer and the Convention Center Hotel Project as the City or the County may reasonably require.

(B) Contingency for City's Satisfaction with Due Diligence Investigations. All reports and the like obtained by Developer from third parties and delivered (or caused to be delivered) to the City and the County shall be recent (i.e., prepared or updated, as the case may be, within 3 months preceding the date that the item is delivered to the City and the County or such longer period of time as the City may, in its sole discretion, deem reasonable) and shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, the City and the County may conduct whatever additional investigations concerning the Convention Center Hotel Project as they deem necessary, including, without limitation, investigations into the feasibility and likelihood of Developer obtaining all building, zoning, and other approvals from the City's Department of Buildings & Inspections, the City's Department of Planning and Engagement, the City Planning Commission, and any other applicable City departments, agencies or boards. If, during or at the conclusion of the due diligence investigations, Developer, the City, or the County (in the case of the City or the County, with advance written notice to the other) reasonably determines that any part of the Convention Center Hotel Project is not feasible or desirable for any reason, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other parties written notice thereof, whereupon this Agreement shall terminate and no party shall thereafter have any rights or obligations hereunder except as may expressly survive termination. Unless otherwise directed by the DCED Director, Developer shall deliver (or cause to be delivered) all due diligence materials to be provided to the City under this Agreement to the DCED Director (for review by DCED and other City departments as deemed necessary or appropriate by DCED) and shall generally coordinate all aspects of the Convention Center Hotel Project (as they relate to the City) through DCED. Upon Closing, the termination rights of the parties under this Section 1(B) shall automatically expire and thereafter shall be null and void. Except to the extent that the City or County later determine that any such reports, materials, or the like were fraudulent, intentionally false, or materially misleading, such reports, materials and the like delivered by Developer under this Section 1 shall be deemed acceptable to the City and the County following expiration of the termination rights provided for under this Section 1.

**2. CLOSING.**

(A) Closing Date. The closing of the transactions described in this Section 2 (the "Closing") is anticipated to take place on \_\_\_\_\_, 2026, or such other date upon which the parties may agree (the "Closing Date"); provided, however, that the Closing shall occur prior to the passage of the TIF Ordinance.

It is the intention of the City and Developer that all of the transactions contemplated in this Section 2 will occur on the same date in as immediate of a sequence as is possible. The occurrence of the Closing is subject to the parties' satisfaction with the various due diligence matters described in Section 1 above.

(B) Initial Conveyance. On the Closing Date, Developer shall transfer or cause to be transferred title to the Property to the City for \$1.00 (the "**Initial Conveyance**") by quitclaim deed. Developer shall pay all customary closing costs relating to the Initial Conveyance (e.g., County transfer tax and County recording fees). The City agrees to neither make, nor permit to be made, any material changes to the condition of the Property or the title thereto during the period in which it owns the Property, which the parties intend to be for as short a period as practicable. During the period in which the City owns the Property, Developer, and its employees and agents, are permitted to enter upon the Property for the purpose of conducting activities associated with the Convention Center Hotel Project at no cost to the City, provided that such entry shall be at the sole risk of Developer, its employees, and agents, and provided, further, for the avoidance of doubt, that the activities described in this sentence are subject to the indemnification provisions in Sections 3(K) and 7(C) of this Agreement.

(C) City Conveyance. Immediately following the Initial Conveyance, the City shall re-convey the Property to Developer (or the Port on behalf of Developer) for \$1.00 (the "**City Conveyance**"), by quitclaim deed (the "**City's Deed**"). Developer shall pay all customary closing costs relating to the City Conveyance (e.g., County transfer tax and County recording fees). The deed effecting the Initial Conveyance shall be recorded prior to the City's Deed.

(D) Miscellaneous Closing Provisions. Pursuant to Section 301-20 of the Cincinnati Municipal Code ("**CMC**"), at Closing, Developer shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by Developer and/or related to the Property to the City. There shall be no proration of real estate taxes and assessments at Closing, and it is understood that the City shall in no way be responsible for the payment of any real estate taxes, service payments in lieu of taxes, and/or assessments due or thereafter becoming due. At Closing, the City and Developer shall execute and cause the execution of a closing statement, County exempt transfer forms, and any and all other customary closing documents that may be deemed necessary for the Closing by the City.

### **3. COMPLETION OF THE CONVENTION CENTER HOTEL PROJECT.**

(A) Preparation of Plans and Specifications. Developer has selected Skanska USA Building, Inc. (the "**Construction Manager**"), as its construction manager for the Convention Center Hotel Project pursuant to that Agreement for Construction Management Services between Developer as "**Owner**" and Construction Manager dated September 21, 2025 (the "**CM Agreement**"). Prior to either the issuance of the Revenue Bonds or the disbursement of any City Cash Funds (as defined below), Developer shall cause the Construction Manager to prepare plans and specifications for the Convention Center Hotel Project that will become the basis for the GMP Amendment (as defined below), and Developer shall submit the same to the City and the County for review and approval; *provided* that the City and/or the County may only withhold approval if such plans and specifications (i) materially reduce or diminish the size, scope, quality, or site plan of the Convention Center Hotel Project, as compared to the scope of work attached hereto as Exhibit B (except as required by applicable law), (ii) could reasonably be expected to reduce the projected hard construction costs of the Convention Center Hotel Project by more than \$2,000,000 as compared to the projected hard construction costs set forth on the budget attached hereto as Exhibit B, (iii) violate applicable zoning laws, or (iv) violate or are inconsistent with the land use approvals secured for the undertaking of the Convention Center Hotel Project, including the planned development approved by the City, in each case in the City's and County's reasonable discretion. Such approved plans and specifications for the Convention Center Hotel Project (including any and all changes thereto, subject to the City's and the County's review and approval on the criteria provided in the immediately preceding sentence) are referred to herein as the "**Final Plans**" with respect to the Convention Center Hotel Project. Developer shall submit any and all proposed changes to the Final Plans to the City and the County for review and approval prior to executing the guaranteed maximum price amendment (the "**GMP Amendment**" and, together with the CM Agreement, and any other amendments, change directives, or change orders thereto, the "**Construction Contract**"). The City and the County will use commercially reasonable efforts to approve or

respond with any comments to the plans and specifications submitted under this Section 3(A) or changes to the Final Plans that require approval under this Section 3(A) within 10 business days after receipt of the same from Developer.

(B) Construction Budget and Schedule. Prior to finalizing the GMP Amendment, in addition to submission of the plans and specifications under Section 3(A), Developer shall submit to the City and the County an updated construction budget (the "**Final Construction Budget**"), and an updated construction schedule (the "**Final Construction Schedule**") for the Convention Center Hotel Project, which in each case will serve as the basis for the delivery of the Convention Center Hotel Project under the Construction Contract. Developer will also submit to the City and the County an updated development budget, which shall be deemed to replace the budget attached hereto as Exhibit B (the "**Final Development Budget**").

(C) Construction Contract. After the Effective Date, as the same become available, Developer shall provide to the City and the County, fully executed copies of the CM Agreement and any amendments thereto, any architect agreement, and any engineering services agreement. Prior to the execution and delivery of the GMP Amendment, Developer shall provide the proposed final form of GMP Amendment to the City and the County for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed provided that the GMP Amendment (i) incorporates the Final Construction Budget, Final Construction Schedule, and Final Plans; (ii) carries forward the construction management fee payable to the Construction Manager consistent with the CM Agreement; and (iii) consistent with the CM Agreement, provides that if the work is performed within the Final Construction Budget, Developer in such capacity as "Owner" will be permitted to share Savings (as defined in the CM Agreement) at Project Closeout (as defined below) to repay a portion of the Loan as further contemplated under Section 4(E)(v) below. Prior to the execution and delivery of the GMP Amendment, Developer shall provide the proposed final form of GMP Amendment to the City and the County for review and approval in accordance with clauses (i), (ii), (iii), and (iv) in Section 3(A) (except that, for comparison purposes under clause (ii) in Section 3(A), the Final Construction Budget will be used as the baseline in lieu of Exhibit B). The City and the County will use commercially reasonable efforts to approve or respond with any comments to the GMP Amendment or changes to the Final Plans attached thereto or referenced therein (to the extent requiring approval under this Section 3(C) within 10 business days after receipt of the same from Developer. At the request of any party, this Agreement shall be amended to attach as updated exhibits the Final Construction Budget, the updated Final Development Budget, and/or an index sheet referencing the Final Plans. For avoidance of doubt, the Final Construction Schedule shall provide for delivery of the Convention Center Hotel Project in accordance with the timelines set forth under Section 3(G).

(D) Amendments and Changes; Contingency. After the execution and delivery of the GMP Amendment, Developer will not be required to submit Immaterial Post-GMP Changes (as defined below) for review and approval to the City and the County but shall provide notice of all Immaterial Post-GMP Changes to the City and the County either concurrent with undertaking the same or during scheduled meetings during construction to discuss, which meetings should occur no less frequently than monthly, and during which the Immaterial Post-GMP Changes from the prior calendar month are to be discussed. For purposes of this Agreement, "**Immaterial Post-GMP Changes**" means any changes to the Construction Contract subsequent to the GMP Amendment (whether by amendment, change order, change directive, a draw on the general contractor's contingency held under the GMP Amendment, or otherwise) or subsequent changes to the Final Plans, so long as such changes would not (i) reduce the projected hard construction costs of the Convention Center Hotel Project by more than \$2,000,000 as compared to the projected hard construction costs in the Final Construction Budget; (ii) materially reduce or diminish the size, scope, quality, or site plan of the Convention Center Hotel Project (except to the extent required by applicable building, health and safety law and regulations), as compared to the scope of work set forth in the Final Plans and the Construction Contract, as each then exists; (iii) violate applicable zoning laws; or (iv) violate or be inconsistent with the land use approvals secured for the undertaking of the Convention Center Hotel Project, including the planned development approved by the City. Any changes (whether by amendment, change order, or change directive, or otherwise) to the Construction Contract subsequent to the GMP Amendment or subsequent changes to the Final Plans that, in each case, do not constitute Immaterial Post-GMP Changes shall require the approval of the City and the County, such approval not to be unreasonably withheld, conditioned, or delayed. The City and the County will use commercially reasonable efforts to

approve or respond with any comments or objections to the changes to the Construction Contract or Final Plans within 10 business days after receipt of the same from Developer.

(E) Application of Project Contingency and Certain Reallocations Under Final Development Budget.

(i) Application of Project Contingency. After the execution and delivery of the GMP Amendment, Developer shall not, without obtaining the prior approval of the City and the County, which approval shall not be unreasonably withheld, conditioned or delayed, apply Project Contingency held under the Final Development Budget to any Excluded Development Budget Items that would (i) reduce the projected hard construction costs of the Convention Center Hotel Project by more than \$2,000,000 as compared to the projected hard construction costs in the Final Construction Budget; (ii) materially reduce or diminish the size, scope, quality, or site plan of the Convention Center Hotel Project (except to the extent required by applicable building, health and safety law and regulations), as compared to the scope of work set forth in the Final Plans and the Construction Contract, as each then exists; (iii) violate applicable zoning laws; or (iv) violate or be inconsistent with the land use approvals secured for the undertaking of the Convention Center Hotel Project, including the planned development approved by the City. The City and the County will approve or respond with any comments or objections to any request for application of Project Contingency to any Excluded Development Budget Item as provided above within 10 business days after receipt of such request from Developer. The failure of the City or the County to respond within such 10-business day period shall constitute a rejection of Developer's request for application. Developer shall be permitted to draw upon or reallocate Project Contingency in any amount to any Included Development Budget Item in the Final Development Budget without the City or the County's prior written approval. However, notwithstanding the foregoing clause, Developer covenants and agrees to provide the City and County with notice of all draws on the Project Contingency during the scheduled construction meetings described in Section 3(D). For purposes of this Agreement, any capitalized term used but not defined in this Agreement in the context of provisions pertaining to the Final Development Budget for the Convention Center Hotel Project shall refer to the applicable line item set forth on the Final Development Budget (i.e., "Project Contingency").

(ii) Line Item Reallocation. Prior to Project Closeout, Developer covenants and agrees to secure the City's and County's prior written approval for any proposed reallocation of budgeted amounts from any Included Development Budget Item(s) to any Excluded Development Budget Item(s) that would exceed the threshold for Immaterial Post-GMP Changes, which approval may be withheld in the City's and County's reasonable discretion. The City and County will approve or respond with any comments or objections to any request for reallocation as provided above within 10 business days after receipt of such request from Developer. The failure of the City and County to respond within such 10-business day period shall constitute a rejection of Developer's request for reallocation. Except as specified above or elsewhere in this Agreement, Developer shall be permitted to reallocate line items in the Final Development Budget without the City or the County's prior written approval.

(F) Proof of Financing. Prior to the closing date for the issuance and sale of the Revenue Bonds (the "**Bond Closing**"), Developer shall provide evidence to the City and the County demonstrating that it has obtained all financing necessary to complete the Convention Center Hotel Project as further detailed in the attached Project budget, as initially identified in Exhibit B and as revised from time to time in accordance with this Agreement.

(G) Commencement and Completion of Construction. Not later than June 30, 2026 (the "**Commencement Deadline**"), Developer shall (i) apply for and receive the required foundation and building permits from the City's Department of Buildings and Inspections for construction of the Convention Center Hotel Project and (ii) commence construction of the Convention Center Hotel Project in accordance with the Final Plans. Not later than December 31, 2029 (the "**Completion Deadline**"), Developer shall complete construction of the Convention Center Hotel Project in substantial accordance with the Final Plans, as demonstrated by a permanent certificate of occupancy for 100% of the hotel portion of the Convention Center Hotel Project ("**Construction Completion**"). However, the City, after consultation with the County, may, upon Developer's written request, permit the Commencement Deadline and the Completion Deadline to each be extended in 2 increments of up to 6 months (e.g., for a total of up to 12 months), which extensions

shall not be unreasonably withheld, conditioned or delayed, provided that Developer can demonstrate that it will complete the Convention Hotel Project within such extended time period. Notwithstanding the foregoing, Developer acknowledges that delivery of the completed Convention Center Hotel Project is of critical importance to the City and the County and agrees to undertake commercially reasonable efforts to achieve an aspirational completion deadline of September 1, 2028; provided however, that Developer's failure or inability to complete construction by such aspirational completion deadline for any reason shall not constitute an independent basis for a default under this Agreement. As additional inducement for the City to extend the City Convention Center Hotel Assistance and the County to extend the County Convention Center Hotel Assistance, Developer covenants and agrees to use commercially reasonable efforts to lease the retail space in the Convention Center Hotel Project to one or more retail end-users, which commercially reasonable efforts shall include, without limitation, extending allowances and incentives to tenants from sources available to Developer for such purposes under the Final Development Budget.

(H) Completion Guaranty. On or before the Bond Closing, Developer shall cause Portman Financial, LLC, a Georgia limited liability company, or one or more affiliates of Developer acceptable to the City and the County ("Guarantor") to execute a completion guaranty in favor of the City and the County, the form of which shall be substantially the same form delivered by Guarantor to Developer's construction lender for the Convention Center Hotel Project on or before the Bond Closing (the "Completion Guaranty"). Alternatively, Developer may elect to attempt to coordinate with its construction lender for the City and the County to be named as beneficiaries of the completion guaranty delivered to Developer's construction lender. If Developer's construction lender allows the City and the County to be named as beneficiaries, then the construction lender's completion guaranty shall also be deemed to be the "Completion Guaranty" for purposes of this Agreement in lieu of a separate completion guaranty made in favor of the City and the County.

(I) Inspection of Work. During construction of the Convention Center Hotel Project, the City, the County, and their respective employees and agents shall have the right at all reasonable times, and upon reasonable notice, to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement. Notwithstanding anything to the contrary in this paragraph (I) or this Agreement, nothing herein shall in any way limit the inspection rights the City otherwise legally possesses, whether in connection with its police powers, permitting, or otherwise.

(J) Mechanics' Liens. Developer shall not permit any mechanics' or other liens (other than liens securing indebtedness permitted under Section 13(F)) to be filed against the Property during construction. If a mechanic's lien shall at any time be filed, Developer shall within 30 days after notice to Developer of the filing thereof (the "Lien Resolution Period"), cause the same to be discharged of record or bonded over in accordance with Ohio law. Notwithstanding the foregoing, Developer may contest the validity of any claim or demand in good faith and in accordance with such rights to contest as may be permitted by the Revenue Bond Documents and Developer's construction lender and with diligence and continuity to the City's and County's reasonable satisfaction. If Developer elects to contest the validity of any claim or demand pursuant to the preceding sentence, the Lien Resolution Period shall toll for such time as Developer is diligently pursuing the contest, for a total of up to 90 days.

(K) Barricade Fees Payable to DOTE. Developer acknowledges that, if applicable, (i) it will be required to obtain a barricade permit and pay barricade fees to the City's Department of Transportation and Engineering ("DOTe") for the closure of any sidewalks and curb lanes of the adjacent streets if and when demolition or construction necessitates closing the adjoining streets or portions thereof, and (ii) with many entities competing for space on City streets, it is important that construction activities be limited to as little space and the shortest duration as possible and that all work be scheduled and performed to cause the least interruption to vehicular travel, bicyclists, pedestrians, and businesses; therefore, DOTE shall have the right to evaluate Developer's need for a barricade throughout construction and, if at any time after consultation with Developer DOTE determines that a barricade is not needed, DOTE shall have the right to withdraw the permit.

(L) Environmental Conditions. As a material inducement to the City and the County to enter into this Agreement, Developer does hereby agree that, with respect to any environmental condition on or otherwise affecting the Property that exists at or prior to the time of the City's and County's execution of this Agreement (herein, a "**pre-existing environmental condition**"), and regardless of whether or not such pre-existing environmental condition is described in any environmental assessment or any other environmental report that may have been previously furnished by Developer to the City and County, Developer shall at no expense to the City and County, promptly take all steps necessary to remediate such pre-existing environmental condition in accordance with applicable laws and regulations, within a reasonable time after discovery, to the satisfaction of the City's Office of Environment and Sustainability. Developer's remediation obligations under this paragraph shall survive the completion of the Convention Center Hotel Project.

(M) Contractors and Subcontractors. Developer shall not solicit bids from any contractors or subcontractors who are identified as being debarred by the federal or state government or who are identified as being debarred on the City's Vendor Performance list.

(N) Diversity, Equity, and Inclusion. Developer shall follow and enforce Sections A, B, and D of the Inclusion Plan, including through following and enforcing the applicable provisions of the Compliance Plan and submitting the required monthly reports relating thereto, to ensure that Developer and all of its contractors, subcontractors, and consultants utilize best efforts to achieve the W/MBE goals of 20% for MBEs and 10% for WBEs, with the additional aspirational goals of 5% each for MBEs and WBEs, for collective goals of 25% for MBEs and 15% WBEs. In addition to the foregoing MBE/WBE goals, Developer will utilize and shall require its construction manager to utilize best efforts to achieve the goal of awarding 60% of the primary trade contracts to union contractors ("**Workforce Goal**") with an aspirational goal of 65%. For the purposes of this paragraph (N), the term "**Compliance Plan**" shall have the meaning ascribed to it in the Inclusion Plan, the term "**WBE**" shall mean woman-owned business enterprise, and "**MBE**" shall mean minority-owned business enterprise. Furthermore, Developer acknowledges that it was selected in part because of its commitment to pursue diverse equity investments for the Convention Center Hotel Project. Developer shall use best efforts to include minority and women investors for the equity portion of financing for the Convention Center Hotel Project.

(O) Union Neutrality. Developer shall and shall cause the Hotel Operator of the Convention Center Hotel Project to adopt a position of Neutrality (as defined below) regarding the unionization of any hourly employees hired to work at the Convention Center Hotel Project who are not otherwise represented by a union at the time of [the opening of the Convention Center Hotel Project]. For purposes of this Agreement, "**Neutrality**" means Developer and the Hotel Operator will: (1) not advocate for or against the unionization of any hourly employees working at the Convention Center Hotel Project who are not otherwise represented by a union at the time of [the opening of the Convention Center Hotel Project]; (2) provide union organizers access to non-working areas of the Convention Center Hotel Project during non-work time as long as: (a) the request for access is made at least 48 hours prior to such access; and (b) providing access does not interfere with the operation of the Convention Center Hotel Project; and (3) voluntarily recognize a union at the Convention Center Hotel Project without an election if presented with a valid showing of majority support for a particular union, as determined in accordance with applicable law. Notwithstanding anything to the contrary contained herein, Developer and the Hotel Operator's neutrality commitment may be terminated if a union attempting to organize hourly employees working at the Convention Center Hotel Project disparages Developer or the Hotel Operator, interferes with Developer's or the Hotel Operator's operation at the Convention Center Hotel Project, or distributes false information. For the avoidance of doubt, the foregoing clause shall not be interpreted to require tenants of the Convention Center Hotel Project (e.g., a restaurant tenant or a coffee shop tenant) to adopt a position of Neutrality regarding the unionization of hourly employees hired to work at their premises within the Convention Center Hotel Project.

#### 4. CITY ASSISTANCE.

(A) Project TIF Revenue Payments. The City's commitment to make the Project TIF Revenue available shall be subject to and contingent upon, without limitation, the execution and continued effectiveness of this Agreement, the Service Agreement, a cooperative agreement, the other applicable Project Documents, and the Revenue Bond Documents. The City's commitment under this Agreement with respect to the Project TIF Revenue shall be limited to providing the Project TIF Revenue to the Port and/or OEBF (or the applicable trustee(s)) for payment of Revenue Bond Obligations, all in accordance with one or more separate agreements to be executed by and between or by and among the City, County, Developer, OEBF, and/or the Port. Developer acknowledges and agrees that the City will not provide the Project TIF Revenue to OEBF or the Port (or the applicable trustee(s)) for payment of the Revenue Bonds other than with respect to Statutory Service Payments for tax years falling within the TIF Exemption Period that are actually made in accordance with the Service Agreement and are actually received by the City.

(B) City TOT Exemption. Pursuant to the TOT Exemption Ordinance, City Council has approved the City TOT Service Payments, and the pledge and assignment of the City TOT Service Payments to the Port and/or OEBF (or the applicable trustee(s)) for payment of a portion of the Revenue Bond Obligations, all in accordance with one or more separate agreements to be executed by and among or by and between the City, the County, Developer, the Convention District NCA, OEBF, and/or the Port. To the extent received directly by the City for transfer to the Port and/or OEBF (or the applicable trustee(s)), Developer acknowledges and agrees that the City will not provide the City TOT Revenue to OEBF or the Port (or the applicable trustee(s)) for payment of the Revenue Bonds other than with respect to City TOT Service Payments for tax years falling within the City TOT Exemption Period that are actually made in accordance with the City TOT Service Agreement and are actually received by the City.

(C) NCA Formation Assistance. To further assist the Convention Center Hotel Project, the City covenants and agrees to cooperate with Development Manager to facilitate the formation of the Convention District NCA in accordance with the NCA Act, which cooperation shall include conducting the public hearing required under the NCA Act and appointing the initial local government representatives to the board of trustees for the Convention District NCA. The City will cooperate in such capacity to cause the Convention District NCA Declaration securing the payment of the Convention District NCA Charges to be recorded against the Convention Center, and, to the extent City approval is necessary, other City-owned properties with commercial tenants that are located in the Convention District NCA.

(D) Real Estate Assistance. In furtherance of the orderly development of the Convention Center Hotel Project, the City and Developer will enter into a purchase and sale agreement or similar agreement (the "**Real Estate Agreement**") pursuant to which the City will agree to grant and convey certain real property interests at and around the Property to facilitate among other things, Developer's construction, maintenance and operation of the skybridge connecting the Convention Center Hotel Project to the Convention Center, loading and unloading areas adjacent to the Convention Center Hotel Project, and such other rights and real property interests as may be agreed upon between the parties under the Real Estate Agreement.

#### (E) Direct City Assistance.

(i) City Loan; Eligible Uses. If the City is satisfied with the due diligence materials provided pursuant to Section 1 above, Developer is not in breach of this Agreement or any of the other Project Documents, and Developer has executed the Note, then the City will loan the Direct City Assistance to Developer, in an amount not to exceed \$50,000,000 (the "**Loan**"). The proceeds of the Loan (the "**City Cash Funds**") shall be used exclusively to pay for capitalizable costs set forth in the Final Development Budget and for no other purpose. For the avoidance of doubt, Developer shall not use any portion of the Funds to pay for the purchase of inventory, supplies, furniture, trade fixtures, or any other items of personal property, or to establish a working capital fund.

(ii) Note from Developer. Prior to receiving the City Cash Funds for the Convention Center Hotel Project, Developer shall execute a promissory note in the form of Exhibit F-1 (Form of Promissory Note) hereto, in favor of the City (the "**Note**"). The Note shall be in the full amount of the Loan.

If Developer (i) fails to timely complete its construction obligations under Section 3(G), (ii) defaults under the Marriott Room Block Agreement beyond applicable notice and cure periods thereunder or hereunder, or (iii) fails to operate the Convention Center Hotel Project consistent with the Quality Standards (as defined below) and such failure continues beyond applicable notice and cure periods hereunder, then, in any such case, the City may declare all disbursed City Cash Funds to be immediately due and payable.

(iii) Disbursement of City Cash Funds. The City shall disburse the City Cash Funds in accordance with Exhibit G (Disbursement of City Cash Funds) hereto.

(iv) Excess Pledged Revenues; City Loan Reserve.

(a) *Subordinate Revenue Bonds and Loan Each Outstanding.* Each year after the Revenue Bonds are issued and sold, irrespective of whether Senior Revenue Bonds are outstanding, to the extent there are Pledged Revenues available following the payment of debt service, inclusive of principal, interest, and administrative expenses as further described under a cooperative agreement, on the Subordinate Revenue Bonds (such amounts being referred to hereinafter as "**Excess Pledged Revenues**"), the Subordinate Revenue Bond Documents will provide that 25% of the Excess Pledged Revenues will be applied to "turbo redeem" the Subordinate Revenue Bonds, and the City will receive 75% of the Excess Pledged Revenues for the repayment of the Note.

(b) *Senior Revenue Bonds and Loan Each Outstanding.* After the Subordinate Revenue Bonds are no longer outstanding, and provided the Senior Revenue Bonds remain outstanding, the Senior Bond Documents shall provide that 25% of the Excess Pledged Revenues will be applied to "turbo redeem" the Senior Revenue Bonds, and the City will receive 75% of Excess Pledged Revenues until the outstanding principal and interest on the Loan has been fully repaid.

(c) *Only Senior Revenue Bonds Outstanding.* In the event the Loan has been paid in full and provided the Senior Revenue Bonds remain outstanding, the Senior Bond Documents will provide for the Excess Pledged Revenues to be distributed as follows: (1) 25% of Excess Pledged Revenues will be applied to "turbo redeem" the Senior Revenue Bonds, and (2) 75% of the Excess Pledged Revenues will be distributed (x) to the County in an amount equal to the portion of County TOT Service Payments as a percentage of all Pledged Revenues transferred to the trustee for the Senior Revenue Bonds (the "**Senior Revenue Bonds Trustee**") during the corresponding year; (y) to the City in an amount equal to the portion of Project TIF Revenues and City TOT Service Payments as a percentage of all Pledged Revenues transferred to the Senior Revenue Bonds Trustee for the corresponding year; and (z) to the Convention District NCA, Excess Pledged Revenues in an amount equal to the Convention District NCA Charges as a percentage of all Pledged Revenues transferred to the Senior Revenue Bonds Trustee for the corresponding year.

(d) *Only Loan Outstanding.* In the event no Revenue Bonds remain outstanding, and the Loan is unpaid, then all Project TIF Revenues and all City TOT Service Payments received by the City shall be applied solely to the payment of principal and interest on the outstanding balance of the Loan, 80% of the County TOT Service Payments received by the County shall be transferred to the City to be applied solely to the payment of principal and interest on the outstanding balance of the Loan, and all Convention District NCA Charges received by the Convention District NCA shall be transferred to the City. For the avoidance of doubt, the remaining 20% of the County TOT Service Payments received by the County shall be retained by the County for the County to use for any lawful purpose.

(e) *No Revenue Bonds or Loan Outstanding.* In the event no Revenue Bonds remain outstanding and the Loan has been repaid in full, then the Excess Pledged Revenues will be distributed and/or retained, as and if applicable, to be used for any lawful purpose, as follows: (1) through the remainder of the TIF Exemption Period, to the City the Project TIF Revenue; (2) through the remainder of the City TOT Exemption Period, to the City the City TOT Service Payments; (3) through the remainder of the County TOT Exemption Period, to the County the County TOT Service Payments; and (4) while the Convention District NCA remains in existence, to the Convention District NCA the Convention District NCA Charges.

(f) City Loan Reserve. As additional security for the repayment of the Loan, Developer covenants and agrees to establish a Loan reserve (the "**City Loan Reserve**") on the date of the Bond Closing and initially fund and thereafter replenish the City Loan Reserve from time to time in accordance with this Section 4(E)(iv)(f). Developer will hold the City Loan Reserve in a segregated depository account subject to the terms and conditions of a deposit account control agreement (the "**DACA**") to be entered into on or before the date of the Bond Closing among the City, Developer and a financial institution reasonably acceptable to the City and Developer. The DACA will permit the City, on an annual basis, to draw upon the City Loan Reserve in an amount (any such amount being an "**Excess Revenues Shortfall**") equal to the lesser of (i) \$600,000, or (ii) the difference, if greater than zero, between (x) the revenues projected to be derived from the City TOT Service Payments, County TOT Service Payments, and community development charges attributable to the Convention Center Hotel Project together with the community development charges attributable to the Westin, in each case, as shown on the final revenue projections prepared in conjunction with the Bond Closing, a copy of which shall be attached hereto as Exhibit H (Final Revenue Projections), and (y) the actual City TOT Service Payments, County TOT Service Payments and community development charges attributable to the Convention Center Hotel Project and the Westin received by the Senior Revenue Bonds Trustee during the corresponding calendar year. Upon full repayment of the Loan, the DACA will provide for the release of any funds then held in the City Loan Reserve to Developer. Developer will fund the City Loan Reserve up to a maximum balance of \$3,000,000 (the "**City Loan Reserve Requirement**") (which is subject to replenishment in an amount not to exceed \$200,000 pursuant to subsection (3) below) from the following sources in the following amounts:

(1) In the amount of \$1,000,000 from all sources legally available to Developer to be deposited by Developer into the City Loan Reserve by no later than the sooner to occur of 10 business days after (i) the hotel portion of the Convention Center Hotel Project is open to the public, or (ii) Construction Completion.

(2) In an amount of up to \$1,000,000 from Developer's share of any Construction Period Savings (as defined below) following Project Closeout (as defined below); for the avoidance of doubt, such contribution shall have no impact on the City's share of any Construction Period Savings; and

(3) In the amount of \$1,000,000 from 20% of Project cash flow available for distribution by Developer as preferred return to its member or members, subject to the restrictions imposed by, and the rights and remedies of, the lenders for the Project under the loan documents (the "**Preferred Return Reserve Contribution**"); provided, however, in the event the City draws upon the City Loan Reserve in any calendar year due to an Excess Revenues Shortfall, then Developer shall make additional deposits of the Preferred Return Reserve Contribution. The foregoing replenishment commitment shall continue until such time that the aggregate replenishment deposits reach \$200,000, after which Developer shall have no obligation to make further deposits under this subsection (3) for any reason, but the City shall otherwise retain all rights to draw upon the City Loan Reserve pursuant to the DACA. In furtherance of Developer's foregoing commitment to contribute the Preferred Return Reserve Contribution and as a condition precedent to the City's extension of the Loan, Developer covenants and agrees to (i) provide to the City and the County for inspection the proposed final operating agreement in redacted form but demonstrating the right of Developer to distribute the Preferred Return Reserve Contribution; (ii) negotiate in good faith with all applicable construction lenders and mezzanine lenders the right to make distributions of cash flow in the form of preferred returns upon the achievement of certain metrics and benchmarks, including debt yield, debt service coverage ratio, and an initial amortization payment under the senior loan; (iii) provide to the City and the County for inspection the proposed final construction loan documents and mezzanine loan documents in redacted form incorporating the aforementioned metrics and benchmarks; and (iv) undertake commercially reasonable efforts to negotiate with its permanent lender at least equivalent benchmarks and metrics with respect to the distribution of Preferred Return Reserve Contribution as are contained in the construction loan documents; provided however, the failure of Developer to secure such at least equivalent metrics and benchmarks shall not constitute an event of default. The City and the

County acknowledge and understand that Developer shall exclusively control all negotiations pertaining to the aforementioned construction and permanent loans.

(v) **Construction Period Savings**. The parties hereby agree that if there are Construction Period Savings following Project Closeout, then the City and Developer will split such Construction Period Savings, up to the Savings Cap (as defined below), with each such party receiving 50% of the Construction Period Savings up to the Savings Cap, with Developer retaining amounts above the Savings Cap. Any amounts captured by the City as Construction Period Savings shall be credited against the outstanding balance on the Loan. To the extent the amount the City receives as Construction Period Savings exceeds the outstanding balance on the Loan, the City shall be entitled to retain such excess amounts; provided that, the City acknowledges and agrees to work in good faith with the County to share in such excess in consideration of the County's contribution to the County TOT Service Payments as a component of the Pledged Revenues; provided further, that the City and the County hereby acknowledge and agree that, as part of the good faith efforts to be undertaken in conjunction with the distribution of excess Construction Period Savings, the City and the County shall consider, solely or in conjunction with other considerations, the proportion of aggregate County TOT Service Payments actually transferred as Pledged Revenues to aggregate Pledged Revenues, in each case, as of the date of such payment of Construction Period Savings to the City. Any such amounts received by the City and/or the County may then be used for any lawful purpose. In furtherance of making the determination as to the degree of Construction Period Savings, Developer covenants and agrees to provide the City on a monthly basis during the Construction Period with all documentation reasonably required to track and, upon Project Closeout, ascertain the Construction Period Savings, which documentation may include but shall not be limited to agreements governing the payment of Included Development Budget Items (as defined below), invoices for services, account statements, payment applications, and amendments to the Construction Contract, including change orders. Within 60 days following Project Closeout, Developer shall submit a final report setting forth any Construction Period Savings together with all such documentation as the City may reasonably require to supplement such final report. Thereafter, the City shall have 90 days to review and confirm the final amount of any Construction Period Savings as set forth in the final report. Notwithstanding anything to the contrary contained herein, any reallocation or series of reallocations between items in the Final Development Budget for the primary purpose of avoiding Development Budget Savings shall be deemed to have never been made such that, irrespective of any bad faith transfer, any transferred amounts from Included Development Budget Item(s) shall be reallocated to such Included Development Budget Item(s) for purposes of calculating Development Budget Savings. An important factor in determining whether a reallocation constituted a bad faith transfer is whether the transfer or transfers would have occurred but for the Development Budget Savings provisions under this Section.

As used herein:

(a) **“Construction Period”** means the time period commencing with the date on which Developer first incurred pre-development costs allocable to a line-item on Exhibit B through Project Closeout.

(b) **“Construction Period Savings”** means, together, Construction Savings and Development Budget Savings.

(c) **“Construction Savings”** means the difference, if greater than zero, calculated after Project Closeout as follows: (i) the “Guaranteed Maximum Price” as that term is defined under the Construction Contract, and modified from time to time, minus (ii) all savings and amounts paid or payable to the Construction Manager pursuant to the Construction Contract.

(d) **“Development Budget Savings”** means the difference between the total costs attributable to Included Development Budget Items (exclusive of any amount payable pursuant to the Construction Contract), and the actual documented costs attributable to Included Development Budget Items (exclusive of any amount payable pursuant to the Construction Contract) paid by Developer under the applicable agreements (or by Guarantor under the Completion Guaranty) and confirmed by the City.

(e) **“Excluded Development Budget Items”** means the following items set forth on attached Exhibit B: (i) Existing Bond Retirement; (ii) Tenant Improvements – Retail; (iii) Leasing Commissions; and (iv) Interest and Operating Reserve Accounts; (v) Development Fees & Overhead; (vi) Real Estate Taxes & Structured Lease Fees; (vii) Project Contingency; (viii) Legal; (ix) Accounting and Administrative Expenses; and (x) Insurance.

(f) **“Included Development Budget Items”** means the following items set forth on attached Exhibit B: (i) Construction Contract Hard Costs (which shall be separately evaluated to determine Construction Savings as provided above); (ii) FF&E/OS&E/Equipment; (iii) Technology and Systems; (iv) Other Hard Costs; (v) Entitlements, Permitting and Public Fees; (vi) Design Consultants; (vii) Consultants & Studies; (viii) Purchasing Agent and Procurement; (ix) Marketing; (x) Pre-Opening Expenses; and (xi) Financing Fees. Included Development Budget Items expressly exclude Excluded Development Budget Items.

(g) **“Project Closeout”** means the date that is 180 days after the latest to occur of (1) Construction Completion, (2) the release of final retainage, (3) the delivery of all lien waivers, or (4) close out and final payment under the Construction Contract.

(h) **“Savings Cap”** means \$17,500,000 (i.e., a maximum share to the City of \$8,750,000).

(vi) **Incentive Recoupment Payment.**

(a) **Generally.** Without limiting the provisions of Sections 13(A) and (B) (*Assignment; Change of Control*) hereof, Developer hereby agrees to pay to the City, concurrently with the closing of a Qualifying Sale, the Incentive Recoupment Payment; *provided that* notwithstanding anything to the contrary herein, Developer's obligation to pay the Incentive Recoupment Payment shall wholly terminate and cease to be effective as of the 10<sup>th</sup> anniversary of Construction Completion. Notwithstanding anything to the contrary in this Agreement, no Incentive Recoupment Payment shall be payable in connection with any sale or transfer that is not a Qualifying Sale. Developer shall provide at least 30 days' prior written notice to the City before the closing of a Qualifying Sale, together with any and all documentation required hereunder with respect to the determination of the Incentive Recoupment Payment. Developer shall promptly provide any additional documentation requested by the City in order to determine the amount of the Incentive Recoupment Payment in accordance with this provision. As used herein:

(1) **“Adjusted Project Cost”** means through the 4<sup>th</sup> anniversary of Construction Completion, \$325,000,000, and which amount increases annually thereafter by 3% (i.e., thereafter, \$334,750,000.00 through the 5<sup>th</sup> anniversary, \$344,792,500.00 through the 6<sup>th</sup> anniversary, \$355,136,275.00 through the 7<sup>th</sup> anniversary, \$365,790,363.25 through the 8<sup>th</sup> anniversary, \$376,764,074.15 through the 9<sup>th</sup> anniversary, and \$388,066,996.37 through the 10<sup>th</sup> anniversary);

(2) **“Affiliate Transfer”** means any transfer of any portion of the Convention Center Hotel Project or Property, assignment of the rights or interests of Developer under this Agreement or the other Project Documents, or sale, transfer, or conveyance of all or any portion of the direct or indirect membership or beneficial interest in Developer or any member or other owner of such entity (each a “**Developer Party**”), in each case, to (a) any successor or surviving entity resulting from a merger, acquisition, or consolidation with any Developer Party; (b) any entity succeeding to all or a substantial portion of any Developer Party's business or an entity to whom such Developer Party has sold all or substantially all of its assets; (c) any related entity, subsidiary, or parent company of any Developer Party; (d) any entity in which any Developer Party has a controlling interest; or (e) any affiliate of any Developer Party's parent. Notwithstanding the foregoing, any transfer or series of transfers in a 24-month period of all or any portion of the direct or indirect membership or beneficial interest in Developer or a Developer Party that results in a Change of Control (as defined below), other than in connection with an Affiliate Transfer under (a) or (b) above, shall be excluded from the definition of Affiliate Transfer;

(3) **“Estate Planning Transfer”** means any inter vivos or testamentary sale, transfer, or conveyance by any person of all or any portion of the direct or indirect beneficial ownership interest in Developer to (a) one or more immediate family members of such person, (b) a trust or other entity in which all the beneficial interest is held by such person or one or more immediate family members of such person, or (c) a charitable organization; provided, that in each case (i) such transfer is made in connection with such person’s bona fide, good faith estate planning, and (ii) such transfer does not result in a Change of Control. Estate Planning Transfer shall also include any transfers resulting from an amendment, restatement, modification, revision, or other change to an existing trust, provided the foregoing requirements in (i) and (ii) are satisfied;

(4) **“Exempt Transfer”** means (a) any Affiliate Transfer, (b) any Estate Planning Transfer, or (c) any sale, transfer, or conveyance in connection with the exercise by any lender (including, without limitation, any mezzanine lender or preferred equity investor) of its remedies under its loan documents or organizational documents with respect to its security in the Convention Center Hotel Project (e.g., foreclosing on Developer’s interest in the Convention Center Hotel Project or accepting a deed in lieu of foreclosure or Developer’s interests therein)(any sale, transfer or conveyance under clause (c) is a **“Foreclosure”**);

(5) **“Incentive Recoupment Payment”** means an amount equal to the Sales Participation Excess multiplied by 25%;

(6) **“Net Sale Proceeds”** means (a) the gross sale proceeds (including any non-monetary consideration, such as assumption of loans (excluding the Loan and Pass-Through Loan), payment in kind, or otherwise), with respect to a Qualifying Sale, less any reasonable, actual, documented, and customary costs of the sale, such as brokerage fees, transfer taxes, recording fees, and so forth, divided by (b) 100%, or, if the Qualifying Sale involves a sale of less than 100% of the direct or indirect ownership interests in Developer or the Convention Center Hotel Project, the percentage of direct or indirect ownership interests that are sold pursuant to the Qualifying Sale (e.g., if 51% of the direct or indirect ownership interests in Developer or the Convention Center Hotel Project are sold, such percentage would equal 51% and not 100%);

(7) **“Qualifying Sale”** means either of the following taking place after the Effective Date (but excluding Exempt Transfers): (a) a sale, transfer, or conveyance of the Convention Center Hotel Project and the Property; or (b) any transaction or series of transactions in any 24-month period in which more than 50% of the direct or indirect ownership interests in Developer or the Convention Center Hotel Project are transferred; and

(8) **“Sales Participation Excess”** means an amount, if positive, that is equal to the Net Sales Proceeds less the Adjusted Project Cost.

(b) **Restrictive Covenant.** The City shall include a covenant in the Restrictive Covenant, which will prohibit the sale, transfer, or conveyance of the Property, or any portion thereof, except upon payment of any Incentive Recoupment Payment that is due.

(c) **Only Applies to First Qualifying Sale.** The foregoing Section 4(E)(vi) and the Restrictive Covenant shall only be applicable to the first, if any, Qualifying Sale and shall not be applicable to any subsequent sales, transfers, or conveyances.

(d) **Loan Repayment.** Any amounts paid to the City as an Incentive Recoupment Payment shall be credited against the outstanding balance on the Loan. To the extent the amount of an Incentive Recoupment Payment exceeds the outstanding balance on the Loan, the City shall be entitled to retain such amounts; provided that, the City acknowledges and agrees to work in good faith with the County to share in such excess in consideration of the County’s contribution to the County TOT Service Payments as a component of the Pledged Revenues; provided further, that the City and the County hereby acknowledge and agree that, as part of the good faith efforts to be undertaken in conjunction with the distribution of excess consideration, the City and the County shall consider, solely or in conjunction with

other considerations, the proportion of aggregate County TOT Service Payments actually transferred as Pledged Revenues as of the date of the Incentive Recoupment Payment to aggregate Pledged Revenues as of the date of the Incentive Recoupment Payment. Any such amounts received by the City and/or the County may then be used for any lawful purpose.

(e) ***Bad Faith Transfers.*** For the avoidance of doubt, a transaction or series of transactions of Developer or an affiliate of Developer that would constitute a Qualifying Sale but for provisions intended to frustrate the purpose of this Section or for the primary purpose of avoiding material responsibilities, claims or amounts due and owing under this Agreement that are then in dispute shall constitute a Qualifying Sale. An important factor in determining intent to frustrate the purpose of this Section is whether terms and provisions would have been incorporated into such a transaction but for this Section.

(F) **Pass-Through City Assistance.** Subject to the terms and conditions of this Agreement and that certain *Grant Agreement Between the Office of Budget and Management and City of Cincinnati* effective on or around September 20, 2024, between the City and the Ohio Office of Budget and Management, a copy of which is attached hereto as Exhibit I (the “**State Grant Agreement**”), and provided that the City is satisfied with the due diligence materials provided pursuant to Section 1 above, and Developer is not in breach of this Agreement or any of the other Project Documents, and Developer has executed the Pass Through Note in the form of Exhibit F-2 (*Form of Pass-Through Promissory Note*) hereto in favor of the City (the “**Pass-Through Note**”), then the City will loan the Pass-Through City Assistance to Developer, in an amount not to exceed \$[48,000,000] (the “**Pass-Through Loan**”). The proceeds of the Pass-Through Loan (the “**Pass-Through Funds**”) shall be used exclusively to pay for allowable costs pursuant to the terms of the State Grant Agreement and its authorizing legislation, and for no other purpose. For the avoidance of doubt, Developer shall not use any portion of the Pass-Through Funds to pay for the purchase of inventory, supplies, furniture, trade fixtures, or any other items of personal property, or to establish a working capital fund. By virtue of receiving the Pass-Through Funds, Developer hereby agrees to assume full responsibility for all obligations and comply with all terms and conditions of the State Grant Agreement. If Developer (i) fails to timely complete its construction obligations under Section 3(G), (ii) defaults under the Marriott Room Block Agreement beyond any applicable notice and cure periods, or (iii) fails to operate the Convention Center Hotel Project compliant with the Quality Standards (as defined below) and such failure continues beyond applicable notice and cure periods hereunder or under the Restrictive Covenant, then, in any such case, the City may declare all disbursed Pass-Through City Assistance to be immediately due and payable.

(G) **Limited Obligations of the City; No Other City Assistance.** Except for the City’s agreements as described in this Agreement, the Service Agreement, the City TOT Service Agreement, any cooperative agreement or similar agreement, and the Revenue Bond Documents (as applicable), the City shall not be responsible for any costs associated with the Convention Center Hotel Project, and Developer shall be solely responsible for all costs associated with the Convention Center Hotel Project. For the avoidance of doubt, Developer acknowledges and agrees that while the City and County’s cooperation with respect to the financing of the Convention Center Hotel Project will enable Developer to secure a substantial portion of the sources to finance the Convention Center Hotel Project, the City and County are relying on Developer’s substantial experience and expertise with respect to the financing of similar projects to secure any and all sources beyond the assistance that the City and the County are enabling Developer to leverage (whether through construction loans, mezzanine loans, equity investments, or otherwise) to deliver the Convention Center Hotel Project in accordance with this Agreement.

## **5. COUNTY ASSISTANCE.**

(A) **County TOT Exemption.** Pursuant to the County TOT Exemption Resolution, the Board of Commissioners of the County has approved the County TOT Service Payments and the pledge and assignment of the County TOT Service Payments to the Port and/or OEBF (or the applicable trustee(s)) for payment of a portion of the Revenue Bond Obligations, all in accordance with one or more separate agreements to be executed by and among or by and between the City, the County, Developer, the Convention District NCA, OEBF, and/or the Port.

(B) Application of County TOT Service Payments to Loan. To further support the repayment of the Loan after the Revenue Bonds are no longer outstanding, the County hereby covenants and agrees to continue to make County TOT Service Payments available to the City on a periodic basis that is no less frequently than quarterly, as determined by the County in its sole discretion with prior notice to the City, until such time as the Loan has been fully repaid. The City will cooperate with the County to provide quarterly statements of the balance due on the Loan until such time that the Loan is fully repaid, which statements shall be no less frequently than on a quarterly basis.

(C) Limited Obligations of the County; No Other County Assistance. Except for the County's agreements as described in this Agreement, any cooperative agreement, and the Revenue Bond Documents (as applicable), the County shall not be responsible for any costs associated with the Convention Center Hotel Project, and Developer shall be solely responsible for all costs associated with the Convention Center Hotel Project as further described in Section 4(G) above.

## **6. OPERATION AS A CONVENTION CENTER HEADQUARTERS HOTEL.**

(A) Hotel Management Agreement; Hotel Franchise Agreement.

(i) Hotel Management Agreement. On or before the Bond Closing, Developer and the initial Hotel Operator shall have delivered to the City and the County either (a) a duly executed copy of the management agreement for the operation and management of the Convention Center Hotel Project (as the same may be amended or replaced from time to time, the "**Hotel Management Agreement**") that incorporates the following core provisions (i) the initial Hotel Operator will manage and operate the Convention Center Hotel Project in accordance with the Marriott Room Block Agreement; and (ii) the initial Hotel Operator will be required to account for the City Exempt Qualifying Lodging Taxes and the County Exempt Qualifying Lodging Taxes as well as the Convention District NCA Charges, or (b) executed certifications in a form acceptable to the City and the County certifying and, as applicable, covenanting to the City and the County that (i) Developer and the initial Hotel Operator have duly executed and entered into a Hotel Management Agreement; (ii) the Hotel Management Agreement contains covenants and agreements that the initial Hotel Operator will manage and operate the Convention Center Hotel Project in accordance with the Marriott Room Block Agreement; and (iii) certifying that the initial Hotel Operator is required under the Hotel Management Agreement to account for the City Exempt Qualifying Lodging Taxes and the County Exempt Qualifying Lodging Taxes as well as the Convention District NCA Charges. In the event Developer or any future owner of the Convention Center Hotel Project proposes to replace the Hotel Operator with a replacement Hotel Operator (in connection with entering into a Hotel Franchise Agreement (as defined below) or otherwise), then prior to executing any replacement Hotel Management Agreement, Developer shall deliver to the City and the County either item described under (a) and (b) above together with an assignment and assumption agreement or similar agreement assigning the responsibilities of the then-current Hotel Operator under the City TOT Service Agreement and the County TOT Service Agreement.

(ii) Hotel Franchise Agreement. Developer may from time to time elect to enter into a franchise agreement (as the same may be amended or replaced from time to time, the "**Hotel Franchise Agreement**") for the Convention Center Hotel Project with a first class "national flag" hotel brand or affiliate thereof with a national reputation for quality (the "**Franchisor**"). If Developer elects to enter into a Hotel Franchise Agreement, then in connection with execution, Developer shall either execute and deliver to the City and the County (a) a copy of the franchise agreement for the Convention Center Hotel Project, or (b) certifications in a form acceptable to the City and the County that (i) Developer and the Franchisor have duly executed and entered into the Hotel Franchise Agreement; (ii) the Hotel Franchise Agreement incorporates the Franchisor's consent to the initial Hotel Operator; (iii) nothing in the Hotel Franchise Agreement prohibits Developer from designing and constructing the Convention Center Hotel Project in accordance with this Agreement; (iv) nothing in the Hotel Franchise Agreement prohibits the initial Hotel Operator to operate the Convention Center Hotel Project in accordance with the Operating Covenant; (v) nothing in the Hotel Franchise Agreement prevents the initial Hotel Operator or any subsequent Hotel Operator from managing and operating the Convention Center Hotel Project in accordance with the Marriott Room Block Agreement; and (vi) the Hotel Franchise Agreement expressly permits the incorporation of the

Convention Center Hotel Project into the Convention District NCA in accordance with the terms and conditions of the Convention District NCA Declaration.

(B) Room Block Agreements.

(i) Marriott Room Block Agreement. Developer shall operate, and cause the Hotel Operator to operate, the Convention Center Hotel Project in compliance with the terms of the Marriott Room Block Agreement for a term of 75 years, subject to earlier termination to the extent expressly set forth therein, under this Agreement or any other Project Document. The Marriott Room Block Agreement shall be in substantially the form of Exhibit J-1 (Form of Marriott Room Block Agreement) hereto (the "**Marriott Room Block Agreement**") and shall require the prior written consent and approval of the City and the County prior to execution. A memorandum of the Marriott Room Block Agreement shall be recorded against the Property at the Bond Closing subsequent to the deed from the Port and immediately prior to the Restrictive Covenant.

(ii) Westin Room Block Agreement. No later than June 30, 2026, Developer shall enter, or cause an affiliate to enter, into a separate agreement in substantially the form of Exhibit J-2 relating to the Westin that requires the owner of the Westin to operate, and to cause the Westin operator to operate, the Westin in the manner required under such agreement (the "**Westin Room Block Agreement**"). However, under no circumstances shall any breach or default of the Westin Room Block Agreement by the owner of the Westin constitute, or be deemed to constitute, a breach or default by Developer of this Agreement or any of the other Project Documents, and vice versa.

(C) Hotel Operating Covenant and Convention Center O&M and Management Requirement.

(i) Hotel Operating Covenant. Subject to the terms and conditions of this Section 6(C) and Sections 6(D) and (E), following Construction Completion, Developer shall open, commence, and continuously operate the Convention Center Hotel Project in accordance with the Quality Standards (as defined below) as a convention center hotel and not use the Convention Center Hotel Project for any use inconsistent with such operation (the "**Operating Covenant**"). For purposes of this Agreement, "**Quality Standards**" means (i) the performance benchmarks and hospitality industry standards equal to or exceeding a hotel rated in the "upper upscale" segment by STR, Inc. a division of CoStar Group, Inc. (if STR, Inc. ceases to exist, ceases to publish hotel class segment ratings or the parties no longer deem STR, Inc. suitable for the purpose identified herein, then, in either such event, the parties shall mutually agree upon a reputable replacement hospitality industry research and benchmarking organization to replace STR, Inc.), or (ii) any performance benchmarks and hospitality industry standards otherwise proposed by Developer and approved by the City and the County, which approval shall not be unreasonably withheld, conditioned or delayed. The Marriott brand, Hyatt brand, Omni brand, and Hilton brand, shall each be deemed to be part of the "upper upscale" segment.

(ii) Convention Center O&M and Management Requirement. Subject to a Facility Operations Force Majeure Event (as defined below), the City will cause the Convention Center to be continuously operated and managed and physically maintained to at least the standard of quality consistent with the principal convention centers (the "**Comparator Convention Centers**") operated by each of the cities of Columbus, Cleveland, Louisville, and Pittsburgh (the operations and management component of this covenant is the "**Convention Center Management Standard**" and the physical maintenance component of this covenant is the "**Convention Center Maintenance Standard**"; each of the Convention Center Management Standard and the Convention Center Maintenance Standard, individually, is the "**Convention Center O&M and Management Requirement**"). The City shall be deemed to be in compliance with the Convention Center Management Standard so long as the City has either (a) engaged a nationally recognized third-party operator experienced in managing similarly situated convention centers, or (b) with Developer's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, undertaken the management of the Convention Center with City personnel or personnel of a quasi-governmental agency established for the purpose of managing the Convention Center, in each case, pursuant to industry standard management and operating procedures, which shall be delivered to Developer for its review. Notwithstanding anything to the contrary contained herein, in the event the City terminates the third-party operator of the Convention Center or the term of any such operator's

agreement has expired, the Convention Center Management Standard shall be automatically suspended and Developer shall be precluded from sending an Initial Convention Center Deficiency Notice (as defined below) until the sooner to occur of (i) the date upon which the City takes final action to comply with the Convention Center Management Standard, or (ii) 180 days.

(iii) **Facility Operations Force Majeure Event.** A “**Facility Operations Force Majeure Event**” means, as the context may provide, (a) flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, cyclone, typhoon, tornado, tsunami, or other adverse weather events, in each case, that occurs on the Property or at the Convention Center at levels in excess of the historic annual averages for the Property or the Convention Center and that could not have reasonably been prevented by Developer with respect to the Property or the City with respect to the Convention Center; (b) terrorist attacks, war, insurgency, strikes, lockouts or other labor disputes that prevent the operation of the Convention Center Hotel Project or the Convention Center, as applicable; or (c) epidemic or pandemic (excluding any delay or non-performance by Developer or the City, as the case may be, caused by COVID-19 that would be reasonably anticipated as of the Effective Date); provided however, in no event shall a Facility Operations Force Majeure Event include the inability of either (i) Developer to perform its obligations under this Agreement, or (ii) the City to operate the Convention Center in accordance with Section 6(C)(ii), solely, in each such case, by reason of lack of sufficient funds required for performance of such obligations or by reason in general economic conditions affecting the hotel industry regionally, in the case of Developer, or affecting the convention center industry regionally, in the case of the City, and, in each case, not attributable to any of the events referred to in clauses (a) through (c) above.

(D) **Suspension of Hotel Operating Covenant.**

(i) **Circumstances of Suspension.** The Operating Covenant will be deemed suspended during (a) Facility Operations Force Majeure Events, provided that (x) within 30 days of learning of any such Facility Operations Force Majeure Event, Developer notifies the City and the County in writing thereof and of the cause or causes thereof and of the duration thereof or, if continuing, the estimated duration thereof, and; (y) if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the City and the County in writing of the duration of the delay; (b) the period of time after a casualty or condemnation event affecting the Convention Center Hotel Project that is reasonably necessary to restore the Convention Center Hotel Project to operations consistent with the Marriott Room Block Agreement, this Agreement, and the Operating Covenant; (c) closures for maintenance or repairs in the ordinary course of business, to the extent it is reasonably necessary for portions of the Convention Center Hotel Project to be closed during such time, or in the event of an emergency; (d) temporary closures not exceeding 2 years for remodeling necessary to maintain compliance with the Quality Standards or the Hotel Management Agreement or the Franchise Agreement, to the extent it is reasonably necessary for portions of the Convention Center Hotel Project to be closed during such time; (e) any period that the Hotel Operator has defaulted under the Hotel Management Agreement or the Franchisor has defined under the Hotel Franchise Agreement, if such default consists of or results in a breach of the Operating Covenant, provided that Developer is using commercially reasonable efforts to enforce such default against the Hotel Operator or Franchisor, as applicable; and (f) the period of time during which a failure of the Convention Center O&M and Management Requirement is ongoing after receipt of any Initial Convention Center Deficiency Notice; provided, that the City shall have any such cure periods provided for below.

(ii) **Suspension and Termination of Hotel Operating Covenant Due to Violation of Convention Center O&M and Management Requirement.**

(a) **Initial Convention Center Deficiency Notice.** In order to suspend the Operating Covenant pursuant to Section 6(D)(i)(f), Developer must deliver to the City and the County written notice (the “**Initial Convention Center Deficiency Notice**”) by no later than 90 days after Developer learns of such failure to satisfy the Convention Center O&M and Management Requirement, together with the date upon which the failure commenced (the “**Convention Center Deficiency Commencement Date**”), and, (i) if the failure is based on a breach of the Convention Center Maintenance Standard, a detailed description of the physical conditions that demonstrate the Convention Center Maintenance Standard is not being satisfied with reference to any or all of the Comparator Convention Centers and the specific physical conditions present in such Comparator Convention Centers that are not presently reflected or being

properly maintained at the Convention Center, and/or (ii) if the failure is based on a breach of the Convention Center Management Standard, a written statement that the City and the County have failed to maintain compliance with the Convention Center Management Standard and the circumstances underlying such failure.

(b) Maintenance Remedy Plan. Within 30 days of delivery of an Initial Convention Center Deficiency Notice based on a failure to meet the Convention Center Maintenance Standard, the City and the County will commence with selecting a reputable third-party vendor to conduct a capital needs assessment for the Convention Center (each, a "**Capital Needs Assessment**"), which vendor shall be selected by the City and the County in their reasonable discretion. Thereafter, upon receipt of the Capital Needs Assessment, the City and the County will cooperate to devise a plan to address those physical conditions described in the Capital Needs Assessment that correspond to the physical conditions cited in the Initial Convention Center Deficiency Notice and are necessary to bring the Convention Center into compliance with the Convention Center Maintenance Standard (the "**Maintenance Remedy Plan**"). Concurrent with the adoption of the Maintenance Remedy Plan, the City and the County covenant and agree to provide a copy of the same to Developer together with any corresponding Capital Needs Assessment and an estimated timeline for full implementation of the Maintenance Remedy Plan (such estimated timeline is the "**Maintenance Cure Period**").

(c) Management Remedy Plan. Within 30 days of delivery of an Initial Convention Center Deficiency Notice based on a failure to meet the Convention Center Management Standard, the City and the County will commence with addressing such failure by either (i) addressing any deficiencies with the existing operator that have resulted in the failure to meet the Convention Center Management Standard, or (ii) commencing with the selection of an operator that complies with the Convention Center Management Standard (the "**Management Remedy Plan**"; each of the Maintenance Remedy Plan and the Management Remedy Plan, individually, is the "**Remedy Plan**"). The City and the County will devise the Management Remedy Plan to bring the Convention Center into compliance with the Convention Center Management Standard within 90 days of delivery of the Initial Convention Center Deficiency Notice (the "**Management Cure Period**"). Concurrent with the adoption of the Management Remedy Plan, the City and the County covenant and agree to provide a copy of the same to Developer.

(d) Developer Covenants Related to Remedy Plan; Remedy Review Meetings; Suspension. Developer covenants and agrees to refrain from frustrating the implementation of the Remedy Plan. During the implementation of any Remedy Plan, the City, the County, and Developer will thereafter meet no less frequently than on a quarterly basis to review the progress of the City in implementing the Remedy Plan. The Operating Covenant will be deemed suspended until such time as the Remedy Plan has been fully implemented to bring the Convention Center into compliance with the Convention Center O&M and Management Requirement.

(e) Second Convention Center Deficiency Notice; Termination of Hotel Operating Covenant. In the event that the City fails to bring the Convention Center into compliance with the Convention Center O&M and Management Requirement on or before the expiration of the Maintenance Cure Period or the Management Cure Period, as applicable, then provided Developer delivers written notice to the City and the County of such failure (the "**Second Convention Center Deficiency Notice**"), and the City fails thereafter to bring the Convention Center into compliance within 180 days of the date of the Second Convention Center Deficiency Notice, the Operating Covenant will terminate. In the event that the Operating Covenant terminates pursuant to this paragraph, then the City and County will cooperate with Developer to place of record a release of the Operating Covenant (in the form of an amendment to the Restrictive Covenant or another commercially reasonable form) and, to the extent not then satisfied, the covenants concerning Construction Savings and the Incentive Recoupment Payment shall continue in full force and effect until satisfied.

(E) No Material Work on or Closure of Convention Center Without Developer Approval; Termination of Hotel Operating Covenant for Failure to Obtain Approval. The City shall provide Developer with at least 120 days' prior written notice of any material work or closure that the City intends to undertake relating to the Convention Center (other than the renovations currently (i.e., as of the Effective Date) underway (the "**Underway Renovations**") and any material work directly arising from a Facility Operations

Force Majeure Event). For so long as the Restrictive Covenant is in effect, except for work commenced in accordance with any Maintenance Remedy Plan (which work shall be deemed approved by Developer), the City will obtain the prior written approval of Developer in advance of undertaking any work (e.g., renovations, alterations or other work (including, without limitation, demolition work) to or closure of the Convention Center that (i) would result in a permanent reduction in the exhibition spaces within Exhibit Halls A, B, and C of the Convention Center (collectively, the **"Primary Exhibit Halls"**) by more than 10% from the space available in the Primary Exhibit Halls immediately after the completion of the Underway Renovations, (ii) would result in more than 10% but less than 20% of the exhibition space within the Primary Exhibit Halls or the ancillary Convention Center meeting spaces (i.e., meeting rooms and ballrooms within Convention Center other than the Primary Exhibit Halls) (collectively, the **"Ancillary Meeting Spaces"**) being unavailable for a period of more than 24 consecutive months, or (iii) would result in more than 20% of the Primary Exhibit Halls or the Ancillary Meeting Spaces being unavailable for a period of more than 12 consecutive months (each, **"Material Work or Closure"**). The failure of the City to obtain the approval of Developer for any Material Work or Closure shall permit Developer to send a termination notice to the City and the County. The Operating Covenant shall terminate within 90 days after the date of such termination notice. In the event that the Operating Covenant terminates pursuant to this paragraph, then the City and the County will cooperate with Developer to place of record a release of the Operating Covenant (in the form of an amendment to the Restrictive Covenant or another commercially reasonable form) and, to the extent not then satisfied, the covenants concerning Construction Savings and the Incentive Recoupment Payment shall continue in full force and effect until satisfied.

(F) Inclusion of Convention Center Hotel Project and Westin in Convention District NCA. To further assist with the development and financing of the Convention Center Hotel Project, Developer shall assist and cooperate to include the Convention Center Hotel Project and the Westin in the Convention District NCA such that Developer will execute and deliver the Convention District NCA Declaration providing for the assessment of a "community development charge" in an amount equal to (i) 1.0% of gross sales at the Convention District Hotel Project and the Westin, and (ii) up to 2.0% of all transactions by which lodging of a hotel room is to be furnished to guests.

(G) City Purchase Option. To the extent the City exercises the City Purchase Option (as defined in the Restrictive Covenant), subject to the terms and conditions of the Restrictive Covenant, and then thereafter either resells the Convention Center Hotel Project or assigns its purchase right to a bona fide third party purchaser, then the City agrees to work in good faith with the County to share in any sale proceeds that are in excess of the principal amount still outstanding on the Loan (the **"Excess Sale Proceeds"**). The City and the County hereby acknowledge and agree that, as part of the good faith efforts to be undertaken in conjunction with the distribution of the Excess Sale Proceeds, the City and the County shall consider, solely or in conjunction with other considerations, the proportion of aggregate County TOT Service Payments actually transferred as Pledged Revenues to aggregate Pledged Revenues, in each case, as of the date of the City's receipt of any Excess Sale Proceeds. Any such amounts received by the City and/or the County may then be used for any lawful purpose.

(H) Recordable Restrictive Covenant. On or before the Bond Closing date, Developer shall execute a Restrictive Covenant memorializing the Operating Covenant and the rights and remedies of the City and the County with respect to any breach of the Operating Covenant, and the other terms and provisions above, which shall be in substantially the form of Exhibit K (Form of Restrictive Covenant) hereto, and shall be recorded against the Property immediately subsequent to the Marriott Room Block Agreement and prior to the recordation of any of the construction loan documents and shall be enforceable by the City and County (the **"Restrictive Covenant"**).

## 7. INSURANCE; INDEMNITY.

(A) Insurance During Construction. From the time that construction associated with the initial development of the Convention Center Hotel Project commences, until such time as all such construction work associated with the Convention Center Hotel Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance and/or Excess Liability insurance with total limits of at least \$5,000,000 per occurrence, combined single limit/\$5,000,000 aggregate, naming the City and the County as additional insureds with respect to the

Convention Center Hotel Project, (ii) builder's risk insurance in the amount of 100% of the value of the improvements constructed (excluding any demolition, clearing and earthwork) as part of the Convention Center Hotel Project, (iii) workers' compensation insurance in such amount as required by law, (iv) all insurance as may be required under the Revenue Bond Documents and/or by Developer's senior construction lenders, and (v) all insurance as may be deemed reasonably necessary by the City and/or the County from time to time and which is available on commercially reasonable terms. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City and the County that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least 30 days prior written notice to the City and the County. For the avoidance of doubt, Developer may provide a list of one or more such companies to the City and the County for pre-approval. Prior to commencement of construction of the Convention Center Hotel Project, Developer shall send proof of all such insurance to (i) the City at 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, Attention: Monitoring and Compliance Division, or such other address as may be specified by the City from time to time, and (ii) the County at 138 E. Court Street, Room 603, Cincinnati, Ohio 45202, or such other address as may be specified by the County from time to time; provided that if the City or the County requests an additional insured endorsement with respect to the Commercial General Liability insurance described above, Developer shall have 6 months following the date of the City's or County's request to obtain such an endorsement from its insurer and provide a copy of the endorsement to the City and the County.

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, the County, and their respective employees, agents, contractors, and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, the County, or their respective employees, agents, contractors, or subcontractors; it being the agreement of the parties that Developer shall at all times endeavor to protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnity.

(i) Indemnification. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City and the County to enter into this Agreement, (x) Developer shall defend, indemnify, and hold the City, the County, and, as applicable, their respective officers, council members, commissioners, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all Claims (as defined below) suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts or omissions of Developer and its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Convention Center Hotel Project, including, without limitation, Claims arising under the State Grant Agreement, any Claims arising due to the ownership, operation, management, services, or programs provided in conjunction with the Convention Center Hotel Project; (y) Developer shall defend, indemnify, and hold the Indemnified Parties harmless from and against any and all Claims suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the City's involvement in the Initial Conveyance and the City Conveyance, including the City's ownership of the Property during the period between the Initial Conveyance and the City Conveyance; and (z) Developer shall defend, indemnify, and hold the Indemnified Parties harmless from and against any and all Claims suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from any pre-existing environmental condition (any Claims under clause (z) are, collectively, "**Environmental Claims**"). The obligations of Developer under this Section shall survive termination of the Agreement with respect to Claims suffered, incurred, asserted, or arising prior to the date of termination. As used herein, "**Claims**" means, collectively, any and all losses, costs (including, without limitation, attorneys' fees), demands, judgments, liability, and damages, in each case, as a result of third-party actions, suits or claims (or threats thereof), except to the extent arising from the gross negligence or willful misconduct of the Indemnified Parties. In addition to the foregoing indemnities, including specifically, the indemnity set forth under Section 7(C)(i)(x), Developer shall defend, indemnify and hold the Indemnified Parties harmless from and against any and all Direct Claims arising from or relating to an event of default by Developer beyond any applicable notice and cure period based

on a violation of the Operating Covenant that occurs from the 11<sup>th</sup> anniversary of the Effective Date through the 30<sup>th</sup> anniversary of the Effective Date. As used herein, “**Direct Claims**” means any and all actions, suits, claims, losses, costs (including, without limitation, reasonable attorneys’ fees), demands, judgments liability, and damages, in each case, arising from acts or omissions of Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Operating Covenant, except, in each case, to the extent arising from the gross negligence or willful misconduct of the Indemnified Parties.

(ii) Indemnity Agreement. Developer shall cause its affiliate to execute an Indemnity Agreement in a form acceptable to the City and the County prior to the Closing (as it may be amended or assigned from time to time, the “**Indemnity Agreement**”; the indemnitor from time to time party to the Indemnity Agreement, “**Indemnitor**”). Portman Holdings, LLC is hereby approved by the City and the County as the initial Indemnitor under the Indemnity Agreement. In the Indemnity Agreement, Indemnitor shall agree to defend, indemnify, and hold the Indemnified Parties harmless with respect to Claims, including Environmental Claims, and Direct Claims covered under Section 7(C)(i) above, subject to the terms of Section 7(C)(ii) below.

(iii) Substitution of Indemnitor; Limitations on Indemnitor Liability. Prior to either (1) obtaining No Further Action (NFA)/Covenant-Not-to-Sue (CNS) status within Ohio’s Voluntary Action Program (VAP) from the Ohio Environmental Protection Agency (“**CNS Closure**”), or (2) delivering a Certified Professional Closure Report (as defined in Exhibit B to this Agreement) (either, “**Environmental Closure**”), Developer shall not be permitted to substitute Indemnitor under the Indemnity Agreement without the City and County’s written approval, which approval may be withheld in the City and County’s reasonable discretion. After obtaining Environmental Closure, provided there is not an event of default hereunder or under any Project Document beyond any applicable notice and cure period and there is no outstanding Claim, including any Environmental Claim, or Direct Claim for which any Indemnified Party is seeking indemnification from Indemnitor, the City and the County shall accept a substitute indemnitor (each a “**Substitute Indemnitor**”), provided that Developer provides written notice of such Substitute Indemnitor to the City and County together with acceptable evidence that the Substitute Indemnitor has a net worth of at least \$5,000,000 (or the applicable increased amount as described below) (the “**Baseline Net Worth Requirement**”) to assume the obligations of the assigning Indemnitor (the “**Assigning Indemnitor**”) under the Indemnity Agreement arising from and after the date of the assignment. Notwithstanding anything to the contrary in this Agreement or the Indemnity Agreement, Indemnitor’s maximum aggregate liability under the Indemnity Agreement shall be determined as follows: (x) for Environmental Claims, unless and until Developer secures CNS Closure, Indemnitor’s maximum liability for Environmental Claims shall be uncapped (such claims being hereinafter referred to as “**Uncapped Environmental Claims**”), and if and only if Developer secures CNS Closure, Indemnitor’s maximum aggregate liability for Environmental Claims (such claims being thereafter referred to as “**Capped Environmental Claims**”) shall be \$5,000,000 (the “**Maximum Liability Threshold**”); and (y) for Claims other than Environmental Claims and for Direct Claims, Indemnitor’s maximum aggregate liability shall be the Maximum Liability Threshold. The Maximum Liability Threshold is a cumulative threshold for all Claims, Direct Claims and Capped Environmental Claims and will not apply independently. For example, if Indemnitor indemnifies the County for a Claim that is subject to indemnification in the amount of \$500,000 and Indemnitor indemnifies the City for a Direct Claim that is subject to indemnification in the amount of \$1,000,000, Indemnitor shall remain responsible for indemnifying the City and the County, together, for up to \$3,500,000 of any future Claims, Direct Claims or Capped Environmental Claims that are subject to indemnification. Under no circumstances with the foregoing limitations apply to Uncapped Environmental Claims. Commencing with the fifth anniversary of the Effective Date and every fifth year thereafter, the Baseline Net Worth Requirement and Maximum Liability Threshold shall be adjusted by any increase in the Consumer Price Index (“**CPI**”) during such five year period as follows: The base for computing the increase in the CPI for purposes of this paragraph shall be the Consumer Price Index—All Urban Consumers, U.S. City Average, All Items (1982-84 Base=100) published by the United States Department of Labor, Bureau of Labor Statistics (the “**Index**”) for the month of January of the first calendar year of the five year period for which the adjustment applies (the “**Beginning Index**”). The adjustment shall be determined by multiplying the then-applicable rate by a fraction, the numerator of which is the Index published for the month of January of the fifth calendar year for which the adjustment applies and the denominator of which is the Beginning Index. If the Index is changed so that the base year differs from that used to calculate the Beginning Index, the Index shall be converted in

accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Agreement, such other government Index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. CPI adjustments are additive and shall never cause the Baseline Net Worth Requirement or Maximum Liability Threshold to decrease. In the event the Index is negative as compared to the Beginning Index then the Baseline Net Worth Requirement and Maximum Liability Threshold shall continue in the amounts at which they were established at the commencement of the then-current five year period.

(iv) Go-Forward Release Upon Indemnitor Substitution. Upon any substitution of an Assigning Indemnitor with a Substitute Indemnitor, the Assigning Indemnitor shall be released from any liability or obligations under the Indemnity Agreement arising from and after the date of the assignment, but shall remain liable for all liability or obligations preceding the date of such assignment unless the Substitute Indemnitor agrees to assume all such responsibility under the terms of the underlying assignment and evidence of the same is provided to the City and the County.

**8. CASUALTY; EMINENT DOMAIN.** If the Convention Center Hotel Project is damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal or state during construction, or local), Developer shall repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Property was in immediately prior to such occurrence, except as otherwise provided below. To the extent the City's and/or the County's participation is required, the parties shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, neither the City nor the County shall be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including, without limitation, obtaining, subject to the same terms, conditions and exceptions as are set forth in Section 3(A) above, the City's and the County's approval of the plans and specifications if they deviate from the Final Plans. Except as otherwise expressly set forth in this Agreement (including, without limitation, under Section 6(C)), Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Property is being repaired or restored pursuant to this Section 8.

## **9. DEFAULT; REMEDIES.**

(A) Default. The occurrence of any of the following shall be an "**event of default**" under this Agreement:

(i) Prior to the last to occur of (a) the defeasance or redemption of all of the outstanding Revenue Bonds (inclusive of any refundings thereof), (b) the expiration of the TIF Exemption Period, (c) the expiration of the City TOT Exemption Period, or (d) the expiration of the County TOT Exemption Period:

(a) the dissolution of Developer or Guarantor (during the term of the Guaranty), the filing of any bankruptcy or insolvency proceedings by Developer or Guarantor (during the term of the Guaranty), or the making by Developer or Guarantor (during the term of the Guaranty) of an assignment for the benefit of creditors; or

(b) the filing of any bankruptcy or insolvency proceedings against Developer or Guarantor (during the term of the Guaranty), the appointment of a receiver (temporary or permanent) for any such entity or person, the attachment of, levy upon, or seizure by legal process of any property of any such entity or person, or the insolvency of any such entity or person, unless such appointment, attachment, levy, seizure or insolvency is cured, dismissed or otherwise resolved to the City's satisfaction within 60 days following the date thereof; or

(ii) The occurrence of a Specified Default (as defined below), or a failure of Developer to perform or observe (or cause to be performed or observed) any obligation, duty, or responsibility under this Agreement or any other Project Document in a timely manner (provided that a failure of Guarantor to

perform under the Completion Guaranty or Portman Holdings to perform under the Indemnity Agreement shall be deemed a failure of Developer to perform under this Agreement), and failure by the defaulting party to correct such default within 90 days after the receipt by Developer of written notice thereof from the City and/or the County (the “**Cure Period**”), other than a Specified Default (as defined below) in the form of a Payment Default (as defined below), in which case there shall be a Cure Period of 10 business days after Developer’s receipt of written notice from the City and/or the County; *provided, however,* that if the nature of the default (other than a Payment Default) is such that it cannot reasonably be cured during the Cure Period, then so long as Developer has commenced to cure the default within such initial Cure Period, Developer shall be entitled to (x) an additional 90 days of Cure Period to cure the default if the default does not pertain to the Operating Covenant, or (y) an additional 180 days of Cure Period to cure the default if the default pertains to the Operating Covenant. If Developer has diligently undertaken to cure the underlying default during the extended Cure Period but has not cured the default, the City and the County may agree in their reasonable discretion to grant Developer additional time to cure such default. Notwithstanding the foregoing, if Developer’s failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency, an event of default shall be deemed to have occurred if Developer fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, “**Specified Default**” means the occurrence of any of the following:

(a) **City Payment Default.** Any Statutory Service Payment is not made when due under the Service Agreement, any City TOT Service Payment is not made when due under the City TOT Service Agreement, or any payment is not made when due under the Note (a “**City Payment Default**”). Developer acknowledges that time is of the essence with respect to the making of each Statutory Service Payment, City TOT Service Payment and any payment due under the Note, and that delays in the making of such payments may result in a delay in the City’s ability to transfer amounts to the Port for payment of debt service on the Revenue Bonds.

(b) **County Payment Default.** Any County TOT Service Payment is not made when due under the County TOT Service Agreement (a “**County Payment Default**”; and, together with a City Payment Default, a “**Payment Default**”). Developer acknowledges that time is of the essence with respect to the making of each County TOT Service Payment and that delays in the making of a County TOT Service Payment may result in a delay in the County’s ability to transfer amounts to the Port for payment of the debt service on the Revenue Bonds.

(c) **Development Default.** Developer (1) fails to comply with Sections 3 or 7 of this Agreement or (2) abandons the Convention Center Hotel Project, including, without limitation, by vacating, demolishing, and/or abandoning the Convention Center Hotel Project.

(d) **Misrepresentation.** Any representation, warranty, or certification of Developer or Guarantor made in connection with this Agreement, or any other Project Document, shall prove to have been fraudulent, intentionally false or materially misleading when made.

(B) **Remedies.** Upon the occurrence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City (with respect to any City Payment Default or other event of default affecting the City) and/or the County (with respect to any County Payment Default or other event of default affecting the County) shall be entitled to (i) upon mutual written agreement of the County (in the event of an event of default that solely affects the City), or upon mutual written agreement of the City (in the event of an event of default that solely affects the County), terminate this Agreement with respect to Developer by giving Developer written notice thereof, and, without limitation of the City’s other rights and remedies, and with or without terminating this Agreement, demand that Developer immediately repay to the City the outstanding balance of the Loan (subject to the limitations provided in the Note) and the Pass-Through Loan (subject to the limitations provided in the Pass-Through Note), (ii) take such actions in the way of “self-help” as the City or the County determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the sole expense of Developer, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including, without limitation, pursuing an action for specific performance. Developer shall be liable for all costs and damages, including, without limitation, attorneys’ fees, suffered or incurred by the City and County as a result of a

default or event of default under this Agreement or the City's and/or County's termination of this Agreement. The failure of the City and/or the County to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement or any other Project Document shall not constitute a waiver of the breach of such covenant or of such remedy.

**10. NOTICES.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as such party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City Manager  
City of Cincinnati  
801 Plum Street  
Cincinnati, Ohio 45202

To Developer:

Cincinnati CH (OH), LLC  
303 Peachtree Center Ave. NE #575  
Atlanta, Georgia 30303  
Attention: Reid L. Scott

With a copy to:

Director, Dept. of Community and  
Economic Development  
City of Cincinnati  
805 Central Avenue, Suite 700  
Cincinnati, Ohio 45202

With a copy to:

Cincinnati CH (OH), LLC  
303 Peachtree Center Ave., NE #575  
Atlanta, Georgia 30303  
Attention: Jeff Greenway

To the County:

Board of County Commissioners of  
Hamilton County, Ohio  
Todd B. Portune Center for County  
Government  
138 E. Court Street, Room 603  
Cincinnati, Ohio 45202  
Attention: President

With a copy to:

Hamilton County Administrator  
Todd B. Portune Center for County  
Government  
138 E. Court Street, Room 603  
Cincinnati, Ohio 45202

Notwithstanding anything to the contrary herein, if Developer sends a notice to the City or the County alleging that the City or the County are in default under this Agreement or any other Project Document, Developer shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202, and County Prosecuting Attorney of Hamilton County, Ohio, William Howard Taft Center, 230 East 9<sup>th</sup> Street, Room 4000, Cincinnati, Ohio 45202.

**11. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DEVELOPER.** Developer makes the following representations, warranties, and covenants to the City and the County as follows:

(A) Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified to conduct business in the State of Ohio, has properly filed all certificates and reports required to be filed by it in order to have the right to conduct its business under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(B) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(C) The execution, delivery, and performance by Developer of this Agreement and each other Project Document to which Developer is a party and the consummation of the transactions contemplated hereby and thereby will not violate any applicable laws, or, to the knowledge of Developer, any writ or decree of any court or governmental instrumentality, or the organizational documents of Developer, or any mortgage, indenture, contract, agreement, or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor, to the knowledge of Developer, is Developer in violation or default of any of the foregoing in any manner relevant to the transactions contemplated by this Agreement or which may in any way affect Developer's ability to perform its obligations under this Agreement or the other Project Documents.

(D) Portman Holdings is experienced in coordinating the design, development, construction, leasing, and operation of first-class, premium branded, convention center headquarters hotel properties that are substantially similar to the Convention Center Hotel Project.

(E) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting it, at law or in equity or before or by any governmental authority that, if determined adversely to it, would impair its financial condition or its ability to perform its obligations under this Agreement or any other Project Documents.

(F) Developer shall give prompt notice in writing to the City and the County of the occurrence or existence, until the later to occur of (i) the expiration of the TIF Exemption Period, (ii) the expiration of the City TOT Exemption Period, (iii) the expiration of the County TOT Exemption Period, or (iv) the defeasance or redemption of all of the outstanding Revenue Bonds (inclusive of any refundings thereof), of any litigation, labor dispute, or governmental proceeding or investigation affecting it that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its completion of the Convention Center Hotel Project.

(G) The statements made in the documentation provided by Developer to the City and the County that are descriptive of Developer, Guarantor, or the Convention Center Hotel Project have been reviewed by Developer and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading, or, if any such documentation contained such a misleading or untrue omission or statement, further documentation correcting such omissions or statements was subsequently provided to the City and the County prior to Developer's execution of this Agreement.

(H) With reference to CMC Section 301-20 (*Delinquencies in Accounts Receivable and Loans Receivable; Policy*), to the best of Developer's knowledge neither it nor any of its affiliates are in breach of any of its obligations to the City under any existing agreements with the City nor does it nor do any of its affiliates owe any fines, penalties, judgment awards or any other amounts to the City.

## **12. REPORTING REQUIREMENTS.**

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City and the County upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements, and information as may be requested by the City pertaining to Developer, the Convention Center Hotel Project, or this Agreement, including, without limitation, audited financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Convention Center Hotel Project, and such reports and information as may be required for compliance with programs and projects funded by the City, the County, the State, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City and the County shall be in such form as the City may from time to time require but, notwithstanding the foregoing, may be provided by Developer in electronic format. Developer

shall retain all Records and Reports until the date that is 3 years following the last to occur of (i) the defeasance or redemption of all of the outstanding Revenue Bonds (inclusive of any refundings thereof), (ii) expiration of the TIF Exemption Period, (iii) the expiration of the City TOT Exemption Period, (iv) the expiration of the County TOT Exemption Period, or (v) such later time as may be required by applicable law (the latest of which is the **“Retention Termination Date”**). This Section 12(A) shall not bind or apply to Guarantor or encompass any of Guarantor’s reports, records, financial statements or other financial information, and in no event shall the City or the County have access to any of Guarantor’s reports, records, financial statements or other financial information. This Section 12(A) shall survive the term of this Agreement.

(B) City’s and County’s Right to Inspect and Audit. During the construction of the Convention Center Hotel Project and thereafter until the Retention Termination Date, but not more frequently than twice every 6 months, Developer shall permit the City and/or the County and their respective designees and auditors to have full access to and to inspect and audit Developer’s Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City and the County, Developer shall reimburse the City and the County for their out-of-pocket costs associated with such inspection or audit.

(C) Annual Jobs & Investment Report. Developer will be required to deliver to the City and the County an annual report, in a form specified by the City from time to time, regarding total real property, personal property, and employment, including jobs created and retained, at the Property.

### **13. GENERAL PROVISIONS.**

#### **(A) Transfer and Assignment.**

(i) Assignments or Transfers Prior to Construction Completion. Prior to Construction Completion, Developer shall not, without the prior written consent of the City Manager and the County Administrator, transfer any portion of the Convention Center Hotel Project or Property or assign its rights or interests under this Agreement or the other Project Documents, other than: (a) in connection with an Estate Planning Transfer or an Affiliate Transfer, provided that, in each case, Ambrish Baisiwala or John C. Portman IV retain control of the day-to-day management of Developer (the **“Key Executive Condition”**), (b) in connection with closing on any financing or refinancing contemplated under Section 13(F), (c) in connection with a Foreclosure, (d) pursuant to the Hotel Management Agreement or any Hotel Franchise Agreement, (e) in connection with entering into leases or licenses granted in the ordinary course of Developer’s business (e.g., leases of retail space in the Convention Center Hotel Project), or (f) the granting of easements, restrictions, covenants or other encumbrances that are reasonably necessary for the development and operation of the Convention Center Hotel Project, including, without limitation, any such easements, restrictions, covenants or other encumbrances required under applicable law (any transfer or assignment under clauses (a) through (f) is a **“Permitted Transfer”**).

(ii) Assignments or Transfers Following Completion of Convention Center Hotel Project Requiring Notice but Not Consent. After Construction Completion, Developer shall not, without the prior written consent of the City Manager and the County Administrator, transfer any portion of the Convention Center Hotel Project or Property or assign its rights or interests under this Agreement or the other Project Documents, other than in connection with a Permitted Transfer; provided, however, that the Key Executive Condition shall no longer apply to a Permitted Transfer under Section 13(A)(i)(a).

(B) Change of Control. Any Change of Control, other than in connection with an Estate Planning Transfer or an Affiliate Transfer, shall require the prior written consent of the City Manager and the County Administrator.

(C) QREI Transfers. Notwithstanding the terms of Section 13(A) or 13(B) or anything to the contrary elsewhere in this Agreement, after Construction Completion, the City and the County’s consent to a QREI Transfer will automatically be deemed given upon satisfaction of the following conditions:

(i) Developer provides the City and the County the identity of all parties, a copy of the purchase agreement, and the organizational documents of the transferee;

(ii) Developer provides the City and the County evidence that the then-current Hotel Operator will continue to operate the Convention Center Hotel Project, or evidence that the proposed transferee has engaged a replacement Hotel Operator with a national reputation for quality of management and operation of first class “national flag” hotels;

(iii) There is no event of default hereunder or under any Project Document beyond any applicable notice and cure period; and

(iv) If the QREI Transfer involves an assignment of this Agreement, Developer provides the City and the County evidence that the transferee will assume Developer's responsibilities under this Agreement from and after the effective date of the assignment (the “**Assignment Date**”) pursuant to a commercially reasonable form of assignment and assumption agreement.

(D) **Release.** Upon the assignment of Developer's rights and interests under this Agreement and the other Project Documents to which Developer is a party, in each case to the extent permitted hereunder or thereunder (and, if applicable, after obtaining the written consent of the necessary counterparty or counterparties hereto or thereto), and the assumption by the assignee of all of the liabilities and obligations of Developer arising under this Agreement and such other Project Documents from and after the Assignment Date, the assignor shall be automatically released from any liabilities or obligations under this Agreement and such other Project Documents to which Developer is a party to the extent such liabilities or obligations arise from and after the Assignment Date.

(E) **Definitions.** For the purposes of this Agreement:

(i) **“Change of Control”** means a change in the ownership of Developer such that its parent entity and any entity directly or indirectly controlled by, or under common control with, its parent entity collectively have less than a 50.1% direct or indirect voting interest in Developer and lack the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

(ii) **“QREI Transfer”** means (i) any assignment of the rights and interests under this Agreement and the other Project Documents by Developer to a Qualified Real Estate Investor and the assumption by the Qualified Real Estate Investor of all of the liabilities and obligations of Developer arising under this Agreement and such other Project Documents from and after the Assignment Date, or (ii) any Change of Control whereby a Qualified Real Estate Investor acquires more than 50% of the direct or indirect voting interests in Developer and has the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

(iii) **“Qualified Real Estate Investor”** means any of the following:

(1) Any Institutional Investor (as defined below); or

(2) Any person or entity domiciled within the United States of America and having a minimum net worth of \$25,000,000, as certified by a reputable firm of certified public accountants, provided such person or entity is not the subject of any bankruptcy, reorganization or insolvency proceedings

(iv) **“Institutional Investor”** means any of the following:

(1) Any savings bank, savings and loan association, commercial bank, trust company, or similar lender having shareholder equity (as determined in accordance with generally acceptable accounting principles) of at least \$50,000,000;

(2) Any college, university, credit union, trust or insurance company or endowment having assets of at least \$50,000,000;

(3) Any employment benefit plan subject to ERISA having assets held in trust of \$50,000,000 or more;

(4) Any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least \$50,000,000;

(5) Any real estate investment trust, limited partnership, limited liability company, corporation, business trust, private equity fund or other investment entity having either assets or committed capital (or any combination thereof) of \$50,000,000 or more;

(6) Any person or entity with at least 10 years' experience in the development, ownership or management of first class "national flag" hotels and core hospitality assets in major metropolitan areas in the United States of America ("**Substantial Hospitality Experience**"); or

(7) Any entity that has one or more executives who individually possess Substantial Hospitality Experience.

(8) Any partnership having as a general partner any person or entity who is or who has a direct or indirect owner who is described in clauses (1) through (7) above, or any corporation, limited liability company or other person or entity controlling, controlled by or controlled with, directly or indirectly, any person or entity described in clauses (1) through (7) above.

(F) Collateral Assignment; Cooperation of City and County. Without the approval of the City or the County, Developer may collaterally assign, all (but not part) of its interest in this Agreement and the other Project Documents to its senior construction lender and thereafter, provided Developer is not in default hereunder or any Project Document to which Developer is a party beyond any applicable notice and cure period, to each other lender that has provided Developer with a loan secured by a deed of trust lien or mortgage upon the Property. Additionally, provided Developer is not in default hereunder or under any other Project Document to which Developer is a party beyond any applicable notice and cure period, without the approval of the City or the County, Developer shall be permitted to pledge direct or indirect interests in Developer in connection with obtaining any mezzanine construction loan or any subsequent mezzanine loan for the Convention Center Hotel Project. The City and the County shall reasonably cooperate with Developer in connection with securing any loan by a lender, which duty of cooperation shall include negotiating in good faith any agreements reasonably required by the lender to secure or protect its interest in the Convention Center Hotel Project and the Project Documents; provided, however, nothing herein shall constitute a waiver of the rights, remedies, or interests of the City or the County, or the ability of the City or the County to defend or protect its rights, interests, and/or remedies under this Agreement and all Project Documents to which the City and/or the County are a party.

(G) Entire Agreement; Conflicting Provisions. This Agreement and the other Project Documents contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all prior discussions, negotiations, representations, or agreements, written or oral, between the City, the County, Developer, 3CDC, and/or Development Manager respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other Project Documents are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(H) Amendments and Waivers. The provisions of this Agreement may be amended, waived, or otherwise modified only by a written agreement signed by the parties.

(I) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. Each party hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(J) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(K) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(L) Severability. If any part of this Agreement is held by a court of law to be void, illegal, or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(M) No Recording. This Agreement shall not be recorded in the Hamilton County Recorder's office.

(N) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.

(O) No Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(P) No Brokers. Developer represents to the City and the County that Developer has not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation from the City and/or the County as a result of the parties' execution of this Agreement.

(Q) Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City and the County under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of the City in other than his or her official capacity, and likewise, none of the representations, warranties, covenants, agreements, or obligations made by Developer herein shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of Developer in other than his or her official capacity. However, in no event shall any officer, agent, employee or attorney of the City or Developer be personally liable under this Agreement.

(R) Applicable Laws. Developer shall obtain all necessary permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the Convention Center Hotel Project, including any of the laws and regulations described on Exhibit K (Additional Requirements) hereto that are applicable to the Convention Center Hotel Project, including, without limitation, Developer shall comply, and shall cause all contractors working on the Convention Center Hotel Project to comply, with prevailing wage requirements which apply to a "Development Agreement" as defined and outlined in CMC Chapter 321. A copy of the City's prevailing wage determination is attached to Exhibit L as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage determination) hereto.

(S) Counterparts. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original, and all of which shall, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Agreement in the presence of the other parties.

(T) Recognition of City Support and County Support. In connection with the construction and opening of the Convention Center Hotel Project, Developer shall acknowledge the support of the City and the County with respect to the Convention Center Hotel Project in all printed promotional materials (including, without limitation, informational releases, pamphlets and brochures, construction signs, project and identification signage and stationery) and any publicity (such as but not limited to materials appearing on the Internet, television, cable television, radio or in the press or any other printed media) relating to the

Convention Center Hotel Project. In identifying the City as a Project partner, Developer shall use either the phrase "Project Assistance by the City of Cincinnati" or a City of Cincinnati logotype or other form of acknowledgement that has been approved in advance in writing by the City. In identifying the County as a Project partner, Developer shall use either the phrase "\_\_\_\_\_ " or a Hamilton County logotype or other form of acknowledgement that has been approved in advance in writing by the County. The requirements of this Section 13(T) shall terminate 3 months following the opening of the Convention Center Hotel Project.

(U) Transfer of Fee or Leasehold Title to Port. Nothing in this Agreement shall be construed to prohibit Developer from entering into a sale (or lease) and leaseback arrangement with respect to portion(s) of the Property in which fee or leasehold title to the Property is held by the Port (the "**Port Authority Arrangement**"); *provided, however,* that (i) the purpose for the Port Authority Arrangement is to take advantage of the sales tax exemption on the purchase of Project building materials, and (ii) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port Authority Arrangement, at least 10 business days prior to any conveyance of any portion of the Property to the Port. Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party except as otherwise expressly permitted hereunder; *provided, however,* at any time, subject to the provisions of this paragraph, once Developer has obtained the fee interest in the Property, Developer may convey fee or leasehold interest to the Port, in the manner, and subject to the terms described, above. It is also understood and agreed that the Port may convey such interest back to Developer pursuant to the terms contained in the agreement memorializing the Port Authority Arrangement. Developer hereby provides notice to the City that Developer will enter into the Port Authority Arrangement.

(V) Term. The term of this Agreement shall commence on the Effective Date and shall end on the earlier to occur of (i) the date terminated under Section 9(B), and (ii) the latest to occur of (w) the defeasance or redemption of all of the outstanding Revenue Bonds (inclusive of any refundings thereof), (x) expiration of the TIF Exemption Period, (y) the expiration of the City TOT Exemption Period, (z) the expiration of the County TOT Exemption Period (the "**Development Agreement Term**"). Upon the expiration or termination of the Development Agreement Term, and except for those provisions herein that expressly survive termination, this Agreement shall be of no further force and effect. Notwithstanding anything herein or elsewhere to the contrary, the termination of this Agreement for whatever reason, whether by default or otherwise, shall not adversely affect the Restrictive Covenant or any pledge made by the City or the County under the other Project Documents to secure payment of the debt service charges on any series of Revenue Bonds.

(W) EstoppeL. After written request from either the City, the County or Developer, within such period of time as may be reasonably needed in order to obtain all required governmental authorizations (in the case of the City or the County) and signatures, the City, the County or Developer shall execute and deliver to the requesting party (and to such other party as the requesting party may reasonably designate) an estoppel certificate: (i) certifying that this Agreement and the other Project Documents are unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Agreement or the other Project Documents, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Agreement and the other Project Documents as the requesting party may reasonably request.

#### **14. FEES AND EXPENSES.**

(A) Initial Administrative Fee. Prior to the execution of this Agreement, Developer paid a non-refundable administrative fee of \$15,000 to cover the City's out-of-pocket and administrative costs and expenses in establishing the project-based TIF, preparing this Agreement and other documents relating hereto, and effecting the transactions contemplated hereby.

(B) City Solicitor Legal Fee. Upon the closing of the Revenue Bonds, Developer shall pay or cause to be paid to the City a non-refundable legal services fee of \$[\_\_\_\_\_ ] from the Revenue Bond proceeds as consideration for the resources expended by the City of Cincinnati Solicitor's Office to

advance and finance the Convention Center Hotel Project, and in addition to the fees of the City's outside legal counsel contemplated in Section 14(C).

(C) Outside Counsel. Developer shall pay any and all outside counsel fees incurred by the City related to the negotiations and issuance of the Revenue Bonds out of the proceeds of the Revenue Bonds, or in some other manner mutually acceptable to Developer and the City.

(D) Monitoring and Servicing Fee; Out-of-Pocket Expenses. The City shall withhold and retain from the Service Payments an annual monitoring and servicing fee equal to the greater of (i) 1.0% of the Service Payments paid (or due, if unpaid) with respect to the Property the prior calendar year, and (ii) the documented, reasonable out-of-pocket fees, costs, charges, and expenses incurred by the City in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other Project Documents, together with the City's monitoring and servicing costs and expenses with respect to the transactions contemplated thereby. To the extent Service Payments are not made or are ineligible to be made under the Service Agreement for any reason, the City may elect to require Developer to pay such monitoring and servicing fees in another manner. This Section 14(D) shall terminate and cease to be effective in the event all of the Revenue Bonds are defeased or redeemed and permanently cease to be payable in accordance with the provisions of this Agreement and the Revenue Bond Documents. The fees described in this Section 14(D) are not refundable once withheld by the City or otherwise paid.

15. **EXHIBITS**. The following exhibits are attached hereto and made a part hereof:

Exhibit A - *Site Plan; Legal Description(s)*  
Exhibit B - *Scope of Work, Budget, and Sources of Funds*  
Exhibit C - *Form of Service Agreement*  
Exhibit D-1 - *Form of City TOT Service Agreement*  
Exhibit D-2 - *Form of County TOT Service Agreement*  
Exhibit E - *Intentionally Omitted*  
Exhibit F-1 - *Form of Promissory Note*  
Exhibit F-2 - *Form of Pass Through Note*  
Exhibit G - *Disbursement of City Cash Funds*  
Exhibit H - *Final Revenue Projections*  
Exhibit I - *State Grant Agreement*  
Exhibit J-1 - *Form of Marriott Room Block Agreement*  
Exhibit J-2 - *Form of Westin Room Block Agreement*  
Exhibit K - *Form of Restrictive Covenant*  
Exhibit L - *Additional Requirements* (incl. Addendum I - Prevailing Wage Determination)

***SIGNATURES ON FOLLOWING PAGES***

Executed by the entities below on the dates indicated below their signatures, effective as of the latest of such dates (the "**Effective Date**").

**CINCINNATI CH (OH), LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Authorized by resolution dated \_\_\_\_\_, 20\_\_\_\_\_

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Sheryl M.M. Long, City Manager

Date: \_\_\_\_\_, 2026

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Steve Webb, City Finance Director

**COUNTY OF HAMILTON, OHIO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form by the County Prosecutor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FISCAL OFFICER'S CERTIFICATE**

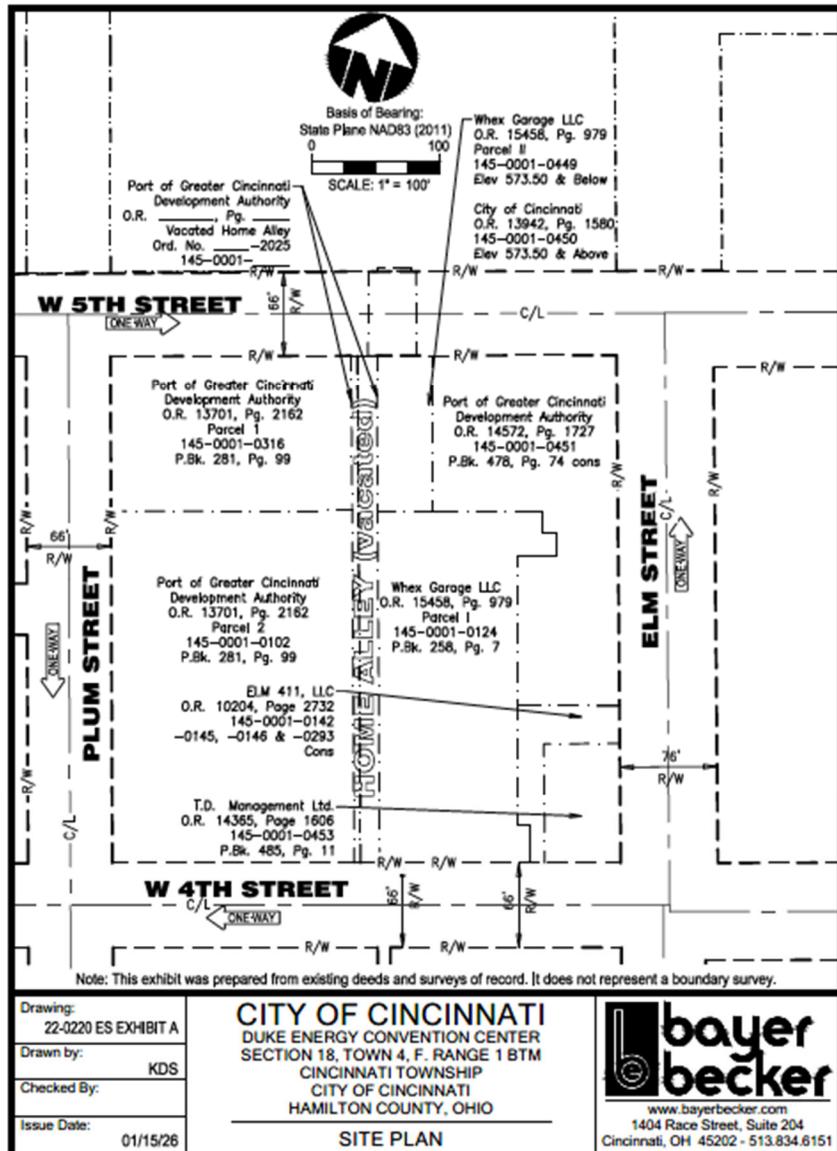
The undersigned, Treasurer of the County of Hamilton, Ohio, hereby certifies that the moneys required to meet the obligations of the County during the year 2026 under this instrument have been lawfully appropriated by the Board of Commissioners of the County for such purposes and are in the treasury of the County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

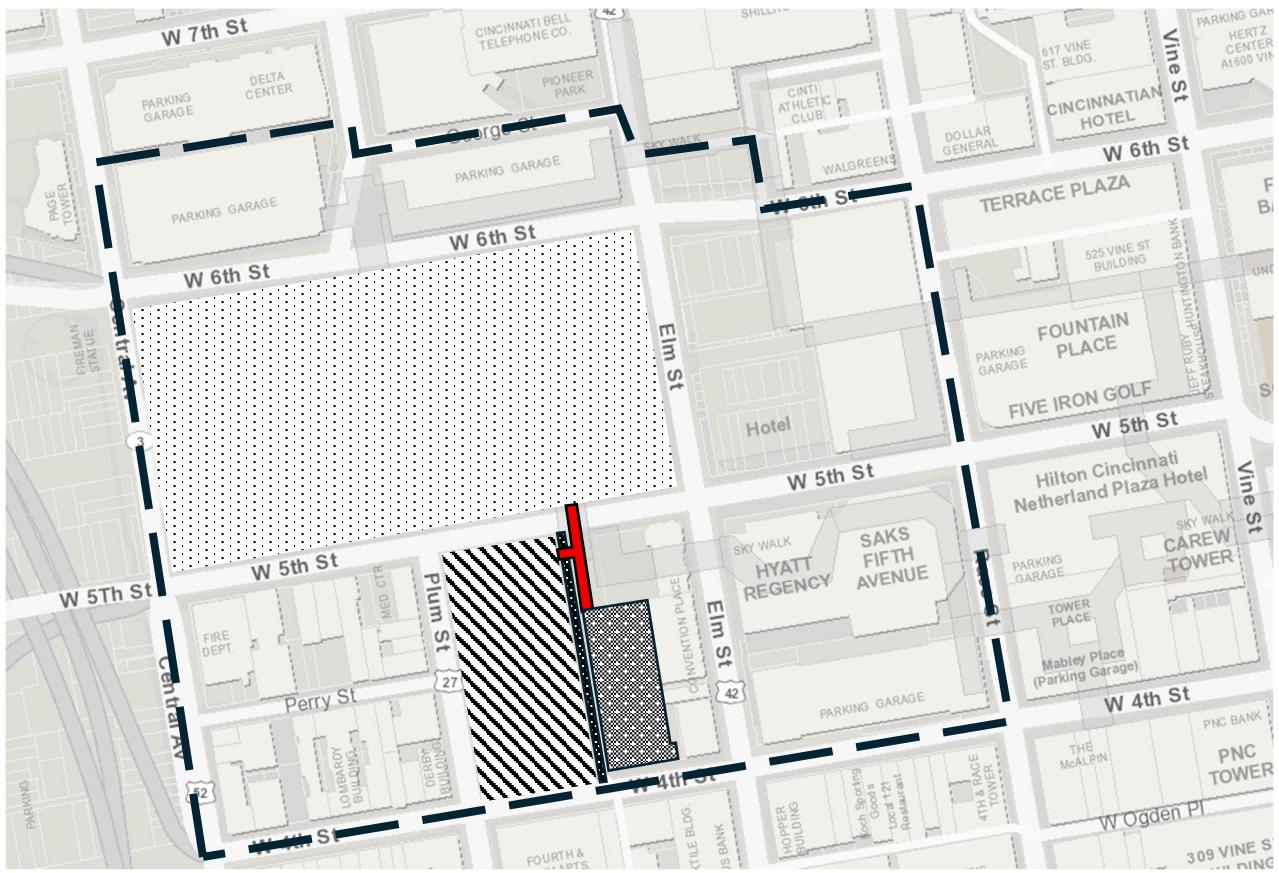
Dated: \_\_\_\_\_  
Jill Schiller, County Treasurer

EXHIBIT A  
to Development Agreement

**SITE PLAN; LEGAL DESCRIPTION(S)**

Site Plan





## Convention Center Project Area

### Home Alley

#### Convention Center



Property (Hotel Site)



Elevated Pedestrian Walkway



Whex Garage



Legal Description(s)

**251 W. Fifth Street Legal Description:**

145-1-316 ~~ST MR~~

Parcel I: Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, City of Cincinnati, Hamilton County, Ohio and being all of In Lot 342 and a part of In Lot 341 by Israel Ludlow and Joel Williams as recorded in Deed Book E2, Pages 66 and 67 of the Hamilton County, Ohio Records and being more particularly described as follows: Beginning at the Southeast corner of Fifth Street (66 foot right of way) and Plum Street (66 foot right of way); thence North 81 degrees 05 minutes 30 seconds East, along the South line of Fifth Street, a distance of 188.58 feet to the Southwest corner of Fifth Street and Home Street (20 foot right of way); thence South 9 degrees 06 minutes 10 seconds East, along the West line of Home Street, a distance of 121.88 feet; thence South 81 degrees 05 minutes 30 seconds West, parallel with the South line of Fifth Street, a distance of 188.85 feet to a point in the East line of Plum Street; thence North 8 degrees 58 minutes 30 seconds West, along the East line of Plum Street, a distance of 121.88 feet to the Southeast corner of Fifth Street and Plum Street and the place of beginning. Containing 23,000 square feet or 0.528 acres, more or less and being part of the Perimeter Survey recorded in Plat Book 281, Page 99 of the Hamilton County, Ohio Plat Records.

The above description is based on an actual field survey made by Thomas J. Howard, Ohio Registered Surveyor No. 5-005005 in October, 1989.

Parcel II: A revocable street privilege to encroach over the right-of-way of Home Street at West Fifth Street for the construction and installation of an overhead walkway pursuant to a certain City of Cincinnati municipal ordinance No. 335-1987, dated August 5, 1987.

**240 W. Fourth Street Legal Description:**

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, being all of in Lots 339 and 340 and a part of in Lot 341 by Israel Ludlow and Joel Williams as recorded in Deed Book E2, Pages 66 and 67 of the Hamilton County, Ohio records and being more particularly described as follows:

Commencing at the Southeast corner of Fifth Street (66' Right of Way) and Plum Street (66' Right of Way); thence South 08° 58' 30" East, along the East line of Plum Street, a distance of 121.88 feet to the real place of beginning for the property herein described; thence North 81° 05' 30" East, parallel with the South line of Fifth Street, a distance of 188.85 feet to a point in the West line of Home Street (20' Right of Way); thence South 09° 06' 10" East, along the West line of Home Street, a distance of 276.21 feet to the Northwest corner of Home Street and Fourth Street (66' Right of Way); thence South 81° 14' 20" West, along the North line of Fourth Street, a distance of 189.47 feet to the Northeast corner of Fourth Street and Plum Street; thence North 08° 58' 30" West, along the East line of Plum Street a distance of 275.72 feet to the Place of Beginning.

A portion of the above described parcel is registered land and is more particularly described as follows:

**Tract A**

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, and being more particularly described as follows:

Commencing at the Northeast corner of Fourth and Plum Streets in said city and running thence

**240 W. Fourth Street Legal Description Continued:**

Northwardly along the East line of Plum Street, 90.00 feet to the real point of beginning for this description; thence continuing along said East line of Plum Street, 34.70 feet to a point which is the Northwest corner of a three story brick building; thence Eastwardly, along the North wall of said building and extending Eastwardly parallel to the North line of Fourth Street, 90.00 feet; thence Southwardly, parallel to the East line of Plum Street, 34.70 feet; and thence Westwardly, parallel to the North line of Fourth Street, 90.00 feet to the real place of beginning.

**Tract B**

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township, and being more particularly described as follows:

Beginning at the Northeast corner of Fourth and Plum Streets in said city; thence Northwardly, along the East line of Plum Street, 90.00 feet; thence Eastwardly, parallel to the North line of Fourth Street, 24.00 feet; thence Southwardly, parallel to the East line of Plum Street, 90.00 feet to the North line of Fourth Street, and thence Westwardly, along the North line of Fourth Street, 24.00 feet to the place of beginning.

**Tract C**

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township and being more particularly described as follows:

Commencing at the Northeast corner of Fourth and Plum Streets in said city and running thence Eastwardly, along the North line of Fourth Street, 24.00 feet to the real place of beginning for this description; thence Northwardly parallel to the East line of Plum Street, 90.00 feet; thence Eastwardly parallel to the North line of Fourth Street, 26.00 feet; thence Southwardly parallel to the East line of Plum Street, 90.00 feet to the North line of Fourth Street; and thence Westwardly, along the North line of Fourth Street, 26.00 feet to the real place of beginning.

**Tract D**

Situate in Section 18, Town 4, Fractional Range 1, Cincinnati Township and being more particularly described as follows:

Commencing at the Northeast corner of Fourth and Plum Streets in said City and running thence Eastwardly along the North line of Fourth Street, 50.00 feet to the real place of beginning for this description; thence Northwardly, parallel to the East line of Plum Street, 90.00 feet; thence Eastwardly, parallel to the North line of Fourth Street, 40.00 feet; thence Northwardly, parallel to the East line of Plum Street, 18.00 feet; thence Eastwardly, parallel to the North line of Fourth Street, 28.00 feet; thence Southwardly, parallel to the East line of Plum Street, 108.00 feet to the North line of Fourth Street; and thence Westwardly, along the North line of Fourth Street, 68.00 feet to the real place of beginning.

Together with:

Easement rights created by Easement Agreement between Greer Properties, Inc. and Corporex Properties, Inc. filed for record February 13, 1990 in Volume 5207, Page 639 of Hamilton County Records.

**EXHIBIT B**  
to Development Agreement

**SCOPE OF WORK, BUDGET, AND SOURCES OF FUNDS**

Developer will construct or cause to be constructed a new convention center headquarters hotel at the Property, which will consist of approximately 660,534 gross square feet of area, comprised of approximately 700 guest rooms and suites, approximately 63,000 square feet of net interior meeting space, an approximately 17,000 square foot exterior event terrace, a ground floor restaurant, a lobby bar, a market outlet, an executive lounge, back of house facilities to support hotel operations, and other programming and amenities associated with a full-service hotel. The hotel is anticipated to be branded as a Marriott Hotel upon opening, and, therefore, will be constructed to "upper upscale" or higher quality standards consistent with achieving that hotel quality standard, as determined by Marriott and STR, Inc., a division of CoStar Group, Inc.

The hotel will also contain approximately 4,617 of leasable retail space on the ground floor along West Fourth Street, which Developer will deliver in a shell condition for lease with future tenants to lead the design and construction of their individual spaces within the third-party retail area.

Developer will also construct or cause to be constructed a new elevated pedestrian walkway connecting the existing adjacent Whex Garage and Convention Center to the hotel complex.

Developer will (1) construct new sidewalks and street improvements along adjacent public rights-of-way, including redesigning Plum Street between W. 3<sup>rd</sup> and W. 5<sup>th</sup> Streets to convert it into a two-way street, and (2) complete underground infrastructure and utility work and new streetscaping in former Home Alley. Developer shall complete or cause to be completed all such right-of-way and public utility work in accordance with applicable standards and requirements of the City's Department of Transportation and Engineering and the corresponding utilities.

By no later than the Completion Deadline, Developer shall satisfy one of the following alternative requirements for the benefit of the City, the County, and the Convention Center Hotel Project. First, Developer may obtain a CNS Closure. Alternatively, Developer may deliver a written report prepared and signed by Atlas Technical Consultants, acting through an Ohio Voluntary Action Program (VAP) Certified Professional in good standing, that concludes to a reasonable degree of professional certainty that: (a) environmental conditions at the Property meet applicable standards for a commercial exposure scenario as set forth in the Ohio Revised Code for the Ohio Voluntary Action Program, (b) environmental conditions quantified at the Property were managed during construction pursuant to a Soil Management Plan/Risk Mitigation Plan, protective of construction workers in connection with and during construction of the Convention Center Hotel; and (c) upon completion of the Convention Center Hotel Project, the Convention Center Hotel Project satisfies VAP-established risk thresholds as it relates to visitors, invitees, employees, licensees, or similarly situated occupants (a "**Certified Professional Closure Report**").

Any report submitted in satisfaction of the foregoing shall include the factual basis and data relied upon; identify and apply the relevant commercial standards under Ohio law; address reasonably foreseeable construction-phase exposure scenarios for construction workers and occupancy-phase exposure scenarios for visitors and invitees; and state any assumptions, data gaps, limitations, institutional controls, engineering controls, or activity and use limitations necessary to support the conclusions. The report shall be accompanied by a reliance letter in favor of the Parties and their lenders, equity investors, and successors and assigns in a form reasonably acceptable to them, permitting reliance on the report and its conclusions without privity of contract.

For clarity, delivery of a CNS shall conclusively satisfy Developer's obligations under this provision. Delivery of a conforming report shall likewise satisfy Developer's obligations under this provision, provided that Developer demonstrates it has implemented any measures identified in the report as necessary to meet the applicable commercial standards and to avoid material environmental risk to construction workers, visitors, or invitees during Convention Center Hotel Project construction.

EXHIBIT C  
to Development Agreement

**FORM OF SERVICE AGREEMENT**

SEE ATTACHED

----- space above for Hamilton County Recorder -----

Contract No.: \_\_\_\_\_

## **SERVICE AGREEMENT**

(Convention Center Hotel Project)

This Service Agreement (this "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2026 (the "**Effective Date**"), by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **CINCINNATI CH (OH), LLC**, a Delaware limited liability company ("**Owner**").

### Recitals:

A. Owner is the fee owner of the property located at 221 W. Fifth Street, Cincinnati, Ohio 45202 and 250 W. Fifth Street, Cincinnati, Ohio 45202, which property is described more fully in Exhibit A (Legal Description) hereto (collectively, the "**Property**").

B. As described in the *Development Agreement* among the City, the Board of County Commissioners of Hamilton County, Ohio, and Owner dated [\_\_\_\_\_] (the "**Development Agreement**"), Owner intends to make or cause to be made certain improvements to the Property (as described in the Development Agreement, the "**Convention Center Hotel Project**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

C. The City believes that the Convention Center Hotel Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

D. In furtherance of the public purpose and to facilitate the Convention Center Hotel Project, and as authorized by Ordinance No. [\_\_\_\_], passed by Cincinnati City Council on [\_\_\_\_] (the "**TIF Ordinance**"), the City has established a so-called project-based TIF Exemption for the Property under Section 5709.41 of the Ohio Revised Code ("**ORC**").

E. Under the TIF Ordinance and in accordance with ORC Section 5709.41, et seq. and this Agreement, the increase in the assessed value of the Property shall be exempt from real property taxes, and all present and future owners of the Property, or any portion thereof, shall be required to make service payments in lieu of taxes, in semi-annual installments, in an amount equal to the amount of real property taxes that would have been paid on the Exempt Improvements (as defined below) had an exemption not been granted ("**Statutory Service Payments**").

F. The Property is located within the Cincinnati City School District, and the Board of Education of the Cincinnati City School District ("Board of Education") has, by resolution adopted on April 27, 2020, and by a *Tax Incentive Agreement* with the City effective as of April 28, 2020, as amended, approved an exemption of 100% of the assessed valuation of the Exempt Improvements for 30 years (subject to the obligation of the City to make payments to the Board of Education as provided in Section II.C.2 of that agreement, which payments are referred to herein as the "School Board Payments").

G. As provided in the Development Agreement, the City intends to use the Statutory Service Payments to (i) pay any fees retained by the Hamilton County Auditor with respect to the Statutory Service Payments, (ii) make the School Board Payments, (iii) cover certain fees to the City provided in the Development Agreement, (iv) to make payments to the Port of Greater Cincinnati Development Authority (the "Port") and/or the Senior Revenue Bonds Trustee in the amount necessary to pay principal, interest, and other amounts due with respect to the Revenue Bonds, and (v) with 75% of any excess after the payment of debt service on the Revenue Bonds to be applied to the outstanding balance of the Loan, provided that when the Revenue Bonds are no longer outstanding 100% of all Statutory Service Payments will be applied to the outstanding balance of the Loan, and once the Loan is no longer outstanding may be used by the City for any lawful purpose.

H. The parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by ORC Section 5709.41, et seq. and shall define the respective rights and obligations of Owner, for itself and its successors-in-interest and assigns, and the City with respect to the Statutory Service Payments.

I. Execution of this Agreement has been authorized by City Council by the TIF Ordinance.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the City and Owner agree as follows:

1. **COMPLETION OF CONVENTION CENTER HOTEL PROJECT.** Owner shall cause the Convention Center Hotel Project to be completed in accordance with the terms of the Development Agreement. Failure to use and operate the Convention Center Hotel Project in the manner contemplated by the Development Agreement shall not relieve Owner of its obligations to make Statutory Service Payments as required hereunder. Owner shall use, develop, maintain, operate, and redevelop the Convention Center Hotel Project in accordance with the Development Agreement throughout the Exemption Period (as defined below), and Owner shall comply with the terms of the Development Agreement in all material respects. During the Exemption Period, Owner shall not change the principal use of the Convention Center Hotel Project without the City's prior written consent.

2. **OBLIGATION TO MAKE STATUTORY SERVICE PAYMENTS.**

A. **Declaration that Exempt Improvements are a Public Purpose.** The City hereby confirms that, pursuant to ORC Section 5709.41, et seq. and the TIF Ordinance, the City declared that 100% of the increase in the assessed value of the Improvement (as defined in ORC Section 5709.41) to the Property, including the Convention Center Hotel Project (collectively, the "Exempt Improvements") constitutes a public purpose and is entitled to exemption from real property taxes for a period of 30 years for a period currently expected to commence in tax year 20\_\_, subject to the terms of the TIF Ordinance (the "Exemption Period"). For the avoidance of doubt, the Exemption Period will not include any extension of the Exemption Period beyond the initial 30-year period authorized under the TIF Ordinance without the prior written consent of the Owner.

B. **Commencement of Statutory Service Payments.** Owner shall commence paying Statutory Service Payments no later than the final date for payment (the last day that payment can be made without penalty or interest) of the first semi-annual installment of real property taxes in the first calendar year after the first tax year in which an Improvement of at least \$1,000,000.00 resulting from the redevelopment activities on the Property appear on the Hamilton County Auditor's tax duplicate. For example, if any Exempt Improvements first appear on the tax rolls on January 1, 2027, Owner's first semi-annual tax payment will

be for the tax bill for the First Half 2027, which will become due and payable to the County Treasurer on or about January 2028. Owner shall pay Statutory Service Payments in semi-annual installments (i) on the earlier of such final date for payment of the first semi-annual installment of real property taxes, or February 1, in each year, and (ii) on the earlier of such final date for payment of the second semi-annual installment of real property taxes, or August 1, in each year (each such final date for payment is referred to herein as a **“Service Payment Date”**). Owner shall continue to make Statutory Service Payments until such time as Owner has paid the final Service Payment applicable to the Exemption Period.

C. Amount of Statutory Service Payments. Each semi-annual Statutory Service Payment shall be paid to the Hamilton County Treasurer in an amount equal to one-half (½) of the annual amount that would have been payable in that year as real property taxes with respect to the Exempt Improvements had an exemption not been granted. However, if after the first semi-annual Statutory Service Payment has been determined and paid, the total annual amount for that year is adjusted by the taxing authorities, the amount of the second semi-annual Statutory Service Payment shall be adjusted accordingly. The Statutory Service Payments shall vary as the assessed value of the Exempt Improvements and the applicable tax rate vary from time to time.

D. Estimation. If, as of any Service Payment Date any Statutory Service Payment is due, the amount of the real property taxes that would have been payable on the Exempt Improvements (if not exempt) cannot be or has not been finally determined, the amount of such taxes shall be estimated by the Hamilton County Auditor or by the City (even though such taxes may be subject to contest, later determination, or adjustment because of revaluation of the Exempt Improvements) for the applicable tax year. If the sum of Statutory Service Payments so calculated and paid in any year is subsequently determined not to be equal to the total amount of real property taxes that would have been paid in that year with respect to the Exempt Improvements (if not exempt), Owner or the City shall promptly pay or repay any deficiency or excess, as appropriate, to the other within 30 days after written demand; provided, however, that nothing in this sentence shall be construed to require the City to repay to Owner any amount that would reduce the total payments in any year to an amount less than the Statutory Service Payments required to be paid in that year.

E. Late Payment. If any Service Payment, or any installment thereof, is not paid by the corresponding Service Payment Date, then, to the extent that Hamilton County does not impose a late fee or delinquency charge, Owner shall pay to the City, as a late payment charge, the amount of the charges for late payment of real property taxes, including penalty and interest, that would have been payable pursuant to ORC Section 323.121 on the delinquent amount. In addition, if Owner fails to make any Service Payment required hereunder, Owner shall pay, in addition to the Service Payment that Owner was required to pay and any late payment charges as stated above, such amount as is required to reimburse the City for all costs and other amounts (including without limitation attorneys' fees) paid or incurred by the City to enforce the Service Payment obligations against Owner or against the Property. Owner acknowledges that delays in the making of any Statutory Service Payments may, among other things, result in delays in the City's ability to timely transfer required amounts to the Port or the Senior Revenue Bonds Trustee for payment of the Revenue Bond Obligations.

### 3. APPLICATION OF STATUTORY SERVICE PAYMENTS.

A. Payment Order in Which Statutory Service Payments are to be Applied. The Statutory Service Payments shall be used by the City to (i) first, to pay any fees charged by the Hamilton County Auditor or any other governmental entity, (ii) second, to make the School Board Payments, (iii) third, to pay the City's fees described in Section 14 of the Development Agreement, and (iv) fourth, to make payments to the Port or the Senior Revenue Bonds Trustee in the amount necessary to pay principal, interest, and other amounts due with respect to the Revenue Bonds, with 75% of any excess after the payment of debt service on the Revenue Bonds to be applied to the outstanding balance of the Loan, provided that when the Revenue Bonds are no longer outstanding 100% of all Statutory Service Payments will be applied to the outstanding balance of the Loan, and once the Loan is no longer outstanding may be used by the City for any lawful purpose.

**4. PAYMENT OBLIGATIONS TO HAVE LIEN PRIORITY.** To the extent permitted by law, the Statutory Service Payments shall be treated as a tax lien in the same manner as real property taxes and will have the same lien, rights and priority as all other real property taxes. Such a lien shall attach, and may be perfected, collected and enforced as provided by law, including enforcement by foreclosure upon such lien pursuant to the procedures and requirements of Ohio law relating to mortgages, liens, and delinquent real estate taxes. Owner, for itself and any future owner(s) of the Property, hereby agrees that the obligation to make Statutory Service Payments shall have the same priority as the obligation to pay real estate taxes in the event of any bankruptcy or other like proceeding instituted by or against Owner. Owner hereby agrees not to contest the lien, rights or priority of the Statutory Service Payments with respect to the Exempt Improvements or the Property.

**5. RECORDING; OBLIGATIONS TO RUN WITH THE LAND; ASSIGNMENT.**

A. Recording. Promptly after the execution of this Agreement, Owner shall cause this Agreement to be recorded in the Hamilton County, Ohio Recorder's Office, at its expense, prior to any mortgage, assignment or other conveyance of any part of the Convention Center Hotel Project or the Property, and failure to do so shall constitute a default under this Agreement. Owner shall provide a recorded copy of this Agreement to the City within 5 business days after recording. All instruments of conveyance of the Convention Center Hotel Project or the Property or Owner's ownership of the same (or portions thereof) to subsequent mortgagees, successors, assigns or transferees shall be subject to this Agreement, and Owner shall cause all instruments of conveyance of interests in all or any portion of the Property to subsequent mortgagees, successors, assigns, or other transferees to be made expressly subject to this Agreement.

B. Covenants Running with the Land. Owner agrees that the obligation to perform and observe the agreements on Owner's part contained herein shall be covenants running with the land and, in any event and without regard to technical classification or designation, legal or otherwise, shall be binding and enforceable by the City and against Owner and its successors-in-interest and transferees as owners from time to time of the fee simple interest in the Property, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate.

C. Obligations are Absolute and Unconditional. The obligation of Owner to make Statutory Service Payments under this Agreement will not be terminated for any cause including, without limitation, failure to commence or complete the Convention Center Hotel Project; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Exempt Improvements; commercial frustration of purpose; or any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State of Ohio or any political subdivision thereof. The obligation to make Statutory Service Payments shall survive the termination of this Agreement to the extent this Agreement terminates prior to the payment in full of all Statutory Service Payments with respect to the Convention Center Hotel Project.

**6. PAYMENT OF TAXES; CONTESTS.**

A. Payment of Taxes. With respect to real property taxes that are not exempted under the TIF Ordinance and this Agreement, Owner shall pay or cause to be paid, as the same become due (but subject to the five business day Cure Period for Payment Defaults described in the Development Agreement), all such taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property and/or the non-exempt improvements or any personal property or fixtures of Owner installed or brought thereon (including, without limitation, any taxes levied against Owner with respect to income or profits from operations at the Property and which, if not paid, may become or be made a lien on the Property or the Exempt Improvements). Owner acknowledges that it, and not the City, is responsible for the payment of all utility and other charges incurred in the operation, maintenance, use and occupancy of the Property and Exempt Improvements.

B. Contests. [PROVISION TO BE FINALIZED IN CONJUNCTION WITH BOND FINANCING – For the duration of this Agreement, Owner (including, without limitation, any successors and assigns of Owner, as applicable), shall not contest the amount or validity of any such taxes, assessments or other charges, including contesting the real estate valuation of the Property and Exempt Improvements.]

7. **TAX EXEMPTION.** Owner, (including, without limitation, any successors and assigns of Owner, as applicable), shall not, without the prior written consent of the City, which may be withheld in the City's reasonable discretion, seek any other real property tax exemption for the Property, or any portion thereof, other than the exemption provided hereunder and pursuant to the TIF Ordinance during the Exemption Period. Owner agrees (on its own behalf and, for the avoidance of doubt, on behalf of its successors and assigns) that the ownership of the Property by a non-profit entity or port authority that would otherwise be exempt from real property taxes shall in no way derogate or limit the obligation to pay Statutory Service Payments hereunder. Notwithstanding the foregoing, this Section shall cease to apply once the Revenue Bonds and the Loan are no longer outstanding, as certified by the Senior Revenue Bonds Trustee, in consultation with the City Finance Department.

8. **INSURANCE COVERAGE AND PROCEEDS.**

A. Coverage. Owner shall provide and maintain, or cause to be provided and maintained, special form (formerly known as "all risk") full replacement cost property insurance on the Exempt Improvements on the Property or any replacements or substitutions therefor (to the extent the same are owned by Owner, or by the Port and leased by Owner) from an insurer that is financially responsible, of recognized standing, and authorized to write insurance in the State. Such insurance policy shall be in such form and with such provisions as are generally considered reasonable and appropriate for the type of insurance involved and shall prohibit cancellation or modification by the insurer without at least 30 days prior written notice to the City and Owner.

B. Proceeds. Upon request, Owner shall furnish to the City such evidence or confirmation of the insurance required under this Section. Owner shall give notice to the City of any final settlement or compromise in connection with any claims for the collection of insurance proceeds in excess of \$500,000 within 15 days of such final settlement or compromise. In the event of any damage to, or destruction of, all or any of the Exempt Improvements on the Property, the proceeds of such insurance (the "**Property Insurance Proceeds**") shall be applied (i) first, to repair, rebuild, restore, or replace the property damaged, or destroyed to the same (or better) condition as existed immediately prior to the damage or destruction (provided, that if there then exists any financing provided to the Owner by third-party (non-affiliate) mortgage lenders with respect to the Property ("Owner Mortgage Financing"), such work may be undertaken in accordance with the provisions of such Owner Mortgage Financing at the election of such lenders), (ii) second, pursuant to any other provisions of any Owner Mortgage Financing, and (iii) third, the remainder to the Owner. In the event that the Exempt Improvements on the Property are deemed irreparable by the Owner, in consultation with the City and any lenders of Owner Mortgage Financing, the Property Insurance Proceeds will be applied (i) first, pursuant to the term of any Owner Mortgage Financing, and (ii) second, to the redemption of the Revenue Bond Obligations, and (iii) third, the remainder to the Owner.

9. **Condemnation Proceeds.** In the event any portion of the Property or the Exempt Improvements shall be taken as a result of the exercise of the power of eminent domain by any governmental entity or other person, association, or corporation possessing the right to exercise the power of eminent domain, the proceeds of such eminent domain award received by Owner shall be used for the same purposes specified with respect to insurance proceeds in Section 8(B) above.

10. **NOTICES.** All notices or other communications under this Agreement shall be deemed given on receipt when personally delivered, or 48 hours after being mailed by U.S. registered or certified mail, postage prepaid, addressed to the City at 801 Plum Street, Cincinnati, OH 45202, Attention: City Manager, with a copy to the Director of the Department of Community and Economic Development, City of Cincinnati, 805 Central Avenue, Suite 700, Cincinnati, OH 45202; and to Owner at its address set forth in the Development Agreement. If Owner sends a notice to the City alleging that the City is in default under this Agreement, Owner shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202. The City and Owner may,

by notice given under this Agreement, designate any further or different addresses to which subsequent notices or other communications shall be sent.

**11. COVENANTS AND REPRESENTATIONS.** Owner represents that it is a duly organized and existing Ohio entity as identified in the introductory paragraph of this Agreement, that it is in good standing under the laws of the State of Ohio, and that it is qualified to do business in the State of Ohio. Owner covenants that it will remain in existence and so qualified as long as it is required to make Statutory Service Payments hereunder.

**12. EXEMPTION APPLICATION.** Owner or its representatives (as applicable) shall prepare, execute and (following the City's prior receipt of copies for review and approval in the City's sole and absolute discretion) file, in a timely fashion after the Effective Date, such applications, documents, and other information with the appropriate officials of the State of Ohio and Hamilton County, or other public body as may be required to effect and maintain during the Exemption Period as described in ORC Chapter 5709 the exemption from real property taxation as contemplated by said Chapter. Owner shall continuously use due diligence and employ commercially reasonable efforts to keep such exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within Owner's control. In the event that subsequent to the allowance of such exemption, the same is at any time revoked or suspended due to the act or omission of Owner, Owner shall nevertheless continue to make Statutory Service Payments throughout the Exemption Period; *provided, however* that such Statutory Service Payments shall only be required during any period of revocation or suspension to the extent (and in the amounts) necessary to cover debt service and other financing costs related to any bonds the City has issued prior to the date of revocation or suspension of the exemption that are secured by the City to be repaid, in whole or in part, by the Statutory Service Payments (or such portion of the Statutory Service Payments as the City may be entitled to pledge as collateral or utilize for repayment of debt under the terms of this Agreement).

**13. DEFAULTS AND REMEDIES.** If Owner fails to make any Service Payment when due (but subject to the 10 business day Cure Period for City Payment Defaults described in the Development Agreement) (time being of the essence), or if Owner fails to observe or perform any other obligation hereunder and such other non-payment failure continues for more than 90 days after the City notifies Owner in writing thereof, the City shall be entitled to exercise and pursue any and all rights and remedies available to it hereunder, at law or in equity, including, without limitation, (a) foreclosing the lien created hereby, and (b) terminating Owner's rights under this Agreement without modifying or abrogating Owner's obligation to make Statutory Service Payments; *provided, however*, that if the nature of the default (other than a City Payment Default) is such that it cannot reasonably be cured during an applicable cure period, Owner shall not be in default under this Agreement so long as Owner commences to cure the default within such cure period and thereafter diligently completes such cure within 90 days after Owner's receipt of the City's initial notice of default. Owner shall pay to the City upon demand an amount equal to all costs and damages suffered or incurred by the City in connection with such default, including, without limitation, attorneys' fees. Waiver by the City of any default shall not be deemed to extend to any subsequent or other default under this Agreement. All rights and remedies hereunder are cumulative.

**14. DURATION OF AGREEMENT.** This Agreement shall become effective on the Effective Date and, except with respect to those provisions expressly stated to survive the expiration of this Agreement (including, without limitation, the obligation to continue to make Statutory Service Payments), shall expire on the day following the date of payment of the final Service Payment applicable to the Exemption Period, unless terminated earlier in accordance with the terms of this Agreement. This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon such expiration, the City shall deliver to Owner such documents and instruments as Owner may reasonably request to evidence such expiration.

**15. RESERVED.**

**16. GENERAL PROVISIONS.**

A. Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement. This Agreement may be executed and delivered by electronic signature.

B. Captions. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

C. Governing Law and Choice of Forum. This Agreement shall be governed by the laws of the State of Ohio and the City of Cincinnati and shall be interpreted and enforced in accordance with the laws of this State and City without regard to the principles of conflicts of laws. All unresolved claims and other matters in question between the City and Owner shall be decided in the Hamilton County Court of Common Pleas. The parties hereby waive trial by jury.

D. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and in lieu of each provision that is illegal, invalid or unenforceable, there shall be added as a part of this Agreement provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

E. Additional Documents. The City and Owner agree to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement to the extent permitted by this Agreement and in compliance with all laws and ordinances controlling this Agreement.

F. Entire Agreement; Amendments. This Agreement, together with the Development Agreement and other Project Documents, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements of the parties. This Agreement may be amended only by a written amendment signed by all parties.

G. Exhibits. The following exhibit is attached hereto and made a part hereof:  
Exhibit A – Legal Description

***SIGNATURES ON FOLLOWING PAGE***

This Service Agreement is executed by the City and Owner by their duly-authorized officers or representatives as of the Effective Date.

**CINCINNATI CH (OH), LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2026

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

Date: \_\_\_\_\_, 2026

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Steve Webb, City Finance Director

*NOTARY BLOCKS ON FOLLOWING PAGE*

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2026,  
by \_\_\_\_\_, the \_\_\_\_\_ on behalf of CINCINNATI CH (OH), LLC, a Delaware limited liability  
company, on behalf of the company.

---

Notary Public  
My commission expires: \_\_\_\_\_

STATE OF OHIO )  
COUNTY OF HAMILTON ) SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by  
\_\_\_\_\_, \_\_\_\_\_ of the CITY OF CINCINNATI, an Ohio municipal corporation,  
on behalf of the corporation.

---

Notary Public  
My commission expires: \_\_\_\_\_

This instrument prepared by:  
City of Cincinnati Law Department  
801 Plum Street, Room 214  
Cincinnati, OH 45202

**EXHIBIT A  
TO  
SERVICE AGREEMENT**

**LEGAL DESCRIPTION**

**[TO BE ATTACHED]**

EXHIBIT D-1  
to Development Agreement

**FORM OF CITY TOT SERVICE AGREEMENT**

SEE ATTACHED

## **CITY TRANSIENT OCCUPANCY TAX SERVICE AGREEMENT**

(Convention Center Hotel Project)

This City Transient Occupancy Tax Service Agreement (this "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2026 (the "**Effective Date**"), by and among the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), **CINCINNATI CH (OH), LLC**, a Delaware limited liability company ("**Owner**") and **[QUALIFYING VENDOR]**, a \_\_\_\_\_ ("Qualifying Vendor").

### Recitals:

J. Owner has designated Qualifying Vendor as the entity responsible for the operation and management of the convention center hotel improvements (the "**Convention Center Hotel Project**") constructed upon the property located at 221 W. Fifth Street, Cincinnati, Ohio 45202 and 250 W. Fifth Street, Cincinnati, Ohio 45202, pursuant to that certain *Development Agreement* by and among the City, the Board of Commissioners of Hamilton County, Ohio, and Owner dated [\_\_\_\_\_] (the "**Development Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

B. The City has determined that the Convention Center Hotel Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

C. In furtherance of the public purposes and to facilitate the Convention Center Hotel Project, and as authorized by Ordinance No. [\_\_\_\_], passed by Cincinnati City Council on [\_\_\_\_] (the "**TOT Exemption Ordinance**"), the City has designated the Convention Center Hotel Project as a convention center headquarters hotel under Section 5739.093 of the Ohio Revised Code ("**ORC**") and exempted the Convention Center Hotel Project from the payment of (i) the City's 1.50% transient occupancy tax established by the City pursuant to ORC Section 5739.08(A); (ii) the City's 1.50% transient occupancy tax established by the City pursuant to ORC Section 5739.08(A); and (iii) the City's 1.00% transient occupancy tax established by the City pursuant to ORC Section 5739.08(B)(2) (together, the "**City Qualifying Lodging Taxes**") commencing on the first day of the first month following the date on which Qualifying Vendor begins collecting City Qualifying Lodging Taxes from hotel guests and continuing thereafter for a period of 30 years (the "**City TOT Exemption Period**").

D. Pursuant to the TOT Exemption Ordinance, the City has required Owner to cause Qualifying Vendor to make monthly payments in an amount equal to the amount of City Qualifying Lodging Taxes that would have been due had an exemption not been granted ("**City TOT Service Payments**").

E. Pursuant to ORC Section 5739.093(D)(2) and the TOT Exemption Ordinance, the City has further determined to (i) collect the City TOT Service Payments and then remit them to either the Port of Greater Cincinnati Development Authority (the "**Port Authority**") or the Senior Revenue Bonds Trustee and/or (ii) appoint the Port Authority or the Senior Revenue Bonds Trustee as its agent for the collection and enforcement of the City TOT Service Payments, all in accordance with the bond documents securing the Revenue Bond Obligations; and further, the City has assigned and pledged the City TOT Service Payments to either the Port Authority or the Senior Revenue Bonds Trustee to facilitate the payment of the Revenue Bond Obligations.

F. The parties have further determined that once the Revenue Bonds are no longer outstanding, to apply the City TOT Service Payments to repay the outstanding balance of the Loan until such time as the Loan is no longer outstanding.

H. The parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated under ORC Section 5739.093 and shall define the respective

rights and obligations of Owner, Qualifying Vendor, and the City with respect to the City TOT Service Payments.

I. Execution of this Agreement has been authorized by City Council by the TOT Exemption Ordinance.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the City, Owner, and Qualifying Vendor agree as follows:

1. **COMPLETION OF CONVENTION CENTER HOTEL PROJECT.** Owner shall cause the Convention Center Hotel Project to be completed in accordance with the terms of the Development Agreement and has engaged Qualifying Vendor to, among other things, collect and remit the City TOT Service Payments to (a) the City and/or (b) the Senior Revenue Bond Trustee, all in accordance with the bond documents securing the Revenue Bond Obligations. Failure to use and operate the Convention Center Hotel Project in the manner contemplated by the Development Agreement shall not relieve Owner and Qualifying Vendor of their obligations to collect and remit the City TOT Service Payments as required hereunder. Owner shall use, develop, maintain, operate, and redevelop the Convention Center Hotel Project in accordance with the Development Agreement throughout the City TOT Exemption Period, and Owner shall comply with the terms of the Development Agreement in all respects. During the City TOT Exemption Period, Owner shall not change the principal use of the Convention Center Hotel Project without the City's prior written consent.

2. **OBLIGATION TO MAKE CITY TOT SERVICE PAYMENTS.**

A. Declaration that Convention Center Hotel Project is a Public Purpose. The City hereby confirms that, pursuant to ORC Section 5739.093, et seq. and the TOT Exemption Ordinance, the City declared that the Convention Center Hotel Project is a convention center headquarters hotel (as defined in ORC Section 5739.093) and constitutes a public purpose entitled to exemption from City Qualifying Lodging Taxes for the duration of the City TOT Exemption Period. For the avoidance of doubt, the City TOT Exemption Period will not include any extension of the City TOT Exemption Period beyond the initial 30 year period authorized under the TOT Exemption Ordinance without the prior written consent of the Owner.

B. Commencement of City TOT Service Payments. Owner shall cause Qualifying Vendor to commence paying City TOT Service Payments no later than on or before 30 days after the end of the first month in which Qualifying Vendor collects payments in lieu of City Qualifying Lodging Taxes. Owner shall cause Qualifying Vendor to pay City TOT Service Payments in monthly installments on the date that the City Qualifying Lodging Taxes would be due had an exemption not been granted (each date for payment is referred to herein as a **"City TOT Service Payment Date"**). Owner shall continue to cause Qualifying Vendor to make City TOT Service Payments until such time as Qualifying Vendor has paid the final City TOT Service Payment applicable to the City TOT Exemption Period.

C. Amount of City TOT Service Payments. While the Revenue Bonds are outstanding, each monthly City TOT Service Payment shall be paid by the City directly to the Port Authority or the Senior Revenue Bonds Trustee in an amount equal to the amount that would have been payable during that same period as City Qualifying Lodging Taxes with respect to the Convention Center Hotel Project had an exemption not been granted. After the Revenue Bonds are no longer outstanding, the monthly City TOT Service Payments shall be paid to the Treasurer of the City of Cincinnati in the same manner as City Qualifying Lodging Taxes in an amount equal to the amount that would have been payable in that same period as City Qualifying Lodging Taxes with respect to the Convention Center Hotel Project had an exemption not been granted.

D. Late Payment. If any City TOT Service Payment is not paid by the corresponding City TOT Service Payment Date, then Owner shall pay to the City, as a late payment charge, the amount of the charges for late payment of City Qualifying Lodging Taxes, including penalty and interest, that would have been payable pursuant to Cincinnati Municipal Code Section 312-13 on the delinquent amount. In addition, if Owner fails to make any City TOT Service Payment required hereunder, Owner shall pay, in addition to the City TOT Service Payment that Owner was required to pay and any late payment charges (or penalties

and interest) as stated above, such amount as is required to reimburse the City for all costs and other amounts (including, without limitation, attorneys' fees) paid or incurred by the City to enforce the City TOT Service Payment obligations against Owner or Qualifying Vendor. Owner acknowledges that delays in the making of any City TOT Service Payments may, among other things, result in delays in the City's ability to timely transfer required amounts to the Port Authority or the Senior Revenue Bonds Trustee for payment of the Revenue Bond Obligations.

**3. APPLICATION OF CITY TOT SERVICE PAYMENTS.** The City has assigned and pledged the City TOT Service Payments to be received from Owner and Qualifying Vendor to the Port Authority and/or the Senior Revenue Bonds Trustee to facilitate the payment of the Revenue Bond Obligations, with 75% of any excess after the payment of debt service on the Revenue Bonds to be applied to the outstanding balance of the Loan, provided that when the Revenue Bonds are no longer outstanding 100% of all City TOT Service Payments will be applied to the outstanding balance of the Loan, and once the Loan is no longer outstanding may be used by the City for any lawful purpose.

**4. CITY TOT SERVICE PAYMENTS NOT PAID ARE DEBT OWED TO THE CITY.** To the extent permitted by law, the City Qualifying Lodging Taxes collected and not paid to the City as City TOT Service Payments shall be deemed a debt owed by Owner and Qualifying Vendor to the City and Owner and Qualifying Vendor shall be liable to an action brought in the name of the City for the recovery of such amounts.

**5. OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL.** The obligation of Owner and Qualifying Vendor to make City TOT Service Payments under this Agreement will not be terminated for any cause including, without limitation, failure to commence or complete the Convention Center Hotel Project as contemplated under the Development Agreement; any acts or circumstances that may constitute failure of consideration; commercial frustration of purpose; or any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State of Ohio or any political subdivision thereof.

**6. NOTICES.** All notices or other communications under this Agreement shall be deemed given on receipt when personally delivered, or 48 hours after being mailed by U.S. registered or certified mail, postage prepaid, addressed to the City at 801 Plum Street, Cincinnati, OH 45202, Attention: City Manager, with a copy to the Director of the Department of Community and Economic Development, City of Cincinnati, 805 Central Avenue, Suite 700, Cincinnati, OH 45202; and to Owner at its address set forth in the introductory paragraph hereof. If Owner sends a notice to the City alleging that the City is in default under this Agreement, Owner shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202. The City and Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices or other communications shall be sent.

**7. COVENANTS AND REPRESENTATIONS.** Owner and Qualifying Vendor each represent for themselves that it is a duly organized and existing [Delaware] entity as identified in the introductory paragraph of this Agreement, that it is in good standing under the laws of the State of Ohio, and that it is qualified to do business in the State of Ohio. Owner covenants that it will remain in existence and so qualified as long as it is required to make City TOT Service Payments hereunder.

**8. DEFAULTS AND REMEDIES.** If Qualifying Vendor fails to make any City TOT Service Payment by the corresponding City TOT Service Payment Date (but subject to the 10 business day Cure Period for City Payment Defaults described in the Development Agreement (time being of the essence)), or if Owner or Qualifying Vendor fail to observe or perform any other obligation hereunder and such other non-monetary payment failure continues for more than 90 days after the City notifies Owner in writing thereof, the City shall be entitled to exercise and pursue any and all rights and remedies available to it hereunder, at law or in equity, including, without limitation, terminating Owner's rights under this Agreement without modifying or abrogating Owner's obligation to make City TOT Service Payments; *provided, however*, that if the nature of the default (other than a City Payment Default) is such that it cannot reasonably be cured during an applicable cure period, Owner shall not be in default under this Agreement so long as Owner commences to cure the default within such cure period and thereafter diligently completes

such cure within 180 days after Owner's receipt of the City's initial notice of default. Owner shall pay to the City upon demand an amount equal to all costs and damages suffered or incurred by the City in connection with such default, including, without limitation, attorneys' fees. Waiver by the City of any default shall not be deemed to extend to any subsequent or other default under this Agreement. All rights and remedies hereunder are cumulative.

**9. DURATION OF AGREEMENT.** This Agreement shall become effective on the Effective Date and, except with respect to those provisions expressly stated to survive the expiration of this Agreement (including, without limitation, the obligation to continue to make City TOT Service Payments), shall expire on the day following the date of payment of the final City TOT Service Payment applicable to the City TOT Exemption Period. This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon such expiration, the City shall deliver to Owner such documents and instruments as Owner may reasonably request to evidence such expiration.

**10. GENERAL PROVISIONS.**

A. Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement. This Agreement may be executed and delivered by electronic signature.

B. Captions. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

C. Governing Law and Choice of Forum. This Agreement shall be governed by the laws of the State of Ohio and the City of Cincinnati and shall be interpreted and enforced in accordance with the laws of this State and City without regard to the principles of conflicts of laws. All unresolved claims and other matters in question between the City and Owner shall be decided in the Hamilton County Court of Common Pleas. The parties hereby waive trial by jury.

D. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and in lieu of each provision that is illegal, invalid or unenforceable, there shall be added as a part of this Agreement provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

E. Additional Documents. The City and Owner agree to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement to the extent permitted by this Agreement and in compliance with all laws and ordinances controlling this Agreement.

F. Entire Agreement; Amendments. This Agreement, together with the Development Agreement and other Project Documents, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements of the parties. This Agreement may be amended only by a written amendment signed by all parties.

G. Replacement Qualifying Vendor. In accordance with Section 6(A) of the Development Agreement, the Owner may, from time to time, designate a replacement Qualifying Vendor (each a "Replacement Vendor"). Upon the appointment of such Replacement Vendor, the obligations of the Qualifying Vendor shall be assumed by the Replacement Vendor.

***SIGNATURES ON FOLLOWING PAGE***

This City Transient Occupancy Tax Service Agreement is executed by the City, Owner, and Qualifying Vendor by their duly-authorized officers or representatives as of the Effective Date.

**[Qualifying Vendor]**

a[n] \_\_\_\_\_

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2026

**CINCINNATI CH (OH), LLC**

a Delaware limited liability company

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2026

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Sheryl M. M. Long, City Manager

Date: \_\_\_\_\_, 2026

Approved as to Form:

Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Steve Webb, City Finance Director

EXHIBIT D-2  
to Development Agreement

**FORM OF COUNTY TOT SERVICE AGREEMENT**

SEE ATTACHED

## COUNTY TRANSIENT OCCUPANCY TAX SERVICE AGREEMENT

(Convention Center Hotel Project)

This County Transient Occupancy Tax Service Agreement (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and among the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, an Ohio political subdivision, 138 E. Court Street, Room 603, Cincinnati, Ohio 45202 (the "County"), **CINCINNATI CH (OH), LLC**, a Delaware limited liability company ("Owner"), and **[QUALIFYING VENDOR]**, \_\_\_\_\_ ("Qualifying Vendor").

Recitals:

A. Owner has designated Qualifying Vendor as the entity responsible for the operation and management of the convention center hotel improvements (the "Convention Center Hotel Project") constructed upon the property located at 221 W. Fifth Street, Cincinnati, Ohio 45202 and 250 W. Fifth Street, Cincinnati, Ohio 45202 pursuant to that certain *Development Agreement* by and among the County, the City of Cincinnati, Ohio, and Owner dated [\_\_\_\_\_] (the "Development Agreement"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

B. The County has determined that the Convention Center Hotel Project is in the vital and best interests of the County and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

C. In furtherance of the public purposes and to facilitate the Convention Center Hotel Project, and as authorized by Resolution No. [\_\_\_\_], adopted by County Board of Commissioners on [\_\_\_\_] (the "TOT Exemption Resolution"), the County has designated the Convention Center Hotel Project as a "convention center headquarters hotel" under Section 5739.093 of the Ohio Revised Code ("ORC") and exempted the Convention Center Hotel Project from the payment of the (i) the County's 3.50% transient occupancy tax established by the County pursuant to ORC Sections 5739.093(D) and 5739.093(X)(4); (ii) the County's 3.00% transient occupancy tax established by the County pursuant to ORC Section 5739.09(A)(1); and (iii) the County's 1.00% transient occupancy tax established by the County pursuant to ORC Section 5739.09(X) (collectively, the "County Qualifying Lodging Taxes") commencing on the first day of the first month following the date on which Qualifying Vendor begins collecting County Qualifying Lodging Taxes from hotel guests and continuing thereafter for a period of 30 years (the "County TOT Exemption Period").

D. Pursuant to the TOT Exemption Resolution, the County has required Owner to cause Qualifying Vendor to make monthly payments in an amount equal to the amount of County Qualifying Lodging Taxes that would have been due had an exemption not been granted ("County TOT Service Payments").

E. Pursuant to ORC Section 5739.093(D)(2) and the TOT Exemption Resolution, the County has further determined to (i) collect the County TOT Service Payments and then remit them to either the Port of Greater Cincinnati Development Authority (the "Port Authority") or the Senior Revenue Bonds Trustee and/or (ii) appoint the Port Authority or the Senior Revenue Bonds Trustee as its agent for the collection and enforcement of the County TOT Service Payments all in accordance with the bond documents securing the Revenue Bond Obligations and the Loan; and further, the County has assigned and pledged the County TOT Service Payments to either the Port Authority or the Senior Revenue Bonds Trustee to facilitate the payment of the Revenue Bond Obligations and the Loan.

F. The parties have further determined that once the Revenue Bonds are no longer outstanding, to make a portion of the County TOT Service Payments available to the City to repay the outstanding balance of the Loan until such time as the Loan is no longer outstanding in accordance with the provisions of the Development Agreement.

G. The parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated under ORC Section 5739.093 and shall define the respective

rights and obligations of Owner, Qualifying Vendor, and the County with respect to the County TOT Service Payments.

H. Execution of this Agreement has been authorized by the Board of County Commissioners by the TOT Exemption Resolution.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the County, Owner, and Qualifying Vendor agree as follows:

1. **COMPLETION OF CONVENTION CENTER HOTEL PROJECT.** Owner shall cause the Convention Center Hotel Project to be completed in accordance with the terms of the Development Agreement and has engaged Qualifying Vendor to, among other things, collect and remit the County TOT Service Payments to (i) the County and/or (ii) the Senior Revenue Bonds Trustee, all in accordance with the bond documents securing the Revenue Bond Obligations and the Loan, as well as in accordance with the Development Agreement. Failure to use and operate the Convention Center Hotel Project in the manner contemplated by the Development Agreement shall not relieve the Owner and Qualifying Vendor of their obligations to collect and remit the County TOT Service Payments as required hereunder. Owner shall use, develop, maintain, operate, and redevelop the Convention Center Hotel Project in accordance with the Development Agreement throughout the County TOT Exemption Period, and Owner shall comply with the terms of the Development Agreement in all respects. During the County TOT Exemption Period, Owner shall not change the principal use of the Convention Center Hotel Project without the County's prior written consent.

2. **OBLIGATION TO MAKE COUNTY TOT SERVICE PAYMENTS.**

A. **Declaration that Convention Center Hotel Project is a Public Purpose.** The County hereby confirms that, pursuant to ORC Section 5739.093, et. seq. and the TOT Exemption Resolution, the County declared that the Convention Center Hotel Project is a convention center headquarters hotel (as defined in ORC Section 5739.093) and constitutes a public purpose entitled to exemption from County Qualifying Lodging Taxes for the duration of the County TOT Exemption Period. For the avoidance of doubt, the County TOT Exemption Period will not include any extension of the County TOT Exemption Period beyond the initial 30 year period authorized under the TOT Exemption Resolution without the prior written consent of the Owner.

B. **Commencement of County TOT Service Payments.** Owner shall cause Qualifying Vendor to commence paying County TOT Service Payments no later than on or before 30 days after the end of the first month in which Qualifying Vendor collects payments in lieu of County Qualifying Lodging Taxes. Owner shall cause Qualifying Vendor to pay County TOT Service Payments in monthly installments on the date that the County Qualifying Lodging Taxes would be due had an exemption not been granted (each date for payment is referred to herein as a "**County TOT Service Payment Date**"). Owner shall continue to cause Qualifying Vendor to make County TOT Service Payments until such time as Qualifying Vendor has paid the final County TOT Service Payment applicable to the County TOT Exemption Period.

C. **Amount of County TOT Service Payments.** While the Revenue Bonds are outstanding, each monthly County TOT Service Payment shall be paid directly by the County to the Port Authority or the Senior Revenue Bonds Trustee in an amount equal to the amount of County Qualifying Lodging Taxes that would have been payable during that same period with respect to the Convention Center Hotel Project had an exemption not been granted. After the Revenue Bonds are no longer outstanding, the Qualifying Vendor shall remit a portion of the County TOT Service Payments to the County for further distribution to the City to repay outstanding amounts due under the Loan in accordance with the provisions of the Development Agreement.

D. **Late Payment.** If any County TOT Service Payment is not paid by the corresponding County TOT Service Payment Date, then Owner shall pay to the County, as a late payment charge, the amount of the charges for late payment of County Exempt Qualifying Lodging Taxes, including penalty and interest, that would have been payable pursuant to Hamilton County Hotel Lodging Excise Tax Code of Regulations, dated December 1, 2023, as amended, supplemented and/or restated, on the delinquent

amount. In addition, if Owner fails to make any County TOT Service Payment required hereunder, Owner shall pay, in addition to the County TOT Service Payment that Owner was required to pay and any late payment charges (or penalties and interest) as stated above, such amount as is required to reimburse the County for all costs and other amounts (including, without limitation, attorneys' fees) paid or incurred by the County to enforce the County TOT Service Payment obligations against Owner or Qualifying Vendor. Owner acknowledges that delays in the making of any County TOT Service Payments may, among other things, result in delays in the County's ability to timely transfer required amounts to the Port Authority or the Senior Revenue Bonds Trustee for payment of the Revenue Bond Obligations.

**3. APPLICATION OF COUNTY TOT SERVICE PAYMENTS.** The County has assigned and pledged the County TOT Service Payments to be received from Owner and Qualifying Vendor to the Port Authority and/or the Senior Revenue Bonds Trustee to facilitate the payment of the Revenue Bond Obligations. In the event the Revenue Bonds are no longer outstanding prior to the expiration of the County TOT Exemption Period, [then the County has further agreed under the Development Agreement to transfer a portion of the County TOT Service Payments to the City for the repayment of the Loan in accordance with the terms of the Development Agreement. purpose.

**4. COUNTY TOT SERVICE PAYMENTS NOT PAID ARE DEBT OWED TO THE COUNTY.** To the extent permitted by law, the County Qualifying Lodging Taxes collected and not paid to the County as County TOT Service Payments shall be deemed a debt owed by Owner and Qualifying Vendor to the County and Owner and Qualifying Vendor shall be liable to an action brought in the name of the County for the recovery of such amounts.

**5. OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL.** The obligation of Owner and Qualifying Vendor to make County TOT Service Payments under this Agreement will not be terminated for any cause including, without limitation, failure to commence or complete the Convention Center Hotel Project as contemplated under the Development Agreement; any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State of Ohio or any political subdivision thereof.

**6. NOTICES.** All notices or other communications under this Agreement shall be deemed given on receipt when personally delivered, or 48 hours after being mailed by U.S. registered or certified mail, postage prepaid, addressed to the County at 138 E. Court Street, Room 603, Cincinnati, OH 45202, Attention: President of the Board of County Commissioners, with a copy to Hamilton County Administrator, 138 E. Court Street, Room 603, Cincinnati, OH 45202; and to Owner at its address set forth in the introductory paragraph hereof. If Owner sends a notice to the County alleging that the County is in default under this Agreement, Owner shall simultaneously send a copy of such notice by U.S. certified mail to: [ ]. The County and Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices or other communications shall be sent.

**7. COVENANTS AND REPRESENTATIONS.** Owner and Qualifying Vendor each represent for themselves that it is a duly organized and existing [Delaware] limited liability company as identified in the introductory paragraph of this Agreement, that it is in good standing under the laws of the State of Ohio, and that it is qualified to do business in the State of Ohio. Owner covenants that it will remain in existence and so qualified as long as it is required to make County TOT Service Payments hereunder.

**8. DEFAULTS AND REMEDIES.** If Qualifying Vendor fails to make any County TOT Service Payment by the corresponding County TOT Service Payment Date (but subject to the 10 business day Cure Period for County Payment Defaults described in the Development Agreement (time being of the essence)), or if Owner or Qualifying Vendor fail to observe or perform any other obligation hereunder and such other non-monetary payment failure continues for more than 90 days after the County notifies Owner in writing thereof, the County shall be entitled to exercise and pursue any and all rights and remedies available to it hereunder, at law or in equity, including, without limitation, terminating Owner's rights under this Agreement without modifying or abrogating Owner's obligation to make County TOT Service Payments; *provided, however, that if the nature of the default (other than a County Payment Default) is such that it cannot reasonably be cured during an applicable cure period, Owner shall not be in default under this*

Agreement so long as Owner commences to cure the default within such cure period and thereafter diligently completes such cure within 180 days after Owner's receipt of the County's initial notice of default. Owner shall pay to the County upon demand an amount equal to all costs and damages suffered or incurred by the County in connection with such default, including, without limitation, attorneys' fees. Waiver by the County of any default shall not be deemed to extend to any subsequent or other default under this Agreement. All rights and remedies hereunder are cumulative.

**9. DURATION OF AGREEMENT.** This Agreement shall become effective on the Effective Date and, except with respect to those provisions expressly stated to survive the expiration of this Agreement (including, without limitation, the obligation to continue to make County TOT Service Payments), shall expire on the day following the date of payment of the final County TOT Service Payment applicable to the County TOT Exemption Period. This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon such expiration, the County shall deliver to Owner such documents and instruments as Owner may reasonably request to evidence such expiration.

**10. GENERAL PROVISIONS.**

A. Counterparts and Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same Agreement. This Agreement may be executed and delivered by electronic signature.

B. Captions. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

C. Governing Law and Choice of Forum. This Agreement shall be governed by the laws of the State of Ohio and the County of Hamilton, Ohio, and shall be interpreted and enforced in accordance with the laws of this State and County without regard to the principles of conflicts of laws. All unresolved claims and other matters in question between the County and Owner shall be decided in the Hamilton County Court of Common Pleas. The parties hereby waive trial by jury.

D. Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and in lieu of each provision that is illegal, invalid or unenforceable, there shall be added as a part of this Agreement provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

E. Additional Documents. The County and Owner agree to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement to the extent permitted by this Agreement and in compliance with all laws and ordinances controlling this Agreement.

F. Entire Agreement; Amendments. This Agreement, together with the Development Agreement and other Project Documents, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements of the parties. This Agreement may be amended only by a written amendment signed by all parties.

***SIGNATURES ON FOLLOWING PAGE***

This County Transient Occupancy Tax Service Agreement is executed by the County, Owner, and Qualifying Vendor by their duly-authorized officers or representatives as of the Effective Date.

**CINCINNATI CH (OH), LLC,**  
A Delaware limited liability company

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2026

**[QUALIFYING VENDOR]**

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By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2026

**COUNTY OF HAMILTON, OHIO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form by the County Prosecutor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**R.C. 5705.41**  
**CERTIFICATE OF AVAILABILITY OF FUNDS**

The undersigned County Auditor of Hamilton County, Ohio (the “**County**”), hereby certifies in connection with the County Transient Occupancy Tax Service Agreement entered into between the County, Cincinnati CH (OH), LLC, and [\_\_\_\_\_], dated as of [\_\_\_\_\_] [\_\_], 2026, that the amount required to meet the contract, obligation, or expenditure for the attached during Fiscal Year 2026, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance. This certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

**IN WITNESS WHEREOF**, I have hereunto set my hand this [\_\_] day of [\_\_\_\_\_] 2026.

**HAMILTON COUNTY, OHIO**

By: \_\_\_\_\_  
County Auditor

Dated: [\_\_\_\_\_] [\_\_], 2026

EXHIBIT E  
to Development Agreement

***Intentionally Omitted.***

EXHIBIT F-1  
to Development Agreement

**FORM OF PROMISSORY NOTE**

SEE ATTACHED

## PROMISSORY NOTE

**\$50,000,000.00**

Cincinnati, Ohio  
\_\_\_\_\_, 2026

**FOR VALUE RECEIVED**, the undersigned, [**CINCINNATI CH (OH), LLC**, a Delaware limited liability company, the address of which is 303 Peachtree Center Avenue NE #575, Atlanta, Georgia 30303] (“**Borrower**”), hereby promises to pay to the order of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Promissory Note (this “**Note**”) is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the “**City**”), the principal sum of Fifty Million Dollars (\$50,000,000.00), or so much thereof as is disbursed by the City to Borrower under that certain *Development Agreement* by and between Borrower and the City, dated \_\_\_\_\_, 2026 (the “**Agreement**”), together with interest thereon and upon the following terms and conditions (the “**Loan**”). The date on which the City disburses the Loan proceeds or any portion thereof to Borrower pursuant to the terms of the Agreement is referred to herein as the “**Loan Disbursement Date**.” Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

Pursuant to the terms of the Agreement, Borrower is required to develop and construct a convention center hotel, and thereafter operate such hotel in compliance with certain operating standards, all as more particularly described in the Agreement.

**1. Terms.** The terms of the Loan are as follows:

- (a) Amount: The principal and amount of the Loan evidenced by this Note is Fifty Million Dollars (\$50,000,000.00).
- (b) Term: The term of the Loan (the “**Term**”) shall be 30 years, beginning on the Loan Disbursement Date, and ending on the 30-year anniversary thereof (the “**Maturity Date**”).
- (c) Interest Rate: 3.00% per annum.
- (d) Payments:
  - (i) Deferment. Borrower shall not be required to make payments under this Note during the period between the Loan Disbursement Date and Construction Completion (collectively, the “**Deferment Period**”).
  - (ii) Payments. Provided Developer is not in default hereunder or under the Agreement beyond any applicable notice and cure period, then commencing on the first day after the expiration of the Deferment Period and continuing through the Maturity Date, payments under this Note shall be made as follows:
    - (A) Excess Pledged Revenues. As more particularly described in the Agreement, any amounts received by the City from Excess Pledged Revenues shall be credited against the Loan, so as to correspondingly reduce the overall outstanding balance thereof.
    - (B) Construction Period Savings. After Project Closeout, any amounts received by the City from Construction Savings shall be credited against the Loan, so as to correspondingly reduce the overall outstanding balance thereof.
    - (C) Incentive Recoupment Payment. As more particularly described in the Agreement, any amounts received by the City in the form of an Incentive Recoupment Payment shall be credited against the Loan, so as to correspondingly reduce the overall outstanding balance thereof.

(D) *Balloon Payment.* If the Loan is not fully forgiven as described in paragraph (iii) below prior to the Maturity Date, then Borrower shall pay a balloon payment equal to all unpaid and unforgiven principal and other charges outstanding on the Loan on the Maturity Date.

(iii) *Forgiveness.* On the Maturity Date, provided that Borrower is not in default of its obligations under this Note, the Agreement, or any of the other Project Documents, the City shall forgive all outstanding principal and interest on the Loan.

- (e) Prepayment: Notwithstanding anything to the contrary contained herein, Borrower may prepay the Loan and accrued interest at any time, without penalty from any sources available to Borrower.
- (f) Default Rate of Interest; Late Charges: If any payment due hereunder is not received by the City when due, a late charge equal to five percent (5%) of the past due amount shall automatically become due, and interest on the past due amount shall accrue from the due date at the rate of twelve percent (12%) per annum until the entire past due amount has been paid. The foregoing is in addition to the City's other rights and remedies hereunder and under the Agreement in the event of a default.
- (g) Due on Sale: Notwithstanding the Maturity Date specified herein, if Developer does not pay the required Incentive Recoupment Payment to the City when due, then the entire outstanding principal balance and all accrued interest shall automatically become due and payable in full upon the sale of all or any portion of the Property other than as authorized under the terms of the Agreement.

2. **Authority.** The officer or representative of Borrower subscribing below represents that s/he has full power, authority, and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.

3. **Place of Payment.** Payments due under this Note shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to the City at the address set forth in the introductory paragraph of this Note or such other place as the Note holder may designate in writing from time to time.

4. **Default.** Upon (a) a default by Developer under the Agreement, specifically limited to (i) a failure by Developer to complete construction of the Convention Center Hotel Project in a timely manner in accordance with the terms of Section 3(G) of the Agreement, (ii) a failure by Developer or Hotel Operator to operate and maintain the Convention Center Hotel Project consistent with the Quality Standards beyond applicable notice and cure periods under the Development Agreement or the Restrictive Covenant, or (iii) a default by Developer or Hotel Operator under the Marriott Room Block Agreement beyond applicable notice and cure periods under the Development Agreement or the Marriott Room Block Agreement; or (b) a default in the payment of interest, principal or any other sum when due under this Note that is not cured within 10 business days after Borrower is given written notice thereof, the entire principal sum hereof and accrued and unpaid interest hereon may, at the option of the Note holder, be declared to be immediately due and payable, time being of the essence, and the Note holder may proceed to enforce the collection thereof by suit at law or in equity. If suit is brought to collect this Note, the Note holder shall be entitled to collect, and Borrower shall indemnify the Note holder against, all expenses of suit, including, without limitation, attorneys' fees. Failure of the Note holder to exercise its rights under this Note in the event of default shall not constitute a waiver of the right of the holder to exercise the same or to exercise such rights in the event of a subsequent default.

5. **General Provisions.** This Note and any and all ancillary documents executed by Borrower in connection with the Loan constitute the entire agreement of the parties with respect to the matters described herein and supersede any and all prior communications and agreements between the parties. This Note may be amended only by a written amendment signed by Borrower and the Note

holder. This Note shall be governed by the laws of the City of Cincinnati and the State of Ohio. This Note shall be binding upon Borrower and its successors and assigns. If any provision of this Note is determined to be in violation of any applicable local, state, or federal law, such provision shall be severed from this Note and the remainder of this Note shall remain in full force and effect. All notices given under this Note shall be sent by regular or certified U.S. mail to Borrower at its address set forth above, and to the Note holder at the address where loan payments are made. Any action or proceeding arising under this Note shall be brought only in the Hamilton County Court of Common Pleas. Presentment, notice of dishonor, protest, and notice of protest are hereby waived. Lender acknowledges the bona fide indebtedness of Borrower for the loan evidenced by this Note. Further, should there be a forbearance or forgiveness at the time all matters which would permit for the forbearance or forgiveness, Lender will issue the requisite IRS form to Borrower reporting the amount of the loan forgiven at that time. Borrower may assign and transfer its interest under this Note on the same terms and conditions governing the assignment of the Agreement.

Executed by Borrower on the date first above written.

**BORROWER:**

**[CINCINNATI CH (OH), LLC]**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

cc: Steve Webb, City Finance Director

EXHIBIT F-2  
to Development Agreement

**FORM OF PASS THROUGH NOTE**

SEE ATTACHED

## PROMISSORY NOTE

\$[48,000,000.00]

Cincinnati, Ohio  
\_\_\_\_\_, 2026

**FOR VALUE RECEIVED**, the undersigned, [**CINCINNATI CH (OH), LLC**, a Delaware limited liability company, the address of which is 303 Peachtree Center Avenue NE #575, Atlanta, Georgia 30303] (“**Borrower**”), hereby promises to pay to the order of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Promissory Note (this “**Note**”) is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the “**City**”), the principal sum of [Forty-Eight Million Dollars (\$48,000,000.00)], or so much thereof as is disbursed by the City to Borrower under that certain *Development Agreement* by and between Borrower and the City, dated \_\_\_\_\_, 2026 (the “**Agreement**”), together with interest thereon and upon the following terms and conditions (the “**Loan**”). The date on which the City disburses the Loan proceeds or any portion thereof to Borrower pursuant to the terms of the Agreement is referred to herein as the “**Loan Disbursement Date**.” Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Agreement.

Pursuant to the terms of the Agreement, Borrower is required to develop and construct a convention center hotel, and thereafter operate such hotel in compliance with certain operating standards, all as more particularly described in the Agreement.

**1. Terms.** The terms of the Loan are as follows:

- (a) Amount: The principal and amount of the Loan evidenced by this Note is [Forty-Eight Million Dollars (\$48,000,000.00)].
- (b) Term: The term of the Loan (the “**Term**”) shall be 15 years, beginning on the Loan Disbursement Date, and ending on the 15-year anniversary thereof (the “**Maturity Date**”).
- (c) Interest Rate: 3.00% per annum.
- (d) Payments:
  - (i) Deferment. Borrower shall not be required to make payments under this Note during the period between the Loan Disbursement Date and Construction Completion (collectively, the “**Deferment Period**”).
  - (ii) Payments. If the Loan is not fully forgiven as described in paragraph (iii) below prior to the Maturity Date, then Borrower shall pay a balloon payment equal to all unpaid and unforgiven principal and other charges outstanding on the Loan on the Maturity Date
  - (iii) Forgiveness. Provided Developer is not in default hereunder or under the Agreement beyond any applicable notice and cure period, then beginning on the anniversary of the first Loan Disbursement Date, and continuing on each anniversary of such date thereafter, the City shall forgive 1/15<sup>th</sup> of the outstanding amount of the principal amount of the Loan then outstanding. On the Maturity Date, provided Developer is not in default hereunder or under the Agreement beyond any applicable notice and cure period, the City will forgive all remaining outstanding principal and interest on the Loan.
- (e) Prepayment: Notwithstanding anything to the contrary contained herein, Borrower may prepay the Loan and accrued interest at any time, without penalty from any sources available to Borrower.
- (f) Default Rate of Interest; Late Charges: If any payment due hereunder is not received by the City when due, a late charge equal to five percent (5%) of the past due amount shall

automatically become due, and interest on the past due amount shall accrue from the due date at the rate of twelve percent (12%) per annum until the entire past due amount has been paid. The foregoing is in addition to the City's other rights and remedies hereunder and under the Agreement in the event of a default.

2. **Authority.** The officer or representative of Borrower subscribing below represents that s/he has full power, authority, and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.
3. **Place of Payment.** Payments due under this Note shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to the City at the address set forth in the introductory paragraph of this Note or such other place as the Note holder may designate in writing from time to time.
4. **Default.** Upon (a) a default by Developer under the Agreement, specifically limited to (i) a failure by Developer to complete construction of the Convention Center Hotel Project in a timely manner in accordance with the terms of Section 3(G) of the Agreement, (ii) a failure by Developer or Hotel Operator to operate and maintain the Convention Center Hotel Project consistent with the Quality Standards beyond applicable notice and cure periods under the Development Agreement or the Restrictive Covenant, or (iii) a default by Developer or Hotel Operator under the Marriott Room Block Agreement beyond applicable notice and cure periods under the Development Agreement or the Marriott Room Block Agreement; or (b) a default in the payment of interest, principal or any other sum when due under this Note that is not cured within 10 business days after Borrower is given written notice thereof, the entire principal sum hereof and accrued and unpaid interest hereon may, at the option of the Note holder, be declared to be immediately due and payable, time being of the essence, and the Note holder may proceed to enforce the collection thereof by suit at law or in equity. If suit is brought to collect this Note, the Note holder shall be entitled to collect, and Borrower shall indemnify the Note holder against, all expenses of suit, including, without limitation, attorneys' fees. Failure of the Note holder to exercise its rights under this Note in the event of default shall not constitute a waiver of the right of the holder to exercise the same or to exercise such rights in the event of a subsequent default.
5. **General Provisions.** This Note and any and all ancillary documents executed by Borrower in connection with the Loan constitute the entire agreement of the parties with respect to the matters described herein and supersede any and all prior communications and agreements between the parties. This Note may be amended only by a written amendment signed by Borrower and the Note holder. This Note shall be governed by the laws of the City of Cincinnati and the State of Ohio. This Note shall be binding upon Borrower and its successors and assigns. If any provision of this Note is determined to be in violation of any applicable local, state, or federal law, such provision shall be severed from this Note and the remainder of this Note shall remain in full force and effect. All notices given under this Note shall be sent by regular or certified U.S. mail to Borrower at its address set forth above, and to the Note holder at the address where loan payments are made. Any action or proceeding arising under this Note shall be brought only in the Hamilton County Court of Common Pleas. Presentment, notice of dishonor, protest, and notice of protest are hereby waived. Lender acknowledges the bona fide indebtedness of Borrower for the loan evidenced by this Note. Further, should there be a forbearance or forgiveness at the time all matters which would permit for the forbearance or forgiveness, Lender will issue the requisite IRS form to Borrower reporting the amount of the loan forgiven at that time. Borrower may assign and transfer its interest under this Note on the same terms and conditions governing the assignment of the Agreement.

Executed by Borrower on the date first above written.

**BORROWER:**

**CINCINNATI CH (OH), LLC**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

cc: Steve Webb, City Finance Director

EXHIBIT G  
to Development Agreement

**DISBURSEMENT OF CITY CASH FUNDS**

**[To be attached to execution version]**

EXHIBIT H  
to Development Agreement

**FINAL REVENUE PROJECTIONS**

**[To be attached post-execution]**

EXHIBIT I  
to Development Agreement

**STATE GRANT AGREEMENT**

SEE ATTACHED

**GRANT AGREEMENT BETWEEN  
THE OFFICE OF BUDGET AND MANAGEMENT AND  
[REDACTED]  
City of Cincinnati**

This Grant Agreement ("Agreement") is made and entered into by and between the State of Ohio (the "State"), through the Ohio Office of Budget and Management ("OBM"), acting by and through its Director, and located at 30 East Broad Street, 34th Floor, Columbus, Ohio 43215, and the [REDACTED] City of Cincinnati [REDACTED] (the "Recipient" or "Grantee"), acting by and through its authorized representative, and located at [REDACTED] 801 Plum St #152, Cincinnati, OH 45202 (each individually a "Party" or collectively the "Parties").

**WHEREAS**, pursuant to Section 200.20 of Substitute House Bill 2 (the "Act"), the 135th General Assembly of the State of Ohio has appropriated funds in the amount of \$717,800,000 to OBM in appropriation item 042509, One Time Strategic Community Investments;

**WHEREAS**, pursuant to Section 200.30 of the Act, OBM shall use the One Time Strategic Community Investments to provide grants for the projects listed in that section in the amounts listed;

**WHEREAS**, pursuant to Section 200.30 of the Act, OBM, prior to disbursing a grant to a Recipient, shall enter into this Agreement with the Recipient;

**WHEREAS**, pursuant to Section 200.30 of the Act, the Recipient, as part of this Agreement, shall agree to complete a final report, in a form and manner prescribed by OBM, detailing how the Recipient used the grant and submit the report to OBM; and

**WHEREAS**, pursuant to Section 200.30 of the Act, the Grantee was appropriated \$46 Million for the project titled [REDACTED] Convention Center District Development [REDACTED] (the "Project").

**NOW, THEREFORE**, for the purposes of providing these grant funds to the Grantee in accordance with the Act, the Parties hereby covenant and agree as follows:

1. **Funding Amount and Purpose.** OBM agrees to provide the Grantee \$46 Million via electronic funds transfer to be used by the Grantee for the purposes of funding the Project. In no event shall the State or OBM's financial commitment to the Grantee exceed \$46 Million as provided for in this Section. Any funds provided under this Agreement that are not spent in conformity with the intent and purpose of the appropriation designated in Section 200.30 of the Act or in violation of other federal, state, or local laws, rules, regulations, or Executive Orders shall be returned in full to the State. Nothing in this Agreement shall constitute, or be deemed to constitute, an obligation of future appropriations of the General Assembly.
2. **Certification of Funds.** It is expressly understood and agreed by the Parties that none of the rights, duties, and obligations of the Parties under this Agreement shall be binding on either Party until all statutory provisions of the Ohio Revised Code ("R.C.") including, without limitation, R.C. 126.07, have been complied with, and until such time as all funds have been made available.
3. **Bonded and Insured Employees and Agents.** The Grantee hereby certifies to OBM that: (i) all individuals or agents of the Grantee who are responsible for maintaining or disbursing funds acquired through this Agreement are or will be fully bonded or insured against the loss of such

funds; (ii) the bonding agent or insurer shall be licensed to do business in Ohio; and (iii) no part of the funds acquired by the Grantee through this Agreement shall be spent to obtain that bonding or insurance.

**4. Performance Period; Report of Expenditures.**

- a. **Initial Period.** The Grantee acknowledges the performance period for this Agreement runs through June 30, 2026. The Grantee will make a good faith effort to complete the Project on or before June 30, 2026. No later than July 31, 2026, the Grantee agrees to submit a final report to OBM detailing the use of funds and confirming the expenditures were made in accordance with the purposes enumerated in Section 1 of this Agreement. Notwithstanding Section 8 of this Agreement, any funds not expended shall be returned in full to the State within fourteen (14) days following the submission of the final report to OBM.
- b. **Extension.** If the Grantee has not expended all funds for the Project by June 30, 2026, the Parties, by mutual consent, may extend this Agreement. In lieu of a final report as provided in Section 4(a) of this Agreement, the Grantee agrees to submit an interim report to OBM detailing the use of funds and the expected completion date of the Project. The interim report shall be submitted to OBM no later than July 31, 2026. As permitted by the extension, no later than thirty (30) days following completion of the Project or the expenditure of all funds, whichever is sooner, the Grantee agrees to submit a final report to OBM detailing the use of funds and confirming the expenditures were made in accordance with the purposes enumerated in Section 1 of this Agreement. Notwithstanding Section 8 of this Agreement, any funds not expended shall be returned in full to the State within fourteen (14) days following the submission of the final report to OBM.
- c. **Project Incompletion.** To the extent applicable, should the Grantee decide not to complete the Project as provided in this Agreement, the Grantee will provide OBM with a final report detailing why the Grantee has chosen not to proceed with the Project. The final report shall be submitted to OBM no later than the last agreed upon date for completion of the Project. Notwithstanding Section 8 of this Agreement, any funds not expended shall be returned in full to the State within fourteen (14) days following the submission of the final report to OBM.

**5. Relationship of the Parties.** It is fully understood and agreed to by the Grantee that neither the Grantee nor its officers, employees, agents, representatives, contractors, or other personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the State or OBM.

**6. Term of Agreement.**

- a. **Effective Date.** This Agreement shall commence and be binding on the Parties upon the completion of: (i) the signature of the Grantee's authorized representative below; and (ii) the Grantee's receipt of funds.
- b. **Expiration.** This Agreement will, unless otherwise earlier terminated herein, expire two (2) years following the date of the Grantee's submission of its final report to OBM pursuant to Section 4 of this Agreement.

Provisions of this Agreement have no force upon expiration unless its context provides otherwise.

- c. **Termination for Cause.** OBM reserves the right to terminate this Agreement upon written notice to the Grantee and to recover any funds distributed to the Grantee, or by the Grantee to contractors or other payees, in violation of the terms of this Agreement.
- d. **Breach; Opportunity to Cure.** OBM, in its sole discretion, may permit the Grantee to cure a breach in this Agreement. Such cure period shall be no longer than twenty-one (21) calendar days. Notwithstanding OBM permitting a period of time to cure the breach or the Grantee's cure of the breach, nothing in this Agreement shall prohibit the State or OBM from exercising any other rights or remedies available to it under federal or state law.

7. **Notice.** Notices required by the Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery, or sent by facsimile or other electronic means (email). Any notice delivered or sent shall be effective on the date of delivery. All notices and other written communications under the Agreement shall be, unless otherwise modified by subsequent written notice, directed to the OBM contact listed on the funding opportunity. The authorized representative on the grant agreement will serve as the main point of contact for this funding whereas additional contacts listed on the funding request form, as applicable, will serve as grant contacts for administrative purposes.

8. **Remittances.** If for any reason funds acquired through this Agreement are required to be paid, repaid, or remitted to the State, they shall be remitted in full by the Grantee to OBM within forty-five (45) days of demand. Any such remittance shall include a copy of this Agreement.

9. **Reports and Records.** During the term of this Agreement and for two (2) years following the date of the Grantee's submission of its final report to OBM, the Grantee shall keep and make all reports and records associated with the grant under this Agreement available to the State, OBM, the Ohio Auditor of State, or other authorized representatives or agents of the foregoing as necessary upon request.

10. **Liability; Waiver of Liability.** The Grantee shall be solely liable for any and all claims, demands, or causes of action arising from its obligations under this Agreement. Each Party to this Agreement must seek its own legal representative and bear its own costs, attorney fees, and expenses, in any litigation that may arise from the performance of this Agreement. It is specifically understood and agreed that OBM does not indemnify the Grantee. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. Nothing in this Agreement shall be construed to be a waiver of any immunity of the Grantee granted by statute or the immunity of any of its employees or agents for any purpose. In no event shall OBM be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits. On and after the date of this Agreement, the Grantee agrees not to seek any determination of liability against OBM or any department, agency, or official of the State in the case of claim or suit arising from the funds provided to the Grantee under this Agreement. The Grantee forever releases and waives any and all claims, demands, and causes of action it may ever possess or assert against OBM and its employees, agents, officials, and attorneys arising from, or relating to, this Agreement.

11. **Public Funds Compliance.** The Grantee will assure compliance with all applicable federal, state, and local laws and regulations pertaining to handling, management, and accountability in relation to public funds. All funds received by the Grantee under this Agreement shall be deposited in one or more financial institutions that fully insure, secure, or otherwise protect the funds from loss through federal deposit insurance and/or other deposit and/or collateralization strategies that protect the funds against loss. Funds granted to the Grantee shall be held in compliance with Chapter 135 of the Revised Code, as applicable.
12. **Ohio Ethics Law.** The Grantee certifies that it is in compliance with and will continue to adhere to the requirements of the Ohio ethics and conflict of interest laws as found in Chapter 102 of the Revised Code and R.C. 2921.42 and 2921.43. The Grantee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State.
13. **Drug-free Workplace.** The Grantee agrees to comply with all applicable state and federal laws regarding a drug-free workplace and shall make a good faith effort to ensure that none of its employees or permitted contractors purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.
14. **No Findings for Recovery.** The Grantee represents and warrants to the State that no officer, employee, or agent is subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that Section. The Grantee agrees that if this representation or warranty is determined by OBM to be false, the Agreement shall be void ab initio as between the Parties to this Agreement, and any funds paid by the State hereunder immediately shall be repaid in full to the State, or an action for recovery immediately may be commenced by the State for recovery of said funds.
15. **Employment Nondiscrimination.** Pursuant to R.C. 125.111, the Grantee agrees that Grantee and any contractor or subcontractor will not discriminate against any citizen of this state in the employment of a person qualified and available to perform work related to the Project on the basis of race, color, religion, sex, age, disability or military status as defined in R.C. 4112.01, national origin, or ancestry. In addition, the Grantee further agrees that Grantee and any contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, will not discriminate against, intimidate, or retaliate against any employee hired for the performance of work related to the Project on the basis of race, color, religion, sex, age, disability or military status as defined in R.C. 4112.01, national origin, or ancestry. To the extent applicable, the Grantee represents that the contractor(s) from whom the Grantee makes purchases has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, and has filed a description of the affirmative action program and a progress report on its implementation with the Ohio Department of Development.
16. **Prevailing Wage.** To the extent applicable, the Grantee shall comply with the prevailing wage requirements of Chapter 4115 of the Revised Code extending from this Agreement.
17. **Competitive Selection.** The Grantee shall comply with all applicable state requirements relating to the competitive selection of contractors and comply with its own competitive selection policies and procedures. If competitive selection for the Project is not required by law, to the extent reasonably possible as determined by the Grantee, the Grantee shall employ an open and competitive process in the selection of its contractors.

18. **Campaign Contributions.** The Grantee hereby certifies that neither it nor any of its officers nor the spouse of any such person, has made contributions to the Governor of Ohio in excess of the limitations specified in R.C. 3517.13.
19. **Compliance with Laws.** The Grantee shall comply with Section 200.30 of the Act and all applicable federal, state, or local laws, rules, regulations, or Executive Orders in the performance of the Grantee's obligations under this Agreement.
20. **Indemnification.** Unless the Grantee is otherwise prohibited from indemnifying the State or OBM under state or federal law, the Grantee agrees to indemnify and to hold the State and OBM harmless and immune from any claims or causes of action arising from, or related to, implementing the Project, including any acts or omissions of the Grantee or its officers, employees, agents, representatives, contractors, or other personnel. Neither the State nor OBM shall be considered a party to and shall not be held liable under any contract entered into by the Grantee in carrying out its activities pursuant to this Agreement.

21. **Miscellaneous Provisions.**

- a. **Controlling Law.** This Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. The Grantee consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.
- b. **Days.** When this Agreement refers to days, it means calendar days, unless it expressly provides otherwise.
- c. **Waiver.** A waiver by any Party of any breach or default by the other Party under this Agreement shall not constitute a continuing waiver by such Party of any subsequent act in breach of or in default hereunder.
- d. **Successors and Assigns.** Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by the Grantee, without the prior written consent of OBM.
- e. **Headings.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- f. **Severability.** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially-enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- g. **Entire Agreement.** This Agreement contains the entire agreement between the Parties and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the Parties. This Agreement supersedes any and all previous agreements, whether written or oral, between the Parties.
- h. **Amendment.** This Agreement may be modified or amended at any time during its term by mutual consent of the Parties, expressed in writing, and officially signed by both Parties.

- i. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- j. **Electronic Signatures.** Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each Party hereto shall be entitled to rely upon an electronic signature of any other Party delivered in such a manner as if such signature were an original.

*(Remainder of page intentionally left blank)*

**IN WITNESS WHEREOF**, this Agreement is signed by the duly authorized representatives of OBM and the Grantee and shall be effective in accordance with Section 6(a) of this Agreement.

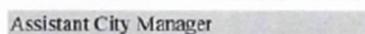
**As to the Grantee, the Authorized Representative:**

By:



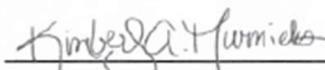
Date: Sep 20, 2024

 William Weber

 Assistant City Manager

**As to the Ohio Office of Budget and Management:**

By:



Date: July 25, 2024

Kimberly A. Murnieks  
Director

EXHIBIT J-1  
to Development Agreement

**FORM OF MARRIOTT ROOM BLOCK AGREEMENT**

SEE ATTACHED

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**ROOM BLOCK AGREEMENT**

**by and between**

[\_\_\_\_\_]

**and**

**Cincinnati CH (OH), LLC**

*NOTE: A Memorandum of this Agreement Shall be Recorded to Confirm that this Agreement Contains and Constitutes a Covenant and Restriction That Runs with Title to the Hotel Site.*

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## ROOM BLOCK AGREEMENT

THIS ROOM BLOCK AGREEMENT (the “**Agreement**”) made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2026 (the “**Effective Date**”) by and between [\_\_\_\_\_], a \_\_\_\_\_ [(the “**CVB**”)], and Cincinnati CH (OH), LLC, a Delaware limited liability company ( the “**Owner**”), recites and provides as follows:

### RECITALS:

A. The CVB has a material interest in maximizing the performance of, and the quality of convention business attracted to, the Convention Center and encouraging convention and tourism business in Hamilton County.

B. In furtherance of those goals, and to facilitate the development of a full-service convention center hotel connected to the Convention Center, the City of Cincinnati (“**City**”), the Board of Commissioners of Hamilton County (“**County**”), and the Owner have entered into the Development Agreement that allows the Owner to obtain certain incentives with respect to the development, construction, and operation of the Hotel.

C. The Development Agreement requires the Owner to enter into this Agreement pursuant to which a certain percentage of the Hotel’s guest rooms will be reserved for specific periods of time for attendees, participants, and planners of conventions and trade shows at the Convention Center. The CVB and the Owner agree that this Agreement is the Marriott Room Block Agreement described in the Development Agreement and that this Agreement constitutes a contract for the provision of services by the Owner to and for the benefit of the CVB, which services are being provided in exchange for the covenants and agreements of the City and County contained in the Development Agreement.

D. The Owner agrees that it will require the Operator, as a condition of any Management Agreement, to abide by the terms of this Agreement.

### AGREEMENT

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and confessed by the parties hereto, the CVB and the Owner hereby covenant and agree with each other as follows:

### ARTICLE I DEFINED TERMS

In this Agreement, the following terms shall have the meaning ascribed to them below:

#### 1.01 “Active Negotiations”

means (x) for purposes of Section 3.01(b), that the Owner or Operator, on the one hand, and a bona fide potential Hotel guest, on the other hand, have exchanged written correspondence between them that reflects an indication of mutual interest for consummating a transaction in

which the Operator contracts to block or book guest rooms at the Hotel and in which neither the Owner or the Operator, on the one hand, nor such bona fide potential Hotel guest on the other hand, has indicated that it no longer has any interest in pursuing such negotiations; and (y) for purposes of Section 3.02(b)(ii), that the CVB or CC Manager, on the one hand, and a Potential Convention Center Customer, on the other hand, have exchanged written correspondence between them that reflects an indication of mutual interest for consummating a City-Wide Event, and neither the CVB or CC Manager, on the one hand, nor such Potential Convention Center Customer, on the other hand, has indicated that it no longer has any interest in pursuing such negotiations.

1.02    **“Agreement”**

means this Room Block Agreement.

1.03    **“Amended Offer”**

is defined in Section 3.01(d).

1.04    **“Available Guest Rooms”**

means, as of any date in question, all of the Hotel’s guest rooms (including suites), excluding any guest rooms that are reasonably projected to be unavailable on the dates in question due to scheduled renovations, repairs (including, without limitation, repairs due to events of casualty that have occurred), or maintenance, and excluding any of the Hotel’s guest rooms that have been condemned in a taking and as to which physical possession is projected to have been taken by the condemnor prior to the date in question.

1.05    **“Block Notice”**

is defined in Section 3.01(d).

1.06    **“Block Release Request Notice”**

is defined in Section 3.02(b).

1.07    **“Business Day”**

means a day other than a Saturday, a Sunday or a day on which national banks in Cincinnati, Ohio are closed for business. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is not a Business Day, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such non-Business Day. Unless otherwise specified herein, all references herein to a “day” or “days” shall refer to calendar days and not Business Days.

1.08    **“CC Manager”**

means the manager of the Convention Center from time to time during the Term, which is Legends Global as of the Effective Date.

1.09    **“City”**

means Cincinnati, Ohio, a municipality.

1.10    **“City-Wide Event”**

means a convention, trade show, or other event during which a Potential Convention Center Customer (i) requests (a) if greater than 48 months in advance of the event, 1,200 or more guest rooms, or (b) within 47 months in advance of the event, 1,000 or more guest rooms, be made available in hotels in the City (including the Hotel) and surrounding metropolitan areas, in the aggregate, for one or more days while the event is held at the Convention Center (and, potentially, the day preceding the commencement of such event and the day following the conclusion of such event), (ii) requires the use of three (3) or more separate hotel properties, and (iii) reserves 60,000 square feet of space in the Convention Center exhibit hall, meeting room and/or ballroom space for the length of the event.

1.11    **“Convention Center”**

means the Cincinnati Convention Center located at 525 Elm Street, Cincinnati, Ohio, as such Convention Center may be branded from time to time.

1.12    **“County”**

means Hamilton County, Ohio, a body corporate and politic of the State of Ohio.

1.13    **“Cure Period”**

is defined in Section 2.02(a)(ii).

1.14    **“CVB”**

means the Greater Cincinnati Convention & Visitors Bureau, an Ohio nonprofit corporation, d/b/a Visit Cincy].

1.15    **“Development Agreement”**

means that certain Development Agreement among the Owner, the City and the County, dated \_\_\_\_\_, 2026, as heretofore and hereafter amended and modified from time to time.“Effective Date”

is defined in this Agreement’s preamble.

1.16    **“Event Block Minimum Rate”**

means the lowest rate the CVB may require the Owner and Operator to quote or charge a Potential Convention Center Customer for a room during a City-Wide Event, as described and determined in accordance with Section 4.01.

1.17    **“Event of Default”**

is defined in Section 8.01.

1.18    **“Event Night”**

means any night during a City-Wide Event (including the day preceding the commencement of and the day following the conclusion of such event, as contemplated in the definition thereof) for which: (x) the CVB has exercised its rights under Section 3.01(a) by giving a Room Block Request Notice to the Operator; and (y) in response to such Room Block Request Notice, one or more rooms have been booked, blocked or reserved by the Operator either: (i) pursuant to a contract with the Potential Convention Center Customer; or (ii) pursuant to Initial Offers or Amended Offers that have been accepted or are still outstanding (and, if such contracts are terminated or any of such offers are subsequently terminated or rejected, then any of the blocked rooms that were subject thereto shall no longer be considered blocked for purposes of this definition).

1.19    **“Event Room Block”**

means a block of Available Guest Rooms (including suites) at the Hotel, and any Hotel ballrooms and/or meeting rooms, offered to or reserved for the attendees of a City-Wide Event in response to a Room Block Request Notice.

1.20    **“Force Majeure”**

means and includes causes without fault and beyond the control of a party, whether or not foreseeable, including, without limitation, fire, explosion, accident, flood, windstorm, earthquake, or other disaster or calamity, disruption of utility service; restrictive new governmental laws or regulations; acts of war (whether declared or undeclared), invasion, blockade, or sabotage; terrorism or threat thereof; riot, civil disturbance, insurrection or acts of public enemies; pandemics and epidemics; and strike, lockout or other labor action and inability to procure materials; provided that a material adverse change in the business, financial condition, operations, assets, liabilities or prospects of either party shall not excuse any failure or delay in performance under this Agreement.

1.21    **“Franchise Agreement”**

means the hotel franchise or license agreement between the Owner and the Franchisor that exists from time to time, as it may be extended, supplemented, amended or replaced from time to time as determined by Owner.

1.22    **“Franchisor”**

means the entity providing a license to use the hotel brand at the Hotel.

1.23    **“Government Disclosure Requirements”**

is defined in Section 4.04(a).

1.24    **“Hotel”**

means the convention center hotel to be constructed by the Owner on the Hotel Site pursuant to the Development Agreement, together with all supporting hotel facilities and amenities.

1.25    "Hotel Site"

means the tract or parcel of real property described in the Development Agreement and defined therein as the "Property," and which is described on Exhibit A attached hereto and made part hereof.

1.26    "Initial Offer"

is defined in Section 3.01(b).

1.27    "Known Release Dates"

is defined in Section 3.02(d).

1.28    "Managed Hotels"

means full-service, convention center hotels within the United States of America operated as first-class hotels containing no less than seven hundred (700) rentable guest rooms operated under the Operator's brand name and managed by the Operator or any entity controlled by, under common control with or that controls Operator, specifically excluding franchised hotels.

1.29    "Management Agreement"

means the hotel operating or management agreement between the Owner and the Operator that exists from time to time, as it may be extended, supplemented, amended or replaced from time to time as determined by Owner.

1.30    "Maximum Event Night Ceiling"

means the maximum number of Event Nights in any calendar month during which the Owner or the Operator shall be obligated to provide Event Room Blocks pursuant to this Agreement. The Maximum Event Night Ceiling is ten (10) Event Nights per calendar month.

1.31    "Maximum Event Room Block"

means (i) for a Room Block Request Notice that is for a period greater than forty eight (48) months after receipt by Operator of the Room Block Request Notice, eighty-five and eight tenths percent (85.8%) of all of the Hotel's Available Guest Rooms, (ii) for a Room Block Request Notice that is for a period that is greater than thirty six (36) and less than forty eight (48) months after receipt by Operator of the Room Block Request Notice, sixty five percent (65%) of all of the Hotel's Available Guest Rooms, and (iii) for a Room Block Request Notice that is for a period of greater than twenty four (24) and less than thirty six (36) months after receipt by Operator of the Room Block Request Notice (if permitted hereunder), fifty percent (50%) of all of the Hotel's Available Guest Rooms.

1.32    **“Memorandum”**

is defined in Section 9.10 hereof.

1.33    **“Midweek”**

means Sunday through Thursday, inclusive.

1.34    **“Notice” or “notice”**

means each and every communication, request, reply, or advice required or permitted to be given, made or accepted by any party to this Agreement to any other party to this Agreement, each of which shall be given in writing, and deemed received by the intended recipient, in accordance with Section 9.04.

1.35    **“Offer Expiration Date”**

is defined in Section 3.01(e).

1.36    **“Opening”**

means the date of the opening of the Hotel to the public for business.

1.37    **“Operator”**

means the entity responsible for overseeing the day-to-day management of the Hotel.

1.38    **“Owner”**

means the entity defined as “Owner” in this Agreement’s preamble and each subsequent owner of all or any part of the Hotel Site. An entity shall be deemed to be the “Owner” hereunder only during its period of ownership of the Hotel Site.

1.39    **“Potential Convention Center Customer”**

means a person, entity, group, or association (or any combination thereof) that is planning a City-Wide Event which, subject to Section 3.01, will commence at least twenty four (24) months after the date of receipt by the Operator of a Room Block Request Notice. Thus, if the Operator receives a Room Block Request Notice for a period that is less than twenty four (24) months after the date of receipt by the Operator of such Room Block Request Notice, the person, entity, group, and/or association that is identified in such Room Block Request Notice shall not constitute a Potential Convention Center Customer.

1.40    **“Rate Quote”**

is defined in Section 3.01(b).

1.41    **“Restrictive Covenant”**

means that certain [Restrictive Covenant] entered into by the Owner pursuant to the terms of the Development Agreement and recorded at Book \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records of the Hamilton County Recorder.

1.42    **“Room Block Contract”**

is defined in Section 3.01(f).

1.43    **“Room Block Request Notice”**

is defined in Section 3.01(a).

1.44    **“Sales Representative”**

is defined in Section 3.01(a).

1.45    **“Standard of Operation”**

is defined in Section 6.01.

1.46    **“Standard of Operation Failure Notice”**

is defined in Section 2.02(a)(ii).

1.47    **“Term”**

is defined in Section 2.01.

1.48    **“Weekend”**

means Friday and Saturday.

**ARTICLE II**  
**TERM OF THIS AGREEMENT**

2.01    **Commencement of the Term**

The term of this Agreement (the “Term”) shall commence on the Effective Date.

2.02    **Expiration of Term**.

(a)    The Term shall continue until the earlier to occur of:

(i)    the date upon which the Convention Center is no longer designated or operated by the City as the City’s principal convention center, subject to the notice and cure rights permitted herein; or

(ii)    the date that is seventy-five (75) years from the Opening.

**ARTICLE III**  
**ROOM BLOCK COMMITMENT; RELEASE OF BLOCK**

3.01 **Room Block**

During the Term, the CVB may from time to time require Operator to offer an Event Room Block to Potential Convention Center Customers in connection with a City-Wide Event in accordance with, and subject to the limitations set forth in, this Agreement. Notwithstanding anything herein to the contrary, the CVB shall not have the right to require Operator to offer an Event Room Block to Potential Convention Center Customers if: the total number of rooms requested to be blocked in such Room Block Request Notice on any Event Night exceeds the number of rooms Operator is required to offer to block pursuant to Section 3.01(b)(i). Subject to the limitations set forth in the preceding sentence and elsewhere in this Article III, the right to require that Operator so offer the Event Room Block will be exercised in accordance with the following procedures:

(a) A management, sales or booking representative of the CVB or, if authorized by the CVB, the CC Manager (the “**Sales Representative**”), will notify Operator that a Potential Convention Center Customer is seeking offers from local hotels to accommodate, among other needs, the guest room needs of the Potential Convention Center Customer for a City-Wide Event (the “**Room Block Request Notice**”). The Room Block Request Notice will (i) identify the Potential Convention Center Customer, (ii) if the same is generally available to the CVB, set forth a documented history of the group’s room block events for the most recent three-year period including a comparison of the number of rooms blocked and the actual number of rooms actually used, (iii) specify each date for which the Potential Convention Center Customer will require blocks of guest rooms (including those dates commonly known as “move in” and “move out” dates), and (iv) specify the number of guest rooms in the Hotel the Potential Convention Center Customer is seeking to block on each of the specific dates. Notwithstanding the provisions of Section 9.04 or the definition of “Notice” set forth above, the Room Block Request Notice will be communicated to the Operator in the same manner as such notifications are customarily communicated by the Sales Representative to other hotels in the City. However, a copy of all Notices required or permitted to be provided by the Sales Representative or the CVB under this Article III shall be delivered to the Owner, and such notices to Operator shall not be effective unless and until a copy of such notices are delivered to the Owner.

(b) Unless such deadline is extended in writing by the Sales Representative, within five (5) Business Days after Operator’s receipt of a Room Block Request Notice for a City-Wide Event that is no sooner than twenty four (24) months from the date of Operator’s receipt such Room Block Request Notice, Operator will deliver to the Potential Convention Center Customer (with a copy to the Sales Representative and the CVB) an initial written offer in response to the Room Block Request Notice (the “**Initial Offer**”). In the Initial Offer the Operator will: (i) offer to the Potential Convention Center Customer to block, on each specific date that the Potential Convention Center Customer requires a block of guest rooms as specified in the Room Block Request Notice, the lesser of (A) the actual number of the Available Guest Rooms in the Room Block Request Notice for each specific date, or (B) the Maximum Event Room Block after deducting each of the following:

- (1) any previously offered room blocks under this Agreement for other City-Wide Events covering such dates, which offers have either been accepted or are still outstanding, and
- (2) any guest rooms released by the CVB pursuant to Section 3.01(j), Section 3.01(l), or Section 3.02 and that have actually been booked by Operator or are the subject of Active Negotiations. If such guest rooms are the subject of Active Negotiations, then at the request of the CVB, the Operator shall (x) attempt to cause such proposed Hotel guest with whom such Active Negotiations are being held to select other dates for the use thereof that would permit Operator to accommodate the room block set forth in the Room Block Request Notice or (y) require the Operator to accelerate negotiations with such potential Hotel guest by requiring such potential Hotel guest to execute a contract to block or book such rooms that are the subject of such Active Negotiations within the fifteen (15) Business Days following the CVB's request to the Operator under this clause (y), failing which, for purposes hereof, such rooms shall no longer be considered under Active Negotiations.

and (ii) quote a specific room rate for a standard single and double room and suites (the “**Rate Quote**”). In making the Rate Quote, the Operator will take into account seasonality (i.e., using group event guest room rates received in a calendar month as the basis for quotes for the same month in subsequent calendar years), Midweek versus Weekend rates, and special events that occur regularly during the applicable period); provided, that, the Rate Quote shall be equitably adjusted for non-recurring special events that occur in a particular month which inflate group event room rates (such as Super Bowls, NCAA Men’s or Women’s basketball tournaments, Major League Baseball playoffs and similar sporting or entertainment events). In addition, rates for groups whose stay consists of both Midweek and Weekend days shall be determined in accordance with Operator’s booking policies described in Section 3.01(f). The amount of the Rate Quote in the Initial Offer will be at the sole, but good faith, discretion of the Operator.

(c) In addition, the Sales Representative may issue a Room Block Request Notice for a City-Wide Event that will commence fewer than twenty-four months from the date of such notice, which the Operator in its discretion may accept or reject.

(d) The Rate Quote included by Operator in the Initial Offer shall be determined in Operator’s sole, but good faith, discretion, and in determining such rate, Operator shall be entitled to take into account, among other considerations, the level of food and beverage services and ancillary services that the Operator anticipates the Potential Convention Center Customer will purchase in the Hotel. In determining such rate, Operator is also expected to consider the overall contribution that the group will bring to the CVB, past historic demand and rates over the same date pattern and high/low demand seasonality. After reviewing the Initial Offer, the Sales Representative may consult with the Operator regarding the Rate Quote contained in the Initial Offer. If prior to acceptance of the Initial Offer (or any amendment thereto voluntarily offered by the Operator to the Potential Convention Center Customer), the CVB reasonably and in good faith believes that it might be in the CVB’s or the City’s best interest to compel the Owner to offer the Potential Convention Center Customer an alternative rate structure, CVB may, after consultation

with the Operator and within thirty (30) days following receipt of the Initial Offer, elect to require (which election shall be communicated by Notice from CVB to the Operator) the Operator to offer to the Potential Convention Center Customer a rate lower than the rate in the Initial Offer, but in no event lower than the Event Block Minimum Rate (such written election being the “**Block Notice**”). Upon receipt of the Block Notice, Operator shall, within two (2) Business Days thereafter, amend the Initial Offer by substituting the rate specified by CVB, which shall be no lower than the Event Block Minimum Rate, as the Rate Quote (the “**Amended Offer**”).

(e) Subject to the remaining provisions of this Section 3.01(e), the Initial Offer or the Amended Offer (if applicable) shall remain open for acceptance by the Potential Convention Center Customer for a period that is usual and customary among convention hotels booking citywide events following the date of the Initial Offer or Amended Offer, as the case may be, but in any event not to exceed the one hundred and eightieth (180th) day following the date of the Initial or Amended Offer. If such customer fails to execute and return the Room Block Contract within such period, the offer shall expire, and the Operator shall have no further obligation to the CVB or the Potential Convention Center Customer in regard to such City-Wide Event under the Initial Offer or the Amended Offer, as the case may be. The date of expiration of the Initial Offer or Amended Offer, as the case may be, determined pursuant to this Section 3.01(e) is herein referred to as the “**Offer Expiration Date**”.

(f) If either the Initial Offer or the Amended Offer is accepted by the Potential Convention Center Customer prior to the Offer Expiration Date, Operator shall endeavor to negotiate a binding contract with the Potential Convention Center Customer applying Operator’s customary booking policies to the Event Room Block (the “**Room Block Contract**”), including, without limitation, such policies relating to contracts, advance deposits and cancellation, provided that these policies shall adhere in all material respects to the general customs employed by the Operator at its Managed Hotels, if any. The Owner will use its good faith efforts to cause the Operator to consider changes to Operator’s customary booking policies to the extent necessary to accommodate any prevalent and material local booking customs or practices. If a Potential Convention Center Customer has not for any reason (other than Operator’s breach of its obligations set forth in the preceding sentence) signed a Room Block Contract with the Operator with respect to such Initial Offer or Amended Offer, as the case may be, on or before the Offer Expiration Date, then such offer will expire, whereupon the Owner shall have no further obligation to the CVB or the Potential Convention Center Customer in regard to such City-Wide Event under the Initial Offer or the Amended Offer, as the case may be. However, if such offer expires at a time when there are more than twenty four (24) months prior to the first Event Night of the Potential Convention Center Customer’s City-Wide Event, nothing in this Agreement shall prohibit CVB from issuing a new Room Block Request Notice for such City-Wide Event in accordance with, and subject to the provisions of, this Section 3.01.

(g) If a Potential Convention Center Customer signs a Room Block Contract with the Operator but later provides notice to the Operator that it is terminating such contract, the Operator, after Notice to CVB from the Owner or Operator, will have no further obligation to CVB in regard to the Event Nights covered by the Room Block Request Notice (which shall be deemed released from the obligations hereunder), but only if such written termination notice is given by the Potential Convention Center Customer on a date less than twenty four (24) months before the first Event Night. If such notice of termination is given on a date more than twenty four (24) months

before the first Event Night, then, unless rooms are blocked under this Agreement for such Event Nights for another City-Wide Event, the CVB may again deliver a Room Block Request Notice in accordance with, and subject to the limitations set forth in, this Section 3.01; provided, however, Operator will have no obligation to cancel any bookings to accommodate such subsequent request. CVB recognizes that the Owner or Operator may be entitled to collect cancellation fees from such Potential Convention Center Customer and CVB hereby consents thereto and agrees that CVB shall have no right or claim to all or any portion of such fees. Similarly, the Owner recognizes that CVB may be entitled to collect cancellation fees from such Potential Convention Center Customer pursuant to the contract between CVB and the Potential Convention Center Customer and the Owner hereby consents thereto and agrees that Owner shall have no right or claim to all or any portion of such fees.

(h) If a Potential Convention Center Customer signs a Room Block Contract with the Operator, then Operator will reserve rooms included in an Event Room Block for such customer for purchase by the persons attending the applicable event until the date required under the Room Block Contract executed with such Potential Convention Center Customer. If within ninety (90) days prior to the first scheduled day of the applicable event, the number of rooms actually booked is less than the number of rooms blocked, then Operator may request CVB to release some or all unbooked rooms and CVB agrees not to condition or delay such release. In addition, if a Convention Center Customer held the same event previously at a different venue, Operator may require that each Room Block Request include a detailed history of the Potential Convention Center Customer's room block requirements for the most recent two (2) years of the previous five (5) year period. Such history shall include for each event during such period (i) the dates and place (city and hotels) of each event during such period, (ii) for each event booked by the Potential Convention Center Customer during such period, the approximate day-by-day rooms occupied, including peak night room pick-up, and (iii) a comparison of room block commitments for each event and the approximate rooms occupied in total pursuant to such room block commitments, and on a daily basis. If the group history of the Potential Convention Center Customer (whether in respect of events at the Convention Center or elsewhere) reflects a pattern whereby the block of rooms reserved by such Potential Convention Center Customer is greater than the actual number of rooms used, then the Operator shall have the right to block only such number of rooms which Operator, in the exercise of its professional judgment and based on such history of the Potential Convention Center Customer, believes will be adequate to accommodate the number of rooms which will be actually used by such Potential Convention Center Customer; provided, that such decision of the Operator shall not release or relieve Operator from providing other lodging (in accordance with industry standard for handling overbookings) if the number of rooms so blocked by Operator actually is not adequate to satisfy the actual use of rooms by the Potential Convention Center Customer (up to the amount of rooms included in the Event Room Block pursuant to the Room Block Contract between Operator and such Potential Convention Center Customer).

(i) Operator shall have the unrestricted right to commit up to fourteen and two tenths percent (14.2%) of the Available Guest Rooms on any given date (and any other rooms that are not subject to being blocked by CVB pursuant to this Agreement) to the Hotel's commercial or group guests. In addition, Operator shall have the unrestricted right to commit any and all rooms not subject to a room block commitment pursuant to this Agreement for any date that is less than twenty four (24) months in advance. In addition, Operator shall have the right to commit to a

block of any number of rooms within the Hotel, so long as, following such commitment, the Owner will be able to fulfill its obligations under this Agreement.

(j) If Operator has a potential booking that would not be permitted under the terms of this Agreement, Operator may by notice to CVB (with a copy to the Owner) request that it be entitled to make such booking. CVB shall have five (5) Business Days in which to respond to such request by notice to the Operator; provided, that a failure to respond shall be deemed a rejection of such request (but such deemed rejection shall not prevent Operator from making multiple requests for such release).

(k) For the avoidance of doubt, the Operator shall have the right to freely book all rooms within the Hotel on any day which the Convention Center cannot accommodate a City-Wide Event because less than sixty thousand (60,000) square feet of exhibit space is available on such day for use by a Potential Convention Center Customer (such determination to be made as of the time Operator makes or extends an offer to make such booking).

(l) Once the Maximum Event Night Ceiling is reached for a month, the Operator shall have the right to freely book the available rooms at the Hotel for that month, regardless of when the booking is made (e.g., it may be more than twenty-four (24) months in advance). Notwithstanding the foregoing, in the event an Event Room Block is cancelled during a month for which the Maximum Event Night Ceiling had been reached, (i) if during an applicable window of time to book Room Block Events, CVB will be entitled to submit Room Block Notice(s) to book up to the Maximum Event Night Ceiling, and (ii) if following the closure of all windows of time to book Room Block Events (i.e., if fewer than twenty-four (24) months prior to the first Event Night), CVB will be entitled to the first opportunity to rebook up to the same number of available rooms if CVB has a replacement Potential Convention Center Customer identified at the time of such cancellation. For the avoidance of doubt, in no event will Operator be required to cancel any bookings previously committed to accommodate the rights of CVB under (i) or (ii) above.

(m) Notwithstanding the foregoing, if a Potential Convention Center Customer has (i) a documented history of causing material property damage or unusually heavy wear and tear in connection with group events or (ii) poor credit or a questionable payment history, then the Operator shall have the right, at its option, to include in its Initial Offer to such Potential Convention Center Customer security, damage or other deposit requirements that, in the Operator's judgment exercised in good faith, would compensate the Operator and the Owner for the damage, wear and tear or failure to pay (and, notwithstanding anything in Section 3.01(d) to the contrary, but subject to resolution of any dispute described below, CVB shall not have the right to require Operator to deliver an Amended Offer to such Potential Convention Center Customer that does not include such security, damage or other deposit requirements); provided that (1) Operator shall provide CVB notice that such Potential Convention Center Customer has a documented history of causing material property damage, unusually heavy wear and tear, poor credit or questionable payment history, as applicable, and also provide notice of its intention to include such (and provide a statement of the amount of the proposed) security, damage or other deposit requirements prior to issuance of such Initial Offer and (2) in such notice Operator shall set forth in reasonable detail the basis for the Operator's conclusions. CVB shall have the right to reasonably challenge the Operator's conclusion that such Potential Convention Center Customer is a customer described in clauses (i) or (ii) of the first sentence of this paragraph but, for the

avoidance of doubt, Operator shall be entitled to deliver an Initial Offer with such additional security, damage or other deposit requirements prior to receipt of notice of any such challenge, and if the parties subsequently agree that such additional requirements are unnecessary, CVB shall be entitled, if such Initial Offer remains outstanding, to require Operator to issue an amended Initial Offer omitting such requirements. CVB shall, to the fullest extent permitted by law, keep such conclusions confidential in accordance with Section 4.03. In the event of any such challenge by CVB, the parties agree to meet and confer and attempt in good faith to reach agreement as to the additional deposit requirements that will be placed on any offer given to such customer.

(n) Each calendar year, subject to the terms of this Agreement, CVB may elect to exercise its right to book a maximum of Six Thousand (6,000) room nights at the Event Block Minimum Rate (the “**EBMR Booking Maximum**”). Once the EBMR Booking Maximum is reached for a calendar year based on confirmed room night bookings pursuant to Room Block Request Notices, any subsequent or additional room night bookings shall be booked at the Rate Quote presented by Operator or at such other commercially reasonable rate as agreed to between Operator and CVB.

### 3.02 Release of Block

(a) Notwithstanding anything to the contrary set forth in this Agreement, but subject to Section 3.02(b) below, Operator shall have the right to commit a block of more than fourteen and two tenths percent (14.2%) of the Available Guest Rooms to non-Potential Convention Center Customer business for a date more than twenty four (24) months in the future, and such block of rooms shall be released from the terms of this Agreement for such dates, unless any of the following are true:

(i) A Room Block Request Notice satisfying the requirements set forth herein has been delivered that covers any of the dates reflected in the Block Release Request Notice, unless any Initial Offer or Amended Offer delivered by Operator in response thereto has expired without the execution by the Potential Convention Center Customer of a Room Block Contract with Operator or, if such a contract was executed, the same has been terminated by the customer;

(ii) The CVB is in Active Negotiations with a Potential Convention Center Customer for a City-Wide Event that includes any of the dates covered by the Block Release Request Notice; or

(iii) The dates covered by the Block Release Request Notice have historically been booked in hotels in the City of Cincinnati for a City-Wide Event and reasonably concludes that the release of the block in the Hotel will jeopardize the booking of such City-Wide Event.

(b) If Operator desires to commit a block of rooms which are otherwise unavailable due to CVB’s ability to reserve the Maximum Event Room Block pursuant to Section 3.02(a) above, Operator shall send a Notice to CVB (a “**Block Release Request Notice**”) specifying (i) the dates as to which such request applies, (ii) the number of event night rooms to which such request applies, and (iii) either that (x) to Operator’s knowledge, none of the items in clauses (i)

through (iii) of Section 3.02(a) are true or (y) even though one or more of the items in clauses (i) through (iii) are true, such Block Release Request Notice describes a group that is proposing to contract for regularly recurring events (including on a rotating basis with other municipalities) at the Hotel and/or the Convention Center, and CVB should consider such request for the release in light of the possible repeat nature of the proposed business. Within five (5) Business Days after receipt of a Block Release Request Notice, CVB shall deliver written notice to Operator either (i) confirming the release of the requested rooms for the specific dates set forth in such Block Release Request Notice or (ii) disapproving such release with an explanation in reasonable detail as to which item(s) in clause (i) through (iii) of Section 3.02(a) permits CVB to disapprove. If CVB fails to either (x) confirm the release of rooms in a Block Release Request Notice or (y) disapprove the release of rooms in a Block Release Request Notice, in each case of (x) and (y), in writing within such five (5) Business Day period, then such release shall be deemed to have been disapproved. Following such deemed disapproval, Owner may make a second request in writing for CVB's approval; if CVB fails to respond to such second written notice within an additional five (5) Business Day period, then such release shall be deemed to have again been disapproved. Following such second deemed disapproval, Owner may make a third request in writing for CVB's approval; if CVB fails to respond to such third written notice within an additional five (5) Business Day period, then such release shall be deemed to have been approved.

(c) Operator shall, upon request by CVB following any release made pursuant to this Section 3.02, use its good faith efforts to accommodate any Event Room Block subsequently requested covering any of the dates for which a release has been provided by CVB under this Section 3.02.

(d) CVB will provide Operator a list of known release dates on a periodic basis (not less than semi-annual) identifying all future dates the Convention Center cannot be utilized for City-Wide Events due to maintenance, move in/out periods, or any other reason ("Known Release Dates"). If the CVB subsequently eliminates such dates from a subsequent list of Known Release Dates, such date(s) shall be subject to all applicable provisions of this Agreement, unless rooms have been booked, blocked or reserved by the Operator pursuant to a contract with a hotel customer or group (and, if such contracts are terminated, then any of the blocked rooms that were subject thereto shall no longer be considered blocked for purposes herein).

3.03. Market Sales Meetings. The parties acknowledge that the sales and marketing staffs of the Operator, CC Manager, and the CVB will work closely with each other to target specific groups or Room Blocks that meet the needs of both parties. Upon request, the Operator and the Owner will attend Market Sales Meetings facilitated by CC Manager and/or CVB on an occasional basis. These meetings should include sales leaders from the Hotel, as well as other market competitors, and would be designed to discuss high-level strategies which can be executed to attract City Wide events to the local area.

3.04. Meeting Space Booking Policy. At any time and based on availability, an event at the Convention Center may need to utilize the Hotel's meeting facilities for overflow, or an event at the Hotel may be required to use the Convention Center's space as overflow, CVB and Operator agree to offer such space, if available, with market-based pricing to be based upon the respective group's requirements and revenue potential.

## ARTICLE IV ROOM BLOCK PRICING

### 4.01      Event Block Minimum Rate; Owner's Projected Event Block Rate Schedule.

(a)      The Event Block Minimum Rate shall be an amount equal to the lesser of (i) 120% of the Consultant Study Group Rate (as defined below) for the applicable period reflected if the Consultant Study Group Rate is lower than the rate listed for the applicable period in the Owner's Initial Projected Event Block Rate Schedule or the Owner's Subsequent Projected Event Block Rate Schedule (each as defined below) or (ii) in the event that 120% of the Consultant Study Group Rate is greater than the rate listed for the applicable period in the Owner's Initial Projected Event Block Rate Schedule or the Owner's Subsequent Projected Event Block Rate Schedule, the greater of (x) the Consultant Study Group Rate and (y) the rate presented for the applicable period in the Owner's Initial Projected Event Block Rate Schedule or the Owner's Subsequent Projected Event Block Rate Schedule, as applicable. The Owner's Initial Projected Event Block Rate Schedule and each Owner's Subsequent Projected Event Block Rate Schedule will include varying rates for room type and for periods within each applicable calendar year to account for seasonality and day of the week (e.g., Midweek, Weekend).

(b)      No less than twelve (12) months prior to the date on which the Owner reasonably anticipates that Opening, will occur, the Owner will provide to CVB a schedule of the projected Event Block Minimum Rate for the first five (5) calendar years after the Opening (the "**Owner's Initial Projected Event Block Rate Schedule**"). The rates for each such year included in Owner's Initial Projected Event Block Rate Schedule shall represent the Owner's good faith forecast of the rates that will be included in the pro forma budget for the operation of the Hotel for such year and are the projections and forecasts being used by the Owner in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of the Owner's business generally.

(c)      By no later than January 1 of each year commencing on the date after the Opening occurs, the Owner shall provide CVB and CC Manager a schedule of the projected Event Block Minimum Rate for the ensuing five (5) calendar year period (each such schedule, an "**Owner's Subsequent Projected Event Block Rate Schedule**"). The rates (i) for the first twelve (12) months covered by the Owner's Subsequent Projected Event Block Rate Schedule shall be those set forth in the pro forma operating budget for the Hotel for such 12-month period that has been approved by the Owner and the Operator, and (ii) for each other year covered thereby shall represent the Owner's and the Operator's then-current good faith forecast of the rates that the Owner and the Operator project will be included in the actual pro forma budget adopted for the operation of the Hotel for such years and are the forecasts and projections being used by the Owner in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of the Owner's business generally. For each year, subsequent to January 1, the Owner may deliver one (1) updated Owner's Subsequent Projected Event Block Rate Schedule, which will replace the Owner's Subsequent Projected Event Block Rate Schedule previously delivered for such year.

(d)      Each of the Owner's Initial Projected Event Block Rate Schedule and each Owner's Subsequent Projected Event Block Rate Schedule shall, when delivered to CVB and CC Manager, be accompanied by (i) reasonable evidence that the same has been approved by both the Owner and the Operator, and (ii) a certification from the Owner to the CVB indicating that the Event

Block Minimum Rate for each year set forth therein represents (x) for the first twelve (12) months covered thereby those set forth in the Owner's pro forma operating budget for such 12-month period that has been approved by the Owner and the Operator, and (y) for each other year covered thereby, the Owner's and the Operator's good faith forecast of the rates that the Owner and the Operator project will be included in the actual pro forma budget adopted for the operation of the Hotel for such year and are the forecasts and projections actually being used by the Owner in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of the Owner's business generally.

(e) The rates reflected in the Owner's Initial Projected Event Block Rate Schedule and each of the Owner's Subsequent Projected Event Block Rate Schedules, as increased up to one hundred ten percent (110%) of such rates, shall be the "**Event Block Minimum Rate**" for each of the five (5) years covered by, as applicable, the Owner's Initial Projected Event Block Rate Schedule or the then current Owner's Subsequent Projected Event Block Rate Schedule. The parties recognize that the Event Block Minimum Rate may change each year (but only once per year and then only with the issuance of the Owner's Subsequent Projected Event Block Rate Schedule), it being understood that each Owner's Subsequent Projected Event Block Rate Schedule and the Event Block Minimum Rate reflected therein shall supersede all previously issued Owner's Subsequent Projected Event Block Rate Schedules even though the same relate to the same years (the following is an example of the "rolling" nature of the determination of the Event Block Minimum Rate: assume that the Owner issues, on December 1, 2027, an Owner's Subsequent Projected Event Block Rate Schedule. That schedule will cover the period commencing January 1, 2028 and ending December 31, 2032 (the "**2028 Schedule**"). Then assume that on December 1, 2029, the Owner issues an Owner's Subsequent Projected Event Block Rate Schedule. That schedule will cover the period commencing January 1, 2030 and ending on December 31, 2034 (the "**2030 Schedule**"). The 2030 Schedule will, as to any Block Notice issued on or after January 1, 2030, supersede the 2029 Schedule and all prior schedules covering the years 2031, 2032, 2033 and 2034 and shall govern the determination of the Event Block Minimum Rate with respect to such Block Notice).

If a Block Notice is issued for a City-Wide Event where the first Event Night will occur on a date in a calendar year that is not covered by the then-current Owner's Subsequent Projected Event Block Rate Schedule (i.e., the date of such first Event Night is beyond the five (5) year period covered by the then current Owner's Subsequent Projected Event Block Rate Schedule), the Event Block Minimum Rate reflected in the then current Owner's Subsequent Projected Event Block Rate Schedule shall be used but shall be adjusted by an usual and customary industry inflation factor as reasonably agreed upon by the Owner, the Operator, and the CVB.

(f) Annually and not to exceed more than one time each year, upon receipt of the Owner's Initial Projected Event Block Rate Schedule or the Owner's Subsequent Projected Event Block Rate Schedule (as applicable), CVB, at its sole cost and expense, shall have the right to hire a nationally recognized consulting firm with an expertise in hotel rate forecasting studies (e.g. HVS, CBRE Hospitality Research, or similar companies) to produce a study projecting reasonable group rates in a format mirroring the Owner's Initial Projected Event Block Rate Schedule or Owner's Subsequent Projected Event Block Rate Schedule (as applicable) (the "**Consultant Study Group Rate**"). The Consultant Study Group Rate shall take into account historic penetration

trends of the Hotel against its competitive set (with comparable sized convention district assets of similar quality and against regional competitive supply such as convention headquarter hotels in nearby peer markets to Cincinnati such as Louisville, KY; Cleveland, OH; Columbus, OH; Pittsburgh, PA; and similar locations). The Consultant Study Group Rate shall also account for seasonality and day-of-week trends as projected against the annual approved budget for the hotel to forecast group rates. If the Consultant Study Group Rate provides the basis of the Event Block Minimum Rate pursuant to Section 4.01(a), the schedule shall remain in effect for the remainder of the calendar year in which the Consultant Study Group Rate is produced and shall then be replaced in any subsequent calendar year by a new Event Block Minimum Rate commissioned pursuant to this Section 4.01(f). For the calendar year following the Hotel Opening, the Event Block Minimum Rate shall be based on the annual projected average daily rate and/or group rate as projected in the annual budget agreed to between the Operator and Owner.

#### 4.02 General Matters Regarding Rates

All rates described are for single rooms. Double occupancy rooms may be quoted at a rate not greater than twenty percent (20%) above the single room rates. Triple and quad occupancy rooms may be quoted at rates with an increase of not greater than thirty percent (30%) above the single room rates. Suites may be quoted with an increase above standard room rates consistent with market practice, as reasonably determined by the Operator.

#### 4.03 Adjustments Due to Market Increase

If Operator can demonstrate to CVB's reasonable satisfaction that, as a result of extraordinary market conditions, market rates for group events at the Test Set (hereafter defined) are in excess of 110% of the rates set forth in the Owner's Initial Projected Event Block Rate Schedule or then-applicable Owner's Subsequent Projected Event Block Rate Schedule, then upon approval thereof by CVB in writing (such approval not to be unreasonably withheld, conditioned or delayed), the Owner shall be permitted to adjust the Event Block Minimum Rate to the market rate for group events at the Test Set. For purposes hereof, the term "**Test Set**" means those hotels generally in the same hotel market and market segment as the Hotel, as determined in accordance with the terms of the Management Agreement. As of the Effective Date, Owner anticipates that the Test Set may include the Hyatt Regency Cincinnati; the Westin Cincinnati; the Hilton Cincinnati Netherland Plaza, the Renaissance Cincinnati Downtown Hotel, and the Embassy Suites by Hilton Cincinnati RiverCenter; provided however, that the foregoing Test Set is provided to CVB for illustrative purposes only, and is subject to change from time to time during the Term, with any such changes to be provided to CVB at least 10 business days in advance of such change becoming effective.

#### 4.04 Confidentiality.

(a) Subject to its obligations under the Ohio Code and applicable ordinances binding on the CVB (collectively the "**Government Disclosure Requirements**"), CVB will not disclose any Initial Offer or Amended Offer, any information provided by Operator under Section 3.01(m) or any information obtained pursuant to Section 4.01 to any person or entity other than (i) its employees, accountants, counsel and other consultants who have a need to know such information, (ii) the Owner and its officers, directors, employees, accountants, counsel and other consultants,

(iii) the Owner's existing and proposed lenders, (iv) Operator and its officers, directors, employees, accountants, counsel and other consultants, (v) prospective purchasers of the Hotel, (vi) the City, (vii) the County, or (viii) in connection with any legal proceeding (or alternative dispute resolution procedure) between the CVB and the Owner and/or the Operator, provided that the CVB shall use reasonable efforts to obtain confidential treatment of same to the maximum extent permitted under Government Disclosure Requirements. Neither the Owner nor the Operator will disclose any information provided by the CVB to the Owner or the Operator hereunder to any person or entity other than (1) their respective affiliates, and the employees, accountants, counsel and other consultants of the Owner, the Operator and their respective affiliates who have a need to know such information and their respective partners, members, shareholders, and other holders of direct or indirect beneficial interests in the Owner or the Operator, (2) the Owner's existing and proposed lenders and investors and any proposed replacement Operator, (3) prospective purchasers of the Hotel or (4) in connection with any legal proceeding (or alternative dispute resolution procedure) between the CVB and the Owner and/or the Operator, provided that the Owner and the Operator shall use reasonable efforts to obtain confidential treatment of same.

(b) CVB shall use its good faith efforts to provide timely written notice to the Owner and the Operator of any request received by CVB pursuant to Government Disclosure Requirements requesting information held by CVB to which the Owner or the Operator may assert "confidential business information" or "trade secret" status under Government Disclosure Requirements, all for the purpose of providing the Owner and the Operator an opportunity to seek to protect such information from disclosure. CVB makes no representation as to how the chief administrative officer for appeals or appeals board will rule on any open records request, but, subject to CVB's obligations under Government Disclosure Requirements and subject to the Owner or the Operator timely filing an appeal seeking non-disclosure of the requested information, the CVB agrees to withhold disclosure of information covered by this Section until required to release it and to cooperate with the Owner and the Operator in asserting its exemption claims under Government Disclosure Requirements.

## **ARTICLE V** **STANDARDS OF HOTEL OPERATION**

### **5.01 Standards**

At all times during the term of this Agreement, the Owner shall, to the extent the Hotel is being operated (or, pursuant to the Development Agreement, required to be operated), require the Operator to operate and manage the Hotel in accordance with the Management Agreement, the Franchise Agreement and (to the extent the Hotel is required to be operated pursuant to the Development Agreement) the applicable provisions of the Development Agreement. The Owner shall require as a condition of any Management Agreement between the Owner and an Operator or any Franchise Agreement that the Operator will agree to abide and be bound to the terms and conditions of this Agreement. At all times when there is no Management Agreement or Franchise Agreement, the Owner shall, to the extent the Hotel is being operated, operate, or require an Operator to operate, the Hotel in a manner generally consistent with the general physical and service standards applicable to other similar convention center hotels and (to the extent the Hotel is required to be operated pursuant to the Development Agreement) in accordance with the applicable provisions of the Development Agreement.

**ARTICLE VI**  
**RESERVED.**

**ARTICLE VII**

**NO LIABILITY FOR POTENTIAL CONVENTION CENTER CUSTOMER;**  
**OWNER RESPONSIBILITY TO REQUIRE OPERATOR TO PERFORM**

7.01 No Liability to CVB

In no event shall CVB be in any way responsible or liable for the performance by any Potential Convention Center Customer of its obligations under its contract with the Owner or the Operator or for any charges, liabilities or other sums owed by, or liabilities of, such Potential Convention Center Customer (or for those for whom it blocks rooms) to either the Owner or the Operator.

7.02 Owner and Operator Responsibility; Authority to Grant Consents and Make Decisions

The Owner shall require the Operator to perform all of the covenants and agreements of the Operator under this Agreement, and require the Operator to observe all of the covenants and agreements of Operator hereunder, and by entering into a Management Agreement, Operator shall, notwithstanding any contrary provision of its Management Agreement, be directly responsible to CVB for the performance of the Operator's obligations hereunder. Furthermore, all actions, consents, decisions, elections, offers, and determinations made hereunder by the Operator with respect to covenants and obligations of the Operator under this Agreement shall be binding upon both the Owner and the Operator for purposes of this Agreement. The Owner shall delegate any or all of such responsibilities hereunder to any Operator pursuant to a Management Agreement, but no such delegation shall release or relieve the Owner from its obligation to perform, or cause to be performed, all of its covenants and agreements set forth herein.

**ARTICLE VIII**  
**EVENTS OF DEFAULT**

8.01 Default

A default under the terms of this Agreement shall occur if any party hereto shall default in the performance of any of the terms, conditions, duties or covenants contained in this Agreement to be performed or observed by it, and such party does not remedy such default within the notice, cure and/or grace period specified in this Agreement therefor, or if no such time is specified, within thirty (30) days after the date of Notice provided by the non-defaulting party or, if the default is of such character as to require more than thirty (30) days to remedy, then if such party fails to commence to cure and correct the default within said thirty (30) day period and thereafter prosecute such corrective action diligently and without interruption and complete the cure thereof within one hundred eighty (180) days following the date of the original Notice of such default (an "Event of Default"). Notwithstanding the foregoing, the failure of the Owner or the Operator to comply with the provisions of Article III hereof within the time frames set forth therein shall, if not cured within ten (10) Business Days following written notice from the CVB to the Owner and the Operator, constitute an Event of Default by the Owner hereunder without the need of any additional Notice and without any further opportunity to cure such Event of Default. All Notices of default

shall be provided to the Owner and to the Operator and shall also be given to the Owner's mortgagee (provided such mortgagee has provided Notice to CVB of its name and address where Notices to it hereunder are to be sent).

#### 8.02 Remedies

If an Event of Default under this Agreement has occurred because of a breach of any provision hereof by the CVB, on the one hand, or the Owner on the other hand, the non-defaulting party shall have the right, at any time after the occurrence of said Event of Default to (i) initiate and thereafter prosecute an action in equity for the specific performance of any covenants or obligations to be performed by the defaulting party hereunder (CVB shall also have the right to seek and obtain an order of specific performance against the Operator so as to compel Operator, in its capacity as such under the Management Agreement, to comply herewith) or (ii) if a court of competent jurisdiction fails to award the remedy of specific performance available to the non-defaulting party under Section 8.02(i) hereof, the non-defaulting party may seek actual damages, but not consequential or punitive damages in accordance with the arbitration procedure set forth in Section 8.04. In no event, however, shall this Agreement be terminated due to an Event of Default (provided that the foregoing shall not limit the provisions of Section 2.02).

Each party acknowledges and agrees that its covenants, obligations and agreements set forth in this Agreement are a material and fundamental inducement to the City and County in executing and delivering the Development Agreement and to other party's agreement to enter into this Agreement and to proceed with the development of the Hotel (in the case of the Owner), and for the agreements of each party set forth in the Development Agreement, such that actual damages may not be an adequate remedy at law for the breach hereof by CVB, the Owner or the Operator. Accordingly, any party shall be entitled to seek relief mandating action by CVB, the Owner and/or the Operator hereunder in accordance with this Agreement. In addition, each party recognizes and agrees that monetary damages could not be calculated to compensate the other party for any breach by the defaulting party of the covenants and agreements contained in this Agreement. Each party may restrain and enjoin any breach or threatened breach of any covenant, duty or obligation of the other party contained in this Agreement without the necessity of (i) posting a bond or other security, (ii) any showing of irreparable harm, balance of harms, consideration of public interest or the inadequacy of monetary damages as a remedy, or (iii) that the administration of an order for injunctive relief would be impracticable. In the event of any breach or threatened breach of any covenant, duty or obligation contained in this Agreement, the party breaching (or threatening breach) stipulates and agrees that the balance of hardships which weigh in favor of injunctive relief and that non-breaching party may seek and obtain injunctive or other form of ancillary relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Agreement on an interim basis pending the outcome of the dispute or controversy hereunder.

<sup>1</sup>The Owner agrees to include in each Management Agreement a provision similar to the foregoing under which the Operator makes such agreements to the Owner with respect hereto and specifically

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<sup>1</sup> PRIOR TO EXECUTION OF MANAGEMENT AGREEMENT, PARTIES TO CONFIRM THAT THIS PROVISION IS INCLUDED IN THE MANAGEMENT AGREEMENT.

agrees that the CVB shall have the right to specifically enforce against the Operator the provisions of this Agreement.

**8.03 Owner's Reservation of Rights**

Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall in no way limit the Owner's or the Operator's rights and remedies against a Potential Convention Center Customer resulting from such Potential Convention Center Customer's default under a contract with Owner or Operator.

**8.04 Dispute Resolution**

Any and all disputes, claims or controversies arising out of, in connection with or relating to this Agreement, if not the subject of an action for specific performance by either party as provided in Section 8.02(i), shall be resolved by final arbitration before one neutral arbitrator in accordance with the then applicable commercial rules of the American Arbitration Association (AAA). Any arbitration shall take place in Cincinnati, Ohio. Judgement upon any award rendered by the arbitrator may be entered by any state or federal court having competent jurisdiction thereof. The parties agree that the arbitrator(s) shall have the power to award all costs of the arbitration and reasonable expenses in connection therewith, including (without limitation) reasonable attorney's fees and expenses, to the prevailing party. Either party may, without inconsistency with this agreement to arbitrate, seek from a court any provisional remedy that may be necessary for establishment of the arbitral tribunal or to invoke the power of the arbitrator for determination of the merits of the applicable dispute or controversy.

**ARTICLE IX  
ADDITIONAL PROVISIONS**

**9.01 Exculpation**

The liability of the Owner (and of any successor "Owner" hereunder during its period of ownership of the Hotel Site) under this Agreement shall be limited to its interest in the Hotel. CVB agrees that none of the Owner's or the Operator's direct or indirect partners, members, managers, joint venturers, shareholders, directors, officers, agents and employees shall have any personal liability with respect to, or arising out of, this Agreement. In no event shall any officer, director, agent, or consultant of CVB, nor any employee or public official of the CVB, ever have any personal liability with respect to or arising out of this Agreement.

**9.02 Miscellaneous**

If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. This Agreement may be changed, waived, modified or supplemented only by an instrument in writing signed by the Owner and the CVB. The headings in this Agreement are for purposes of reference only and shall not limit or define the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

9.03 Estoppel Certificate

Within ten (10) Business Days after request therefor by any party hereto or by Operator or by the holder of any loan made to the Owner or the Operator, the other party(ies) shall execute and deliver to the requesting party a statement in writing and reasonably satisfactory to the requesting party and directed to the requesting party (and, if requested, to the holder of any loan made to the Owner or the Operator) certifying to such factual matters as may be reasonably requested by such requesting party, including without limitation (if such be the case) that (a) this Agreement is unmodified and in full force and effect, (b) to the certifying party's knowledge the requesting party is not in default hereunder or, if in default, the nature thereof in reasonable detail, and (c) there are no defenses or offsets to the Agreement claimed in writing by the other party.

9.04 Notices

Each Notice to be provided or given hereunder must be in writing and must be delivered or provided in one of the following methods: (a) certified mail, return receipt requested, postage pre-paid and addressed to the party to whom such Notice is intended to be delivered; or (b) personal delivery to the addressee by courier or other means of hand delivery. Notice delivered by certified mail pursuant hereto shall be effectively given and received on the third (3rd) business day following deposit of the same in the United States Mail, postage pre-paid, addressed properly to the party to whom such notice intended. Notice by personal delivery shall be effectively given and received upon delivery thereof to the addressee as confirmed in writing by a receipt executed by and retained by the party delivering such Notice.

to CVB: \_\_\_\_\_

Address \_\_\_\_\_  
City, State, Zip code \_\_\_\_\_  
Attention: \_\_\_\_\_

with copy to: \_\_\_\_\_

Address \_\_\_\_\_  
City, State, Zip code \_\_\_\_\_  
Attention: \_\_\_\_\_

[ Add Legends and City]

to the Owner: \_\_\_\_\_

Cincinnati CH (OH), LLC  
c/o Portman Holdings, LLC  
303 Peachtree Center Avenue  
Suite 575  
Atlanta, Georgia 30303  
Attention: S. Jefferson Greenway

to the Operator: \_\_\_\_\_

Address \_\_\_\_\_  
City, State, Zip code \_\_\_\_\_  
Attention: \_\_\_\_\_

with a copy to: \_\_\_\_\_

Any mortgagee, trustee or beneficiary under any mortgage or deed of trust on the Hotel may by Notice to the parties set forth hereinabove designate an address to which Notices to it hereunder shall be sent. Any such party may from time to time by Notice as herein provided, designate a different address to which Notices to it shall be sent.

**9.05 Transfer of Owner's or Operator's Interest**

(a) In the event of the sale, assignment or transfer by the Owner of its fee interest in the Hotel Site (other than a collateral assignment to secure a debt of the Owner) to a successor in interest (who shall, upon acceptance of title to or an interest in the Hotel Site or any part thereof, be deemed to have assumed the obligations of the Owner hereunder arising from and after the date of such acceptance), the transferring Owner shall be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and CVB agrees to look solely to such successor in interest of the Owner for performance of such subsequently occurring obligations. Notwithstanding the provisions of the preceding sentence, any successor Owner hereunder shall in all respects be obligated to honor any contract or agreement previously executed with a Potential Convention Center Customer in accordance with its terms and shall be bound by any outstanding Initial Offers or Amended Offers, each Room Block Request Notice and the Event Rate then in effect subject to and in accordance with the provisions of Article III.

(b) In the event that the Management Agreement with any Operator expires or terminates for any reason, the Operator under such Management Agreement shall be relieved from any obligations arising hereunder from and after the date upon which, as a consequence thereof, such Operator is no longer operating the Hotel. The Owner shall be obligated to secure the written consent and agreement of any replacement third-party Operator to comply with all of the terms, provisions and conditions set forth herein; provided, that, a failure by the Owner to do so shall in no way release or relieve the Owner or any such third-party replacement Operator from performing the obligations of the Owner and the Operator hereunder.

**9.06 Superiority of Agreement; Covenant Running with the Hotel Site**

The provisions of this Agreement shall constitute a restrictive covenant running with the Hotel Site binding upon each owner thereof, and any and all operators or managers of the Hotel thereon, and each and every other person or entity claiming or holding any interest in the Hotel Site, shall inure to the benefit of CVB, and shall apply to any hotel now or hereafter located on the Hotel Site, or any portion thereof. Notwithstanding the foregoing, the parties acknowledge that the building located on the Hotel Site includes a number of non-hotel areas on the first two floors of the Hotel, such as retail and other common area spaces (the "Non-Hotel Areas"). In the event that

Owner legally divides that Hotel Site during the Term to separate any of the Non-Hotel Areas from the Hotel, this Agreement shall not bind or encumber such Non-Hotel Areas.

**9.07 Gender: Singular and Plural**

As used herein, the neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a corporation, partnership or other legal entity when the context so requires. The singular number includes the plural, and vice versa, whenever the context so requires.

**9.08 Nature and Extent of Agreement; Governing Law; Venue**

This Agreement contains the complete agreement of the parties regarding the terms and conditions of the Agreement. There are no oral or written conditions, terms, understandings or other agreements pertaining to the room block arrangements which have not been incorporated herein. The laws of the State of Ohio shall govern the validity, interpretation, performance and enforcement of this Agreement, without regard to conflicts of law principles. Hamilton County, Ohio shall be the exclusive venue for all suits or other legal actions arising out of this Agreement.

**9.09 Attorney's Fees**

Should any legal action be brought by either party to this Agreement because of a breach of or an Event of Default under this Agreement or to enforce any provision of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court (subject to the limitations set forth herein).

**9.10 Recording of Memorandum**

The parties shall execute and record a memorandum of this Agreement (the "Memorandum") in the Hamilton County Recorder's Office. Upon termination of this Agreement, the parties will promptly record a termination of such Memorandum, or otherwise cause the Memorandum to be removed from the land records. In addition, if Owner legally separates any of the Non-Hotel Areas from the Hotel on the Hotel Site, the parties will promptly record a release of the Memorandum from such Non-Hotel Areas. The foregoing obligation shall survive the termination of this Agreement.

**9.11 Third Party Beneficiary**

Notwithstanding any provision hereof to the contrary, it is specifically acknowledged and agreed that, as owner of the Convention Center, to the extent of its rights hereunder or under the Development Agreement, the City is a third party beneficiary of this Agreement entitled to enforce such rights in its own name. Such third party beneficiary rights may not be assigned by the City to any other party.

**9.12 Binding Effect**

Subject to express provisions hereof to the contrary, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns during the Term hereof.

*[End of Page]*

Each of the parties hereto has caused this Agreement to be duly executed by their lawfully authorized representatives effective as of the Effective Date.

**OWNER:**

Cincinnati CH (OH), LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Signatory

**CVB: [SIGNATURE BLOCKS TO BE  
REVISED]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form and Legality:

Title: \_\_\_\_\_

**EXHIBIT A**  
**to Marriott Room Block Agreement**

**HOTEL SITE and LEGAL DESCRIPTION**

[TO BE ATTACHED]

EXHIBIT J-2  
to Development Agreement

**FORM OF WESTIN ROOM BLOCK AGREEMENT**

[To be attached to execution version]

EXHIBIT K  
to Development Agreement

**FORM OF RESTRICTIVE COVENANT**

SEE ATTACHED

----- space above for recorder -----

## **RESTRICTIVE COVENANT AGREEMENT WITH PURCHASE OPTION (CONVENTION CENTER HOTEL PROJECT)**

This RESTRICTIVE COVENANT AGREEMENT WITH PURCHASE OPTION (CONVENTION CENTER HOTEL PROJECT) (this “**Covenant**”) is made as of the Effective Date (as defined on the signature page hereof), by and among **CINCINNATI CH (OH), LLC**, a Delaware limited liability company (“**Developer**”) with an address which is 303 Peachtree Center Ave. NE #575, Atlanta, Georgia 30303, the **CITY OF CINCINNATI, OHIO**, an Ohio municipal corporation, with an address which is 801 Plum Street, Cincinnati, Ohio 45202 (the “**City**”) and the **BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO**, an Ohio political subdivision, with an address which is Todd B. Portune Center for County Government, 138 E. Court Street, Room 603, Cincinnati, Ohio 45202 (the “**County**”). Capitalized terms not defined herein shall have the meaning given to them in the hereinafter defined Development Agreement.

### **Recitals:**

A. Developer is the owner of certain real property located in downtown Cincinnati, Ohio, commonly referred to as *[Updated Street Address for Consolidated Parcel]* as more particularly described on Exhibit A (Legal Description) hereto (the “**Convention Center Hotel Project Site**”). Developer has committed to developing a project upon the Convention Center Hotel Project Site as required under the Development Agreement (collectively, the “**Convention Center Hotel Project**”).

B. In furtherance of the development and financing of the Convention Center Hotel Project, Developer, the City, and the County entered into that certain *Development Agreement* dated \_\_\_\_\_, 2026 (the “**Development Agreement**”), whereby the City and the County each agreed to extend certain incentives to Developer and the Convention Center Hotel Project to facilitate the financing and construction of the Convention Center Hotel Project, including (i) the City’s implementation of tax increment financing upon the Convention Center Hotel Project Site pursuant to Ohio Revised Code (“**ORC**”) Section 5709.41; (ii) the City’s exemption of the Convention Center Hotel Project Site from the payment of City TOT Service Payments pursuant to ORC Section 5739.093; (iii) the City’s assistance with the formation of a new community authority pursuant to ORC Chapter 349.01, *et. seq.*; (iv) the City’s extension of a \$50,000,000 loan (the “**City Loan**”) to Developer; (v) the City’s extension of a \$[48,000,000] loan to Developer using the Pass-Through City Assistance (the “**Pass-Through Loan**”); and (vi) the County’s exemption of the Convention Center Hotel Project Site from the payment of County TOT Service Payments pursuant to ORC Section 5739.093.

C. To further assist Developer with the development of the Convention Center Hotel Project and specifically the configuration and assemblage of the Convention Center Hotel Project Site, the City entered into that certain *Real Estate Agreement* dated \_\_\_\_\_, 2026 (the “**Real Estate Agreement**”), with Developer and Whex Garage LLC, an Ohio limited liability company (“**Whex**”), providing for the City’s cooperation with respect to the granting of easements, vacation of rights-of-way, and conveyances of various interests to facilitate the configuration of the Convention Center Hotel Project Site and certain improvements and appurtenances benefitting the Convention Center Hotel Project Site and the

Convention Center Hotel Project, including an elevated and enclosed pedestrian skybridge to connect the Convention Center (as defined below), the Whex Garage (defined below), and the Convention Center Hotel Project (the “**Skybridge**”), to be owned and operated by Developer (collectively, the “**City Real Property Contributions**”).

D. In its capacity as the owner and operator of the Cincinnati Convention Center (the “**Convention Center**”) located at 525 Elm Street, Cincinnati, Ohio, the City has further entered into a certain *Reciprocal Covenants, Restrictions, and Easements Agreement (Convention Center-Hotel Garage Skybridge)* recorded in Official Record Book \_\_\_\_\_, Page \_\_\_\_\_ of the Hamilton County, Ohio Recorder’s Office (the “**Skybridge REA**”) with Developer and Whex governing the operation and maintenance of the Skybridge and permitting the Skybridge to connect to the Convention Center to facilitate ingress and egress to and from the Convention Center Hotel Project to the Convention Center, which connection constitutes a material benefit to the Convention Center Hotel Project.

E. The City further anticipates that after the execution and delivery of this Covenant, it may accept title from Whex to that certain structured parking facility located adjacent to the vacated right-of-way formerly known as Home Alley (the “**Whex Garage**”) and across Fifth Street from the Convention Center; it being understood that the Whex Garage has been made subject to a certain Reciprocal Covenants, Restrictions and Easements Agreement (Home Alley) recorded in Official Record Book \_\_\_\_\_, Page \_\_\_\_\_ of the Hamilton County, Ohio Recorder’s Office (the “**Home Alley REA**”), which grants certain interests and easements in favor of Developer pertaining to the use of vacated Home Alley for the benefit of the Convention Center Hotel Project Site.

F. As a condition of the City’s and County’s execution of the Development Agreement and the extension of the assistance and incentives contemplated therein as well as of the City’s execution of the Real Estate Agreement, and the Skybridge REA, the City has required that Developer memorialize certain obligations herein with respect to the repayment of the City Loan, and the City and the County have required Developer memorialize certain obligations herein with respect to the operation of the Convention Center Hotel Project.

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged by Developer, City, and County and other good and valuable consideration, Developer hereby grants and conveys to the City the rights to enforce the covenants pertaining to the repayment of the City Loan as hereinafter provided and to the City and the County the rights to enforce the covenants pertaining to the operation of the Convention Center Hotel Project as hereinafter provided, and in connection therewith, has determined to subject the Convention Center Hotel Project Site to the following covenants and restrictions, which covenants and restrictions shall be deemed to run with the land and shall be binding on Developer and future owners of all or any portion of the Convention Center Hotel Project Site and the Convention Center Hotel Project (collectively referred to as “**Owner**”).

## 16. CITY LOAN REPAYMENT COVENANTS.

(A) Construction Savings Covenant. In consideration for the City’s extension of the City Loan to Developer to pay a portion of the costs of the Convention Center Hotel Project, Owner hereby covenants and agrees to cause the City Loan to be repaid, in part, from 50% of any Construction Period Savings, up to the City’s maximum share of the Savings Cap, in all cases as more fully set forth in the Development Agreement (the “**Construction Savings Covenant**”).

(B) Incentive Recoupment Payment. As further inducement for the City to extend the City Loan to Developer, Owner covenants and agrees to pay to the City, concurrently with the closing of a Qualifying Sale (as defined below), the Incentive Recoupment Payment (the “**Incentive Recoupment Payment Covenant**” and, together with the Construction Savings Covenant, the “**City Loan Repayment Covenants**”); provided that notwithstanding anything to the contrary herein, Owner’s obligation to pay the Incentive Recoupment Payment shall wholly terminate and cease to be effective as of the 10th anniversary of Construction Completion. Notwithstanding anything to the contrary in this Covenant or the Development Agreement, no Incentive Recoupment Payment shall be payable in connection with any sale or transfer

that is not a Qualifying Sale. Owner shall provide at least 30 days' prior written notice to the City before the closing of a Qualifying Sale, together with any and all documentation required hereunder with respect to the determination of the Incentive Recoupment Payment. Owner shall promptly provide any additional documentation requested by the City in order to determine the amount of the Incentive Recoupment Payment in accordance with this provision.

(i) For purposes of the foregoing Incentive Recoupment Payment Covenant, the below terms shall have the following meanings:

(a) **“Adjusted Project Cost”** means through the 4<sup>th</sup> anniversary of Construction Completion, \$325,000,000, and which amount increases annually thereafter by 3% (i.e., thereafter, \$334,750,000.00 through the 5<sup>th</sup> anniversary, \$344,792,500.00 through the 6<sup>th</sup> anniversary, \$355,136,275.00 through the 7<sup>th</sup> anniversary, \$365,790,363.25 through the 8<sup>th</sup> anniversary, \$376,764,074.15 through the 9<sup>th</sup> anniversary, and \$388,066,996.37 through the 10th anniversary);

(b) **“Affiliate Transfer”** means any transfer of any portion of the Convention Center Hotel Project or Property, assignment of the rights or interests of Owner under the Development Agreement or the other Project Documents, or sale, transfer, or conveyance of all or any portion of the direct or indirect membership or beneficial interest in Owner or any member or other owner of such entity (each an **“Owner Party”**), in each case, to (a) any successor or surviving entity resulting from a merger, acquisition, or consolidation with any Owner Party; (b) any entity succeeding to all or a substantial portion of any Owner Party's business or an entity to whom such Owner Party has sold all or substantially all of its assets; (c) any related entity, subsidiary, or parent company of any Owner Party; (d) any entity in which any Owner Party has a controlling interest; or (e) any affiliate of any Owner Party's parent. Notwithstanding the foregoing, any transfer or series of transfers in a 24-month period of all or any portion of the direct or indirect membership or beneficial interest in Owner or an Owner Party that results in a Change of Control, other than in connection with an Affiliate Transfer under (a) or (b) above, shall be excluded from the definition of Affiliate Transfer;

(c) **“Estate Planning Transfer”** means any inter vivos or testamentary sale, transfer, or conveyance by any person of all or any portion of the direct or indirect beneficial ownership interest in Owner to (a) one or more immediate family members of such person, (b) a trust or other entity in which all the beneficial interest is held by such person or one or more immediate family members of such person, or (c) a charitable organization; provided, that in each case (i) such transfer is made in connection with such person's bona fide, good faith estate planning, and (ii) such transfer does not result in a Change of Control. Estate Planning Transfer shall also include any transfers resulting from an amendment, restatement, modification, revision, or other change to an existing trust, provided the foregoing requirements in (i) and (ii) are satisfied;

(d) **“Exempt Transfer”** means (a) any Affiliate Transfer, (b) any Estate Planning Transfer, or (c) any sale, transfer, or conveyance in connection with the exercise by any lender (including, without limitation, any mezzanine lender or preferred equity investor) of its remedies under its loan documents or organizational documents with respect to its security in the Convention Center Hotel Project (e.g., foreclosing on Owner's interest in the Convention Center Hotel Project or accepting a deed in lieu of foreclosure or Owner's interests therein)(any sale, transfer or conveyance under clause (c) is a **“Foreclosure”**);

(e) **“Incentive Recoupment Payment”** means an amount equal to the Sales Participation Excess multiplied by 25%;

(f) **“Net Sale Proceeds”** means (a) the gross sale proceeds (including any non-monetary consideration, such as assumption of loans (excluding the Loan and Pass-Through Loan), payment in kind, or otherwise), with respect to a Qualifying Sale, less any reasonable, actual, documented, and customary costs of the sale, such as brokerage fees, transfer taxes, recording fees, and so forth, divided by (b) 100%, or, if the Qualifying Sale involves a sale of less than 100% of the direct or indirect ownership interests in Owner or the Convention Center Hotel Project, the percentage of direct or indirect

ownership interests that are sold pursuant to the Qualifying Sale (e.g., if 51% of the direct or indirect ownership interests in Owner or the Convention Center Hotel Project are sold, such percentage would equal 51% and not 100%);

(g) **“Qualifying Sale”** means either of the following taking place after the Effective Date (but excluding Exempt Transfers): (a) a sale, transfer, or conveyance of the Convention Center Hotel Project and the Property; or (b) any transaction or series of transactions in any 24-month period in which more than 50% of the direct or indirect ownership interests in Owner or the Convention Center Hotel Project are transferred; and

(h) **“Sales Participation Excess”** means an amount, if positive, that is equal to the Net Sales Proceeds less the Adjusted Project Cost.

This Section 1.2 shall only be applicable to the first, if any, Qualifying Sale and shall not be applicable to any subsequent sales, transfers or conveyances.

## 17. HOTEL OPERATING COVENANT AND CONVENTION CENTER O&M AND MANAGEMENT REQUIREMENT.

### (A) Hotel Operating Covenant.

(i) **Quality Standards Covenant.** Following completion of construction of the Convention Center Hotel Project, Owner covenants and agrees to commence, and continuously operate the Convention Center Hotel Project in accordance with the Quality Standards (as defined below) as a convention center hotel and not use the Convention Center Hotel Project for any use inconsistent with such operation (the “Operating Covenant”). For purposes of this Covenant, “Quality Standards” means (i) the performance benchmarks and hospitality industry standards equal to or exceeding a hotel rated in the “upper upscale” segment by STR, Inc. a division of CoStar Group, Inc. (if STR, Inc. ceases to exist, ceases to publish hotel class segment ratings or the parties no longer deem STR, Inc. suitable for the purpose identified herein, then, in either such event, the parties shall mutually agree upon a reputable replacement hospitality industry research and benchmarking organization to replace STR, Inc.), or (ii) any performance benchmarks and hospitality industry standards otherwise proposed by Owner and approved by the City and the County, which approval shall not be unreasonably withheld, conditioned or delayed. The Marriott brand, Hyatt brand, Omni brand, and Hilton brand, shall each be deemed to be part of the “upper upscale” segment.

(ii) **Convention Center O&M and Management Requirement.** Subject to a Facility Operations Force Majeure Event (as defined below), the City will cause the Convention Center to be continuously operated and managed and physically maintained to at least the standard of quality consistent with the principal convention centers (the “**Comparator Convention Centers**”) operated by each of the cities of Columbus, Cleveland, Louisville, and Pittsburgh (the operations and management component of this covenant is the “**Convention Center Management Standard**” and the physical maintenance component of this covenant is the “**Convention Center Maintenance Standard**; each of the Convention Center Management Standard and the Convention Center Maintenance Standard, individually is the “**Convention Center O&M and Management Requirement**”). The City shall be deemed to be in compliance with the Convention Center Management Standard so long as the City has either (a) engaged a nationally recognized third-party operator experienced in managing similarly situated convention centers, or (b) with Owner’s prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, undertaken the management of the Convention Center with City personnel or personnel of a quasi-governmental agency established for the purpose of managing the Convention Center, in each case, pursuant to industry standard management and operating procedures, which shall be delivered to Owner for its review. Notwithstanding anything to the contrary contained herein, in the event the City terminates the third-party operator of the Convention Center or the term of any such operator’s agreement has expired, the Convention Center Management Standard shall be automatically suspended and Owner shall be precluded from sending an Initial Convention Center Deficiency Notice (as defined below) until the sooner to occur of (i) the date upon which the City takes final action to comply with the Convention Center Management Standard, or (ii) 180 days.

(iii) **Facility Operations Force Majeure Event.** A “**Facility Operations Force Majeure Event**” means, as the context may provide, (a) flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, cyclone, typhoon, tornado, tsunami, or other adverse weather events, in each case, that occurs on the Property or at the Convention Center at levels in excess of the historic annual averages for the Property or the Convention Center and that could not have reasonably been prevented by Owner with respect to the Property or the City with respect to the Convention Center; (b) terrorist attacks, war, insurgency, strikes, lockouts or other labor disputes that prevent the operation of the Convention Center Hotel Project or the Convention Center, as applicable; or (c) epidemic or pandemic (excluding any delay or non-performance by Owner or the City, as the case may be, caused by COVID-19 that would be reasonably anticipated as of the Effective Date); provided however, in no event shall a Facility Operations Force Majeure Event include the inability of either (i) Owner to perform its obligations under this Covenant, or (ii) the City to operate the Convention Center in accordance with Section 2.1.2, solely, in each such case, by reason of lack of sufficient funds required for performance of such obligations or by reason in general economic conditions affecting the hotel industry regionally, in the case of Owner, or affecting the convention center industry regionally, in the case of the City, and, in each case, not attributable to any of the events referred to in clauses (a) through (c) above.

(iv) **Suspension of Operating Covenants.**

(a) **Circumstances of Suspension.** The Operating Covenant will be

deemed suspended during (a) Facility Operations Force Majeure Events, provided that (x) within 30 days of learning of any such Facility Operations Force Majeure Event, Owner notifies the City and the County in writing thereof and of the cause or causes thereof and of the duration thereof or, if continuing, the estimated duration thereof, and; (y) if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the City and the County in writing of the duration of the delay; (b) the period of time after a casualty or condemnation event affecting the Convention Center Hotel Project that is reasonably necessary to restore the Convention Center Hotel Project to operations consistent with the Marriott Room Block Agreement, this Covenant, and the Operating Covenant; (c) closures for maintenance or repairs in the ordinary course of business, to the extent it is reasonably necessary for portions of the Convention Center Hotel Project to be closed during such time, or in the event of an emergency; (d) temporary closures not exceeding 2 years for remodeling necessary to maintain compliance with the Quality Standards or the Hotel Management Agreement or the Hotel Franchise Agreement, to the extent it is reasonably necessary for portions of the Convention Center Hotel Project to be closed during such time; (e) any period that the Hotel Operator has defaulted under the Hotel Management Agreement or the Franchisor has defined under the Hotel Franchise Agreement, if such default consists of or results in a breach of the Operating Covenant, provided that Owner is using commercially reasonable efforts to enforce such default against the Hotel Operator or Franchisor, as applicable; and (f) the period of time during which a failure of the Convention Center O&M and Management Requirement is ongoing after receipt of any Initial Convention Center Deficiency Notice; provided, that the City shall have any such cure periods provided for below.

(b) **Suspension and Termination of Hotel Operating Covenant Due to Violation of Convention Center O&M and Management Requirement.**

(1) **Initial Convention Center Deficiency Notice.** In order to suspend the Operating Covenant pursuant to Section 2.1.4.1(f), Owner must deliver to the City and the County written notice (the “**Initial Convention Center Deficiency Notice**”) by no later than 90 days after Owner learns of such failure to satisfy the Convention Center O&M and Management Requirement, together with the date upon which the failure commenced (the “**Convention Center Deficiency Commencement Date**”), and, (i) if the failure is based on a breach of the Convention Center Maintenance Standard, a detailed description of the physical conditions that demonstrate the Convention Center Maintenance Standard is not being satisfied with reference to any or all of the Comparator Convention Centers and the specific physical conditions present in such Comparator Convention Centers that are not presently reflected or being properly maintained at the Convention Center, and/or (ii) if the failure is based on a breach of the Convention Center Management Standard, a written

statement that the City and the County have failed to maintain compliance with the Convention Center Management Standard and the circumstances underlying such failure.

(2) **Maintenance Remedy Plan.** Within 30 days of delivery of an Initial Convention Center Deficiency Notice based on a failure to meet the Convention Center Maintenance Standard, the City and the County will commence with selecting a reputable third-party vendor to conduct a capital needs assessment for the Convention Center (each, a “**Capital Needs Assessment**”), which vendor shall be selected by the City and the County in their reasonable discretion. Thereafter, upon receipt of the Capital Needs Assessment, the City and the County will cooperate to devise a plan to address those physical conditions described in the Capital Needs Assessment that correspond to the physical conditions cited in the Initial Convention Center Deficiency Notice and are necessary to bring the Convention Center into compliance with the Convention Center Maintenance Standard (the “**Maintenance Remedy Plan**”). Concurrent with the adoption of the Maintenance Remedy Plan, the City and the County covenant and agree to provide a copy of the same to Owner together with any corresponding Capital Needs Assessment and an estimated timeline for full implementation of the Maintenance Remedy Plan (such estimated timeline is the “**Maintenance Cure Period**”).

(3) **Management Remedy Plan.** Within 30 days of delivery of an Initial Convention Center Deficiency Notice based on a failure to meet the Convention Center Management Standard, the City and the County will commence with addressing such failure by either (i) addressing any deficiencies with the existing operator that have resulted in the failure to meet the Convention Center Management Standard, or (ii) commencing with the selection of an operator that complies with the Convention Center Management Standard (the “**Management Remedy Plan**”; each of the Maintenance Remedy Plan and the Management Remedy Plan, individually, is the “**Remedy Plan**”). The City and the County will devise the Management Remedy Plan to bring the Convention Center into compliance with the Convention Center Management Standard within 90 days of delivery of the Initial Convention Center Deficiency Notice (the “**Management Cure Period**”). Concurrent with the adoption of the Management Remedy Plan, the City and the County covenant and agree to provide a copy of the same to Owner.

(4) **Owner Covenants Related to Remedy Plan; Remedy Review Meetings; Suspension.** Owner covenants and agrees to refrain from frustrating the implementation of the Remedy Plan. During the implementation of any Remedy Plan, the City, the County, and Owner will thereafter meet no less frequently than on a quarterly basis to review the progress of the City in implementing the Remedy Plan. The Operating Covenant will be deemed suspended until such time as the Remedy Plan has been fully implemented to bring the Convention Center into compliance with the Convention Center O&M and Management Requirement.

(5) **Second Convention Center Deficiency Notice; Termination of Hotel Operating Covenant.** In the event that the City fails to bring the Convention Center into compliance with the Convention Center O&M and Management Requirement on or before the expiration of the Maintenance Cure Period or the Management Cure Period, as applicable, then provided Owner delivers written notice to the City and the County of such failure (the “**Second Convention Center Deficiency Notice**”), and the City fails thereafter to bring the Convention Center into compliance within 180 days of the date of the Second Convention Center Deficiency Notice, the Operating Covenant will terminate. In the event that the Operating Covenant terminates pursuant to this paragraph, then the City and County will cooperate with Owner to place of record a release of the Operating Covenant (in the form of an amendment to this Covenant or another commercially reasonable form) and, to the extent not then satisfied, the covenants concerning Construction Savings and the Incentive Recoupment Payment shall continue in full force and effect until satisfied.

(v) No Material Work on or Closure of Convention Center Without Owner Approval:  
Termination of Hotel Operating Covenant for Failure to Obtain Approval. The City shall provide Owner with at least 120 days' prior written notice of any material work or closure that the City intends to undertake relating to the Convention Center (other than the renovations currently (i.e., as of the Effective Date) underway (the "**Underway Renovations**") and any material work directly arising from a Facility Operations Force Majeure Event). For so long as this Covenant is in effect, except for work commenced in accordance with any Maintenance Remedy Plan (which work shall be deemed approved by Owner), the City will obtain the prior written approval of Owner in advance of undertaking any work (e.g., renovations, alterations or other work (including, without limitation, demolition work) to or closure of the Convention Center that (i) would result in a permanent reduction in the exhibition spaces within Exhibit Halls A, B, and C of the Convention Center (collectively, the "**Primary Exhibit Halls**") by more than 10% from the space available in the Primary Exhibit Halls immediately after the completion of the Underway Renovations, (ii) would result in more than 10% but less than 20% of the exhibition space within the Primary Exhibit Halls or the ancillary Convention Center meeting spaces (i.e., meeting rooms and ballrooms within Convention Center other than the Primary Exhibit Halls) (collectively, the "**Ancillary Meeting Spaces**") being unavailable for a period of more than 24 consecutive months, or (iii) would result in more than 20% of the Primary Exhibit Halls or the Ancillary Meeting Spaces being unavailable for a period of more than 12 consecutive months (each, "**Material Work or Closure**"). The failure of the City to obtain the approval of Owner for any Material Work or Closure shall permit Owner to send a termination notice to the City and the County. The Operating Covenant shall terminate within 90 days after the date of such termination notice. In the event that the Operating Covenant terminates pursuant to this paragraph, then the City and the County will cooperate with Owner to place of record a release of the Operating Covenant (in the form of an amendment to this Covenant or another commercially reasonable form) and, to the extent not then satisfied, the covenants concerning Construction Savings and the Incentive Recoupment Payment shall continue in full force and effect until satisfied.

(B) **Defaults and Remedies**.

(i) Notice of Default; Remedies. The City and the County shall each give Owner a written notice of any default with respect to the breach of any of the covenants herein, and shall provide Owner 90 days after such written notice, to cure any such violation or default, prior to seeking to enforce their respective rights and remedies hereunder (the "**RCA Cure Period**"); *provided however*, if the nature of the default is such that it cannot reasonably be cured during the RCA Cure Period, then so long as Owner has commenced to cure the default within such initial RCA Cure Period, Owner shall be entitled to an additional 180 days of RCA Cure Period. If Owner has diligently undertaken to cure the underlying default during the extended RCA Cure Period but has not cured the default, the City and the County may agree in their reasonable discretion to grant Owner additional time to cure such default. Upon failure by Owner to cure any such violation or default within the RCA Cure Period, the City and the County shall have the right to enforce any of the restrictions and covenants set forth herein by suit in equity or action by law, including but not limited to, the City's right to pursue actions to compel specific performance with respect to the City Loan Repayment Covenants, and the City's and the County's rights to pursue actions to compel compliance with the Operating Covenants

(ii) Remedies Non-Exclusive. The rights and remedies of the City and the County provided for in this Covenant are not exclusive and are in addition to any other rights and remedies available hereunder, at law, in equity or otherwise. No failure or delay by the City or the County to enforce any provision of this Covenant will constitute a waiver by the City or the County of that or any other provision, nor will any single or partial exercise of any right, power, privilege under this Covenant preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege by either the City or the County. For avoidance of doubt, the enforcement of the County's rights and remedies hereunder shall not preclude the City from simultaneously exercising its rights and remedies, including without limitation its rights under Section 3 below.

**18. CITY'S PURCHASE OPTION RIGHTS.**

(A) **Convention Center Hotel Project Purchase Option.** As additional inducement for the City to extend the City Loan and the Pass-Through Loan, make the City Real Property Contributions, and grant the rights under the Skybridge REA, Developer, on behalf of itself and all future Owners of the Convention Center Hotel Project Premises (defined herein), hereby grants to the City, a right to purchase the Convention Center Hotel Project Interests (as defined below) upon the occurrence and continuation of an event of default pertaining to the Operating Covenant for 365 days after the City's initial notice of default to Owner (the "**City Purchase Option**"). Upon vesting, the City Purchase Option shall continue thereafter for a period of 365 days. The failure of the City to exercise the City Purchase Option within such 365-day period shall be deemed a waiver of such right by the City. Upon timely exercising the City Purchase Option, the City shall have the right to purchase and Owner shall have the obligation to sell and convey to the City, subject to the terms below, all of the following items for the Convention Center Hotel Project Interests Purchase Price (as defined below) (collectively, the "**Convention Center Hotel Project Interests**"):

- (i) Owner's right, title and interest in and to the Convention Center Hotel Project Site;
- (ii) Owner's right, title, and interest in and to the Convention Center Hotel Project and all other buildings, improvements, and other items of real estate located on the Convention Center Hotel Project Site (collectively, the "**Improvements**," and together with the Convention Center Hotel Project Site, the "**Convention Center Hotel Project Premises**");
- (iii) Owner's right, title, and interest in and to all of the following (collectively, the "**Convention Center Hotel Project Personal Property**"):
  - (a) Items of tangible personal property consisting of all furniture, fixtures, equipment, machinery and other tangible personal property located at the Convention Center Hotel Project and owned or leased by Owner as of the Purchase Option Closing Date (as defined below), including all inventories of food and beverage in opened containers and all in-use or stock of linens, china, glassware, silver, uniforms, towels, paper goods, stationery, soaps, cleaning supplies and the like with respect to the Convention Center Hotel Project on hand as of the Purchase Option Closing Date, but specifically excluding (x) any and all tangible personal property and/or trade fixtures owned or leased by tenants, occupants, concessionaires, licensees, guests, or employees of Owner, any Franchisor, the Hotel Operator, or any of their respective affiliates, (y) any and all (1) unopened alcohol inventory and (2) other alcoholic beverages to the extent that any applicable law prohibits the transfer of alcoholic beverages from Owner to City, and (z) any and all cash-on-hand, furniture, fixtures and equipment or other cash reserves, and petty cash funds;
  - (b) to the extent assignable, all intangible personal property owned or possessed by Owner and used exclusively in connection with the ownership or operation and maintenance of the Convention Center Hotel Project, including, without limitation, (1) utility and development rights and privileges, (2) restaurant names and other trade names and general intangibles pertaining to the Convention Center Hotel Project and the personal property related to the Convention Center Hotel Project (e.g., phone numbers, internet addresses and domain names), (3) the share of the final night's room revenue for the Convention Center Hotel Project of registered guests in occupancy from the preceding night through check-out time the morning of the Purchase Option Closing Date, including any City TOT Service Payments, County TOT Service Payments, Convention District NCA Charges attributable to the Convention Center Hotel Project, sales taxes, room taxes or other taxes or payments in lieu of taxes thereon (the "**Rooms Ledger**"), (4) reservations and agreements made or entered into prior to the Purchase Option Closing Date for rooms at the Convention Center Hotel Project to be utilized on or after the Purchase Option Closing Date, or for catering services or other hotel services to be provided on or after the Purchase Option Closing Date at or by the Convention Center Hotel Project (the "**Advanced Bookings**"), and (5) all licenses, permits, concessions and approvals required by any governmental authority, or otherwise appropriate with respect to the construction, ownership, operation, leasing, maintenance, or use of the Convention Center Hotel Project Site or any part thereof, but specifically excluding (x) any and all liquor licenses and permits or rights relating to the sale of liquor at the Convention Center Hotel Project, any proprietary information concerning Owner, and, (y) any and all intangible personal property owned or leased by tenants, occupants,

concessionaires, licensees, guests, or employees of Owner, any Franchisor, the Hotel Operator, or any of their respective affiliates;

(c) Owner's interest as lessor pursuant to all leases, concessions, license agreements, and occupancy agreements with respect to the Convention Center Hotel Project under which any tenants (other than registered guests) or concessionaires occupy space at the Convention Center Hotel Project (collectively, the "**Leases**") that are in effect on the Purchase Option Closing Date, if any;

(d) To the extent assignable, Owner's right, title, and interest in, if any, all written service, supply, trash removal, maintenance, construction, capital improvement and other similar contracts in effect with respect to the Convention Center Hotel Project Site related to the construction, operation, or maintenance of the Convention Center Hotel Project Site (collectively, the "**Contracts**") that City elects to assume, including the Management Agreement, any Hotel Franchise Agreement and any trademark agreements; and

(e) Notwithstanding anything contained in this Section 3.1 to the contrary, the following is specifically excluded from the Convention Center Hotel Project Personal Property, and none of the following shall be transferred to City: (a) Owner's cash in bank accounts and invested with financial or other institutions, (b) any accounts receivable accruing prior to the Purchase Option Closing Date except for the Rooms Ledger to the extent provided hereunder, (c) any credit card merchant numbers of Owner, (d) any insurance policies related to the Convention Center Hotel Project, including, without limitation, general liability, operational liability, business interruption, fire and casualty policies, and all proceeds and claims thereunder, (e) any asset management services provided for the benefit of Owner or the Convention Center Hotel Project by any affiliate of Owner, (f) any refunds (including, without limitation, refunds of real estate taxes) attributable to the period of time prior to the Purchase Option Closing Date, and (g) books and records relating to the period of time prior to the Purchase Option Closing Date, including any confidential personnel records of the employees of the Convention Center Hotel Project (e.g., evaluations, write-ups and other subjective materials, medical records, etc.).

(B) **Purchase Option Notice.** In the event the City elects to exercise the City Purchase Option, it shall, within the 365-day period in Section 3.1, deliver a written notice to Owner making such election and requiring that Owner cooperate with the City and use commercially reasonable efforts to cause the Hotel Operator, the Franchisor and other necessary third parties to cooperate with the City to cause the transfer and conveyance of the Convention Center Hotel Project Interests to the City or its assignee by the date specified in the notice, which date shall be no later than 180 days after the date of the notice (the "**Purchase Option Closing Date**"). Within 30 business days of the City's exercise of the City Purchase Option, the City and Owner shall cooperate to establish the purchase price for the Convention Center Hotel Project Interests, which shall be an amount equal to the greater of (i) Fair Market Value of the Convention Center Hotel Project Interests, and (ii) the amount necessary to discharge all Third-Party Financings; provided, however, to the extent the Convention Center Hotel Project is secured by any Third-Party Financing that constitutes a "blanket lien" across multiple properties, the amount under clause (ii) shall only take into account the amount to release the Convention Center Hotel Project from the "blanket lien" securing such Third-Party Financing (the "**Convention Center Hotel Project Interests Purchase Price**"). Upon determining the Convention Center Hotel Project Interests Purchase Price, the City will pay the same to Owner on the Purchase Option Closing Date. For purposes of this Section 3.2 "**Fair Market Value**" and "**Third-Party Financings**" shall have the following meanings:

(i) "**Fair Market Value**" shall mean the then-current fair market value of the Convention Center Hotel Project Interests determined in an appraisal delivered by a member of the American Institute of Real Estate Appraisers (or successor organization) holding the "Member, Appraisal Institute" or equivalent designation with substantial experience appraising hospitality projects comparable in size and scale to the Project (an "**Appraiser**" or "**Appraisers**", as the case may be) as follows: if the City shall have caused an appraisal of the fair market value to be prepared by an Appraiser and delivered to the Owner along with the City's notice of its intent to exercise the City Purchase Option, the Owner may accept that appraisal as the fair market value or may reject that determination within the next 20 days; provided, that if the City does not deliver such an appraisal or that appraisal is rejected by the Owner within the

allotted time, then the fair market value shall be determined by an appraisal conducted by an Appraiser mutually selected by the City and the Owner, which appraisal shall be binding upon both; provided, further, that if the City and the Owner are unable to agree upon the selection of an Appraiser within 30 days after the date on which the Owner receives the City's notice of exercise of the City Purchase Option (if the notice did not include an appraisal) or 30 days after the date on which Owner rejects the City's appraisal (if the notice included an appraisal), as applicable (the "**Joint Appraiser Selection Period**"), then the fair market value shall be determined by three separate real estate appraisals made as follows: (i) the City and the Owner shall each select one of the Appraisers and those two Appraisers shall select the third Appraiser, (ii) the selection of the Appraisers shall be completed within 30 days after the end of the Joint Appraiser Selection Period, (iii) the Appraisers selected by the City and Owner shall independently complete an appraisal of the Convention Center Hotel Project Interests and submit the same to the City and Owner within 30 days after the date of appointment of the third Appraiser, (iv) unless such appraisals concur as to the fair market value (in which case, the value so determined shall be the fair market value), the third Appraiser shall select the appraisal that, in the opinion of such Appraiser, is closest to the true fair market value of the Convention Center Hotel Project Interests, and (v) the fair market value in the appraisal selected by the third Appraiser shall be conclusively established as the fair market value of the Convention Center Hotel Project Interests. In no event shall the Appraiser that is appointed by the City or Owner be an affiliate of the appointing party.

(ii) [**Third-Party Financings**" means any third-party mortgage financing or third-party mezzanine financing secured in whole or in part by the Convention Center Hotel Project or interests therein.]

(C) **Conduct Prior to Purchase Option Closing Date.** During the period from the date of the City's exercise of the City Purchase Option through the Purchase Option Closing Date, Owner shall:

(i) not enter into any material new Leases or Contracts that are not month-to-month or otherwise terminable without any termination fee upon not more than 60 days' notice without the City's prior written consent, which consent shall be in the City's sole discretion;

(ii) maintain commercially reasonable insurance coverage for the Convention Center Hotel Project; provided that in no event shall this provision require Owner to obtain insurance coverage exceeding the insurance coverage currently in effect for the Convention Center Hotel Project;

(iii) not cause any material and discretionary capital improvement work to be done at the Convention Center Hotel Project without the City's prior written consent, other than regular and customary maintenance work and reasonable repairs, which consent shall be in the City's sole discretion; and

(iv) shall not intentionally encumber title to the Convention Center Hotel Project.

(D) **Conditions to Closing.** [The closing of the City Purchase Option on the Purchase Option Closing Date is expressly conditioned on the City (i) having obtained any consents, approvals or waivers for the sale of the Convention Center Hotel Project from the Hotel Operator and Franchisor, and (ii) having released Owner and any of its affiliates under the Project Documents or any agreements related thereto (e.g., guarantees and indemnity agreements) from any liability arising under such Project Documents and related agreements to the extent arising from and after the Purchase Option Closing Date (the "**Closing Conditions**"). The Hotel Operator and Franchisor consents, approvals, and waivers shall consist of any consents and approvals or waivers of consent or approvals that must be obtained from the Hotel Operator or the Franchisor under the Hotel Management Agreement and any Hotel Franchise Agreement, respectively. Owner shall reasonably cooperate with the City in connection with the pursuit of such consents, approvals and/or waivers, at no material additional cost to Owner. If any such consent, approval or waiver is not obtained from the Hotel Operator or Franchisor on or before the Purchase Option Closing Date, such failure shall not constitute a default by Owner under this Agreement or any other Project Document; provided however, such failure shall also not relieve Owner of any liability under this Covenant or any other Project Document.]

(E) **Closing**. On the Purchase Option Closing Date, subject to the satisfaction of the Closing Conditions, simultaneously with delivery by the City to Owner of the Convention Center Hotel Project Interests Purchase Price, Owner shall execute and deliver, or cause to be executed and delivered, each of the following instruments with respect to the Convention Center Hotel Project: (a) a limited warranty deed to the Convention Center Hotel Project Site and the Convention Center Hotel Project; (b) a bill of sale and assignment and assumption for the Convention Center Hotel Project Personal Property; (c) all books and records relating to the Convention Center Hotel Project in the possession of Owner, including all property management and maintenance records, it being understood that (x) leaving such records at the Convention Center Hotel Project shall satisfy Owner's obligations hereunder and (y) "books and records" shall specifically exclude any item specifically excluded from the definition of Convention Center Hotel Project; (d) any documentation associated with the satisfaction of the Closing Conditions, provided that Owner shall not bear any material additional costs associated with the same; and (e) such other documents or instruments contemplated hereunder or as the title company reasonably may request to effect the transfer of the Convention Center Hotel Project.

(F) **Assignment of City Purchase Option**. After the City's exercise of the City Purchase Option but no sooner than 30 days prior to the Purchase Option Closing Date, the City shall have the right to assign, transfer, convey and/or otherwise sell (or enter into any agreement to do the same), directly or indirectly, any interest it may have in or under this Section 3.6 without the written consent of Owner.

## 19. ADDITIONAL PROVISIONS.

(A) **Notices**. Any notices or demands to be given under this Covenant shall be sent by U.S. mail, postage prepaid, registered or certified mail, return receipt requested, or by overnight courier service to the address set forth below, or as otherwise directed in writing by that party. Notices shall be deemed sent when received or refused. Notices shall be addressed as follows:

**To the City:**

City Manager  
City of Cincinnati  
801 Plum Street  
Cincinnati, Ohio 45202

With a copy to:

Director, Dept. of Community and  
Economic Development  
City of Cincinnati  
805 Central Avenue, Suite 700  
Cincinnati, Ohio 45202

**To the County:**

Board of County Commissioners of  
Hamilton County, Ohio  
Todd B. Portune Center for County Government  
138 E. Court Street, Room 603  
Cincinnati, Ohio 45202  
Attention: President

With a copy to:

Hamilton County Administrator  
Todd B. Portune Center for County Government  
138 E. Court Street, Room 603  
Cincinnati, Ohio 45202

**To Developer:**

Cincinnati CH (OH), LLC  
303 Peachtree Center Ave. NE #575  
Atlanta, Georgia 30303  
Attention: Reid L. Scott

With a copy to:

Cincinnati CH (OH), LLC  
303 Peachtree Center Ave. NE #575  
Atlanta, Georgia 30303  
Attention: Jeff Greenway

(B) **Certificates and Releases.** The City and the County shall, upon written request by Owner, provide certificates or releases, in a form acceptable to Owner, stating that Owner, the Convention Center Hotel Project Site and the Convention Center Hotel Project are in compliance with all of the terms, obligations, covenants and restrictions of Owner hereunder, if the City and the County determine that such compliance in fact exists.

(C) **Severability.** If any portion of this Covenant is found to be invalid or unenforceable, the remaining portions hereof shall continue in full force and effect.

(D) **Binding Effect.** Except in the event of a termination as provided herein (including under Section 1), all of the terms, conditions, restrictions and covenants of this Covenant shall be effective for a period of 75 years after the Effective Date and shall be deemed to run as a binding servitude of, and as applicable a benefit to, the Convention Center Hotel Project Site.

(E) **Governing Law.** This Covenant shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Covenant shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. Each party hereby waives trial by jury with respect to any and all disputes arising under this Covenant.

(F) **Amendments and Waivers; No Assignment by City or County.** The provisions of this Covenant may be amended, waived, or otherwise modified only by a written agreement signed by the parties. Except as otherwise set forth in Section 3.6, the right, title and interest of the City and the County may not be assigned or transferred without obtaining the prior written consent of Owner.

(G) **Counterparts.** The parties may execute this Covenant in multiple counterparts, each of which shall be deemed an original, and all of which shall, collectively, constitute only one agreement.

(H) **Captions.** Captions and headings are contained in this Covenant only for purposes of convenience and in no way define, limit, extend, or describe the scope or content of this Covenant or any provisions hereof.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURES FOLLOW.]

Executed by Developer, City and County on the date of acknowledgement indicated below, effective as of \_\_\_\_\_, 2026 (the “**Effective Date**”).

**CINCINNATI CH (OH), LLC**

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Sheryl M.M. Long, City Manager

Approved as to form:

\_\_\_\_\_  
Assistant City Solicitor

**COUNTY OF HAMILTON, OHIO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form by the County Prosecutor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[NOTARY BLOCKS FOLLOW]

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:  
 )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2026,  
by \_\_\_\_\_, as \_\_\_\_\_ of CINCINNATI CH (OH), LLC, a Delaware limited liability  
company, on behalf of the company.

Notary Public  
My commission expires: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2026,  
by Sheryl M.M. Long, as City Manager of CITY OF CINCINNATI, OHIO, an Ohio municipal corporation, on  
behalf of the City.

Notary Public  
My commission expires: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2026,  
by \_\_\_\_\_, as \_\_\_\_\_ of COUNTY OF HAMILTON, OHIO, an Ohio political  
subdivision, on behalf of the County.

Notary Public  
My commission expires: \_\_\_\_\_

This instrument prepared by:  
Office of the City Solicitor  
City of Cincinnati  
801 Plum Street, Suite 214  
Cincinnati, Ohio 45202

Exhibit A  
to Restrictive Covenant Agreement

LEGAL DESCRIPTION

[To be Attached]

EXHIBIT L  
to Development Agreement

**ADDITIONAL REQUIREMENTS**

For the purposes of this Exhibit L, "Project" shall mean the Convention Center Hotel Project. Developer and Developer's general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, "**Government Requirements**"), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer's contractors, subcontractors or employees, either on the City's part or with respect to any other governmental entity, and (b) the City and the County and their respective legal departments are not providing legal counsel to or creating attorney-client relationships with Developer by attaching this Exhibit to this Agreement.

This Exhibit serves two functions:

(i) Serving as a Source of Information with Respect to Government Requirements. This Exhibit identifies certain Government Requirements that may be applicable to the Project, Developer, or its contractors and subcontractors. Because this Agreement requires that Developer comply with all applicable laws, regulations, and other Government Requirements (and in certain circumstances to cause others to do so), this Exhibit flags certain Government Requirements that developers, contractors and subcontractors regularly face in constructing projects or doing business with the City. To the extent Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

(ii) Affirmatively Imposing Contractual Obligations. If certain conditions for applicability are met, this Exhibit also affirmatively imposes contractual obligations on Developer, even where such obligations are not imposed on Developer by Government Requirements. As described below, the affirmative obligations imposed hereby are typically a result of policies adopted by City Council which, per Council's directive, are to be furthered by the inclusion of certain specified language in some or all City contracts. The City administration (including the City's Department of Community and Economic Development) is responsible for implementing the policy directives promulgated by Council (which typically takes place via the adoption of motions or resolutions by Council), including, in certain circumstances, by adding specific contractual provisions in City contracts such as this Agreement.

(A) Construction Workforce.

(i) Applicability. Consistent with the limitations contained within the City Resolutions identified in clause (ii) below, this Section (A) shall not apply to contracts with the City other than construction contracts, or to construction contracts to which the City is not a party. For the avoidance of doubt, this Agreement is a construction contract solely to the extent that it directly obligates Developer to assume the role of a general contractor on a construction project for public improvements such as police stations or other government buildings, public parks, or public roadways.

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least

halfway through the Construction Contract (or in the case of a construction contract of six months or more, within 60 days of beginning the Construction Contract) (collectively, the **“Construction Workforce Goals”**).

As used herein, the following terms shall have the following meanings:

(a) **“Best Efforts”** means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(b) **“Minority Person”** means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian or Alaskan Native.

(c) **“Black”** means a person having origin in the black racial group of Africa.

(d) **“Asian or Pacific Islander”** means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii and Samoa.

(e) **“Hispanic”** means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultural origin.

(f) **“American Indian”** or **“Alaskan Native”** means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Conferring with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, without limitation, the City’s construction of public improvements to specifically benefit the Project, or the City’s sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than 10 days following Developer and/or its general contractor’s meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor’s meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under CMC Chapter 321. CMC Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project's budget. For the purposes of this clause (iii), "direct City funding" means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Agreement requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

(1) "Bid" means an offer in response to an invitation for bids to provide construction work.

(2) "Invitation to Bid" means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) "Trade Craft" means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) "Public Notification" means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the "scope of work" and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) "Read Aloud in a Public Forum" means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City of Cincinnati Building Code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code, Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under CMC Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within 20 days after the City's written demand.

(F) Small Business Enterprise Program.

(i) Applicability. The applicability of CMC Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. CMC Chapter 323 defines "contract" as "a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services." It defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority." To the extent CMC Chapter 323 does not apply to this Agreement, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises ("SBE's), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with CMC Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City's web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Agreement, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

- (1) Including qualified SBEs on solicitation lists.
- (2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.
- (3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.
- (4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15<sup>th</sup>. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to Section 2921.12, Ohio Revised Code.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in CMC Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. CMC Chapter 325 (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. CMC Chapter 325 does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of CMC Chapter 325 (the City of Cincinnati's Equal Employment Opportunity Program), the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within 20 days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of CMC Chapter 319, which provides for a "Prompt Payment System", may apply to this Agreement. CMC Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to Ohio Revised Code Section 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with

the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained CMC Chapter 326 (Wage Enforcement) (the “**Wage Enforcement Chapter**”). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. CMC Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the CMC. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in CMC Chapter 326) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of CMC Chapter 326, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized “Affidavit Regarding Wage Theft and Payroll Fraud” on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an “Amended Affidavit Regarding Wage Theft and Payroll Fraud” on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of CMC Chapter 326, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively “investigative bodies”) to release to the City’s Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City’s request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

(d) If this Agreement is subject to the Wage Enforcement provisions of CMC Chapter 326, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of CMC Chapter 326, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to CMC Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

(N) Americans with Disabilities Act; Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the “**Accessibility Motion**”). This motion directs City administration, including DCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the “**ADA**”), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a “place of public accommodation” or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, “**Contractual Minimum Accessibility Requirements**” means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible point of entry is not a building’s primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of “qualifying incentives” for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines “qualifying incentives” as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, without limitation, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, “qualifying incentives” does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to Ohio Revised Code 3735.67, et seq., or Job Creation Tax Credits pursuant to Ohio Revised Code 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

(ii) Requirement. If the applicability criteria of Ordinance No. 89-2017 are met, then the following requirements shall apply to any parking garage included within the Project: (a) at least one percent of parking spaces, rounding up to the nearest integer, shall be fitted with Level 2 minimum 7.2 kilowatt per hour electric car charging stations; provided that if one percent of parking spaces is less than two parking spaces, the minimum number of parking spaces subject to this clause shall be two parking spaces; and (b) the parking garage’s electrical raceway to the electrical supply panel serving the garage shall be capable of providing a minimum of 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer, and the electrical room supplying the garage must have the physical space for an electrical supply panel sufficient to provide 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer.

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently suspended or debarred by any federal, state, or local government agency. In completing the Project, Developer shall not solicit bids from any contractors or subcontractors who are identified as being suspended or debarred by any federal, state, or local government agency. If Developer or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

(Q) Use of Nonfranchised Commercial Waste Haulers Prohibited. The City requires that persons providing commercial waste collection services (as that term is defined under CMC Chapter 730) within the City of Cincinnati obtain a franchise, and the City maintains a list of franchised commercial waste haulers. Developer is prohibited from using or hiring (or causing to be used or hired) a nonfranchised commercial waste hauler to provide commercial waste collection services in connection with the performance of this Agreement, and Developer is responsible for ensuring that any commercial waste collection services provided in connection with the performance of this Agreement are provided by a franchised commercial waste hauler. Questions related to the use of commercial waste franchisees can be directed to, and a list of current franchisees can be obtained from, the City's Office of Environment & Sustainability by calling (513)352-3200.

*Addendum I*  
*to*  
*Additional Requirements Exhibit*

City's Prevailing Wage Determination

SEE ATTACHED

**REQUEST FOR PROJECT WAGE DETERMINATION**

**IF THIS IS A REVISION REQUEST, ENTER ORIGINAL  
ASSIGNED NUMBER:**  
59326984

**DEPARTMENT\***  
DCED

**CONTACT PERSON \***  
MARC VON ALLMEN

**Phone # \***  
(513)352-6109

**Email \***  
MARC.VONALLMEN@CINCINNATI-OH.GOV

**Requested Date:**  
09/04/2025

**Estimated Advertising Date:**  
11/01/2025

**Estimated Bid Opening Date:**  
11/30/2025

**Estimated Starting Date:**  
12/15/2025

**CHOOSE SOURCE & WRITE IN THE FUND NUMBER**

**CITY** **FUND \***  
 Yes  No 000

**STATE** **FUND \***  
 Yes  No 000

**COUNTY** **FUND**  
 Yes  No

**FEDERAL** **FUND**  
 Yes  No

**IS THIS PROJECT BEING COMPETITIVL BID?**  
 Yes  No

**PROJECT ACCOUNT NUMBER:**

**AMT. OF PUB. FUNDING \$: \***  
\$251,844,417.00

**TOTAL PROJECT DOLLARS: \***  
\$526,505,710.00

**NAME OF PROJECT (Maximum 100 Letters) \***  
CONVENTION HOTEL

**Type of Project: (E.g., residential building, commercial building, heavy work, highway work, demolition, mixed use building, roads, parking lot, sewer, parks) \***

New construction of 700 room hotel including 63,000 SF of meeting space, 17,000 SF outdoor terrace, and multiple restaurants. Project also includes streetscaping work along 5th St. adjacent to project as well as construction of skybridge over 5th St.

**Project Location: (Include both the address and parcel number.) \***  
240 W 4th St. (142-0001-0102-00) and 251 W 5th St. (145-0001-0316-00).

**Owner of Project Site: (Include the current owner and any lease or transfer of ownership that will occur before, during, or after completion of the project as part of the agreement.) \***  
Port currently owns the site. As part of the finance closing, the City will take title to the project site and then immediately convey the property to the Port or the Developer. Once construction commences, the Port will have title to the property and lease the property back to the Developer during construction. Developer will own the property once construction is complete.

**Budget Breakdown: (Provide a description of all funding sources and the use of those funds. Attachments may be included as necessary.) \***  
See attached

**Project Scope: (Provide a detailed description of the entire project scope under the agreement. If applicable, please include information about the numbers of stories in the building, the number of residential units, or the number of HOME units.) \***

New construction of a 700 room, 21 story convention center hotel, including 63,000 SF of meeting space, 17,000 SF outdoor terrace, and multiple restaurants. Project also includes streetscaping work along 5th ST. adjacent to the project and construction of a skybridge over 5th St.

**Upload Supporting Documents (1)**

Supporting Documents

CONVENTION HOTEL - PWD BUDGET.DOCK - Von Allmen, Marc, 9/4/2025 10:42:33 AM

**Assigned Number** 59634923 **Dept Submitted Date** 09/04/2025 **DEI Received Date**

**Original Assigned Number**  
59326984

**Funding Guidelines:**

**State**  **Federal**  **Prevailing Wage Will Not Apply**

**Rates That Apply:**

**Building**  **Heavy**  **Highway**  **Residential**

**Decision Number:**

**Modification Number:**

**Publication Date:**

**Determination By:**

<b>Name *</b> KARIM HALTY	<b>Title</b> Contract Compliance Spec.	<b>Date *</b> 09/08/2025
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**Decision Summary:**\*

This project is for the construction of a 700 room, 21 story convention center hotel. Project also includes streetscaping work along 5th ST. adjacent to the project and construction of a skybridge over 5th St. The total budget of the project is \$526,505,710 with the City of Cincinnati providing \$251,844,417 of funding, which exceeds the local prevailing wage threshold established in Cincinnati Municipal Code Chapter 321-118. Therefore, State of Ohio prevailing wage requirements will apply to this project as required by Cincinnati Municipal Code 321-118.

NOTE: Any changes to the scope, funding, or developer of the project will require revision to this determination.

**Director Approval Signature**  
LYDGIA SARTOR

**Director Approval Date**  
09/09/2025

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4896-7368-3600, v. 1