Contract No. 75x 2017-091

ORIGINAL CONTRACT
RETURN TO FINANCE DEPT.

FUNDING, ACQUISITION AND DEVELOPMENT AGREEMENT

between the

CITY OF CINCINNATI

and

ACKERMANN ENTERPRISES, INC.

Project Name: Madison & Whetsel Redevelopment

Dated: ____________, 2016

FUNDING, ACQUISITION AND DEVELOPMENT AGREEMENT
(Madison & Whetsel Redevelopment)

THIS FUNDING, ACQUISITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **ACKERMANN ENTERPRISES, INC.**, an Ohio corporation, the address of which is 4030 Smith Road, Suite 130, Cincinnati, Ohio 45209 ("**Developer**").

Recitals:

A. The City and Developer desire that the four blocks immediately surrounding the intersection of Whetsel Avenue and Madison Road, together with the North Sierra Properties (as defined below) (the "**Project Site**"), as shown on Exhibit A (*Site Plan*) hereto, be comprehensively redeveloped in accordance with this Agreement.

B. The City is currently the fee owner of the real property identified with a "B" (the "**City Phase I Properties**") and "C" on Exhibit A (under "Current Site Plan") (the "**City Phase II Properties**"; and, together with the City Phase I Properties, collectively, the "**City Properties**"). Madisonville Community Urban Redevelopment Corporation, an Ohio non-profit corporation ("**MCURC**"), currently owns the real property identified with a "D" on Exhibit A (under "Current Site Plan") (the "**MCURC Properties**"), and Developer anticipates entering into a separate agreement with MCURC to obtain title to the MCURC Properties. Developer currently has an option to purchase the real property identified with an "E" on Exhibit A (under "Current Site Plan") (the "**Developer Option Properties**"). Developer will also acquire or obtain options to acquire (although it has not done so as of the Effective Date) the real property in the Project Site identified with an "A" on Exhibit A (under "Current Site Plan") (the "**Potential Acquisition Properties**"), and at such time as the Potential Acquisition Properties are acquired in accordance with this Agreement they shall be included in the definition of "Developer Option Properties". The northwest, northeast, southwest and southeast blocks immediately surrounding the intersection of Whetsel Avenue and Madison Road are sometimes referred to herein as the "**NW Block**", "**NE Block**", "**SW Block**", and "**SE Block**", respectively. The properties identified with an "A," "B," "C," "D," or "E" north of Sierra Street on Exhibit A (under "Current Site Plan") are sometimes referred to herein as the "**North Sierra Properties**".

C. The Project Site's redevelopment will initially involve: (i) the retention and improvement of the approximately 24,542 square foot retail facility in the NW Block (the "**Madison Center Facility**"), (ii) the addition of approximately 7,543 square feet of new retail store front and an additional approximately 5,000 square feet of residential amenity space, (iii) the construction of approximately 24,850 square feet of office space, (iv) the construction of approximately 185 units of residential apartments, and (v) the construction of approximately 440 on-site surface parking spaces, in each case as more comprehensively described in Exhibit B (*Scope of Work – Public Infrastructure Improvements and Private Improvements*) hereto (the "**Project**"). The aggregate construction and acquisition cost of the Project is anticipated to equal approximately $36,000,000, as is more fully described in Exhibit C (*Budget; Sources of Funds*) hereto. As described herein, (a) all individuals and entities providing guaranties with respect to Developer's private financing, or (b) if there are not guaranties provided in respect of Developer's private financing, one or more individuals or entities with net worth deemed reasonably adequate by the City (whether one or more than one, collectively, "**Initial Guarantor**") will provide a guaranty (or guaranties) of completion in favor of the City with respect to the construction of the Project in substantially the form of Exhibit D (*Form of Completion Guaranty*) hereto (whether one or more than one, collectively, the "**Initial Completion Guaranty**"). If this Agreement is assigned to an Eligible Affiliate (as defined below) in accordance with Section 12(A)(iii), then Ackermann Enterprises, Inc. will also execute a guaranty of completion in the form of Exhibit D in addition to the Initial Completion Guaranty to be executed by Initial Guarantor. The term "**Guarantor**" shall refer to each of, and collectively, Initial Guarantor and Ackermann Enterprises, Inc., if applicable, and the term "**Completion Guaranty**" shall refer to each of, and collectively, the Initial Completion Guaranty and the guaranty of completion executed by Ackermann Enterprises, Inc., if applicable.

D. Developer contemplates completing a second phase of development following the Project located on the SE Block, consisting of the construction of: (i) approximately 100 units of market-rate multi-family housing, (ii) additional retail storefronts of approximately 4,500 square feet, (iii) approximately 8,000 square feet of office space, and (iv) related improvements thereto (collectively, the "**Phase II Project**"). The Phase II Project would be constructed on the City Phase II Properties. As provided herein, if construction of the Phase II Project is not commenced within 48 months following the Closing, the City shall have the right to the re-conveyance of the City Phase II Properties and the other properties within the SE Block.

E. Developer seeks to acquire fee title to the City Properties other than those included in the NW Block (the "**City Sale Property**"). The NW Block is the site of the Madison Center Facility, which is currently occupied by a Family Dollar store, the Braxton Cann Health Clinic operated by the City's Health Department, and certain other tenants (collectively, the "**Existing NW Block Tenants**"). The City will retain ownership of the NW Block, but the City and Developer will enter into a *Master Lease and Management Agreement* in substantially the form of Exhibit E (*Form of Master Lease and Management Agreement*) hereto (the "**Lease Agreement**"). The term of the Lease Agreement will be 50 years unless earlier terminated in accordance with the terms thereof. Pursuant to the Lease Agreement, Developer will manage the Madison Center Facility on the City's behalf for a market-rate management fee of 5% of Gross Revenue (as defined therein). As described in the Lease Agreement, Developer will receive a credit thereunder for improvements made by Developer to the Madison Center Facility paid for by Developer out of sources other than those provided by the City hereunder. The City will enter into a sublease agreement with Developer, enabling the Braxton Cann Health Clinic to continue operations without disruption (the "**Health Clinic Sublease Agreement**").

F. In furtherance of the revitalization of the Madisonville neighborhood and the City's urban redevelopment goals, the City desires to provide additional support for the Project as follows:

(i) contributing up to $4,200,000 to the Project from Incentive District No. 19, commonly known as the Madisonville TIF District (the "**TIF District**"), from Fund 498 (the "**TIF District Fund**"), as follows: (a) a grant not to exceed $2,000,000 to reimburse Developer for the cost of constructing Right-of-Way Public Infrastructure Improvements (as defined herein) benefiting the Project Site, and (b) a potentially forgivable cash-flow loan not to exceed $2,200,000 to reimburse Developer for the cost of constructing Non-Right-of-Way Public Infrastructure Improvements (as defined herein) benefiting the Project Site and for the acquisition of Developer Option Properties and the demolition of structures thereon;

(ii) contributing a potentially forgivable cash-flow loan not to exceed $750,000 to the Project from funds appropriated by Cincinnati City Council pursuant to Ordinance No. 498-2012, passed December 19, 2012 (the "**Capital Appropriation Ordinance**"), to finance the acquisition of Developer Option Properties as well as the demolition of vacant buildings on the Project Site;

(iii) conveying the City Sale Property to Developer for $0.00 and certain conditional repayment obligations as described more fully in the Note (as defined below);

(iv) granting Developer the future option to purchase or lease (for fair market value), and/or manage, the City-owned property located at 5021 Whetsel Avenue ("**5021 Whetsel**") upon the non-renewal, expiration or termination of the existing lease arrangement between the City and Artsville Corporation (it being acknowledged that the lease/grant of management rights with respect to 5021 Whetsel could, at the City's option, come in the form of an amendment to the Lease Agreement adding 5021 Whetsel thereto);

(v) cooperating in good faith with Developer to facilitate New Market Tax Credit financing for the Project, at no cost or expense to the City unless the City agrees otherwise in the form of a written amendment hereto; and

(vi) creating a 30-year real property tax exemption for the Project Site pursuant to Ohio Revised Code Section 5709.41 (the "**Project TIF**") and assigning a portion of the service payments in lieu of taxes received in respect of the Project TIF (the "**Service Payments**") equal to 75% to the Port of Greater Cincinnati Development Authority (the "**Port Authority**") to enable the Port Authority to obtain bond financing for the Project.

G. On the Closing, to evidence Developer's repayment obligations with respect to the potentially forgivable cash-flow loan and the conveyance of the City Sale Property described in recital F above, Developer will execute a certain *Promissory Note* in favor of the City, in substantially the form attached hereto as Exhibit F (*Form of Promissory Note*) in the maximum principal amount of $3,773,000.00 (the "**Note**"). Said maximum principal amount reflects the sum of (i) the maximum funding the City may provide hereunder with respect to the Non-Right-of-Way Public Infrastructure Improvements, acquisition of Developer Option Properties, and Project Site demolition, and (ii) the estimated fair market value of the City Sale Property to be conveyed to Developer of $823,000. Any and all direct financing provided hereunder will be disbursed in accordance with, and subject to the terms and conditions of, Exhibit G (*Disbursement of Funds*) hereto.

H. As security for the obligations under the Note, Developer shall execute one or more *Mortgages* in favor of the City in substantially the form attached hereto as Exhibit H (*Form of Mortgage*) (the "**Mortgages**"), to be recorded against the City Sale Property, each Developer Option Property, and each MCURC Property at Closing. The Mortgages will contain a clause subordinating the City's lien to Developer's New Markets Tax Credit lender ("**Lender**").

I. Promptly following the passage of the TIF Ordinance (as defined below), Developer and the City intend to work with the Port Authority to prepare and execute (a) a *Service Agreement* memorializing Developer's obligation to make Service Payments (which term shall include any minimum service payments required to be made in connection with bonds issued by the Port Authority), as well as certain additional terms and conditions relating to the Project TIF transaction (the "**Service Agreement**"), and (b) a *Cooperative Agreement* or other like agreement outlining the respective rights and obligations of the City, the Port Authority and Developer with respect to the Service Payments and the Project (the "**Cooperative Agreement**").

J. Under Ohio Revised Code Section 5709.41, the City must have held fee title to the parcels it exempts from real property taxation prior to the passage of the ordinance enacting such exemption (the "**TIF Ordinance**"). Accordingly, in accordance with the terms of this Agreement, prior to the Closing (as defined below), Developer will have conveyed the Developer Option Properties and the MCURC Properties to the City for $0.00 in the aggregate to the City following Developer's acquisition and completion of any demolition on the same (subject to contemplated reimbursement of acquisition and demolition costs as provided herein). At Closing, the City will re-convey the Developer Option Properties and the MCURC Properties, and convey the City Sale Property, to Developer for $0.00 in the aggregate. Developer's conveyances to the City (the "**Developer Conveyances**") will be in substantially the form of Exhibit I-1 (*Form of General Warranty Deed – Developer Conveyances*) hereto ("**Developer's Deeds to the City**") and the City's conveyance to Developer (the "**City Conveyance**") will be in substantially the form of Exhibit I-2 (*Form of Quitclaim Deed – City Conveyance*) hereto (the "**City's Deed to Developer**"; and, together with Developer's Deeds to the City, collectively the "**Deeds**"). This Agreement, the Completion Guaranty, the Note, the Lease Agreement, the Health Clinic Sublease Agreement, the Mortgages, the Service Agreement, the Cooperative Agreement, the Deeds, the Indemnity Agreement (as defined below), the Public Parking Covenant (as defined below), the Parking Management Agreement (as defined below), and such other agreements, instruments, or other documents executed or delivered by the parties hereto in relation to the Project from time to time are referred to herein, collectively, as the "**Project Documents**".

K. The City has determined that eliminating competitive bidding in connection with (i) the sale of the City Sale Property and the lease of the NW Block to Developer (and the grant of a purchase option to Developer with respect to 5021 Whetsel) is appropriate because such conveyances are an integral component of a comprehensive redevelopment that the City believes is essential to the revitalization of the Madisonville neighborhood and the City's urban redevelopment efforts more generally, and (ii) the re-conveyance of the Developer Option Properties and the MCURC Properties to Developer (or its designee) is appropriate because Developer's willingness to initially convey such property to the City is contingent upon the City's agreement to re-convey such property to Developer (or its designee) and to no other party as provided herein.

L. The City's Real Estate Services Division has determined by appraisal that the fair market value of the City Sale Property is $823,000, and the fair market value of the interests in the Madison Center Facility being conveyed by the City is $222,725; however, the City's Department of Community and Economic Development ("**DCED**") has determined that it is appropriate to (i) convey the City Sale Property at below fair market value (namely, for $0.00) and add the fair market value to the principal balance of the Note, as described herein, and (ii) lease the Madison Center Facility to Developer for a base rent of $0.00 per year plus additional rent of 100% of Net Operating Income (as defined in the Lease Agreement), because DCED believes such conveyances will result in the City's receipt of economic and non-economic benefits equal to or exceeding such fair market values.

M. The City, upon recommendation of DCED, believes that the 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 and for this reason the City desires to facilitate the Project by providing the assistance and undertaking such activities as are described herein and in the other Project Documents.

N. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the conveyance of the City Sale Property to Developer, the lease of the NW Block to Developer (or the sale or lease of 5021 Whetsel), and the re-conveyance of the MCURC Properties and the Developer Option Properties to Developer at its meeting on June 3, 2016.

O. The execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. 241-2016, passed by Cincinnati City Council on June 29, 2016. As described more fully herein, the City and Developer's obligations hereunder are conditioned upon the passage of the TIF Ordinance.

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

1. DUE DILIGENCE INVESTIGATIONS.

(A) Developer's Delivery of Due Diligence Materials to the City. Following the parties' execution of this Agreement, Developer, at its sole expense, shall obtain and deliver to the City the following items **not later than 24 months following the Effective Date** (except as otherwise indicated); *provided* that all such items must be delivered prior to the Closing Date:

(i) *Title*: the title insurance described in clause (D) below;

(ii) *Survey*: An ALTA survey (or ALTA surveys) of the entire Project Site showing all easements and other matters of record that can be shown on a survey;

(iii) *Environmental*: A copy of whatever environmental reports Developer may obtain in connection with the Project, including, at a minimum, (a) a Phase I environmental site assessment under current ASTM standards, (b) a reliance letter addressed to the City made by an environmental consulting firm, in form and substance acceptable to the City's Office of Environment & Sustainability, and (c) such other reports, information and documentation as the City's Office of Environment & Sustainability believes is reasonably necessary to satisfy itself with respect to the environmental condition of the Project Site;

(iv) *Budget*: An updated development budget for the Project;

(v) *Financing*: Evidence satisfactory to the City that Developer has obtained all sources of financing, both public and private, such that the Project is or will be fully and adequately funded at Closing (it being acknowledged and agreed by Developer that the City may request copies of executed term sheets, loan or funding agreements, loan documents, and such other documentation as may be deemed reasonably necessary by the City in order to protect its interests);

(vi) *Service Payment Projections*: A detailed analysis showing the projected Service Payments that will be generated from the Project;

(vii) *Copy of Bank Appraisal*: a copy of an "as-built" appraisal (as well as any other appraisals) provided by or to Lender in connection with the Project; and

(viii) *Potential Acquisition Properties Diligence Items*: **not less than 14 days prior to acquiring a Potential Acquisition Property,** Developer shall provide the City with the following items with respect to any such Potential Acquisition Property (on and subject to the terms of this Agreement, including this Section 1): (a) an executed purchase agreement with respect to any such property, (b) the environmental reports referenced in clause (iii) of this Section 1(A) with respect to any such property, and (c) a Commitment of Title Insurance indicating that, upon closing, good and marketable fee simple title to such property will be vested in Developer.

(B) Contingency for City's Satisfaction with Due Diligence Investigations. All reports and the like obtained by Developer from third parties and delivered to the City shall be recent (i.e., prepared or updated, as the case may be, within three (3) months preceding the date that the item is delivered to the City) and shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, Developer and the City may conduct whatever additional investigations concerning the 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 Department of Buildings and Inspections, the City Planning Commission, and any other applicable City departments, agencies or boards. If, during or at the conclusion of the due diligence investigations, either party determines, in good faith and based upon its due diligence, that the Project is not feasible or desirable, or if Developer has been unable to obtain the items in Section 1(A) above or satisfy itself that it will obtain all permits or approvals for the Project, approval of the TIF Ordinance, or approval of plans or specifications for the Project, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and neither party shall thereafter have any rights or obligations hereunder; *provided*, for the avoidance of doubt, that title to each Developer Option Property and MCURC Property conveyed to the City prior to such termination date shall remain with the City following any such termination so long as the City has reimbursed Developer for such property in accordance with Section 1(D) hereof. Notwithstanding Section 9 hereof, unless otherwise directed by the DCED Director, Developer shall deliver all due diligence materials to be provided by Developer 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 Project (as they relate to the City) through DCED. Upon Closing, the termination rights of the parties under this paragraph 1(B) shall automatically terminate and cease.

(C) Extension of 24-Month Diligence Period if New Markets Tax Credit Allocation Obtained. If an adequate New Markets Tax Credit allocation is obtained by Developer within 24 months following the Effective Date, Developer shall have an additional 6 months over and above the 24-month period described in Section 1(A) to deliver the evidence of financing described in clause 1(A)(v) above. Developer's failure to close its New Markets Tax Credit loan facility with Lender within 24 months shall not give either party the right to terminate this Agreement so long as Developer (i) obtains an adequate New Market Tax Credit allocation within 24 months following the Effective Date, and (ii) closes its loan facility with Lender within 30 months following the Effective Date.

(D) Pre-Closing Acquisition, Demolition, and Conveyances. From time to time following the Effective Date, Developer shall (i) acquire all Developer Option Properties and MCURC Properties in

accordance with this Section 1, and (ii) demolish any existing structures on the Developer Option Properties in accordance with the terms of this Agreement, including, without limitation, Exhibit B hereto; *provided* that the City acknowledges that Developer intends to acquire the MCURC Properties at the Closing and thereafter complete demolition of existing structures thereon, and that therefore the transfer of the MCURC Properties to the City and then back to Developer will occur at Closing. Following such demolition, if (a) Developer has submitted (1) the environmental reports referenced in clause (iii) of Section 1(A) with respect to any such property, (2) a commitment for an Owner's Policy of Title Insurance covering the City with respect to any such property indicating that, upon the conveyance of such property, the City will hold good and marketable fee simple title to such property, (3) all documentation and information with respect to the acquisition and demolition on any such property required by Exhibit G hereto (other than with respect to the requirements of A(i) and A(iii) (except insofar as A(iii) applies to the demolition) of such Exhibit), and (4) such other information and documentation with respect to such property that the City may reasonably request, and (b) all of the items described in the preceding clause (a) are satisfactory to the City, then the City shall indicate its approval of the transfer of such property to the City. At such time (except in the case of the MCURC Properties, which are anticipated to be conveyed to the City prior to demolition thereon at Closing), Developer will convey such property by a *General Warranty Deed* in the form of Exhibit I-1 hereto, the City will hold title to such property until the Closing (as described below), and the City will disburse Funds reimbursing Developer with respect to such acquisition and demolition upon transfer of title to such property to the City (provided, however, that Developer shall not be entitled to any reimbursement with respect to the acquisition of or demolition on the MCURC Properties) in accordance with this Agreement (including Exhibit G hereof). Prior to acquiring a property, Developer may submit the materials referenced in the foregoing clause (ii) to the City, and the City will provide a preliminary written indication as to whether the City is willing to approve of the transfer of such property to the City; *provided* that the City may require from Developer updated materials (or certifications as to no material adverse changes from Developer's principals or officers) upon completion of demolition if it deems them reasonably necessary. The City shall record each such deed provided that the City shall be entitled to elect, in writing, to require the Developer to record (or cause the recordation) of each such deed. Developer shall be responsible for all recording costs under this clause (D). The City agrees to neither make, nor permit to be made, any material changes to the condition of the Developer Option Properties or the title thereto during the period in which it owns the same. During the period in which the City owns the Developer Option Properties, Developer, its employees and agents are permitted to enter upon said properties for the purpose of conducting activities associated with due diligence in respect of the Project at no cost to the City upon the provision of not less than 24 hours' prior written notice to DCED. Any 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 provision in Section 7(C) of this Agreement. Developer shall ensure that (x) such activities are covered by a Commercial General Liability insurance of at least $1,000,000 per occurrence, combined single limit/$1,000,000 aggregate, naming the City as an additional insured with respect to such activities, (y) no material changes are made to such properties prior to Closing except as have been expressly permitted by this Agreement or otherwise consented to by the City in writing, and (z) no tools, debris, vehicles, or any personal property of Developer, its employees, or its agents are left upon such properties following the completion of any such due diligence work on a particular property. To the extent such pre-Closing due diligence activities will be intrusive or involve sub-surface work, Developer shall obtain DCED's written consent not less than 24 hours prior to commencing such work, which consent shall not be unreasonably withheld or delayed. The right of entry granted hereunder shall be non-exclusive and shall be subject to such lawful uses as the City may determine from time to time except as may be expressly provided to the contrary herein. Notwithstanding the foregoing, with respect to the property located at 5911-13 Madison Road, Developer shall be entitled to reimbursement for the cost of acquiring such property prior to conveyance of fee title to the City or demolition so long as Developer has (x) otherwise complied with and obtained any approvals from the City required by this clause (D) (except with respect to the demolition of structures on such property) and (y) Developer has drafted, received the City's approval as to form, and executed and recorded a *Restrictive Covenant* with respect to such property obligating Developer to convey such property to the City upon the expiration or termination of the then-existing term of the lease affecting such property. Notwithstanding anything herein to the contrary, Developer may use an affiliate of Developer as its agent to effectuate Developer's obligations under this Section 1(D).

2. CLOSING.

(A) Closing Date. Provided that Developer has complied with all terms and conditions of this Agreement and the other Project Documents and this Agreement has not been terminated in accordance with Section 1(B), the closing of the transactions described in this Section 2 (the "**Closing**") shall take place on approximately June 30, 2018, or such other date as the parties may agree upon (the "**Closing Date**"). It is the intention of the parties 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 (i) the parties' satisfaction with the various due diligence matters described in Section 1 above, (ii) all Project Documents having been fully executed on or prior to the Closing Date, (iii) the occurrence of Developer's closing with its Lender and the Port Authority on or prior to the Closing Date, (iv) Developer's having previously conveyed all Developer Option Properties to the City in accordance with Section 1(D) prior to the Closing Date, and (v) the passage of the TIF Ordinance prior to the Closing Date (it being understood by the parties that it is contemplated that the TIF Ordinance would be passed following the City's acquisition of all Developer Option Properties and the MCURC Properties).

(B) City Conveyance; Mortgages. On the Closing Date, (i) Developer shall acquire the MCURC Properties and convey the same to the City by a *General Warranty Deed* in the form of Exhibit I-1, (ii) the City shall effect the City Conveyance by executing and delivering to Developer the City's Deed to Developer, thereby re-conveying the Developer Option Properties and the MCURC Properties to Developer and conveying the City Sale Property to Developer, and (iii) Developer shall execute and deliver Mortgages with respect to the City Sale Property, the MCURC Properties and the Developer Option Properties to the City. Developer shall pay all customary closing costs relating to the City Conveyance (*e.g.*, County transfer tax and County recording fees) and shall cause the City's Deed to Developer and the Mortgages to be recorded with the Hamilton County, Ohio Recorder's Office. The Mortgages shall be recorded immediately following the recordation of the City's Deed to Developer and prior to any and all other mortgages or other instruments; *provided, however* that the City hereby consents to the prior recordation of Lender's mortgage (if any). If Developer elects in writing prior to the Closing Date to pursue a purchase option with respect to 5021 Whetsel, the City will draft and execute a recordable instrument evidencing such option and such instrument shall be recorded by Developer against 5021 Whetsel on the Closing Date.

(C) Lease Agreement; Health Clinic Sublease Agreement; 5021 Whetsel. Developer and the City shall execute the Lease Agreement and the Health Clinic Sublease Agreement on or before the Closing Date. Developer and the City have been working, in good faith, towards the negotiation of the Health Clinic Sublease Agreement. The City provided its form of the same, which is attached to the Lease Agreement as Exhibit B thereto; however, the City and Developer acknowledge that such agreement has not been negotiated and it shall be subject to revisions and negotiations in good faith as are mutually deemed desirable. Developer shall pay all customary closing costs relating to the Lease Agreement (*e.g.*, County transfer tax and County recording fees). If Developer elects in writing prior to the Closing Date to include 5021 Whetsel in the Lease Agreement, the City will revise the unexecuted Lease Agreement to include 5021 Whetsel prior to the Closing Date. If Developer makes neither election prior to the Closing Date, the City shall have no further obligation to provide an option to purchase or lease 5021 Whetsel to Developer (although the City could still agree in writing to do so in its discretion).

(D) Re-conveyance of City Phase II Properties to City for Failure to Timely Commence Construction. If Developer fails to commence on-site construction of the Phase II Project within 48 months following the Closing Date (as evidenced by the recordation of a notice of commencement in a form approved by the City in writing), the City may require, by written notice, the re-conveyance of the City Phase II Properties and the other real property conveyed by the City in the SE Block (collectively, the "**Repurchase Property**"). If so required by the City, Developer shall, within 30 days of its receipt of the applicable written notice from the City, cause the Repurchase Property to be re-conveyed to the City by limited warranty deed for (i) $298,000, plus (ii) an amount equal to the Funds provided by the City to reimburse Developer for the acquisition of or demolition with respect to any of the Repurchase Property (the "**Repurchase Price**"). The Repurchase Price shall be treated as if it were a payment with respect to the Loan (subject to the provisions relating to application of prepayments

described in the Note); *provided* that if, at the time of the City's exercise of its re-conveyance right, all then-outstanding obligations (including fees, interest, and principal) under the Note are less, in the aggregate, than the Repurchase Price, (a) the City shall pay Developer an amount equal to (1) the Repurchase Price less (2) the then-outstanding obligations (including fees, interest, and principal) under the Note, and (b) the then-outstanding obligations (including fees, interest, and principal) under the Note shall be deemed satisfied. The City's re-conveyance right pursuant to this Section 2(D) will be described in the City's Deed to Developer.

(E) Miscellaneous Closing Provisions. Pursuant to Section 301-20, Cincinnati Municipal Code, 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 to the City. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Developer and its successors-in-title shall pay all real estate taxes, service payments in lieu of taxes and assessments thereafter becoming due. The City shall pursue an exemption from real estate taxes and assessments for all of the Developer Option Properties and MCURC Properties conveyed to the City at Closing. At Closing, the parties shall execute a closing statement, County exempt transfer forms and any and all other customary closing documents that may be deemed reasonably necessary for the Closing by the City.

3. PREPARATION OF PLANS AND SPECIFICATIONS.

(A) Preparation of Schematic Plans. At least 3 months prior to the Closing, Developer shall (i) prepare preliminary schematic plans and specifications for the improvements identified as the "Right-of-Way Public Infrastructure Improvements" and the "Non-Right-of-Way Public Infrastructure Improvements" described in Exhibit B hereto (the "**Non-Right-of-Way Public Infrastructure Improvements**" and the "**Right-of-Way Public Infrastructure Improvements**", respectively; and, collectively, the "**Public Infrastructure Improvements**") and submit the same to DCED and the City's Department of Transportation and Engineering ("**DOTE**") for review and approval, and (ii) prepare preliminary schematic plans and specifications for the improvements identified as "Private Improvements" in Exhibit B hereto (the "**Private Improvements**") to DCED for review and approval. The plans and specifications submitted pursuant to this clause (A), as approved by Developer, DCED, DOTE, and all governmental departments and entities with jurisdiction, including without limitation the City's Department of Buildings and Inspections and the City's Urban Design Review Board, are referred to herein as the "**Preliminary Plans**". Developer shall work with MCURC and the Madisonville Community Council in developing the Preliminary Plans and shall obtain MCURC's written approval and Madisonville Community Council's letter of support of the same.

(B) Preparation of Final Plans. Within 3 months following Closing, Developer shall prepare detailed plans and specifications, consistent with the Preliminary Plans and Exhibit B (except as otherwise agreed in writing by DCED), and shall submit the same for review and approval by DCED, DOTE, and all governmental departments and entities with jurisdiction as aforesaid. The final plans and specifications, as approved by Developer, DCED, DOTE, and all governmental departments and entities with jurisdiction, and as the same may thereafter be modified during construction by properly-executed change orders, are referred to herein as the "**Final Plans**".

4. OBTAINING & APPROVING CONSTRUCTION BIDS.

(A) Final Bids. Following the parties' approval of the Final Plans, Developer shall engage in a competitive bidding process, as pre-approved by the City, for the selection of contractors for the construction of the Public Infrastructure Improvements (such process is not required hereunder with respect to the Private Improvements). Developer shall not solicit bids from contractors that are identified as being debarred on lists maintained by the City or by the federal or state governments. The final bids (as approved by DCED and Developer, with respect to the Public Infrastructure Improvements only, or as obtained by Developer with or without the DCED's approval, with respect to the Private Improvements) are referred to herein as the "**Final Bids**".

(B) Budgets. Promptly after the parties have approved the Final Bids, Developer

shall provide the City with an updated budget for the Project.

5. **CONSTRUCTION.**

(A) Construction. Once the parties have approved the Final Plans and Final Bids, Developer shall proceed with the construction of the Project and shall thereafter complete the same in accordance with the Final Plans. Upon completion of construction, Developer shall provide verification to the City of the actual costs associated with the Project. It shall be a violation of the terms of this Agreement if Developer does not commence construction of the Project within 3 months following the Closing Date.

(B) Surety Bonds. Prior to commencing construction of the Project, Developer shall provide the City with payment and performance bonds in amounts sufficient to pay for the costs of constructing the Public Infrastructure Improvements (excluding, for the avoidance of doubt, acquisition and demolition with respect to the Developer Option Properties). The form of the surety bonds shall in all respects be satisfactory to the City and shall entitle Developer and the City to enforce the surety bonds directly against the issuers thereof in the event the work covered by the bonds is not satisfactorily completed in a timely manner as required under this Agreement.

(C) No Assurances of Permits or Other Approvals. By executing this Agreement, the City administration makes no representations or other assurances to Developer that it will be able to obtain whatever variances, permits or other approvals from the City's Department of Buildings and Inspections, DOTE, City Planning Commission, or City Council that may be required in connection with the Project.

(D) Inspection of Work. During construction, the City, its employees and agents shall have the right at all reasonable times to enter upon the Project Site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement.

(E) Mechanics Liens. Developer shall not permit any mechanics' or other liens to be filed against the Project Site during construction. If a mechanics' lien shall at any time be filed, Developer shall cause the same to be discharged of record within thirty (30) days after notice of the filing thereof.

(F) Parking Improvements. Developer agrees to consult with the City when incorporating any technology into parking improvements on the Project Site to ensure compatibility with similar parking technology then being used with the City.

6. **CITY'S FUNDING COMMITMENT; CITY ASSISTANCE.**

(A) Forgivable Cash-Flow Loan of TIF District and City Capital Funds. Provided that Developer is not in breach of any Project Document, the City shall provide a loan to Developer (the "**Loan**"), disbursed in accordance with Exhibit G, as follows:

(i) up to a principal amount of $2,200,000 from the TIF District Fund shall be provided by the City, on a reimbursement basis, concurrently with the construction of the Non-Right-of-Way Public Infrastructure Improvements, with respect to hard costs and expenses actually incurred and paid by Developer in respect of the Non-Right-of-Way Public Infrastructure Improvements and acquisition of and demolition on Developer Option Properties; and

(ii) up to a principal amount of $750,000 from City capital dollars appropriated by the Capital Appropriation Ordinance shall be provided by the City, on a reimbursement basis, following Developer's acquisition of an applicable Developer Option Property or Developer's demolition of a vacant structure on the Project Site.

The Loan shall be evidenced by, and repaid in accordance with the terms and conditions of, the Note. The Loan potentially may be forgiven in whole or in part subject to, and in accordance with, the terms and conditions of the Note. As provided in Section 1(D), Loan proceeds may be advanced prior to Closing

with respect to acquisition and demolition costs for Developer Option Properties. For the avoidance of doubt, if Developer is in breach of any of the Project Documents but cures such breach within any applicable cure periods, Developer shall be entitled to any disbursements of the Loan it would otherwise be entitled to hereunder following such cure.

(B) Grant of TIF District Funds for Right-of-Way Public Infrastructure Improvements. Provided that the Closing shall have occurred and Developer is not in breach of any Project Document, the City shall provide a grant to Developer (the "**Grant**"; and, together with the Loan, collectively the "**Funds**"), up to a principal amount of $2,000,000 from the TIF District Fund, on a reimbursement basis, concurrently with the construction of the Right-of-Way Public Infrastructure Improvements, with respect to hard costs and expenses actually incurred and paid by Developer in respect of the Right-of-Way Public Infrastructure Improvements. The Grant shall be disbursed in accordance with Exhibit G. For the avoidance of doubt, if Developer is in breach of any of the Project Documents but cures such breach within any applicable cure periods, Developer shall be entitled to any disbursements of the Grant it would otherwise be entitled to hereunder following such cure.

(C) Facilitation of Port Authority Participation, Bond Issuance. Prior to Closing, the City and Developer shall cooperate in good faith in obtaining the Port Authority's participation in the Project, negotiating and executing the Service Agreement and Cooperative Agreement, and in certain other matters relating to the establishment of the Project TIF. The City and Developer anticipate that the City will assign the Service Payments (except to the extent it is obligated to provide a portion of the Service Payments to the Board of Education of the City School District of the City of Cincinnati (the "**School Board**") to satisfy the City's obligations with respect to the Project under that certain Agreement by and between the City and the School Board dated July 2, 1999, as amended) in order to enable the Port Authority to issue bonds, which proceeds would then be available to Developer to provide a source of financing for certain components of the Project.

(D) New Markets Tax Credits. The City acknowledges that Developer is seeking an allocation of New Markets Tax Credits of approximately $27,000,000, and the City agrees to cooperate, in good faith, with Developer upon Developer's request to the extent the City deems City involvement to be reasonably necessary in the pursuit of said tax credits. Nothing in this clause (D) shall obligate the City to agree to amend any Project Documents for any reason; *provided, however* that the City may, in its sole discretion, agree to one or more amendment(s) of this Agreement or the other Project Documents to the extent that (i) the City deems such an amendment to be necessary to facilitate a New Markets Tax Credit transaction with respect to the Project, (ii) the City otherwise is comfortable with the terms and conditions of such an amendment and it is not materially inconsistent with the economic terms and conditions of this Agreement or the other Project Documents, and (iii) the City believes such an amendment would be warranted given the circumstances, in each case as determined in the City's sole discretion.

(E) No Other City Assistance. As a material inducement to the City to enter into this Agreement, Developer agrees that it shall not request or expect to receive any additional funding, real estate or income tax abatements, or other financial assistance from the City in connection with the Project in the future, either for itself, for the benefit of the tenants or other occupants of the Project Site, or for the benefit of any other third party. Notwithstanding the foregoing, it shall not be a violation of this clause (E) if Developer requests City assistance with respect to the Phase II Project; *provided* that, except as expressly provided to the contrary now or in the future, the City shall in no way be obligated to agree to any such request or provide any assistance to the Phase II Project whatsoever.

(F) Use Restrictions; Public Parking Covenant. Developer acknowledges and agrees it is a condition of this Development Agreement that the Public Infrastructure Improvements' (particularly the Non-Right-of-Way Public Infrastructure Improvements') status as "public infrastructure improvements" as defined in Ohio Revised Code § 5709.40 be maintained at all times prior to the later to occur of (i) the cessation of the useful life of such improvements, and (ii) the expiration of the TIF District (January 1, 2035). To effect such status with respect to the Non-Right-of-Way Public Infrastructure Improvements, at Closing Developer shall execute and cause the recordation of a *Restrictive Covenant* in the form of Exhibit J (*Form of Public Parking Covenant*) hereto (the "**Public Parking Covenant**") and a *Parking Management Agreement* in the form of Exhibit K (*Form of Parking Management Agreement*) hereto (the

"**Parking Management Agreement**") at Closing, together with executing such other documents and instruments thereafter as may be required by the City in order to effect the status of the Non-Right-of-Way Public Infrastructure Improvements as "public infrastructure improvements" under Ohio Revised Code § 5709.40. Without in any way limiting the fact that the execution of the Parking Management Agreement and the Public Parking Covenant is a condition to Closing, the City and Developer acknowledge that the forms attached as Exhibit J and Exhibit K hereto are not final and may be subject to further negotiation and revision in good faith, including, without limitation, modification to reflect the fact that private, rather than public, monies may be used to pay for a portion of the parking improvements on the Project Site (as contemplated by the last sentence of this paragraph). To the extent the Non-Right-of-Way Public Improvements consist of parking improvements, the Public Parking Covenant and Parking Management Agreement will, at a minimum, (a) establish access rights for the general public to the Non-Right-of-Way Public Infrastructure Improvements such that the public may utilize the Non-Right-of-Way Public Infrastructure Improvements in the same manner, and on the same terms, as the Project's patrons, guests, invitees, tenants (including an employees and agents of tenants), and owners from time to time, without discrimination of any kind, and (b) provide for conspicuous signage indicating such public access. Developer further acknowledges and agrees that the City's obligation to make any payment of Funds hereunder is conditional upon the legality of the same, and that the City shall be under no obligation to make payments of Funds in respect of the TIF District that are otherwise eligible to be reimbursed hereunder if the Non-Right-of-Way Public Infrastructure Improvements do not constitute "public infrastructure improvements" as defined in Ohio Revised Code § 5709.40. For the avoidance of doubt, any parking improvements that are not financed with the Funds shall not be required to constitute "public infrastructure improvements" and appropriate provision shall be made in the Public Parking Covenant and Parking Management Agreement with respect to the same.

7. INSURANCE; INDEMNITY.

(A) Insurance during Construction. Until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least $5,000,000 per occurrence, combined single limit/$5,000,000 aggregate, naming the City as an additional insured with respect to the Project, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed as part of the Project, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Lender, and (v) such other insurance coverage as may be deemed reasonably necessary by the City from time to time. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, 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 thirty (30) days prior written notice to the City. Prior to commencement of construction of the Project, Developer shall send proof of all such insurance to 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; *provided* that if the City 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 request to obtain such an endorsement from its insurer and provide the original endorsement to the City.

(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, its 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, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Developer shall at all times 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. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify and hold

the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties (i) as a result of or arising from the acts of Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Developer in connection with the Project, and (ii) as a result of or arising from the City's involvement in the Developer Conveyance and the City Conveyance, including the City's ownership of the MCURC Properties or the Developer Option Properties during the period between the Developer Conveyance and the City Conveyance, except in all of the foregoing instances to the extent caused by the recklessness or willful misconduct of any of the Indemnified Parties. Developer agrees to cause Guarantor to execute an indemnity agreement, in form and substance satisfactory to the City, pursuant to which Guarantor agrees to defend, indemnify and hold the Indemnified Parties harmless from and against any and all Claims of the type described in clause (ii) of this Section 7(C) (the "**Indemnity Agreement**"). It shall be a violation of the terms of this Agreement if the Indemnity Agreement ceases to be effective at any point.

8. DEFAULT; REMEDIES.

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

(i) The dissolution of Developer or Guarantor, the filing of any bankruptcy or insolvency proceedings by or against Developer or Guarantor, the appointment of a receiver (temporary or permanent) for any such entity, the attachment of, levy upon, or seizure by legal process of any property of any such entity, or the insolvency of any such entity; 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 and observed) any obligation, duty, or responsibility under this Agreement or any other Project Document, and failure by Developer to correct such default (including any Specified Default other than a Payment Default) within thirty (30) days after Developer's receipt of written notice thereof from the City (the "**Cure Period**"), other than a Payment Default (as described below), in which case there shall be a 5 day cure period following written notice thereof by the City; *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, Developer shall not be in default under this Agreement so long as Developer commences to cure the default within such Cure Period and thereafter diligently completes such cure within ninety (90) days after Developer's receipt of the City's initial notice of 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 as determined by the City in good faith, 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) Payment Default. Any Service Payment or payment under the Note is not made when due under the Service Agreement or Note, subject to the 5 day cure period provided herein (a "**Payment Default**"). Developer acknowledges that time is of the essence with respect to the making of each Service Payment and payment under the Note.

(b) Development Default. Developer (1) fails to (x) diligently prosecute the work related to the Project as provided herein, (y) complete the Public Infrastructure Improvements fully in accordance with Exhibit B and the Final Plans, or (z) complete the Private Improvements in accordance with Exhibit B and substantially in accordance with the Final Plans, or (2) abandons the Project.

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

(B) Remedies. Upon the occurrence of an event of default and during the existence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement by giving Developer written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the expense of Developer, (iii) demand the immediate repayment of some or all of (a) the outstanding Principal Amount and other obligations under the Note, and/or (b) the Grant (to the extent disbursed by the City), and (iv) 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 as a result of a default or event of default of Developer under this Agreement or the City's termination of this Agreement as a result of an event of default. The failure of the City 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.

9. 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 either 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, OH 45202

With a copy to:

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

To Developer (before completion):
Ackermann Group
4030 Smith Road, Suite 130
Cincinnati, Ohio 45209
Attention: Dobbs Ackermann

With a copy to:

Thompson Hine LLP
312 Walnut Street, Suite 1400
Cincinnati, Ohio 45202
Attention: Stephen King

Notwithstanding anything to the contrary herein, if Developer sends a notice to the City alleging that the City is in default under this Agreement, 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, OH 45202.

10. REPRESENTATIONS, WARRANTIES, AND COVENANTS. Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Developer is a corporation duly organized and validly existing under the laws of the State of Ohio, is qualified to conduct business in the State of Ohio, has properly filed all certificates and reports required to be filed by it 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.

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. 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.

(iii) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or 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 is Developer in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer or Guarantor, at law or in equity or before or by any governmental authority that, if determined adversely to Developer or Guarantor, would impair the financial condition of such entity or its ability to perform its obligations with respect to the Project, except for the Harbor Greene proceeding involving a development matter in Bellevue, Kentucky as has been previously disclosed to the City.

(v) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting Developer or Guarantor that could reasonably be expected to interfere substantially with their respective normal operations or materially and adversely affect either such entity's financial condition.

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or the 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 prior to Developer's execution of this Agreement.

(vii) With reference to Section 301-20 (*Delinquencies in Accounts Receivable and Loans Receivable; Policy*) of the Cincinnati Municipal Code, to the best of Developer's knowledge neither of Developer or Guarantor is in breach of any of their respective obligations to the City under any existing agreements with the City nor do Developer or Guarantor owe any fines, penalties, judgment awards or any other amounts to the City.

11. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City 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 Project, or this Agreement, including without limitation audited financial statements, bank statements, income tax returns, information pertinent to the determination of finances of the Project, and such reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as the City may from time to time require. Developer shall retain all Records and Reports until three (3) years following the expiration of the Project TIF, or such later time as may be required by applicable law (the "**Retention Termination Date**").

(B) City's Right to Inspect and Audit. During construction of the Project and thereafter until the Retention Termination Date, Developer shall permit the City and its 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, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

(C) Annual Reporting of Financial Information. So long as any obligations remain outstanding under the Note, Developer shall provide to the City an annual report, in the form of Exhibit L (*Form of Annual Report*) hereto (each an "**Annual Report**") containing information deemed reasonably necessary by the City (as specified thereon) to calculate payment amounts under the Note. Each Annual Report shall be submitted to the City by April 1 (or the next succeeding business day) and shall include financial statements, certified by the Chief Financial Officer or Treasurer of Developer. For the avoidance of doubt, the City's right to inspect and audit described in clause (B) above shall include the right to audit

Developer's Records and Reports in connection with the subject matter of the Annual Report and the Note.

12. GENERAL PROVISIONS.

(A) Assignment; Change of Control; Sale; Lender Provisions.

(i) Assignment. Developer shall not, without the prior written consent of the City Manager, assign its rights or interests under this Agreement. Notwithstanding the foregoing, (a) nothing in this Agreement shall be construed to prohibit Developer from entering into a sale and leaseback arrangement with respect to the Project Site in which fee title to the Project Site is held by the Port Authority; *provided, however,* that (1) Developer shall provide the City with 30 days' advance notice in writing of such arrangement and shall promptly provide such documents and other information with respect to this arrangement as the City may request, (2) Developer agrees to execute an amendment to the terms of this Agreement and/or any other Project Documents should the City indicate, in writing, that such an amendment (or such amendments) are required to effect any technical and legal changes that the City may, in its discretion, deem to be necessary or desirable to accommodate such an arrangement while maintaining all of the material economic and financial terms of this Agreement (including, without limitation, that Developer shall pay Service Payments in an amount equal to the Service Payments that would be payable by it if it were the fee owner of the applicable real property), and (3) the City and Developer agree to negotiate in good faith towards any such amendment, and (b) this provision shall not preclude the assignment of Developer's rights hereunder or the Service Agreement as collateral to its Lender with respect to the Project or the Phase II Project.

(ii) Change of Control. Developer shall (a) not permit a Change of Control (as defined below) prior to the completion of construction of the Project, and (b) shall provide the City with prompt written notice of any Change of Control following the completion of construction. As used herein, "Change of Control" means a change in the ownership of Developer such that Dobbs Ackermann, or any entity directly or indirectly controlled by Dobbs Ackermann, lacks 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) Assignment to Eligible Affiliate; Execution of Additional Guaranty of Completion by Ackermann Enterprises, Inc.. Notwithstanding anything in this Section 12(A) to the contrary, the City agrees that it will consent to the assignment of this Agreement to an Eligible Affiliate at any time prior to Closing. As used herein, "**Eligible Affiliate**" means a limited liability company, limited partnership, corporation, or other business entity qualified to do business in Ohio that is wholly-owned by Dobbs Ackermann or with respect to which Dobbs Ackermann has the power to direct or cause the direction of the management and policies of such entity. Developer shall deliver to the City written notice of its desire to assign the Agreement to an Eligible Affiliate, and the City will thereafter prepare amendments to this Agreement and/or other Project Documents reflecting the change in the "Developer" entity hereunder and incorporating such other ministerial changes to the Agreement as are deemed reasonably necessary by the City and Developer in order to effectively assign the Agreement and other applicable Project Documents to the Eligible Affiliate. If such an assignment has occurred, then at Closing, Ackermann Enterprises, Inc. shall execute a guaranty of completion in the form of Exhibit D hereto and shall thereafter be included in the definition of "**Guarantor**", collectively with the Initial Guarantor, and such guaranty of completion shall be deemed included in the definition of "**Completion Guaranty**", collectively with the Initial Completion Guaranty.

(iv) No Sale Without City Consent. No sale of all or any portion of the Project Site shall take place without the City's consent; *provided,* however, that after the date of completion of construction of the Project, so long as no event of default has occurred and is continuing under this Agreement or any other Project Document, the City may, in good faith, withhold consent to a sale only if (a) the proposed transfer is prohibited by applicable law or the transferee has been debarred from doing business with the City, (b) the proposed transferee is, in the City's reasonable judgment, not capable of performing the obligations of Developer under this Agreement and the other Project Documents, (c) the City determines that the proposed transferee (or its third party manager) lacks adequate experience in

operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Project, (d) the City determines that it is not satisfied with the past performance history and reputation of the proposed transferee and its direct or indirect controlling beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates, (e) the City determines that the proposed transfer is not an arm's-length transaction for fair market value, or (f) the City has not received adequate information and other documentation from Developer to determine whether the conditions in the preceding clauses (a) through (e) apply. The City shall have 30 days from the date on which it receives written notice in accordance with this Agreement of a proposed sale (which notice shall include at least the legal name and identification of the key principals/managers of the proposed transferee, the proposed purchase price, and such other information regarding the proposed transfer as Developer believes would assist the City in making its determination) to determine whether it intends to consent thereto, and shall provide written notice to Developer of such decision, including any supporting information the City considered material to its decision. If the City fails to respond within such 30 day period, it shall be deemed to have consented to such proposed sale; *provided* that the City may, by written notice delivered within the initial 30 day period, extend its period for consent to 60 days in the aggregate if it determines that it lacks adequate information to determine whether consenting to such a proposed transfer is appropriate; *provided, further* that, if Developer provides additional information to the City remedying the City's lack of adequate information, the City may not elect to extend its deadline for its decision for more than 15 days following its receipt of such additional information. Developer shall promptly provide any additional supporting documentation regarding the proposed transfer to the City upon the City's reasonable request of the same. For the avoidance of doubt, it is not a requirement of this Agreement that the "Operator" under the Lease Agreement be the same entity as the "Developer" hereunder, or vice versa; and, so long as all applicable terms and conditions of this Agreement and the Lease Agreement are satisfied with respect to an assignment, the Lease Agreement may be assigned independently of this Agreement, or vice versa.

(v) Lender Provisions.

(a) Lender's Cure Right. If the City sends a notice of default to Developer under this Agreement and intends to exercise any right it may have under this Agreement to terminate this Agreement or demand repayment of previously disbursed funds, the City shall, prior to exercising such right, so long as Lender has provided the City with a notice address in accordance with Section 9 hereof, (1) send a copy of such notice of default to Lender, and (2) permit Lender a reasonable opportunity to cure Developer's default; *provided, however* that if Lender fails to (x) notify the City in writing, within 10 business days after receiving a copy of the notice of default, that Lender has commenced to cure the default, or (y) cure the default to the City's satisfaction within (I) 30 days after receiving a copy of the notice of default, or (II) if the nature of the default is such that it cannot reasonably be cured during such 30 day period, within a reasonable period of time after receiving a copy of the notice of default provided Lender commences to cure the default within such 30 day period and thereafter diligently completes such cure (*provided* that the total cure period shall in no event extend more than 90 days past the date when the Lender received a copy of the initial notice of default), then the City shall be free to take any or all of the remedies provided herein or that are otherwise available to the City at law or in equity. Lender's cure period shall be concurrent with Developer's cure period.

(b) Amendment to Lender Provisions. The City agrees, for the benefit of Lender, to obtain Lender's prior written consent to any amendments to this Section 12(A)(v) that would adversely impact Lenders' rights under this Section 12(A)(v).

(B) Entire Agreement; Conflicting Provisions. This Agreement and the 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 them respecting the subject matter hereof. In the event that any of the provisions of this Agreement or any other Project Document purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(C) Amendments and Waivers. The provisions of this Agreement may be amended,

waived or otherwise modified only by a written agreement signed by both parties.

(D) 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.

(E) 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.

(F) 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.

(G) 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.

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

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

(J) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement (except that Lender shall be a third party beneficiary with respect to Section 12(A)(v) hereof).

(K) No Brokers. The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation from the other party as a result of the parties' execution of this Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City 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.

(M) 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 Project, including any of the laws and regulations described on Exhibit M (*Additional Requirements*) hereto which are applicable to the Project.

(N) Recognition of City Funding. Developer shall ensure that the financial support of the City is recognized in any and all printed materials such as informational releases, pamphlets and brochures, project and exhibition signage, construction and demolition signs, and any publicity such as that appearing on the Internet, television, cable television, radio, or in the press or any other printed media in connection with the Project. In identifying the City as a funder, Developer shall use either the phrase "Funded 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.

(O) Contingency for Legislative Authorization from City Council; Termination. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement and shall not be required to provide the funding described in this Agreement if for any reason Cincinnati City Council does not pass any and all necessary legislation for the Project, including without

limitation the TIF Ordinance. The City administration shall draft and submit the TIF Ordinance to Council and any appropriate committees and shall support the TIF Ordinance if they believe, in good faith, that it is appropriate to do so. If all necessary legislative authorizations are not obtained on or before December 31, 2018, the City or Developer may terminate this Agreement by giving written notice thereof to the other party, whereupon neither party shall thereafter have any rights or obligations under this Agreement and the parties shall take such steps as may be deemed reasonably necessary by the City to unwind the transactions contemplated herein; *provided* that any Developer Option Properties or MCURC Properties conveyed to the City shall remain with the City following termination and the City shall be under no obligation to provide compensation to Developer for the same. The City's right and Developer's right to terminate this Agreement shall automatically terminate at Closing.

(P) 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.

(Q) Force Majeure. Notwithstanding anything in this Agreement to the contrary, each party shall be temporarily excused from performance during any period in which they are prevented or delayed in such performance due to the occurrence of a Force Majeure, provided that such party promptly notifies the other party of the initial occurrence of the Force Majeure (and in any event no later than 30 days thereafter). As used herein, a "**Force Majeure**" shall mean strikes, labor disputes, riots, shortages or unavailability of equipment, materials or utilities, natural disasters, unusually severe weather conditions, or any other events or circumstances for which the party charged with performance is not responsible and which are not within such party's reasonable control. The shortage or unavailability of money shall not be deemed to be a Force Majeure. No Force Majeure shall be permitted to excuse any delay in performing an obligation for longer than 90 days.

13. FEES AND EXPENSES. Developer shall pay any and all documented out-of-pocket expenses incurred by the City in connection with this transaction, including, without limitation, any reasonable attorneys' fees the City may incur in enforcing the terms and conditions of or exercising any remedies under this Agreement or any other Project Document; *provided* that the City shall give Developer notice and an estimate of costs for which it intends to seek reimbursement from Developer prior to incurring any such costs except upon the occurrence and during the continuance of an event of default, in which case no prior notice or estimate is required.

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

Exhibit A – *Site Plan*
Exhibit B – *Scope of Work – Public Infrastructure Improvements; Private Improvements*
Exhibit C – *Budget; Sources of Funds*
Exhibit D – *Form of Completion Guaranty*
Exhibit E – *Form of Master Lease and Management Agreement*
Exhibit F – *Form of Promissory Note*
Exhibit G – *Disbursement of Funds*
Exhibit H – *Form of Mortgage*
Exhibit I-1 – *Form of General Warranty Deed – Developer Conveyance*
Exhibit I-2 – *Form of Quitclaim Deed – City Conveyance*
Exhibit J – *Form of Public Parking Covenant*
Exhibit K – *Form of Parking Management Agreement*
Exhibit L – *Form of Annual Report*
Exhibit M – *Additional Requirements*

SIGNATURES ON FOLLOWING PAGE

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

ACKERMANN ENTERPRISES, INC.

By: ______________________

Printed name: John Wendt

Title: CFO

Date: 9/28, 2016

CITY OF CINCINNATI

By: ______________________
Harry Black, City Manager

Date: 10/6, 2016

Recommended by:

for Oscar L. Bedolla, Director
Department of Community and Economic Development

Approved as to Form:

Assistant City Solicitor

Approved by:

E. de Vega for T. Corey
Thomas B. Corey, Director 10-4-16
Department of Economic Inclusion

Certified Date: OCT 06 2016
Fund/Code: 980x105x 121011
Amount: $750,000.00
By: ______________________
Reginald Zeno, City Finance Director

RECEIVED
SEP 28 2016
COMMUNITY & ECONOMIC DEVELOPMENT

EXHIBIT A
to
Funding, Acquisition and Development Agreement

SITE PLAN

<u>Current Site Plan</u>

SEE ATTACHED

EXHIBIT A
CURRENT SITE PLAN

- PHASE I Target Area
- A: POTENTIAL ACQUISITION PROPERTIES
- B1: OWNED by CITY - PHASE I (SALE OR CONVEYANCE / RE-CONVEYANCE)
- B2: OWNED by CITY - PHASE I (LEASE / LEASEBACK)
- B3: OWNED by CITY - PHASE I (CONDITIONAL PURCHASE OPTION)
- C: OWNED by CITY - PHASE II (SALE OR CONVEYANCE / RE-CONVEYANCE)
- D: OWNED by MADISONVILLE
- E: DEVELOPER CURRENT OPTIONS

NOTE: DRAWINGS ARE PRELIMINARY. EXISTING CONDITIONS MUST BE FIELD VERIFIED.

MADISONVILLE | 6.08.2016 | SITE CONTROL MAP | 0.1

Site Plan (as to be constructed)

SEE ATTACHED

SIERRA ST
WHETSEL AVE
MADISON ROAD
RAVENNA ST
WARD ST
PRENTICE ST
88 on-street
73 sp
56 sp
123 sp
98 sp
LL Parking (40)
Res. Garages
10

1. Existing MAC Building
   Retail/Office
   3L. 10,989 gsf
2. Existing Madisonville Retail Center
   Retail/Health Clinic
   1L. 25,116 gsf
3. Residential/Retail
   4L. 70,400 gsf (5K Amenity, 2.6K Retail)
4. Residential
   3L. 22,500 gsf (2.4K Retail)
5. Residential
   3L. 27,000 gsf
6. Historic Fifth/Third Building
   Retail/Residential
   3L. 8,475 gsf
7. Residential
   3L. 42,000 gsf
8. Residential/Office
   4L. 66,000 gsf
9. Optional Residential/Garage
10. SOUTHEAST BLOCK PHASE 2
    Residential/Retail/Garage

PARKING	
Office: 4 per 1000sf:	66 spaces
Retail: 6 per 1000sf:	213 spaces
Res: 1.41 per unit:	285 spaces
Total:	564 spaces
PARKING AVAILABLE:	528 spaces
On-Site:	440 spaces
On-Street:	88 spaces
Shared Parking:	36 spaces

studio costandi ARCHITECTURE + PLANNING

NOTE: DRAWINGS ARE PRELIMINARY. EXISTING CONDITIONS MUST BE FIELD VERIFIED.

EXHIBIT B
to
Funding, Acquisition and Development Agreement

SCOPE OF WORK – PUBLIC INFRASTRUCTURE IMPROVEMENTS; PRIVATE IMPROVEMENTS

SEE ATTACHED

Exhibit B

to

Funding, Acquisition and Development Agreement

SCOPE OF WORK – PUBLIC INFRASTRUCTURE IMPROVEMENTS; PRIVATE IMPROVEMENTS

Note: All quantities below are preliminary and subject to change

Private Improvements

The Private Improvements on the Project will include the following:

Residential

- 185 Residential Apartments including a mix of studio, One Bedroom, Two Bedroom and potentially Three Bedroom units.
- 32 Private Residential Garages
- 5,000 square feet of private residential amenity space

Commercial

- 5,000 leasable square feet of new construction retail including tenant improvements
- 24,850 leasable square feet of new construction office including tenant improvements
- Façade improvements to the Madison Center retail building
- Tenant improvements for the Madison Center retail building for re-tenanting of commercial spaces excluding the existing Braxton Cann Health Clinic and Family Dollar stores (approximately 5,853 leasable square feet of re-tenanted space.)
- Braxton Cann Health Clinic grant of $1 million of tenant improvements to be completed concurrent with Madison Center building improvements.

Site Improvements

- All site improvements beyond what may be funded by public TIF dollars.

Public Infrastructure Improvements

A. Right-of-Way Public Infrastructure Improvements
   - Public streetscape improvements for the two block area of Madison Road and Whetsel Avenue between Ravenna St. and Ward St. (West to East) and Sierra St. and Prentice St. (North to South) including, but not limited to:
     - o Curbs and sidewalks
     - o Storm drainage and other public utility improvements, as necessary
     - o Public parallel parking of approximately 86 spaces
     - o Paving resurfacing, as necessary
     - o Street trees
     - o Street lighting, including decorative post lighting
     - o Site furnishings

B. Non-Right-of-Way Public Infrastructure Improvements
   - Improvements in the Project Site including, but not limited to:
     - o Demolition
     - o Site improvements including:
       - o Public plaza space at Madison and Whetsel intersection
       - o Utility improvements, as necessary
       - o Asphalt parking lots
       - o Landscaping and hard-scaping
       - o Parking lighting
       - o Site furnishings

EXHIBIT C
to
Funding, Acquisition and Development Agreement

BUDGET; SOURCES OF FUNDS

SEE ATTACHED

EXHIBIT C
Madisonville Redevelopment
Project Budget and Sources of Funds
by funding category

Private Improvements

Sources of Funds		
1st Mortgage	$	15,350,000
2nd Mortgage	$	1,100,000
Sponsor Equity	$	2,200,000
City of Cincinnati Project TIF	$	3,100,000
City of Cincinnati District TIF	$	-
NMTC Equity	$	8,424,000
Health Clinic Grant	$	1,000,000
Deferred Developer Fee	$	221,068
Total Sources of Funds - Private	**$**	**31,395,068**

Uses of Funds		
Acquisition		
Acquisition	$	-
Construction		
Demolition	$	-
Site Work	$	200,000
Streetscape - Madison and Whetsel - ALLOW.	$	-
Residential Amenities	$	500,000
Sales Tax Credit	$	(702,000)
Construction Costs Residential	$	14,404,072
FFE (Appliances)	$	407,000
Comm. Space / White Box	$	1,940,250
Exterior Improvements to Retail Center - ALLOW.	$	400,000
Comm. Tenant Improvement - ALLOW.	$	1,490,730
Health Clinic T.I. - ALLOWANCE	$	1,000,000
General Requirements	$	837,466
Contractor Overhead	$	334,986
Contractor Profit	$	669,973
Contingency	$	669,973
General Development Costs		
Architecture & Engineering	$	815,279
Permits and Tap Fees	$	168,232
Construction P & P Bond	$	67,115
Real Estate Taxes During Construction	$	41,400
Insurance - GL and BR During Construction	$	118,875
Title and Recording	$	78,000
Legal and Professional Fees	$	335,417
Project Accounting	$	20,000
Market Study	$	10,000
Construction Period Interest	$	1,657,827
Loan Origination Costs	$	164,500
Owner's Contingency	$	450,000
Commercial Leasing Commissions	$	299,858
Working Capital and Lease-up Reserve	$	375,000
NMTC Fees and Third-party Costs	$	1,967,000
Port Authority Fee	$	140,400
Developer and Guarantor Fees	$	2,533,715
Total Uses of Funds - Private	**$**	**31,395,068**

EXHIBIT C

Right-of-Way Public Infrastructure Improvements		
Sources of Funds		
City of Cincinnati District TIF	$	2,000,000
Total Sources of Funds - Right-of-Way Public	**$**	**2,000,000**
Uses of Funds		
Streetscape Allowance	$	2,000,000
Total Uses of Funds - Right-of-Way Public	**$**	**2,000,000**
Non-Right-of-Way Public Infrastructure Improvements		
Sources of Funds		
City of Cincinnati District TIF	$	2,950,000
Total Sources of Funds - Non-Right-of-Way Public	**$**	**2,950,000**
Uses of Funds		
Acquisition		
Acquisition	$	1,560,000
Construction		
Demolition	$	278,500
Site Work	$	800,000
General Requirements	$	53,925
Contractor Overhead	$	21,570
Contractor Profit	$	43,140
Contingency	$	43,140
General Development Costs		
Architecture & Engineering	$	74,044
Permits and Tap Fees	$	22,213
Construction P & P Bond	$	8,885
Legal and Professional Fees	$	44,583
Total Uses of Funds - Non-Right-of-Way Public	**$**	**2,950,000**
Total Project Costs	**$**	**36,345,068**

EXHIBIT D
to
Funding, Acquisition and Development Agreement

FORM OF COMPLETION GUARANTY

SEE ATTACHED

Project: Madison & Whetsel Redevelopment

COMPLETION GUARANTY

This Completion Guaranty ("**Guaranty**") is made as of the Effective Date (as defined on the signature page hereof) by **[ENTITY NAME]**, an **[ENTITY TYPE AND STATE OF FORMATION]**, the address of which is 4030 Smith Road, Suite 130, Cincinnati, Ohio 45209 ("**Guarantor**) in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

Recitals:

A. The City and ACKERMANN ENTERPRISES, INC., an Ohio corporation, having an address of 4000 Smith Road, Suite 150, Cincinnati, Ohio 45209 ("**Obligor**", being an affiliate of Guarantor) are parties to a *Funding and Development Agreement* dated [________________], 2016 (the "**Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Agreement. **[TO BE REVISED WHERE ACKERMANN ENTERPRISES, INC. IS THE GUARANTOR]**

B. Pursuant to the Agreement, among other things, (i) Obligor is obligated to complete the Project, which includes (a) the retention and improvement of the Madison Center Facility, (b) the addition of approximately 7,543 square feet of new retail store front and an additional approximately 5,000 square feet of residential amenity space, (c) the construction of approximately 24,850 square feet of office space, (d) the construction of approximately 185 units of residential apartments, and (e) the construction of approximately 440 on-site surface parking spaces, in each case as more comprehensively described in the Agreement, and (b) the City agreed to provide funding for the Public Infrastructure Improvements in the amounts and manner described in the Agreement (the "**Funds**").

C. It is a condition of the Agreement that Guarantor provide this Guaranty to the City with respect to the Project.

NOW, THEREFORE, for and in consideration of the City's execution of the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agrees as follows:

1. <u>Guaranty</u>.

(A) Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the City the full and prompt performance by Obligor of Obligor's obligations under the Agreement to complete the Project, including payment to the City of any and all losses, damages and expenses (including without limitation attorneys' fees) suffered or incurred by the City and arising out of the failure by Obligor under the Agreement to do so, regardless of whether such losses, damages or expenses are expressly provided for under the Agreement or are then otherwise allowable by law.

(B) If Obligor fails to fulfill Obligor's obligations under the Agreement to complete the Project, resulting in a notice of default from the City to Obligor under the Agreement, the City may notify Guarantor thereof in writing, whereupon Guarantor, within the allowable cure period within the Agreement, shall take all steps necessary to cure the default (including, for example, providing additional funding for the Project if necessary); failing which the City shall have the right to demand that Guarantor repay to the City all previously disbursed Funds under the Agreement, payable within ten (10) days after the City's written demand. All rights and remedies of the City under this Guaranty are cumulative, and nothing in this Guaranty shall be construed as limiting the City's rights and remedies available under the Agreement or at law or in equity. Notwithstanding the foregoing, no amendment to the Agreement altering the scope of the Project shall be binding on the Guarantor unless it is approved in writing by Guarantor.

(C) The City may from time to time, in the exercise of its sole and absolute discretion and without providing notice to, or obtaining the consent of, Guarantor, and without in any way releasing, altering, or impairing any of Guarantor's obligations and liabilities to the City under this Guaranty: (i) waive compliance with, or any default occurring under, or grant any other indulgence with respect to, the Agreement; (ii) modify or supplement any of the provisions of the Agreement upon written agreement with Obligor; (iii) grant any extension or renewal of or with respect to the Agreement upon written agreement with Obligor and/or effect any release, compromise or settlement in connection therewith; and (iv) deal in all respects with Obligor as if this Guaranty were not in effect.

2. Liability of Guarantor.

(A) Guarantor's liability under this Guaranty (i) shall be primary, direct and immediate and is a guaranty of payment (to the extent required to complete construction of the Project in accordance with the Agreement; for the avoidance of doubt, the City acknowledges that this Guaranty is not a guaranty of payment with respect to Obligor's repayment obligations under the Note), performance, and completion of construction of the Project and not of collection; (ii) shall not be conditioned or contingent upon the pursuit by Obligor of any remedy that it may have against its contractors, subcontractors or any other person with respect to the Project or at law or in equity; and (iii) shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Agreement, as the case may be, or of the adequacy of any consideration or security given therefor or in connection therewith, or of any other circumstance that might otherwise constitute a legal or equitable discharge of a surety or a guarantor under applicable law. Guarantor hereby waives any and all defenses at law or in equity that may be available to Guarantor by virtue of any such circumstance.

(B) Without limiting the generality of the foregoing provisions of this section 2, the City shall not be required (i) to make any demand of Obligor or any other person (including any other guarantors of the obligations guaranteed by Guarantor); or (ii) otherwise to pursue or exhaust its remedies against Obligor or any other person or entity (including any other guarantors of the obligations guaranteed by Guarantor) or against the Project, before, simultaneously with, or after enforcing any of its rights and remedies under this Guaranty against Guarantor. The City may bring one or more successive and/or concurrent actions against Guarantor, either as part of any action brought against Obligor or in one or more separate actions, as often as the City deems advisable in the exercise of its sole and absolute discretion.

(C) Guarantor's liability under this Guaranty shall continue after any assignment or transfer by the City or Obligor of any of their respective rights or interests under the Agreement or with respect to the Project until the satisfaction of all provisions contained in this Guaranty (but the foregoing shall not be deemed to be or constitute the consent by the City to any such assignment by Obligor, which shall continue to be governed by the terms of the Agreement). Guarantor's liability under this Guaranty shall not be affected by any bankruptcy, reorganization or insolvency of Obligor or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Obligor.

(D) Waivers. Guarantor hereby expressly waives: (i) presentment and demand for payment of any sum payable under the provisions of the Agreement, and protest of any nonpayment thereof; (ii) notice of acceptance of this Guaranty and of such presentment, demand and protest; (iii) notice of any default under this Guaranty or under the provisions of the Agreement, except as stated herein; (iv) demand for observance or performance, and enforcement, of any of the terms or conditions of this Guaranty, and/or of the Agreement, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Agreement upon any default by Obligor in performing any of Obligor's obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all expenses, including without limitation reasonable attorneys fees, that the City incurs in connection therewith, payable within ten (10) days after the City's written demand.

3. Subrogation. No payment by Guarantor under this Guaranty shall give Guarantor any right of subrogation to any rights or remedies of the City against Obligor under the Agreement. Until Obligor has paid and performed all of its obligations under the Agreement, Guarantor hereby waives all rights of contribution, indemnity or subrogation with respect to Obligor that might otherwise arise from Guarantor's performance under this Guaranty.

4. Effect of this Guaranty. Guarantor hereby warrants to the City that: (A) Guarantor (i) has a financial interest in the Project; (ii) is duly organized, validly existing and in good standing under the laws of the State of Ohio; (iii) has full power, authority and legal right to execute, acknowledge and deliver this Guaranty; and (iv) there are no actions, suits or proceedings pending or to the knowledge of Guarantor, threatened against Guarantor, at law or in equity, or before any governmental department, commission, board, bureau, agency or instrumentality which involve the possibility of any judgment or order that may result in any material adverse effect upon Guarantor; and (B) this Guaranty constitutes Guarantor's binding and enforceable legal obligation.

5. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person; (ii) upon receipt or refusal if delivered by overnight delivery with any reputable overnight courier service; or (iii) upon receipt or refusal if sent by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to Guarantor and the City, as the case may be, at the addresses set forth in the introductory paragraph of this Guaranty or such other address as may be designated from time to time by notice given to the other party in the manner prescribed herein. Guarantor shall simultaneously send, by U.S. certified mail, a copy of each notice given by Guarantor to the City hereunder to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

6. General Provisions.

(A) Amendment. This Guaranty may be amended or supplemented by, and only by, an instrument executed by the City and Guarantor.

(B) Waiver. Neither party hereto shall be deemed to have waived the exercise of any right which it holds under this Guaranty unless that waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

(C) Applicable Law. This instrument shall be given effect and construed by application of the laws of the City of Cincinnati and the State of Ohio, and any action or proceeding arising under this Guaranty shall be brought only in the Hamilton County Court of Common Pleas. Guarantor hereto agrees that the City shall have the right to join Obligor in any action or proceeding commenced by the City under this Guaranty.

(D) Time of Essence. Time shall be of the essence of this Guaranty.

(E) Headings. The headings of the paragraphs and subparagraphs of this Guaranty are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

(F) Construction. As used in this Guaranty, (i) the term "person" means a natural person, a trustee, a corporation, a partnership, a limited liability company, and any other form of legal entity; and (ii) all references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any paragraph or subparagraph shall, unless herein expressly indicated to the contrary, be deemed to have been made to such paragraph or subparagraph of this Guaranty, and (d) to Guarantor, the City, and Obligor shall be deemed to refer to each person hereinabove so named and their respective heirs, executors, personal representatives, successors and assigns.

(G) Severability. No determination by any court or governmental body that any provision of this Guaranty or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or

enforceability of (i) any other such provision, or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with applicable law.

(H) Entire Agreement. This Guaranty represents the complete understanding between or among the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between or among the parties hereto as to the same.

(I) Term. This Guaranty shall be effective upon the execution hereof and shall remain in effect until such time as Obligor completes the Project, as evidenced by certificates of occupancy issued with respect to each portion of the Project, in each case by the City's Department of Buildings and Inspections. Upon issuance of all requisite certificates of occupancy, this Guaranty shall terminate and be of no further force and effect.

[*Signature Page Follows*]

Executed as of ________________, 20___ (the "**Effective Date**").

GUARANTOR:

[________________________]

By: ______________________________

Name: ____________________________

Title: _____________________________

Recommended by:

____
Oscar L. Bedolla, Director
Department of Community and Economic Development

Approved as to Form:

____
Assistant City Solicitor

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

EXHIBIT E
to
Funding, Acquisition and Development Agreement

FORM OF MASTER LEASE AND MANAGEMENT AGREEMENT

SEE ATTACHED

MASTER LEASE AND MANAGEMENT AGREEMENT

(Madison Center – Madison & Whetsel Redevelopment)

THIS MASTER LEASE AND MANAGEMENT AGREEMENT (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, a municipal corporation and political subdivision of the State of Ohio, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**") and [______________], an Ohio [__________] ("**Operator**"). Capitalized terms used, but not defined, herein have the meanings ascribed thereto in that certain Funding, Acquisition and Development Agreement by and between the City and Operator's affiliate, Ackermann Enterprises, Inc. ("**Ackermann**") dated ____________, 2016 (the "**Development Agreement**").

Recitals:

A. The City is the fee owner of the real property located at the northwest corner of Madison Road and Whetsel Avenue, as shown and described on Exhibit A *(Site Plan and Legal Description)* hereto, including the retail center and parking lot thereon (the "**Property**"). The Property is currently and will hereafter be occupied by various tenants under various lease agreements, as described herein.

B. Pursuant to the Development Agreement, Ackermann will undertake or has undertaken a redevelopment project on the Property and in the vicinity of the Property involving, among other things, the construction of office, retail, and residential improvements (as defined in the Development Agreement, the "**Project**").

C. The City desires to lease the Property to Operator and engage with Operator to manage the Property on the City's behalf for a term of 50 years to achieve greater efficiencies and to ease the City's administrative burden. The City desires to lease an approximately 10,930 square foot portion of the Property back from Operator for the entirety of such 50 year term to continue and expand the operations of the Braxton F. Cann Memorial Medical Center, which leaseback will be in the form of Exhibit B (*Form of Health Clinic Sublease Agreement*) hereto (the "**Health Clinic Sublease Agreement**"). The Health Clinic Sublease Agreement will entail annual aggregate rent of $96,075 plus common area maintenance charges and will permit the City to terminate the sublease arrangement with 6 months' prior written notice following the 5th anniversary thereof.

D. As described more particularly herein, (i) Operator will not be required to pay base rent during the term, (ii) Operator will pay annual additional rent in an amount equal to the Net Operating Income (as defined below) with respect to the preceding calendar year and will be responsible for paying all Operating Costs (as defined below) as additional rent from time to time (subject to the limitations of Section 5(G)), (iii) Operator may reimburse itself for Operating Costs out of the total revenues collected from the Property (the "**Gross Revenue**"), and (iv) as compensation for Operator's services hereunder, Operator may retain for itself from Gross Revenue an annual management fee (the "**Management Fee**") of (a) 5% of Gross Revenue for the preceding calendar year, plus (b) for the first 7 years of the Term (as defined below), an amount equal to the Annual Permitted Improvement Reimbursement Amount (as defined below). To the extent Gross Revenue is insufficient to cover Operating Costs plus the Management Fee, the Management Fee will be reduced accordingly.

E. It is a condition of the Development Agreement that Operator enter into this Agreement with the City.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of the Property at its meeting on June 3, 2016.

G. Execution of this Agreement has been authorized by City Council by Ordinance No. 241-2016, duly passed on June 29, 2016.

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

1. **LEASED PREMISES.**

(A) Grant. On the terms and conditions set forth in this Agreement, the City does hereby lease the Property, including all existing improvements and all future improvements (other than tenant improvements) thereon to Operator, and Operator does hereby lease the Property from the City, for the Term established under section 2 below.

(B) As-Is Condition. Operator will be conducting its own title search, survey work, and other due diligence in order to familiarize itself with the condition and characteristics of the Property. The City has not made any representations or warranties concerning the condition or characteristics of the Property, and Operator acknowledges and agrees that Operator is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable under this Agreement for any pre-existing environmental conditions affecting the Property. On the Commencement Date (as defined in section 2 below), Operator shall accept the Property in "as-is" condition.

2. **TERM.**

(A) Term. The term ("**Term**") of this Agreement shall commence on the Closing Date (as described in the Development Agreement and referred to herein as the "**Commencement Date**"), and, unless sooner terminated in accordance with the termination provisions herein, shall continue until the 50th anniversary of the Commencement Date (the "**Termination Date**"). At the request of either party, the parties shall confirm the Commencement Date and Termination Date once the Commencement Date occurs by completing the Declaration of Commencement Date attached hereto as Exhibit C (*Form of Declaration of Commencement Date*); however, failure of the parties to do so shall not affect the Commencement Date or expiration date. All obligations of Operator under this Agreement that have accrued but have not been fully performed as of the expiration or sooner termination of the Term of this Agreement, including without limitation indemnity obligations, shall survive such expiration or termination until fully performed; *provided* that Excess Obligations (as defined below) shall not survive the expiration or termination of the Term of this Agreement.

(B) Default under Development Agreement. In the event that the City exercises any right it may have under the Development Agreement to terminate the Development Agreement due to a default thereunder, the City shall have the right to terminate this Agreement by giving Operator written notice thereof. Any default by Operator under the Development Agreement shall constitute a default of Operator under this Agreement and shall be subject to the same remedies and cure provisions as are specified in the Development Agreement.

3. **PERMITTED USE**. Operator shall continuously manage the Property throughout the Term as a retail, commercial or outpatient medical facility unless the City agrees in writing to a change in use. Operator shall obtain and maintain any necessary licenses and permits and shall operate and manage the Property in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements, including any applicable requirements described in Exhibit M of the Development Agreement (collectively, "**Legal Requirements**").

4. **RENT; MANAGEMENT FEE.**

(A) Base Rent. Operator shall not be required to pay base rent to the City during the Term.

(B) Additional Rent.

(i) Reimbursement of Operating Costs Incurred by the City. This is a "triple net" lease, and throughout the Term, Operator shall pay all costs associated with the operation, maintenance, repair and replacement of the Property, including without limitation charges for gas, electricity, water, sewer, telephone and all other utilities, insurance costs, real estate taxes and installments of assessments that become due and payable during the Term, salaries, wages and benefits paid to persons employed in connection with the operation of the Property, and all other costs that would generally be regarded in the industry as operating costs (collectively, "**Operating Costs**"), but subject to the limitations set forth in Section 5(G) hereof. Operator shall make such payments directly to the persons or entities to whom such payments are owed. To the extent that the City, rather than Operator, pays any costs that would otherwise be payable by Operator as Operating Costs during the Term, Operator shall reimburse the City for such costs, as a component of Additional Rent (as defined below), within thirty (30) days after Operator's receipt of documentation substantiating such costs (but subject to the limitations set forth in Section 5(G) hereof). The City shall not pay such costs until 15 days after written notice to Operator; *provided*, however, that the City may pay such costs without providing such prior written notice to Operator if the City determines, in good faith, that delaying payment during such 15 day notice period would materially impair the City's interests.

(ii) Net Operating Income Payment to the City. Operator shall pay to the City on an annual basis an amount equal to the Net Operating Income with respect to the immediately preceding calendar year. For the purposes of this Agreement, "**Net Operating Income**" means (i) Gross Revenue with respect to the immediately preceding calendar year, minus (ii) Operating Costs (as defined below) with respect to the immediately preceding calendar year, minus (iii) the Management Fee to be withheld by Operator with respect to the immediately preceding calendar year. Payments of Net Operating Income will be due not later than April 1 (or the next succeeding business day, if April 1 is not a business day) of each year, together with the documentation required under Section 5(D). The payments described in this Section 4(B)(ii) and in Section 4(B)(i) above are referred to collectively as "**Additional Rent**".

(C) Real Estate Taxes. As provided in section 4(B) above, Operator shall pay all real estate taxes and installments of assessments coming due during the Term, including without limitation real estate taxes and assessments that are not yet due and payable as of the Commencement Date but are allocable to periods prior to the Commencement Date. Operator shall furnish the City, upon request, with appropriate evidence of payment. If Operator institutes proceedings to contest the validity or amount of real estate taxes on the Property, the City shall cooperate with Operator (it being acknowledged that the City shall have no obligation to incur any cost or expense in so doing) to the extent that the participation of the owner of the Property is required, but Operator may not defer payment of the real estate taxes during such contest. Operator shall be entitled to any and all amounts recovered which relate to tax payments previously made by Operator. Notwithstanding the foregoing, the City reserves the right to evaluate, on a case-by-case basis, the merit of Operator's contest and reserves the right not to cooperate in such contest if, in the reasonable determination of the City, such contest would not be in the best interest of the public.

(D) Late Charge. If Operator fails to pay any sum due to the City hereunder, and the same remains overdue for longer than thirty (30) days past the due date, the overdue amount shall thereafter bear interest until paid at the greater of ten percent (10%) or the rate that is four percent (4%) higher than the prime rate as published in the Wall Street Journal, but in no case greater than the highest legal rate.

(E) Management Fee. As compensation for Operator's services hereunder, Operator may withhold from Gross Revenue an annual Management Fee equal to (i) 5% of Gross Revenue, plus (ii) solely with respect to the first 7 years of the Term, an amount equal to (a) 100% of Operator's documented hard construction costs with respect to Permitted Improvements (as defined below) made to the Property by Operator that are listed on Operator's budget for Private Improvements included within Exhibit C to the Development Agreement, divided by (b) 7 (the "**Annual Permitted Improvement Reimbursement Amount**"). To the extent the construction of the Permitted Improvements is paid for by or reimbursed with the Funds (as defined in the Development Agreement), the portion of the Permitted

Improvements paid for by or reimbursed with such Funds will be excluded from Operator's documented hard construction costs for the purposes of calculating the Annual Permitted Improvement Reimbursement Amount. The Management Fee is payable solely out of Gross Revenue and from no other source. Accordingly, for the avoidance of doubt, to the extent Gross Revenue is insufficient to cover Operating Costs plus the Management Fee, the Management Fee will be reduced to the greater of (x) the amount whereby the difference between Gross Revenue, on the hand, and Operating Costs plus the Management Fee, on the other hand, is equal to zero, and (y) zero. Operator will be entitled to carry forward any portion of the Management Fee for any particular calendar year that it was unable to realize pursuant to the immediately preceding sentence to each succeeding calendar year until it has realized the unclaimed portion of such Management Fee; *provided*, for the avoidance of doubt, that any unrealized Management Fees at the time of the termination or expiration of this Agreement will be forfeit if not then available out of the difference between prorated Gross Revenue and prorated Operating Costs or if there exist any Excess Obligations. An example of the calculation of the Annual Permitted Improvement Reimbursement Amount and its interaction with Net Operating Income is included as Exhibit F hereto.

5. OPERATION OF THE PROPERTY; EXCESS OBLIGATIONS; CITY'S CALL RIGHT.

(A) Generally. Operator shall act in a fiduciary capacity with respect to the proper accounting for and protection of the City's assets, and shall observe all rules and regulations and all such duties as the City may generally impose with respect to the operation of its properties. In addition to the foregoing:

(i) Administration of Leases. Operator shall manage and operate the Property in substantially the same manner in which the Property is presently being managed and operated and shall administer all leases, including without limitation ensuring the fulfillment of the landlord's obligations thereunder, enforcing the tenants' obligations thereunder, paying all operating expenses approved by the City, and handling tenant complaints. Operator shall have the responsibility for negotiating new leases, lease renewals and lease terminations at the Property and will provide such documents to the City for review and approval by the City. Operator will provide the City with a written notice of intent to lease, sublease or renew any sublease not less than 15 days prior to the delivery of any such document to the City for review and approval. Operator shall also provide to the City a summary of the proposed subtenant for the City's consideration and an explanation for the lease rate to be charged to the subtenant over the term of the lease. The City will endeavor to indicate, in writing, its approval or disapproval of the subtenant and documentation within 30 business days of receiving the documents and summary from Operator. Failure to approve or disapprove in writing within such time period shall be deemed approval.

(ii) Collection of Revenue. Operator shall use diligent efforts to collect all rental income, security deposits, and other revenue generated from the Property and shall handle the same as provided in this Agreement.

(iii) Utility Service and Other Service Contracts. Operator shall arrange for all necessary utility services, security service, janitorial service, pest control, trash collection, landscaping service, and other services for the Property through separate contracts between Operator and third parties, as approved by the City and as reflected on the Approved Operating Budget (as defined below), or, at the City's option, the City may enter into various contracts in its own name. The City may require that all contracts for goods and services entered into by Operator be competitively bid. Any and all contracts with third parties entered into by Operator in connection with servicing the Property shall, unless otherwise authorized or directed by the City: (a) be arm's-length contracts with parties that are unaffiliated with Operator (or, if such parties are affiliated with Operator, such contracts shall reflect fair market rates and commercially reasonable terms and conditions as if such contracts were arm's-length); (b) be in the name of Operator; (c) be assignable, at the City's option, to the City or the City's nominee; (d) include a provision for cancellation without penalty upon not more than thirty (30) days written notice; and (e) where appropriate, require the service provider to maintain commercial general liability insurance naming the City as an additional insured and such other insurance as the City may require. Upon the termination of this Agreement, Operator shall, at the City's option, assign to the City or the City's nominee any or all service contracts pertaining to the Property. *Under no circumstances shall Operator have the authority or execute contracts in the name of the City or as an authorized agent of the City, and any attempt by Operator to do so shall constitute a default*

hereunder.

(iv) Security. Operator shall provide such security for the Property as the City shall from time to time determine is necessary or appropriate.

(v) Employment of Qualified Personnel. Operator shall employ sufficient experienced and qualified personnel who will render the services required by this Agreement and who will be neatly dressed and courteous to the public. This Agreement is not one of agency by Operator for the City but one with Operator engaged independently in the business of managing property on its own behalf as an independent contractor. All matters pertaining to the employment, supervision, compensation, promotion and discharge of Operator's employees are the sole responsibility of Operator, which is in all respects the employer of such employees, and the City shall have no liability with respect thereto. Operator shall fully comply with applicable laws and regulations having to do with Workers Compensation, Social Security, unemployment insurance, and other employer/employee related subjects. Operator shall at its sole expense provide adequate training for its employees, the cost of which training shall not be includable as a reimbursable Operating Cost.

(vi) Commencement Date. Prior to the Commencement Date, Operator shall provide the City with a schedule of employees to be employed in the direct management of the Property. Operator shall provide the City with a revised schedule of employees from time to time upon any changes thereto.

(vii) Promotion. Operator shall engage in promotional and advertising activities with respect to the Property only if pre-approved, in each instance, by the City in writing.

(viii) Reporting of Accidents and Other Significant Occurrences. Operator shall keep the City informed of all reported accidents and other significant, unanticipated occurrences at or otherwise affecting the Property that involve public health or safety issues or that could lead to negative publicity. Operator shall notify the City within 24 hours of break-ins, assaults or other criminal-type activity at the Property. For all incidents for which a police report is filed, Operator shall promptly obtain a copy of the police report and promptly provide a copy of it to the City.

(ix) Hours of Operation. If the Property includes common areas that are open to the general public, Operator shall keep such areas open on such days and during such hours as shall be determined by Operator from time to time with written notice to the Director of the City's Department of Community and Economic Development.

(B) Maintenance, Repairs and Services. Throughout the Term, Operator shall maintain the Property in good, clean and safe condition and repair. The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Property.

(C) Collection of Revenue and Reimbursement of Operating Costs.

(i) Collection of Revenue. Throughout the Term, Operator shall immediately deposit (or cause the deposit of) any Gross Revenue received in respect of the Property to a federally insured bank account in Operator's name (the "**Account**"). From time to time upon the City's request, Operator shall provide copies of bank statements with respect to the Account to the City. Operator shall require all tenants and other payors paying by check or direct deposit to pay into the Account. If revenue is stolen, Operator shall file a report with the Cincinnati Police Department immediately upon discover and shall notify the City's Director of the Department of Community and Economic Development within 24 hours of discovery. Operator shall file an insurance claim with its insurance carrier to cover the amount stolen and shall deposit such insurance proceeds into the Account when received.

(ii) Payment of Operating Costs. Subject to the limitations set forth in Section 5(G) hereof, Operator shall pay all Operating Costs from the Account in accordance with Approved Operating Budget for the calendar year. The Approved Operating Budget shall include a breakdown of costs into

real estate taxes, utilities, repairs/maintenance, insurance, management fee (as defined in Section 4(E)), advertising/leasing, administrative and other line items acceptable to the City. For the avoidance of doubt, if Operator's expenses with respect to the Property exceed the amounts approved by the City pursuant to the Approved Operating Budget in excess of 5% in the aggregate, Operator will not be entitled to treat such expenses as Operating Costs payable out of Gross Revenue without the City's prior written consent; *provided* that any excess of taxes or utility payments over the amounts approved by the City pursuant to the Approved Operating Budget shall not be included in such 5% figure for the purposes hereof, and Operator shall be entitled to treat such tax or utility payments as Operating Costs irrespective of this clause (ii). Notwithstanding anything to the contrary herein, Operator shall not expend more than $50,000 on any non-emergency replacements or repairs without the City's prior written consent.

(D) Reporting Requirements. Throughout the Term, Operator shall provide the City with the following information and reports:

(i) *Budget:* Prior to the beginning of each calendar year during the Term, Operator shall provide the City with a copy of Operator's operating budget for the Property for the upcoming year in the form of Exhibit D (*Form of Operating Budget*) hereto, which shall include any and all anticipated capital expenditures for such year and may include reserves for unanticipated expenses. Such operating budget shall be acceptable in form and substance to the City. Upon approval by the City, the operating budget with respect to the upcoming year shall be referred to herein as the "**Approved Operating Budget**".

(ii) *Inspection Report:* By April 1 (or the next succeeding business day) of each calendar year, Operator shall provide the City with a copy of Operator's internally generated engineering and building system inspection report which details the physical condition of building systems and structural items, together with Operator's proposed maintenance schedule pertaining thereto.

(iii) *Financial Statements:* By April 1 (or the next succeeding business day) of each calendar year, Operator shall provide the City with financial statements certified by Operator's chief financial officer detailing income and expenses for the Property for the year then just ended, prepared by an independent certified public accountant utilizing generally accepted accounting principles, and describing in detail Operator's calculation of Net Operating Income, Operating Costs and the Management Fee. Together with such financial statements, Operator shall include an actual operating budget for the previous calendar year detailing changes from the Approved Operating Budget for such previous calendar year submitted under clause (i) of this Section 5(D). The City's receipt of Operator's certified financial statements shall not constitute a waiver of the City's right to inspect and audit Operator's books and records as provided in the Development Agreement or in any other Project Document.

(iv) *Written Report:* By April 1 (or the next succeeding business day) of each calendar year, Operator shall provide the City with a written report, detailing in narrative form any material matters relating to the Property that may have occurred during the preceding year.

(v) *Other Information:* Operator shall comply with Section 11 (*Reporting Requirements*) of the Development Agreement as if each term therein is fully applicable to Operator, regardless of whether Operator and Developer are the same entity. Operator agrees that the City has all rights with respect to Operator as the City has with respect to Developer in virtue of Section 11 of the Development Agreement.

(E) Title Matters; Existing Leases. Operator shall not operate the Property or take any other actions that would violate any easements, covenants, restrictions or other matters of record affecting the Property. Operator shall not have the right to grant any easements or otherwise encumber the City's title to the Property without the City's prior written consent or as provided in the Development Agreement. The City shall have the right to grant easements to third parties and to take whatever other actions affecting the Property as may be deemed reasonably necessary by the City so long as such actions do not unreasonably impair the rights granted to or materially increase the obligations of Operator under this

Agreement. Operator acknowledges the Property is subject to the existing leases described on Exhibit E (*Existing Leases*) hereto.

(F) City's Right to Inspect. The City shall have the right to inspect the Property from time to time for any proper purpose.

(G) Excess Obligations; City's Call Right.

(i) *Definition*: As used herein, "**Excess Obligations**" means each of, and collectively, Operator's obligation to pay any Operating Costs, to make any repairs, restorations or replacements, or to incur any other expenses with respect to the Property under this Agreement where the projected cost of the foregoing (as determined by the City in good faith) exceeds any available Gross Revenue, replacement or other reserves and any available insurance proceeds.

(ii) *Good Faith Negotiations; City's Call Right*: Should an Excess Obligation exist or be anticipated by Operator to exist at any time, Operator will provide prompt written notice to the City of the same. Following the provision of such notice, DCED and Operator will negotiate in good faith to reach a mutually agreeable strategy for addressing such Excess Obligation. Such negotiations may involve proposals that would, by way of example and not of obligation, (i) involve DCED seeking an appropriation or alternative source of City financing to assist with payment for such Excess Obligation, (ii) involve a lesser scope of repair, restoration or replacement that would otherwise be permitted, (iii) involve such other arrangements as are deemed agreeable by the City in its discretion, or (iv) involve some combination of the foregoing; *provided* that neither DCED nor the City shall in any way be obligated to agree to any of the foregoing proposals, it being acknowledged and agreed that such proposals are identified herein by way of example only. Notwithstanding anything to the contrary herein, if DCED and Operator are unable to reach a mutually agreeable resolution of such Excess Obligations after the expiration of the negotiation period contemplated hereunder, Operator will not be responsible for the payment of Excess Obligations; *provided* that (i) Operator shall comply with written directions from the City pertaining to the order of priority of costs to be paid by Operator, and (ii) the City shall have the right to repurchase the leasehold and all other interests of Operator under this Agreement for $1.00 (the "**City's Call Right**") upon not less than 30 days' prior written notice (the "**Call Notice**"), and thereafter, if the City so chooses, to terminate this Agreement. Upon its receipt of a Call Notice from the City, Operator shall promptly comply with all terms of this Agreement relating to termination and/or expiration of this Agreement and the surrender of the Property in order to effect the City's retaking of possession of the Property not later than the 30th day following the date of the Call Notice and shall otherwise work in good faith with the City to ensure that the transition of the Property to the possession of the City proceeds in a smooth, professional and expeditious manner consistent with industry norms.

(iii) *Expiration of Negotiation Period; Emergencies*: DCED's obligation to negotiate with Operator under this Section 5(G) shall expire 60 days following its receipt of written notice of such Excess Obligation from Operator. Notwithstanding anything to the contrary herein, DCED shall not be obligated to negotiate with Operator regarding an Excess Obligation if the City believes, in good faith, that failure to pay an Excess Obligation creates an emergency situation and must be corrected immediately. In such an emergency circumstance, the City may exercise the City's Call Right upon the provision of a Call Notice 24 hours prior to the effective time of the City's Call Right unless Operator agrees to promptly pay such an Excess Obligation.

6. ALTERATIONS; SIGNS; NO LIENS.

(A) Alterations. During the Term, Operator shall not make any material alterations, additions or other changes to the Property without the prior written consent of the City, including without limitation changes that affect the structural portions of the Property, the mechanical equipment serving the Property, the utility systems serving the Property, or the ingress, egress or traffic flow within the Property, nor shall Operator make any alterations, additions or other changes that would diminish the fair market value of the Property. Notwithstanding the foregoing, Operator may make the improvements to the Property described in the Development Agreement, which improvements are described herein as the

"**Permitted Improvements**". In addition to the Permitted Improvements, Operator shall have the right to make all minor and cosmetic-type alterations to the Property without having to obtain the City's prior consent. All alterations made by Operator shall be made in a good and workmanlike manner, in compliance with all Legal Requirements, shall not diminish the value of the Property, and shall be consistent with the quality, design, functionality, and aesthetic appeal of the Property. If Operator installs any trade fixtures, ordinary fixtures or equipment that serve the Property, Operator shall not thereafter remove the same and shall surrender the same to the City at the end of the Term.

(B) Signs. Operator shall be permitted to erect such directional, informational and other signs on the Property as Operator deems appropriate provided that all such signs are professionally prepared, comply with all Legal Requirements, and satisfy the City's requirements with respect to size, design, content and location. Operator shall, at its expense, keep all signs on the Property in good condition and repair.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Property as a result of labor or material furnished at Operator's request, Operator shall cause the lien to be released within thirty (30) days following the filing of such lien.

7. **INSURANCE; INDEMNITY.**

(A) Insurance. Throughout the Term, Operator shall maintain the following insurance and shall deliver evidence of the continued effectiveness of such insurance not less than once per calendar year, which shall be delivered not later than 60 days following the renewal of any such policy, together with endorsements to the same legally assuring the City's rights as additional insured:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Property and all other improvements now or hereafter located on the Property, including without limitation all fixtures and equipment, naming the City and Operator as their interests may appear;

(ii) property insurance on any and all personal property of Operator from time to time located at the Property in the amount of the full replacement cost thereof;

(iii) Commercial General Liability insurance of at least $2,000,000 per occurrence, combined single limit/$3,000,000 aggregate, naming the City as an additional insured with respect to the Property; and

(iv) workers compensation insurance and any and all other insurance as may be required by law or reasonably requested in writing by the City.

(B) Policy Requirements. Operator's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City.

(C) Waiver of Subrogation. Operator hereby waives all claims and rights of recovery, and on behalf of Operator's insurers, rights of subrogation, against the City, its council members, officers, 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 Operator, even if such loss or damage arises from the negligence of the City, its council members officers, employees, agents, contractors or subcontractors; it being the agreement of the parties that Operator shall at all times protect itself against such loss or damage by maintaining adequate insurance. Operator shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Operator or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Operator. Operator shall defend, indemnify and hold the City, its council members, officers, employees and agents harmless from and against all costs, losses, claims, damages, liabilities, actions, claims for relief of every kind and character, expenses, including legal expenses, and obligations, financial or otherwise, arising either directly or indirectly out of Operator's performance of its responsibilities under this Agreement; excluding, however, any of the foregoing caused by the negligence or willful misconduct of the City, its council members, officers, employees or agents. All indemnity obligations and assumption of liabilities herein provided for shall continue in full force and effect notwithstanding the termination of this Agreement.

8. **CASUALTY; EMINENT DOMAIN.** If the Property is damaged or destroyed by fire or other casualty, or if any portion of the Property is taken by exercise of eminent domain, Operator shall repair and restore the 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 (subject to provisions hereof relating to Excess Obligations). The City and Operator shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. Such proceeds shall be payable to the City as the owner of the Property; however, the City shall make available to Operator so much of the proceeds as are needed to repair and restore the Property. If the proceeds are insufficient to fully repair and restore the Property, the City shall not be required to make up the deficiency. Operator shall handle all construction in accordance with plans and specifications approved in writing by the City. Operator 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.

9. **DEFAULT; REMEDIES.**

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

(i) The failure of Operator to make any required payment when due or perform any obligation under this Agreement, and failure by Operator to correct such failure within thirty (30) days after Operator's receipt of written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured within 30 days, Operator shall not be in default so long as Operator commences to cure the default within such 30-day period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Operator's receipt of the City's initial notice of default. The foregoing notwithstanding, if Operator's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Operator fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) The dissolution of Operator, the filing of any bankruptcy or insolvency proceedings by or against Operator, the appointment of a receiver (temporary or permanent) for Operator, the attachment of, levy upon, or seizure by legal process of any property of Operator, or the insolvency of Operator; or

(iii) The occurrence of an event of default under the Development Agreement.

(B) Remedies. Upon the occurrence of an event of default under this Agreement, the City shall be entitled to: (i) terminate this Agreement by giving Operator written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Operator, and (iii) exercise any and all other rights and remedies under this Agreement, the Development Agreement, or the other Project Documents, or otherwise available at law or in equity. Operator shall be liable for all costs and damages, including without limitation attorneys' fees, suffered or incurred by the City as a result of a default of Operator under this Agreement or the City's enforcement or termination of this Agreement except to the extent (a) such

costs and damages constitute Excess Obligations or (b) such costs and damages are attributable to the City's termination of this Agreement under Section 5(G) hereof and Operator has fully and promptly complied with all provisions of Section 5(G), including, without limitation, the provisions relating to Operator's surrender of the Property. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy

10. ASSIGNMENT AND SUBLETTING. Operator acknowledges that the City is entering into this Agreement because of the City's confidence that Operator has the financial backing, business experience and community support that are necessary to properly manage the Property in accordance with the provisions of this Agreement throughout the entire Term. Operator acknowledges that the City shall not be expected to consent to a proposed assignment by Operator of its interests under this Agreement; *provided*, however, that Operator may periodically sublease portions of the Property in accordance with the terms and conditions of Section 5(A)(i) hereof to commercial, retail or medical outpatient tenants (including by executing the Health Clinic Sublease Agreement with the City). Other than as provided to the contrary in the immediately preceding sentence, any attempt by Operator to assign or otherwise transfer its interests under this Agreement, or to sublease all or any portion of the Property, to a third party without the City's prior written consent shall be null and void and shall, at the option of the City, constitute a default of Operator under this Agreement. No assignment or sublease by Operator under this Agreement shall relieve Operator from any liability under this Agreement unless otherwise agreed to in writing by the City. Notwithstanding the foregoing, so long as no event of default has occurred and is continuing under this Agreement or any other Project Document, the City may, in good faith, withhold consent to an assignment of Operator's interests hereunder only if (i) the proposed assignment is prohibited by applicable law or the assignee has been debarred from doing business with the City, (ii) the proposed assignee is, in the City's reasonable judgment, not capable of performing the obligations of Operator under this Agreement, (iii) the City determines that the proposed assignee (or its third party manager) lacks adequate experience in operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Property, (iv) the City determines that it is not satisfied with the past performance history and reputation of the proposed assignee and its direct or indirect controlling beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates, or (v) the City has not received adequate information and other documentation from Operator to determine whether the conditions in the preceding clauses (i) through (iv) apply. The City shall have 30 days from the date on which it receives written notice in accordance with this Agreement of a proposed assignment (which notice shall include at least the legal name and identification of the key principals/managers of the proposed transferee, the proposed purchase price, and such other information regarding the proposed transfer as Operator believes would assist the City in making its determination) to determine whether it intends to consent thereto, and shall provide written notice to Operator of such decision, including any supporting information the City considered material to its decision. If the City fails to respond within such 30 day period, it shall be deemed to have consented to such proposed assignment; *provided* that the City may, by written notice delivered within the initial 30 day period, extend its period for consent to 60 days in the aggregate if it determines that it lacks adequate information to determine whether consenting to such a proposed assignment is appropriate; *provided, further* that, if Operator provides additional information to the City remedying the City's lack of adequate information, the City may not elect to extend its deadline for its decision for more than 15 days following its receipt of such additional information. Operator shall promptly provide any additional supporting documentation regarding the proposed assignment to the City upon the City's reasonable request of the same. For the avoidance of doubt, it is not a requirement of this Agreement that the "Developer" under the Development Agreement be the same entity as the "Operator" hereunder, or vice versa; and, so long as all applicable terms and conditions of this Agreement and the Development Agreement are satisfied with respect to an assignment, the Development Agreement may be assigned independently of this Agreement, or vice versa.

11. ESTOPPEL CERTIFICATES. Within fifteen (15) days after written request from the other party (or, with respect to certificates from the City of Cincinnati, within such longer period of time as may be reasonably needed in order to obtain all required governmental authorizations and signatures), each party shall execute and deliver to the requesting party an estoppel certificate (i) certifying that this

Agreement is 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, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Agreement as the requesting party may reasonably request.

12. **SURRENDER; HOLDOVER.**

(A) Surrender. On the last day of the Term, Operator shall surrender the Property to the City in good condition and repair, reasonable wear and tear excepted, and, on or before the last day of the Term, Operator shall remove all of Operator's tools and other personal property. Unless required by the City, Operator shall not remove any signs, trade fixtures, ordinary fixtures or equipment used in connection with the Property. Operator shall promptly repair any and all damage to the Property caused by its removal of any of the foregoing.

(B) Holdover. If Operator fails to surrender possession of the Property to the City at the end of the Term under section 12(A) above, such holdover shall be deemed as creating a tenancy-at-will, terminable by the City at any time by giving written notice thereof to Operator. Operator shall be liable for all costs and damages suffered or incurred by the City as a result of Operator's holding over.

(C) Documents to be Delivered to City. On the last day of the Term, Operator shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, contracts with third parties, warranty information, and all other written materials and documents that are in Operator's possession or under Operator's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Property.

13. **NOTICES**. Any notice or other communication required or desired to be given to either party under this Agreement shall be in writing and (i) delivered personally, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time. Notices shall be deemed given upon receipt.

To the City:

City of Cincinnati
801 Plum Street
Cincinnati, OH 45202
Attention: City Manager

with a copy to:

Director of Community and Economic Development
City of Cincinnati
805 Central Avenue, Suite 700
Cincinnati, OH 45202

To the Operator:

____
____
____
Attention: ______________________

If Operator sends a notice to the City alleging that the City is in breach of this Agreement, Operator shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

14. **GENERAL PROVISIONS.**

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

(B) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(C) 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.

(D) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(E) Severability. If any part of this Agreement is held 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.

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

(G) 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.

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

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

(J) No Brokers. The City and Operator represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(K) Force Majeure. Notwithstanding anything in this Agreement to the contrary, each party shall be temporarily excused from performance during any period in which they are prevented or delayed in such performance due to the occurrence of a Force Majeure, provided that such party promptly notifies the other party of the initial occurrence of the Force Majeure (and in any event no later than 30 days thereafter). As used herein, a **"Force Majeure"** shall mean strikes, labor disputes, riots, shortages or unavailability of equipment, materials or utilities, natural disasters, unusually severe weather conditions, or any other events or circumstances for which the party charged with performance is not responsible and which are not within such party's reasonable control. The shortage or unavailability of money shall not be deemed to be a Force Majeure. No Force Majeure shall be permitted to excuse any delay in performing an obligation for longer than 90 days.

(L) Exhibits. The following Exhibits are attached hereto and made a part hereof:
Exhibit A - Site Plan and Legal Description
Exhibit B - Form of Health Clinic Sublease Agreement
Exhibit C - Declaration of Commencement Date
Exhibit D - Form of Operating Budget
Exhibit E - Existing Leases
Exhibit F - Example of Annual Permitted Improvement Reimbursement Amount

[*Signature Page Follows*]

Executed by the parties on the respective dates of acknowledgment of their signatures, effective as of the later of such dates (the "**Effective Date**").

CITY OF CINCINNATI

By: ______________________________
Harry Black, City Manager

Recommended By:

____
Oscar L. Bedolla, Director
Department of Community and Economic Development

Approved as to Form:

____
Assistant City Solicitor

Certified Date:______________________
Fund/Code:_________________________
Amount:___________________________
By:_______________________________
Reginald Zeno, City Finance Director

[____________________], an Ohio [__________]

By: ____________________________

Name: __________________________

Title: ___________________________

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____________, 2016, by Harry Black, City Manager of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the corporation.

____
Notary Public
My Commission Expires: ________________

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____________, 2016, by __________________, ______________________ of [_______________], an Ohio [________], on behalf of the [_________].

____
Notary Public
My Commission Expires: ________________

EXHIBIT A

to Master Lease and Management Agreement

Site Plan and Legal Description

TO BE ATTACHED

EXHIBIT B

to Master Lease and Management Agreement

Form of Health Clinic Sublease Agreement

TO BE ATTACHED

Contract # ____________

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE (this "**Lease**") is made and executed as of [__________], 20[___] (the "**Effective Date**"), by and between [______________________], an Ohio [__________], the address of which is 4000 Smith Road, Suite 150, Cincinnati, Ohio 45209 ("**Landlord**"), and the BOARD OF HEALTH OF THE CITY OF CINCINNATI, located at 3101 Burnet Avenue, Cincinnati, Ohio 45229 ("**Tenant**"). Landlord controls the Leased Premises (as defined below) pursuant to that certain *Lease and Management Agreement* by and between Landlord and the City of Cincinnati and dated [____________], 20[___] (the "**Lease and Management Agreement**"). Nothing in this Lease shall be construed as limiting Landlord's responsibilities under the Lease and Management Agreement.

WITNESSETH:

1. GRANT OF LEASE. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the approximate 10,930 square feet of space located at 5818 Madison Road in the City of Cincinnati, Hamilton County, Ohio, including both the "**Existing Premises**" and "**Expansion Premises**", as shown on the floor plan attached as Exhibit A (*Floor Plan*) hereto (the "**Leased Premises**"). Tenant already has various furniture and other equipment and personal property currently located in the Leased Premises, and may bring additional furniture and other equipment and personal property on the Leased Premises from time to time. Any such furniture and equipment shall remain the property of Tenant, and Landlord shall have no right (by operation of law or otherwise) to the same.

2. TERM.

2.1 TERM. The Term of this Lease shall commence on [______________], 20[__] (the "**Commencement Date**") and shall continue for 600 months, ending on [______________], 20[___]. As used herein, the term "**Lease Year**" means the partial year beginning on the Commencement Date and ending on December 31, 20[___] and/or each full one-year period thereafter during the Lease Term. Rent and any other sums provided in this Lease for which the Lease Year is a factor shall be adjusted and paid on a pro rata basis for any Lease Year that is less than 12 full calendar months.

2.2 TENANT'S DISCRETIONARY TERMINATION RIGHT. Tenant shall have the right to terminate this Lease at any time on or following the expiration of the 5th Lease Year upon 6 months' prior written notice to Landlord. For the avoidance of doubt, the 6 month notice period may take place, in whole or in part, prior to the expiration of the 5th Lease Year. For example, if Tenant provides notice that it desires to terminate the Lease when 4 months remain in the 5th Lease Year, this notice would constitute a valid exercise of the termination right described in this Section 2.2 but the Lease would not terminate until 2 months into the 6th Lease Year, unless the parties hereto agreed otherwise or unless there is a separate basis for an earlier termination. Upon notice of termination, Tenant shall be obligated to continue to pay Rent and perform its other obligations under this Lease during the period preceding the date of termination.

2.3 TERMINATION FOR CAUSE. Tenant and Landlord shall each have the right to terminate this Lease in the event of a default by the other party, as more particularly described in Section 11 hereof.

3. RENT.

3.1 BASE RENT. Tenant shall pay Landlord $96,075 as annual base rent for the Leased Premises ("**Base Rent**"). Pro-rated Base Rent for the first Lease Year is $[ ].[1]

3.2 ADDITIONAL RENT.

(a) In addition to Base Rent, Tenant shall pay Landlord Additional Rent. As used herein, "**Additional Rent**" means Tenant's Proportionate Share of Operating Costs. "**Rent**" shall mean, collectively, Additional Rent and Base Rent.

(b) As used herein, "**Operating Costs**" means all costs permitted under the Lease and Management Agreement that are actually incurred by Landlord in connection with the maintenance, repair and operation of the Property (as defined in the Lease and Management Agreement), including, without limitation, (i) utility charges, (ii) costs of commercial general liability insurance, property insurance and other insurance maintained by Landlord, and (iii) real estate taxes and installments of assessments. For the avoidance of doubt, Operating Costs shall not include management or other like fees or any costs associated with the construction or design of the Permitted Improvements (as defined in the Lease and Management Agreement).[2]

(c) As used herein, "**Tenant's Proportionate Share**" means 44.5%.

3.3 PAYMENT.

(a) Timing of Rent Payments. All Rent shall be due and payable in equal monthly installments in advance on the first day of each month during the Term of this Lease to Landlord at its notice address, or at such other place as Landlord may designate in writing to Tenant. The Rent for any partial month shall be prorated on a per diem basis. The first month's Rent shall be due and payable on the Commencement Date.

(b) Estimated Additional Rent. Prior to the beginning of each Lease Year, Landlord shall provide written notice to Tenant of Tenant's estimated Additional Rent for such Lease Year. Tenant shall then pay the same in monthly installments equal to said amount divided by the number of months in such Lease Year. Estimated Additional Rent for the first Lease Year is $[ ].[3]

(c) Annual "True Up" of Additional Rent. Within 30 days following the end of a Lease Year, Landlord shall calculate Tenant's actual Proportionate Share of Operating Costs for the Lease Year then just ended and shall provide Tenant with written notice of the same, together with documentation (such as invoices with records of payment) confirming the same. If the amount paid by Tenant as its estimated Additional Rent for such Lease Year is less than Tenant's actual Proportionate Share of Operating Costs for such Lease Year, Tenant shall pay the amount of the deficiency within 90 days after receiving Landlord's notice. If the amount paid by Tenant as its estimated Additional Rent for such Lease Year is greater than Tenant's actual Proportionate Share of Operating Costs for such year, Landlord shall credit such excess amount against installments of Additional Rent next coming due, or if the Term has ended

[1] To be completed prior to execution of this lease at Closing.

[2] Currently, gas and electric are separately metered. Does Ackermann Group intend to continue this arrangement or have one bill? This document to be revised accordingly.

[3] To be provided prior to execution of this lease at Closing.

Landlord shall refund such excess amount to Tenant within 30 days following the end of the Term.

4. TAXES. Landlord shall pay, prior to delinquency, all real estate taxes and assessments levied against the Leased Premises which shall become due and payable during the Term of this Lease.

5. UTILITIES. During the Lease Term, Landlord shall pay all charges against the Leased Premises for water, sanitary sewer, gas, light, heat, electricity and any other utility services furnished to or consumed on the Leased Premises.

6. PARKING. Landlord shall provide, for Tenant's exclusive use, fifteen (15) parking spaces (the "**Parking Spaces**") at the lot currently located between the Leased Premises and Madison Road (the "**Parking Lot**"). The use of the Parking Spaces shall be at no extra charge.

7. INSURANCE. Landlord shall keep the Leased Premises and the building in which the Leased Premises are located and other improvements now or hereafter located in the Leased Premises insured in accordance with the Lease and Management Agreement.

8. CONDITION AND MAINTENANCE OF LEASED PREMISES:

   (a) Tenant acknowledges and agrees that the Leased Premises are being leased in their present condition and on an AS IS basis.

   (b) Landlord, at its expense, shall repair, maintain and keep in good order, condition and repair, ordinary wear and tear excepted, the building in which the Leased Premises are located, and all components thereof, including but not limited to (i) the heating, air conditioning, plumbing, sewer, electrical and sprinkler systems, (ii) the roof and all exterior and structural elements, (iii) the walls, windows, ceilings, doors, floors and foundations within or supporting the Leased Premises, (iv) the parking lot, drives, loading dock, entrances and doors to the building, and any and all common areas in and around the building, and (v) the furniture and equipment that is included in this Lease.

   (c) Except for those portions of the Leased Premises required to be maintained by Landlord under paragraph (b) above, Tenant, at its expense, shall maintain the Leased Premises and keep the Leased Premises in good order, condition and repair, ordinary wear and tear excepted, and shall maintain and take good care of the grounds and all landscaping.

9. TENANT'S WORK. Landlord acknowledges that Tenant is in the process of renovating the Leased Premises, including by expanding the Existing Premises via the addition of the Expansion Premises, in each case as described on Exhibit B (*Description of the Tenant's Work*) hereto (the "**Tenant's Work**"). All such improvements, modifications, additions and/or alterations pursuant to the Tenant's Work shall become and remain the property of the owner of the Leased Premises; *provided* that all trade fixtures, equipment and personal property, including, without limitation, all furniture and furnishings and inventories now, hereafter or heretofore maintained, installed or used in the Leased Premises by Tenant shall remain the property of Tenant and may be removed by Tenant at any time during the Term hereof.

10. CASUALTY OR CONDEMNATION. In the event that the Leased Premises or any part thereof are (a) damaged by fire or other casualty or (b) taken by virtue of eminent domain or by a public body vested with the power of eminent domain, or voluntarily conveyed by Landlord in lieu of eminent domain ("**condemnation**"), then this Lease shall not terminate. Rather, Landlord shall become obligated to repair or restore the Leased Premises as nearly as possible to the condition in which it existed immediately prior to such damage or condemnation. In such event, Landlord shall proceed promptly to make such repairs or restoration. However, Landlord is only obligated to restore and/or repair pursuant to this paragraph if Landlord can make such repairs or restoration for an amount not in excess of the amount recovered by Landlord from insurance

proceeds resulting from the casualty or the condemnation award, whichever is applicable. There shall be an equitable abatement of rent during the period that the Leased Premises may be wholly or partially unavailable for use by Tenant for the operation of its business. Should the damage or condemnation be of a character that it will not permit repair or restoration of the Leased Premises within the period of ninety (90) days after the occurrence thereof as determined by either party, or if the cost of such repair or restoration exceeds Landlord's insurance recovery or the condemnation award, either Landlord or Tenant shall have the right to cancel the Lease for the remainder of any unexpired Term upon giving written notice to the other party.

11. DEFAULT.

(a) Tenant shall be in default of this Lease if (i) Tenant fails to pay the Rent or any other amount required to be paid by Tenant within ten (10) days of its due date and such default continues for a period of ten (10) days after written notice is given to Tenant by Landlord, or (ii) Tenant fails to perform any other duty or obligation imposed by this Lease and the default continues for a period of thirty (30) days after written notice is given to Tenant by Landlord. The foregoing notwithstanding, if Tenant's failure to perform or observe any obligation, duty, or responsibility under this Lease creates a dangerous condition or otherwise constitutes an emergency, a default shall be deemed to have occurred if Tenant fails to take corrective action (or, if applicable, notify Landlord so that Landlord can take corrective action) immediately upon discovering such dangerous condition or emergency

(b) Landlord shall be in default of this Lease if Landlord fails to perform any duty or obligation imposed by this Lease and the default continues for a period of thirty (30) days after written notice is given to Tenant by Landlord. The foregoing notwithstanding, if Landlord's failure to perform or observe any obligation, duty, or responsibility under this Lease creates a dangerous condition or otherwise constitutes an emergency, a default shall be deemed to have occurred if Landlord fails to take corrective action immediately upon discovering such dangerous condition or emergency

(c) Upon the occurrence of a default by the other party, either party to this Lease shall have the right to terminate this Lease upon 30 days' written notice, in addition to such other rights and remedies that may be available at law or in equity.

12. ASSIGNMENT AND SUBLETTING. Tenant may only assign this Lease in whole or in part or sublet any part or all of the Leased Premises with the prior written consent of Landlord, which consent shall not be unreasonably withheld.

13. USE OF PREMISES. The Leased Premises shall be used as a health care center, and for no other purpose, unless the Landlord gives prior written consent for a different use, which consent shall not be unreasonably withheld.

14. QUIET ENJOYMENT. Landlord covenants that if Tenant pays the rent and performs all of the terms of this Lease, Landlord shall not interfere with Tenant's peaceable and quiet enjoyment and possession of the Leased Premises throughout the Lease Term.

15. SUCCESSORS AND ASSIGNS. The conditions, covenants and agreements in this Lease to be kept and performed by Landlord and Tenant shall bind and inure to the benefit of their respective successors and permitted assigns.

16. RIGHTS OF ENTRY. Upon forty-eight (48) hours notice, Landlord shall have the right to enter the Leased Premises during normal business hours to (i) inspect and/or allow inspection of the Leased Premises, (ii) show the Leased Premises to prospective purchasers or mortgagees or, during the last 6 months of the Term, prospective tenants, (iii) make repairs or restoration to the Leased Premises permitted or required to be made by Landlord hereunder, and (iv) perform the

services to be performed by Landlord under this Lease, provided each such entry by Landlord shall be made in such manner so as not to unreasonably interfere with Tenant's use, occupancy and business operations therein and provided, further, that one or more employees of Tenant are provided the opportunity to be present when Landlord enters the Leased Premises. Notwithstanding the foregoing, in the case of any emergency with respect to which Landlord either requires immediate entry to the Leased Premises (including without limitation cases where emergency repairs are needed), Landlord, with respect to such emergency, shall have the right to enter the Leased Premises at any time or times without prior notice to Tenant but shall notify Tenant as soon thereafter as reasonably possible. Whenever Landlord shall enter upon and/or be present in the Leased Premises, Landlord shall (a) exercise all reasonable efforts to safeguard all persons and property in the Leased Premises from any injury or damage that might be occasioned thereby and to minimize any interference with Tenant's business operations that may be occasioned thereby, and (b) not, in any circumstance, view or inspect any files, papers, or records of Tenant, it being acknowledged by Landlord that Tenant's files, papers and records contain protected healthcare information.

17. EXPIRATION. Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Leased Premises in good condition and repair, ordinary wear and tear, damage by fire, other casualty, condemnation or appropriation, and maintenance and repairs required under this Lease to be performed by Landlord, excepted.

18. NOTICES. All notices to be given to either party shall be deemed given if made in writing and personally delivered, or deposited in the United States mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

LANDLORD:	Ackermann Group 4000 Smith Road, Suite 150 Cincinnati, OH 45209 Attention: Dobbs Ackermann
TENANT:	City of Cincinnati Health Department 3101 Burnet Avenue Cincinnati, OH 45229 Attention: Office Manager
With a copy to:	Director, Dept. of Community and Economic Development City of Cincinnati 805 Central Avenue, Suite 700 Cincinnati, OH 45202

Notwithstanding anything to the contrary herein, if Landlord sends a notice to Tenant alleging that Tenant is in default under this Lease, Landlord 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.

19. LIENS. Tenant shall not permit any liens of any kind to be placed upon the Leased Premises or the building or land where the Leased Premises are located as a result of the Tenant's Work. Tenant will remove and discharge any such charge, lien, security interest or encumbrance upon the Leased Premises within thirty (30) days of Tenant's receipt of notice from Landlord of such lien's attachment to the property. Landlord will not be liable for any labor, service or materials furnished or to be furnished as a result of the Tenant's Work, and no mechanic's or other liens for any such labor, service or materials shall attach to or affect the interest of the Landlord in and to the Leased Premises or the underlying real estate as a result of the Tenant's Work.

20. LANDLORD'S RIGHT TO CURE TENANT'S DEFAULT. Landlord acknowledges that Tenant is a governmental entity and that, as such, Landlord shall not have the right to cure Tenant's defaults at Tenant's expense.

21. BROKERS. Landlord and Tenant agree that no brokerage commission or similar compensation is due in connection with this transaction.

22. MEMORANDUM OF LEASE. Upon request of either party, the parties shall execute a Memorandum of Lease in recordable form in accordance with the provisions of Section 5301.251 of the Ohio Revised Code.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

[______________________]

By: ______________________________

Name: ____________________________

Title: _____________________________

TENANT:

Board of Health of the City of Cincinnati

By: ____________________________
O'dell Owens, MD, MPH
Interim Health Commissioner

By: ____________________________
Malcolm Timmons
Chairperson, Board of Health

Approved as to Form:

____
Assistant City Solicitor

Certified Date: ____________________

Fund/Code: _______________________

Amount: __________________________

By: __________________________
Reginald Zeno, City Finance Director

STATE OF OHIO

COUNTY OF HAMILTON

The foregoing instrument was acknowledged before me this _____ day of _____________, 20___ by ___________________ (name), the _________________ (title) of [___________________], a [________________] on behalf of the [______________].

____
Notary Public

STATE OF OHIO

COUNTY OF HAMILTON

The foregoing instrument was acknowledged before me this _____ day of __________________, 20___ by O'dell Owens, Interim Health Commissioner, and Malcolm Timmons, Chairperson, of the **Board of Health of the City of Cincinnati.**

____
Notary Public

EXHIBIT A

FLOOR PLAN

[TO BE ATTACHED]

EXHIBIT B

DESCRIPTION OF THE TENANT'S WORK

[TO BE ATTACHED]

EXHIBIT C

to Master Lease and Management Agreement

Declaration of Commencement Date

[to be completed once Commencement Date has occurred]

This Declaration of Commencement Date is executed this ____ day of ____________, 20__ by the **City of Cincinnati**, an Ohio municipal corporation (the "**City**") and [______________], an Ohio [___________] ("**Operator**").

The City and Operator's affiliate, Ackermann Enterprises, Inc., are parties to a *Master Lease and Management Agreement* (dated ________________, 2016 pertaining, among other things, to Operator's lease and management of the Madison Center retail facility located at the northwest corner of Madison Road and Whetsel Avenue in Cincinnati.

The Commencement Date is hereby confirmed to be ________________, 20____. The expiration date of the initial Term is hereby confirmed to be ________________, 20____.

Executed by the parties effective as of the date first set above.

CITY OF CINCINNATI

By: ______________________________
Harry Black, City Manager

ACKERMANN ENTERPRISES, INC., an Ohio corporation

By: ______________________________

Name: ____________________________

Title: _____________________________

Recommended By:

____
Oscar L. Bedolla, Director
Department of Community and Economic Development

Approved as to Form:

____
Assistant City Solicitor

Certified Date:____________________
Fund/Code:______________________
Amount:_________________________
By:_____________________________
Reginald Zeno, City Finance Director

EXHIBIT D

to Master Lease and Management Agreement

Form of Operating Budget

SEE ATTACHED

EXHIBIT D

Master Lease and Management Agreement

FORM OF BUDGET AND ANNUAL REPORT

INCOME	**Year**
Effective Rental Income by Tenant	
Braxton Cann Health Clinic	$ -
Family Dollar	$ -
Tenant #3	$ -
Tenant #4	$ -
Tenant #5	$ -
Sub-Total Commercial Effective Income	$ -
Miscellaneous Income	$ -
Effective Rental Income	$ -

OPERATING EXPENSES	**Year**
Commercial Operating Expenses	
Commercial RE Taxes	$ -
Insurance	$ -
Utilities - Common Area	$ -
Payroll	$ -
General & Administrative	$ -
Advertising and Leasing	$ -
Commercial Management Fee	$ -
Repairs & Maintenance	$ -
General & Operating Supplies	$ -
Audit & Tax Return	$ -
Miscellaneous	$ -
Total Operating Expenses	$ -
Net Operating Income	$ -
Replacement Reserves	$ -
NOI After Capital	$ -
DEBT SERVICE	
First Mortgage	$ -
Second Mortgage	$ -
Total Mortgage Payments	$ -
CASH FLOW	$ -
Deferred Fee Payments (if any)	$ -
NET CASH FLOW	$ -

EXHIBIT E

to Master Lease and Management Agreement

Existing Leases

TO BE ATTACHED

EXHIBIT F

to Master Lease and Management Agreement

Example of Annual Permitted Improvement Reimbursement Amount

SEE ATTACHED

EXHIBIT F

Madison Center Capital Improvements Credit Illustration

6/15/2016

Madison Center Revenues

Madison Center Tenants	Leasable SF	Gross Rent Potential
Retail Center - Family Dollar	7,759	$49,195
Retail Center - Health Clinic (Expanded)	10,930	$154,004
Retail Center - Newly Tenanted	5,853	$101,257
Gross Rent Potential	**24,542**	**$304,456**
Less Vacancy Factor		$30,446
Effective Income Potential		**$274,010**

Madison Center Expenses

Operating Expenses	Per SF costs	Total
Commercial RE Taxes	$ 2.85	$69,945
Insurance	$ 0.20	$4,908
Utilities - Common Area	$ 0.50	$12,271
Payroll	$ 0.64	$15,707
General & Administrative	$ 0.10	$2,454
Advertising and Leasing	$ 0.15	$3,681
Commercial Management Fee	5.00%	$13,701
Repairs & Maintenance	$ 0.30	$7,363
General & Operating Supplies	$ 0.05	$1,227
Audit & Tax Return	$ 0.09	$2,209
Miscellaneous	$ 0.02	$491
Total	$ 5.46	**$133,957**

Net Operating Income Estimate	**$140,053**
Reserve for Replacement	$24,542
NOI Estimate After Capital	**$115,511**
Capital Improvements Credit	($100,000)
Projected Master Lease Payment to City (NMTC Term)*	**$15,511**

*Capital Improvements Credit ends after lease Year 7

Projected Madison Center Block Improvements

Item	Cost	Private $	TIF $
Acquisition of Ravenna Houses	$190,000	0	$190,000
Demolition of Ravenna Houses	$38,000	0	$38,000
Site Improvements (Parking & Grading)	$358,000	0	$358,000
Building Façade Improvements	$400,000	$400,000	0
TI for Retail Center - New Tenants	$292,650	$292,650	0
Total Improvements	**$1,278,650**	$ 692,650	$ 586,000

Capital Improvements Credit Calculation	Factor
City Credit to Dev for Cap Upgrades	100%
Improvement Credit Term (yrs)	7
Inflation Rate	3.00%
Potential Annual Improvement Credit	$ (111,175)
Maximum Annual Improvement Credit	$ (100,000)

EXHIBIT F
to
Funding, Acquisition and Development Agreement

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

$3,773,000.00

Date:____________, 2016
(the "**Effective Date**")
Cincinnati, Ohio

FOR VALUE RECEIVED, the undersigned ("**Borrower**") promises to pay to the order of the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which for purposes of this Note is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the "**City**"), the sum specified below together with interest thereon and upon the following terms and conditions. This Promissory Note (this "**Note**") evidences Developer's obligation to repay the Loan, as defined in that certain *Funding, Acquisition and Development Agreement* entered into by and between the City and Borrower as of ________________, 2016 (the "**Development Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

1. Amount. The maximum principal amount of the Loan is Three Million Seven Hundred Seventy-Three Thousand Dollars ($3,773,000.00). The actual principal amount of the loan evidenced hereby shall equal the sum of (i) the amount disbursed to Developer as a Loan pursuant to the Development Agreement, the maximum amount of which is $2,950,000, and (ii) $823,000, representing the fair market value of the City Sale Property conveyed (or to be conveyed) to Developer (collectively, the "**Principal Amount**").

2. Interest Rate. Interest shall accrue on the Principal Amount at a fixed rate of 1.50% per annum. Interest on the Principal Amount shall commence on the date of disbursement.

3. Payments; Late Charge; Maturity Date. The Principal Amount, together with interest on the unpaid principal balance at the rate described above, compounded annually, shall be repayable as follows:

   (i) Annual Payments; Sale Payment.

      a. Beginning with the first April 1 following completion of construction (as evidenced by the issuance of a certificate of occupancy with respect to any portion of the Project) (the "**Commencement Date**"), and thereafter on each April 1 (or the first succeeding business day thereafter) through, and including, the Maturity Date (as defined below), Borrower shall make annual loan payments of principal and interest, in arrears, in amounts equal to the Annual Payment Amount (as defined below). To the extent the Annual Payment Amount for an applicable calendar year is less than the amount of interest accrued in such year, such accrued interest shall capitalize and be added to the Principal Amount. Any dispute regarding the calculation of the determination of the Annual Payment Amount or Sale Payment Amount (as defined below) in any given year shall be resolved by the written determination of the Director (as defined below), made in good faith, which determination shall be binding and conclusive

unless it is determined by a binding, non-appealable adjudication by a court of law with subject matter jurisdiction that the Director's determination is manifestly contrary to the definitions contained in clause (ii) below. Subject to any limitations herein, the Director shall have full discretion to resolve any ambiguities with respect to clause (ii) below in favor of the City, and Borrower expressly waives any canons of contractual interpretation to the contrary.

b. Concurrently with the closing of a sale of the Project Site (or the portion of the Project Site owned by Borrower and its affiliates), Borrower shall pay the Sale Payment Amount to Borrower. Borrower shall provide at least 30 days' prior written notice before the closing of such a sale, together with any and all documentation required hereunder or the Agreement with respect to the determination of the Sale Payment Amount. Borrower shall promptly provide any additional documentation requested by the City in order to determine the Sale Payment Amount in accordance with clause (iv) below. Borrower acknowledges that the Development Agreement prohibits the sale of all or any portion of the Project Site owned by Borrower and its affiliates without the City's consent (provided in accordance with the Development Agreement).

(ii) Definitions. As used herein:

a. "**Annual Payment Amount**" means (1) the amount by which Net Cash Flow in an applicable calendar year exceeds the amount of Net Cash Flow that would be necessary (if received on an annualized basis) to enable Developer, or its private equity investors, as applicable, to achieve a Cash on Cash Rate of Return of 12%, multiplied by (2) 25%. By way of example of this definition, the Net Cash Flow required to achieve a 12% Cash on Cash Rate of Return would be calculated by 0.12 (Cash on Cash Rate of Return) x $2,000,000 (the Equity Contribution) or $240,000. If the Net Cash Flow in Year 2 is $450,000 then the Annual Payment Amount would be ($450,000 - $240,000) x 25% or $52,500.

b. "**Cash on Cash Rate of Return**" shall mean the ratio of Net Cash Flow to the Equity Contributions expressed as a percentage.

c. "**Equity Contributions**" shall mean the initial equity contribution of $2,000,000, and shall exclude any future equity contributions.

d. "**Equity Distributions**" shall mean any and all equity distributions made as a result of or in connection with the Project, including, for the avoidance of doubt, any equity distributions made as a result of or in connection with any refinancing of the Project.

e. "**Internal Rate of Return**" means, as of the date of any given repayment, the monthly compounded rate at which the present value of all Equity Contributions equals the present value of all Equity Distributions. Internal Rate of Return shall be calculated using the Microsoft Excel IRR function (or if such program is no longer available, such other similar software program specified by the Director). Borrower shall provide the excel document used to calculate IRR to the City for review.

f. "**Net Cash Flow**" means (1) Net Operating Income in a calendar year, minus (2) any payments of principal and interest with respect to Borrower's construction loan facilities with Lender in such calendar year.

g. "**Net Operating Income**" means, for the applicable calendar year, collected Project revenue minus, in each case with respect to the Project, (1) reasonable and customary expenses relating to salaries, insurance, taxes (including Service Payments), utilities, management fees, administration, marketing, contract services, repairs, maintenance expenses, replacement reserves (which shall equal a minimum of $250 per apartment per year and $0.50 per square foot of commercial/office space per year), capital expenses that exceed available replacement reserves (provided that Borrower may demonstrate annual contributions of at least the minimum amount referred to above to such reserves), and payments of the deferred developer fee included in the Final Budget, and (2) other expenses as may be deemed appropriately deducted as determined by the Director of DCED (the "**Director**") in his discretion, exercised in good faith.

h. "**Sale Payment Amount**" means (1) the amount by which Sale Proceeds in an applicable calendar year exceeds the amount of Sale Proceeds that would be necessary to enable Developer, or its private equity investors, as applicable, to achieve an Internal Rate of Return of 20%, multiplied by (2) 25%. By way of example of this definition, the Sale Payment Amount required to achieve a 20% Internal Rate of Return would be calculated by setting up an excel sheet where the Equity Contributions are expressed as a negative number in year 0 and all of the Net Cash Flows (less any Annual Payment Amounts) derived by the Developer and any Sale Proceeds previously received by Developer from a partial sale of the Project Site are listed as positive numbers in subsequent years along with the Sale Proceeds in the year in which the Project Site or a portion thereof is sold.

i. "**Sale Proceeds**" means the purchase price and any other consideration paid by or on behalf of a purchaser in connection with a sale of all or any portion of the Project Site, less the reasonable, documented expenses of such a sale.

(iii) Late Charges. A late payment fee equal to five percent (5%) of the annual loan payment, or $2,500, whichever is greater, shall be due if a required annual payment and corresponding Annual Report (as defined in the Development Agreement) are not received on the due date. If any amount remains unpaid for longer than thirty (30) days past the due date, interest shall accrue on such past due amount at a default rate of 12% per annum. Time is of the essence.

(iv) Documentation. In addition to the Annual Report described in the Agreement, Borrower shall submit such information and documentation as is requested by the City in order to determine the Annual Payment Amount or Sale Payment Amount (including, without limitation, any information and documentation sufficient to calculate Net Operating Income, Net Cash Flow, Sale Proceeds, Internal Rate of Return, and Cash on Cash Rate of Return).

(v) Credit to Note Obligations. As described in Section 2(D) of the Development Agreement, and subject to the terms thereof, the Repurchase Price (if applicable) may be treated as if a payment under this Note as if made on the date of the recordation of the deed re-

conveying the City Phase II Properties to the City. The crediting of the Repurchase Price as a payment under this Note shall not be treated as an annual payment under Section 3(i) hereof, it being acknowledged and agreed by Borrower that Borrower shall remain obligated to make annual payments in the Annual Payment Amount in accordance with Section 3(i) regardless of whether the Repurchase Price is credited as a payment under this Note with respect to any particular year.

(vi) Forgiveness Prior to Maturity Date. If a sale of the entire (or entire remainder of the) Project Site owned by Borrower or its affiliates (it being understood that the Madison Center Facility is not owned by Borrower or its affiliates for the purposes of this sentence) occurs following Closing, and if Borrower pays to the City the Sale Payment Amount upon the closing of such sale, then any and all outstanding principal and interest hereunder (the "**Remaining P&I Obligations**") shall be forgiven effective as of the time of the City's receipt of the Sale Payment Amount; *provided*, however, that to the extent any fees owed to the City under this Note or any other Project Document remain outstanding, such fees shall not be forgiven and shall be immediately due and payable as of the closing of such sale. For the avoidance of doubt, a partial sale of the Project Site will not trigger forgiveness prior to the Maturity Date.

(vii) Maturity Date; Forgiveness. The Remaining P&I Obligations, together with any outstanding fees, shall be due and payable on the 30th anniversary of the Commencement Date (or the next succeeding business day) (the "**Maturity Date**"); *provided, however* that the Remaining P&I Obligations shall not be due and payable and shall instead be forgiven on the Maturity Date if, and only if, (a) Borrower has promptly and fully made all payments hereunder which were due and owing prior to the Maturity Date (or has remedied any such failures to the satisfaction of the City prior to the Maturity Date in accordance with the Project Documents) and (b) is not otherwise in default under the Agreement or any other Project Document. Notwithstanding the foregoing, to the extent any fees remain outstanding, such fees shall not be forgiven even if the Remaining P&I Obligations are forgiven, and any outstanding fees shall be immediately due and payable as of the Maturity Date.

5. Due on Transfer or Sale. Notwithstanding the Maturity Date, the remaining principal balance and all accrued but unpaid interest shall become due and payable upon written notice by the City upon Borrower's sale or other transfer of the Project Site or any portion thereof if such sale or transfer occurs prior to the Maturity Date and without the City's consent (as described in Section 12(A)(iv) of the Development Agreement).

6. Place of Payment. Payments shall be made 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. Borrower acknowledges that the City may designate a third party to service the loan.

7. Prepayment. Prepayment of the principal due under this Note may be made in whole or in part at any time without premium or penalty. Any such prepayments shall be applied first to late charges, if any, then to accrued interest then due and owing, and then to principal. The making of a prepayment shall not operate to satisfy or waive Borrower's obligation to make annual payments for any particular year under Section 3(i) hereof (including, without limitation, the obligation to make an annual payment with respect to the year in which a prepayment is made).

8. Default. Upon any default in the payment of any installment of interest, principal or any other sum when due under this Note after written notice by the City to Borrower and failure to cure by Borrower within 5 days thereafter, the entire principal sum hereof and accrued but unpaid interest hereon may, at the sole option of the holder hereof, be declared to be immediately due and payable, time being of the essence. Failure of the holder hereof to exercise this option in the event of

default shall not constitute a waiver of the right of the holder to exercise the same in the event of a subsequent default.

9. General Provisions. This Note and any other Project Documents 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 below 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.

10. Security. This Note is secured by the following (check all that apply):

☒ *Mortgage* on Borrower's real property located at [____________].

☐ Security interest in all business assets/other collateral as described in a certain Security Agreement & UCC-1 Financing Statements

☐ Guaranty

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.

[*Signature Page Follows*]

Executed by each of the undersigned (collectively, the Borrower) on the date first above written.

Ackermann Enterprises, Inc.
an Ohio corporation

By: ______________________________

Printed Name: ____________________

Title: ____________________________

Borrower's Mailing Address:

[____________________]
[____________________]
[____________________]

Contact No.: __________________

Approved by:

____
Oscar L. Bedolla, Director
Department of Community and Economic Development

Approved as to Form:

____
Assistant City Solicitor

{00201555-9}

EXHIBIT G
to
Funding, Acquisition and Development Agreement

DISBURSEMENT OF FUNDS

(A) Conditions to be Satisfied Prior to Disbursement of Funds. The City shall be under no obligation to disburse the Funds until the following conditions are satisfied:

(i) Developer shall have executed and delivered the Note to the City;

(ii) Developer shall have provided the City with evidence of insurance required under this Agreement;

(iii) Developer shall have provided the City with evidence that it has obtained all licenses, permits, governmental approvals and the like necessary for the construction work;

(iv) If reimbursement is being sought for construction, remodeling, or demolition, then such construction, remodeling or demolition shall have commenced and be proceeding in accordance with the City-approved plans and specifications, budget, and construction schedule;

(v) Developer shall have delivered any required bonds under this Agreement to the City;

(vi) Developer shall have provided the City with such other documents, reports and information relating to the Project as the City may reasonably request; and

(vii) Developer shall not be in default under this Agreement.

(B) Disbursement of Funds. Provided all of the requirements for disbursement of the Funds shall have been satisfied, the City shall disburse the Funds to Developer. The City shall disburse the Funds on a reimbursement basis and pro-rata with all other construction loan funds being utilized by Developer for the Project (i.e., the City's Funds shall not be first in; *provided* that the City acknowledges that the Funds may be first in with respect to reimbursement of construction of certain of the Public Infrastructure Improvements and pre-Closing acquisition and demolition on the Developer Option Properties, with respect to which there may be no sources of reimbursement for such expenses other than the City). Developer shall not be entitled to a disbursement of Funds to pay for costs incurred prior to the Effective Date. Developer shall request the Funds and shall use the Funds solely to pay for the following uses and for no other purpose: (i) construction of the Public Infrastructure Improvements, (ii) acquisition of Developer Option Properties, and (iii) demolition on Developer Option Properties, in each case as described in this Agreement. Nothing in this Agreement shall permit, or shall be construed to permit, the expenditure of Funds for the acquisition of supplies or inventory, or for the purpose of purchasing materials not used in the construction, or for establishing a working capital fund, or for any other purpose expressly disapproved by the City. Developer shall not request a disbursement of Funds for any expenditure that is not itemized on or contemplated by the approved budget or if the costs for which the disbursement is being requested exceeds the applicable line item in the budget; however, Developer may request, in writing, that funds be transferred between line items, with the City's approval thereof not to be unreasonably withheld. Disbursements shall be limited to an amount equal to the actual cost of the work, materials and labor incorporated in the work up to the amount of such items as set forth in Developer's request for payment. Anything contained in this Agreement to the contrary notwithstanding, the City shall not be obligated to make or authorize any disbursements from the project account if the City determines, in its reasonable discretion, that the amounts remaining from all funding sources with respect to the Project are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to Developer for construction shall be limited to the Funds to be made available by the City under this Agreement.

Developer shall provide all additional funds from other resources to complete the Project. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds available to Developer, to the extent such Funds have not been disbursed, shall terminate ninety (90) days following completion of construction.

(C) Draw Procedure

(i) Frequency. Developer may make disbursement requests no more frequently than once in any thirty (30) day period.

(ii) Documentation. Each disbursement request shall include the following: For construction costs shown on the approved budget, Developer shall submit a draw request form provided by the City, with the following attachments: (a) an AIA G-702-703 Form (AIA) or such other similar form acceptable to the City, (b) sworn affidavits and/or unconditional lien waivers (together with invoices, contracts, or other supporting data) from all contractors, subcontractors and materialmen covering all work, labor and materials for the work through the date of the disbursement and establishing that all such work, labor and materials have been paid for in full, (c) waivers or disclaimers from suppliers of fixtures or equipment who may claim a security interest therein, and (d) such other documentation or information requested by the City that a prudent construction lender might request. All affidavits and lien waivers shall be signed, fully-executed originals.

(D) Retainage. After review and approval of a disbursement request, then the City shall disburse (i) prior to 50% completion of the Public Infrastructure Improvements, ninety percent (90%) of the amount requested (with retainage of 10%), and (ii) on and after the 50% completion point of the Public Infrastructure Improvements, ninety-five percent (95%) of the amount requested (with retainage of 5%). The retained amount shall be disbursed when (a) construction of the Project (including the Private Improvements) has been completed (as evidenced by a certificate of occupancy for all buildings with respect to the Private Improvements, and as determined by the City with respect to the Public Infrastructure Improvements), (b) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment, (c) Developer has provided the City with a complete set of "as built" drawings for the Project if required by the City, and (d) Developer has complied with all of its other obligations under this Agreement as determined by the City in its sole discretion. Notwithstanding anything in this clause (D) to the contrary, with respect to acquisition and demolition costs approved by the City with respect to each Developer Option Property, the City shall disburse the entirety of the amount requested upon the transfer of title to the Developer Option Property to the City with no retainage so long as (1) there is no event of default under the Agreement, (2) the City has received and is satisfied with all applicable due diligence documentation provided in the Agreement with respect to the applicable Developer Option Property, and (3) Developer has otherwise complied with this Exhibit G in terms of materials, documentation and other information provided to the City (e.g., AIA forms, lien waivers, and so forth) with respect to such acquisition and demolition costs for which reimbursement is sought.

(E) Estoppel Certification. A request for the disbursement of Funds shall, unless otherwise indicated in writing at the time Developer makes such request, be deemed as a representation and certification by Developer that (i) that all work done and materials supplied to date are in accordance with the Final Plans and in strict compliance with all legal requirements as of the date of the request, (ii) the Project is being completed in accordance with the Final Plans, and (iii) Developer and the City have complied with all of their respective obligations under this Agreement. If Developer alleges that the City has been or is then in default under this Agreement at the time Developer makes such request, and if the City disputes such allegation, the City shall not be obligated to make or authorize such disbursement until the alleged default has been resolved.

EXHIBIT H
to
Funding, Acquisition and Development Agreement

FORM OF MORTGAGE

-- space above for recording --

Property: [___________]

MORTGAGE

The undersigned ("**Mortgagor**"), in consideration of a loan from the City of Cincinnati, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), in the maximum principal amount of **$3,773,000**, as evidenced by that certain *Promissory Note* dated [_________________], 20[__] (as the same may be amended from time to time, the "**Note**"), hereby grants, with mortgage covenants, to the City the real property described on Exhibit A (*Legal Description*) hereto.

Parcel Number: [_____________]
Property Address: [_____________]
Prior Instrument: OR _____, Page _____, Hamilton County, Ohio Records

This Mortgage is given, upon the statutory condition, to secure the payment and performance of Mortgagor's obligation to repay the loan in accordance with the terms of the Note. The stated maturity date of the indebtedness evidenced by the Note is [_____________], 20[___].

There are hereby excepted from the Mortgage covenants (i) all easements, covenants, restrictions and conditions of record, and (ii) real estate taxes and assessments not yet due and payable.

[*Signature and Notary Page Follows*]

This Mortgage shall be effective as of the date of Mortgagor's acquisition of title to the property; namely, [____________________], 20[____].

ACKERMANN ENTERPRISES, INC.

By: ______________________________

Name: ______________________________

Title: ______________________________

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of ________, 20___, by ______________________ (name), ______________________ (title) of Ackermann Enterprises, Inc., an Ohio corporation, on behalf of the corporation.

____
Notary Public
My commission expires: ______________

Approved as to Form:

____
Assistant City Solicitor, City of Cincinnati

EXHIBIT A
to Mortgage

LEGAL DESCRIPTION OF PROPERTY

[TO BE PROVIDED BY DEVELOPER AND REVIEWED/APPROVED BY CITY]

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Room 214
Cincinnati, OH 45202

EXHIBIT I-1
to
Funding, Acquisition and Development Agreement

FORM OF GENERAL WARRANTY DEED – DEVELOPER CONVEYANCE

-- space above for Recorder's Office --

GENERAL WARRANTY DEED

ACKERMANN ENTERPRISES, INC., an Ohio limited liability company ("**Grantor**"), for valuable consideration paid, hereby grants and conveys, with general warranty covenants, to the **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), the tax-mailing address of which is 801 Plum Street, Cincinnati, Ohio 45202, the following described real property ("**Property**"):

See Attached Exhibit A (*Legal Description of Property*) incorporated by reference herein.

Together with all appurtenant easements and rights.

Auditor's Parcel ID no.: [______________________]

Prior Instrument Reference: Official Record __________, Page __________
of the Hamilton County Recorder's Office

The City's acceptance of the property hereinabove described was authorized by Ordinance No. 241-2016 passed by City Council on June 29, 2016.

There are hereby excepted from the general warranty covenants herein (i) all easements, covenants, restrictions and conditions of record and (ii) real estate taxes and assessments not yet due and payable.

[Signature Page Follows]

Executed on ____________________, 20___.

ACKERMANN ENTERPRISES, INC.,
an Ohio corporation

By: ____________________________________

Name: __________________________________

Title: ___________________________________

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of __________, 20___ by ________________________________ (name), __________________ (title) of ACKERMANN ENTERPRISES, INC., an Ohio corporation, on behalf of the corporation.

____
Notary Public
My commission expires: _________________________

Approved as to Form:

____
Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Room 214
Cincinnati, OH 45202

{00201555-9}

EXHIBIT A

to General Warranty Deed

LEGAL DESCRIPTION OF PROPERTY

[TO BE ATTACHED]

EXHIBIT I-2
to
Funding, Acquisition and Development Agreement

FORM OF QUITCLAIM DEED – CITY CONVEYANCE

-- space above for Recorder's Office --

QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the "**City**"), for valuable consideration paid, hereby grants and conveys to ACKERMANN ENTERPRISES, INC., an Ohio corporation ("**Developer**"), the tax-mailing address of which is 4030 Smith Road, Suite 130, Cincinnati, Ohio 45209, all of the City's right, title and interest in and to the following described real property ("**Property**"):

See Attached Exhibit A (*Legal Description of Property*) incorporated by reference herein.

Together with all appurtenant easements and rights.

Auditor's Parcel ID no.: [________________________]

Prior Instrument Reference: Official Record __________, Page __________ of the Hamilton County Recorder's Office

[THIS PARAGRAPH TO BE INCLUDED FOR REPURCHASE PROPERTY ONLY:] Reconveyance to City: Pursuant to that certain *Funding, Acquisition and Development Agreement* dated [____________], 2016 between Developer and the City (the "**Agreement**"), if Developer does not commence construction of the Phase II Project (as defined in the Agreement) by certain dates as set forth in the Agreement, the City has the right to re-purchase the Property on the terms and conditions set forth therein. At such time as the City no longer has the right to repurchase the Property under the Agreement, the City, promptly upon Developer's written request, shall execute and deliver to Developer a release of such rights in recordable form.

The City's conveyance of the property hereinabove described was authorized by Ordinance No. 241-2016 passed by City Council on June 29, 2016.

[Signature Page Follows]

Executed on ___________________, 20___.

CITY OF CINCINNATI,
an Ohio municipal corporation

By: ______________________________________
Harry Black, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of __________, 20___ by Harry Black, City Manager of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the municipal corporation.

____
Notary Public
My commission expires: ___________________

Approved as to Form:

____
Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, Room 214
Cincinnati, OH 45202

EXHIBIT A

to Quitclaim Deed

LEGAL DESCRIPTION OF PROPERTY

[TO BE ATTACHED]

EXHIBIT J
to
Funding, Acquisition and Development Agreement

FORM OF PUBLIC PARKING COVENANT

-- space above for recorder --

Property: [______________]

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "**Covenant**") is made as of the Effective Date (as defined on the signature page hereof) by **ACKERMANN ENTERPRISES, INC.**, an Ohio corporation, with an address of 4030 Smith Road, Suite 130, Cincinnati, Ohio 45209 ("**Owner**"), for the benefit of the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "**City**").

Recitals:

A. By virtue of a deed recorded on [__________] in Official Record [______], Page [_______], Hamilton County, Ohio Records ("**Deed**"), Owner is the owner of the real property located at [____________] in the Madisonville neighborhood of Cincinnati, as more particularly described on Exhibit A (*Legal Description of the Parking Site*) hereto (the "**Property**"). Owner undertook a project to, among other things, construct a public parking lot on the Property (the "**Project**"), which is to be financed, in whole or in part, by the City (the "**Funds**"), as described in that certain *Funding, Acquisition and Development Agreement* dated [______________], 2016 between the City and Developer (the "**Agreement**"). Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Agreement.

B. As partial consideration for the City's grant of the Funds for the Project, Owner is required under the Agreement to execute and record this Covenant.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner does hereby declare that the Property is and shall be subject to the provisions of this Covenant as set forth below.

1. **Public Parking Requirement**. Each and every parking space at the Parking Site shall be a public parking space, open and available to members of the general public on the same terms and conditions as would be available to the employees and patrons of Owner; *provided, however* that this Covenant shall not preclude Owner from reserving a portion of the Parking Site for the patrons, employees and invitees of the Board of Health of the City of Cincinnati's Braxton Cann Memorial Health Clinic.

2. **Term**. This Covenant shall expire on January 1, 2035.

3. **Enforcement of the Covenants**. The City is the beneficiary of the covenants contained

herein. Each and every provision of this Covenant shall apply to and be enforceable by an action at law or equity instituted by the City against all any owner or owners of all or a portion of the Property from time to time. Any failure of the City to enforce any provision of this Covenant shall not be deemed a waiver of the City's right to do so thereafter. This Covenant shall not be amended, released, extinguished or otherwise modified without the prior written consent of the City, which consent may be withheld in its sole and absolute discretion except as otherwise stated herein. Owner acknowledges and agrees that the City's provision of the Funds is expressly conditioned upon, among other things, Owner's fulfillment of the terms and conditions of this Covenant, including Section 1 hereof, and that the City will incur actual damages and may be irreparably harmed by the failure of Owner to comply with the same. Owner acknowledges that, in the event of a failure to comply with the terms of this Covenant, the City may seek injunctive relief in addition to such other legal, equitable, contractual or other remedies as may be available to the City from time to time.

4. **Covenants to Run with the Land.** Owner intends, declares and covenants on behalf of itself and its successors and assigns that this Covenant and the provisions contained herein: (i) shall be covenants running with the land and are binding upon Owner and its successors-in-title; (ii) are not merely personal covenants of Owner; and (iii) shall inure to the benefit of the City. Owner hereby agrees that any and all requirements of the laws of the State of Ohio to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate or privity of contract are also deemed to be satisfied in full.

5. **Severability.** Each provision of this Covenant and the application thereof to the Property are hereby declared to be independent of and severable from the remainder of this Covenant. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Covenant.

[*Signature Page Follows*]

This Restrictive Covenant is executed on ____________, 2016 (the "**Effective Date**").

ACKERMANN ENTERPRISES, INC.,
an Ohio corporation

By: ______________________________

Name: ____________________________

Title: ____________________________

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _________, 2016 by ____________________, as the ____________________ of **ACKERMANN ENTERPRISES, INC.**, an Ohio corporation, on behalf of the corporation.

____
Notary Public
My commission expires: ________________

ACKNOWLEDGED AND ACCEPTED BY:

CITY OF CINCINNATI

By: ______________________________
Harry Black, City Manager

Recommended by:

____
Oscar L. Bedolla, Director
Department of Community and Economic Development

Approved as to Form:

____
Assistant City Solicitor

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

Exhibit A
to
Restrictive Covenant

Legal Description of Parking Site

[Intentionally Omitted]

EXHIBIT K
to
Funding, Acquisition and Development Agreement

FORM OF PARKING MANAGEMENT AGREEMENT

SEE ATTACHED

Contract No: ______________

PARKING LOT MANAGEMENT AGREEMENT

(Public Parking Lots at [____________] in Madisonville)

This PARKING LOT MANAGEMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 805 Central Avenue, Suite 700, Cincinnati, OH 45202, Attn: Department of Community and Economic Development (the "**City**"), and **ACKERMANN ENTERPRISES, INC.**, an Ohio corporation, the address of which is 4000 Smith Road, Suite 150, Cincinnati, Ohio 45209 ("**Operator**").

Recitals:

A. Operator owns (i) the approximately [___]-space parking lot located at [____________], (ii) the approximately [___]-space parking lot located at [____________], (iii) the approximately [_____]-space parking lot located at [______________], and (iv) the approximately [___]-space parking lot located at [______________], each of which is depicted on Exhibit A (*Site Plan*) hereto (collectively, the "**Parking Lot**") and is in the Madisonville neighborhood.

B. Pursuant to a certain *Funding and Development Agreement* entered into on ______________________, 2016 (the "**Development Agreement**") with the City, the City has agreed to provide the Funds (as defined in the Development Agreement) to Operator to, among other things, reimburse Operator for a portion of the acquisition and hard construction costs of the Parking Lot. Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Development Agreement.

C. In consideration of the City's provision of the Funds to Operator, and as a condition thereof, Operator has agreed to enter into this Agreement in order to memorialize its commitment to (i) keep and maintain the Parking Lot as public parking and to enter into this Agreement to govern its management of the Parking Lot, (ii) operate and maintain the Parking Lot and bear all costs and expenses in connection with the same, and (iii) charge no fee for parking at the Parking Lot and receiving no fee from the City or otherwise in connection with managing the Parking Lot.

D. Operator's commitment to keep the Parking Lot open as public parking is further memorialized in that certain *Restrictive Covenant* executed by Operator in favor of the City and recorded with the Hamilton County, Ohio Recorder's Office at Official Record [________], Page [_________] (the "**Public Parking Covenant**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. ENGAGEMENT. Operator hereby agrees to assume the exclusive obligation of managing and operating the Parking Lot on the terms and conditions set forth in this Agreement. Operator acknowledges that it or its affiliates have constructed the Parking Lot (or have caused the Parking Lot to have been constructed) and it is therefore familiar with the condition of the Parking Lot. The City makes no representations or warranties to Operator concerning the present or future condition of the Parking Lot.

2. TERM. The term of this Agreement ("**Term**") shall commence on the Effective Date (also referred to herein as the "**Commencement Date**") and, unless extended or sooner terminated in accordance with the provisions hereof, shall expire on the date the Public Parking Covenant expires or is terminated (the last day of the Term being referred to herein as the "**Expiration Date**"). Upon the expiration or termination of this Agreement, neither party shall thereafter have any rights or obligations under this Agreement; *provided*, however, that all rights and obligations of the parties hereunder that have accrued but have not been fully

performed as of the effective date of such expiration or termination shall survive the expiration or termination until fully performed.

3. **NO MANAGEMENT FEE**. Operator shall provide the services and perform the obligations contemplated hereby at its sole cost and expense, and there shall be no management or other fee associated with the same.

4. **DUTIES**.

(A) Duties. Operator hereby covenants and agrees that it will provide the following services and perform the following obligations throughout the Term:

(i) General. Operator shall manage and operate the Parking Lot in a first-class manner equal to other comparable public (or public/private, as the case may be) parking lots in Cincinnati and shall render the usual and customary services incidental thereto in a professional, businesslike and efficient manner. Operator shall act in a fiduciary capacity with respect to the proper accounting for and protection of the City's rights with respect to the Parking Lot. Operator shall observe all rules and regulations and perform all duties as the City may impose from time to time on the Parking Lot; *provided* that such rules, regulations and duties shall be no more stringent than those rules, regulations and duties imposed by the City on City-owned parking lots managed by third parties (irrespective of the fact that the Parking Lot is not City-owned) from time to time. Operator shall be responsible for full compliance with all applicable federal, state and municipal laws, ordinances, regulations and orders (collectively, "**Laws**") pertaining to the operation of the Parking Lot.

(ii) Collection of Parking Revenue. The parties acknowledge that, because parking at the Parking Lot will be free, Operator will not be collecting or handling any parking revenue; *provided* that this Agreement, including without limitation this clause, may be subject to amendment relating to parking fees as described in Section 5(A) below.

(iii) Payment of Expenses. Operator shall pay, when due, all operating and other expenses associated with the Parking Lot. The City shall have no responsibility with respect to any costs or expenses in respect of the Parking Lot whatsoever other than the provision of the Funds on, and subject to the terms of, the Development Agreement.

(iv) Licenses and Permits. Operator shall obtain and maintain all licenses and permits required by an operator of parking facilities by any governmental body or agency having jurisdiction over Operator's operation of the Parking Lot, and Operator shall abide by the terms of such licenses and permits.

(v) Security. Operator shall use commercially reasonable efforts to ensure that the Parking Lot is safe, well-lit and free of crime.

(vi) Maintenance & Repairs. Operator shall at all times maintain the Parking Lot in good and safe condition and repair, in a neat, clean and orderly condition, including without limitation maintaining the landscaping, filling cracks and pot holes, and removing graffiti on an as-needed basis. The City shall not have any maintenance or repair obligations, or any obligation to provide services for the benefit of the Parking Lot, under this Agreement.

(vii) Capital Repairs. Operator, at Operator's expense, shall be responsible for making any and all capital repairs or capital improvements to the Parking Lot as Operator determines from time to time are needed.

(viii) Public Parking. Operator shall (a) erect or construct signage, clearly and conspicuously visible from public right-of-way to passers-by and vehicular traffic (but conforming with all applicable zoning laws and other Laws), indicating that the Parking Lot includes public parking, (b) ensure that the Parking Lot is easily identifiable as being available, without charge, to the general public (unless a fee is to be charged in accordance with the terms of this Agreement), and (c) in no way discriminate as between members of the general public and Operator's (or Operator's affiliates') employees or patrons with respect to the availability of the Parking Lot; *provided*, however, that Operator shall provide a certain number of parking spaces, free of charge, to the patrons, employees and invitees of the Board of Health of the City of Cincinnati's Braxton Cann Memorial Health Clinic in accordance with the Health Clinic Sublease Agreement.

(ix) Reporting of Accidents and Other Significant Occurrences. Operator shall keep the City informed of all significant, unanticipated occurrences at or otherwise affecting the Parking Lot that involve public health or safety issues or that could lead to negative publicity. Operator shall notify the Director of the City's Department of Community and Economic Development ("**DCED**") within 48 hours of Operator being notified of any break-ins and assaults occurring at the Parking Lot. For all incidents for which Operator has been notified that a police report is filed, Operator shall promptly obtain a copy of the police report and promptly provide a copy of it to DCED's Director. Operator shall keep the City copied on any notice provided to Operator's insurers of any claims made by Operator in respect of the Parking Lot or incidents occurring thereon.

(B) Alterations. Operator shall not make or construct any structural or material improvements, additions or alterations to the Parking Lot without the prior written consent of the City, not to be unreasonably withheld. This clause 4(B) shall not operate to require the City's consent to any re-striping or re-sealing of the Parking Lot.

(C) Inspections. The City shall have the right to inspect the Parking Lot from time to time for the purpose of determining whether Operator is fulfilling its obligations hereunder or for any other proper purpose.

(D) No Liens. If any mechanics' lien or other similar lien is filed against the Parking Lot as a result of labor or material furnished at Operator's request, Operator shall cause the lien to be released or bonded off within thirty (30) days following the filing of such lien.

5. PARKING RATES; HOURS OF OPERATION.

(A) Parking Rates. Operator shall not charge a parking fee to park in the Parking Lot; *provided, however*, that if Operator provides written notice that it seeks to establish monthly, daily or hourly fees for the Parking Lot, (i) the City agrees to consent to the same, and the City and Operator agree to enter into an amendment of this Agreement reflecting the City's consent, together with such modifications and additions to this Agreement as may be deemed reasonably necessary by the City in order to properly reflect the City's practices and requirements with respect to the accounting and handling of funds of a public asset, and (ii) any fee for the use of the Public Parking Spaces charged to the general public shall be no higher than the fee for the use of the Public Parking Spaces charged to Operator's (or its affiliates') employees and guests, and any such fee arrangement with respect to the Public Parking Spaces shall in no way discriminate against members of the general public or provide preferential treatment to Operator's (or its affiliates') employees and guests. Notwithstanding anything to the contrary herein, (a) the provision of parking spaces to the patrons, employees and invitees of the Braxton Cann Memorial Health Clinic pursuant to the Health Clinic Sublease Agreement is permitted hereunder, and (b) in no event may Operator charge a parking fee with respect to the parking spaces provided in accordance with the Health Clinic Sublease Agreement.

(B) Hours of Operation. Operator may determine the hours of the Parking Lot in its reasonable discretion.

6. **INSURANCE.**

(A) Type of Insurance. Throughout the Term of this Agreement, Operator shall carry and maintain or cause to be carried and maintained the following insurance:

(i) Worker's compensation insurance as required by law;

(ii) Employer's liability insurance on all of Operator's employees working at the Parking Lot who are not covered by Worker's Compensation, for occupational accidents or disease, for limits of not less than $1,000,000 for any one occurrence; and

(iii) Garage keepers' insurance covering claims for bodily injury, personal injury or death, and property damage occurring at the Parking Lot in an amount not less than $1,000,000 per accident, combined single limit, or such additional amount as the City or its risk advisors may determine from time to time to be customary for similar-sized public parking lots in Cincinnati.

Operator shall send proof of all such insurance within 15 days of the Effective Date hereof, and thereafter upon the City's written request, to 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. This Section 6 shall not be construed as limiting any obligations (with respect to insurance or otherwise) under the Development Agreement.

(B) Policy Requirements. Operator's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. Prior to the Commencement Date, and annually thereafter, Operator shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Operator hereunder. Operator's garage liability insurance policy shall name the City of Cincinnati as an additional insured.

(C) Subcontractors. Operator shall require (or cause its contractors to require) all subcontractors doing work at the Parking Lot to have commercial general liability insurance coverage, at the subcontractor's expense, in sufficient amounts to protect the interests of Operator and the City. Operator shall obtain and keep on file (or shall require its contractors to obtain and keep on file) a certificate of insurance evidencing that each subcontractor is so insured and naming Operator and the City as additional insureds.

(D) Waiver of Subrogation. Operator hereby waives all claims and rights of recovery, and on behalf of Operator's insurers, rights of subrogation, against the City, its 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 insurance, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Operator shall at all times protect itself against such loss or damage by maintaining adequate insurance on Operator's property. Operator shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

7. **INDEMNIFICATION**. The City assumes no responsibility for any acts, errors or omissions of Operator or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Operator. Operator shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability (collectively, "**Claims**") suffered or incurred by or asserted against the Indemnified

Parties or any one or more of them as a result of or arising from the operation of the Parking Lot or the acts of Operator, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Operator in connection with Operator's activities at or with respect to the Parking Lot, or in connection with any breach by Operator under this Agreement, or in connection with any employment matter arising between Operator and its employees. The foregoing indemnity shall not apply to Claims to the extent such Claims arise out of the recklessness or willful misconduct of the City or its employees, agents or contractors. This indemnification provision shall survive the termination or expiration of this Agreement with respect to Claims arising prior to the termination or expiration of this Agreement.

8. CASUALTY DAMAGE. If the Parking Lot is damaged or destroyed by fire or other casualty, the City may, at its option, immediately require that Operator repair the damage to the Parking Lot. Operator shall be relieved of its obligation to manage the Parking Lot during any period in which the Parking Lot is closed for repairs. For the avoidance of doubt, this section shall not apply to the Private Improvements.

9. DEFAULT; REMEDIES.

(A) Default. Each of the following shall constitute a default by Operator under this Agreement:

(i) If Operator fails to perform or observe any of the other covenants, terms or conditions contained in this Agreement, and such failure continues for longer than 30 days after Operator receives written notice thereof from the City; *provided, however*, that if the nature of the default is such that it cannot reasonably be cured within 30 days, Operator shall not be in default so long as Operator commences to cure the default within such 30-day period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Operator's receipt of the City's initial notice of default. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, a default shall be deemed to have occurred if Operator fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) If Operator files or has filed against it a petition or similar pleading for bankruptcy, insolvency, receivership or assignment for the benefit of creditors.

(B) Remedies. Upon the occurrence of a default that continues beyond the applicable notice and cure period (if any) provided for hereunder, the City shall be entitled to (i) terminate this Agreement by giving Operator written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Operator, 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. Operator shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Operator under this Agreement or the City's enforcement or termination of this Agreement. Operator shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy. The City's rights and remedies hereunder are cumulative, and the City shall be entitled to all other rights and remedies available at law or in equity. No waiver of default by the City of any term, covenant or condition hereof to be performed or observed by Operator shall be construed as, or operate as, a waiver of any subsequent default of the same or any other term, covenant or condition hereof.

10. NOTICES. All notices required to be given to either party under this Agreement shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a nationally recognized courier service, to the parties at their respective addresses set

forth in the introductory paragraph of this Agreement or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt. If Operator sends a notice to the City alleging that the City is in breach of this Agreement, Operator 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. If the City sends a notice to Operator, the City shall simultaneously send a copy of such notice to: Thompson Hine LLP, 312 Walnut Street, Suite 1400, Cincinnati, Ohio 45202, Attention: Stephen King. If the City is required to send a notice to a Lender hereunder, such notice shall be given in accordance with the Development Agreement.

11. GENERAL PROVISIONS.

(A) Entire Agreement. This Agreement (including the exhibits hereto and other agreements referred to herein) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Assignment and Financing.

(i) Assignment. Operator shall not assign its rights or obligations under this Agreement to a third party without the prior written consent of the City. Notwithstanding the foregoing, if Developer's obligations under the Development Agreement are assigned, then the City agrees to consent to the assignment of this Agreement to the same entity with respect to which Developer's obligations under the Development Agreement were assigned.

(ii) Incorporation of Lender Cure Right Provisions. The provisions regarding the Lender cure right in Section 12(A)(v)(a) of the Development Agreement are hereby incorporated, *mutatis mutandis*, into this Agreement.

(C) Amendments. This Agreement may be amended only by a written amendment signed by both parties; *provided, however*, that the City agrees to obtain Lender's prior written consent to any amendments to Section 11(B)(ii) of this Agreement that would have a material and adverse impact on Lender's rights under such section.

(D) 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 Operator agrees that venue in such court is proper. Operator hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) 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.

(F) 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.

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

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

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

(J) No Third Party Beneficiaries. Except as described in Section 11(B) hereto, the parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City 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 member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Agreement shall be personally liable under this Agreement.

(L) Representation as to Authority. Operator represents to the City that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement and that Operator's execution and performance of this Agreement has been duly authorized by all necessary actions.

(M) Exhibits. The following exhibit is attached hereto and made a part hereof:
Exhibit A - *Site Plan*

[*Signature Page Follows*]

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "**Effective Date**").

CITY OF CINCINNATI

By: ______________________
Harry Black, City Manager

Date:______________, 2016

ACKERMANN ENTERPRISES, INC.

By: ____________________________
Name: __________________________
Title: __________________________

Date:______________, 2016

Recommended By:

____
Oscar L. Bedolla, Director
Dept. of Community & Economic Development

Approved as to Form:

____
Assistant City Solicitor

EXHIBIT A
to
Parking Lot Management Agreement

SITE PLAN

[INTENTIONALLY OMITTED]

EXHIBIT L
to
Funding, Acquisition and Development Agreement

FORM OF ANNUAL REPORT

SEE ATTACHED

EXHIBIT L

Funding, Acquisition and Development Agreement

FORM OF ANNUAL REPORT

INCOME	**Year**
Residential Effective Rental Income	$ -
Residential Miscellaneous Income	$ -
Commercial Effective Income	$ -
Commercial Miscellaneous Income	$ -
Parking income	$ -
Effective Rental Income	**$ -**

OPERATING EXPENSES	**Year**
Residential Operating Expenses	
Real Estate Taxes	$ -
Insurance	$ -
Utilities - Common Area	$ -
Utilities - Vacant Apartments	$ -
Payroll	$ -
General & Administrative	$ -
Advertising & Leasing	$ -
Residential Management Fee	$ -
Property Maintenance	$ -
Turnover	$ -
Audit & Tax Return	$ -
Commercial Operating Expenses	
Commercial RE Taxes	$ -
Insurance	$ -
Utilities - Common Area	$ -
Payroll	$ -
General & Administrative	$ -
Advertising and Leasing	$ -
Commercial Management Fee	$ -
Repairs & Maintenance	$ -
General & Operating Supplies	$ -
Audit & Tax Return	$ -
Miscellaneous	$ -
Total Operating Expenses	**$ -**
Net Operating Income	**$ -**
Replacement Reserves	$ -
NOI After Capital	**$ -**
DEBT SERVICE	
First Mortgage	$ -
Second Mortgage	$ -
Total Debt - NMTC QLICI Loans	$ -
Total Debt Service	**$ -**
CASH FLOW	$ -
Deferred Developer Fee Payment	$ -
NET CASH FLOW	$ -

EXHIBIT M
to
Funding, Acquisition and Development Agreement

ADDITIONAL REQUIREMENTS

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) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the 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 a 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, but not limited to, 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 ten (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 Cincinnati Municipal Code Chapter 321. Municipal Code 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 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 Cincinnati Municipal Code 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 twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.[1]

(i) Applicability. The applicability of Municipal Code Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of $5,000. Municipal Code 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 Municipal Code 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 Cincinnati Municipal Code ("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

[1] Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

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 15th. 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 Cincinnati Municipal Code 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. Chapter 325 of the Cincinnati Municipal Code (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. Chapter 325 of the Municipal Code 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 Chapter 325 of the Cincinnati Municipal Code (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 twenty (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 Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", may apply to this Agreement. Municipal Code 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 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 513-746-7200.

(M) Wage Enforcement. This Agreement is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any person who has an agreement with the City, or a contractor or subcontractor of that person, shall report all complaints or adverse determinations of Wage Theft and Payroll Fraud (as defined in Chapter 326 of the Cincinnati Municipal Code) against the person, contractor or subcontractors to the Department of Economic Inclusion within 30 days of notification of the complaint or adverse determination. Under the Wage Enforcement provisions, the City shall have the authority, under certain circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.

(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.

Addendum I
to
Additional Requirements Exhibit

City's Prevailing Wage Determination

TO BE ATTACHED

RECEIVED

MAY 24 2016

Department of Economic Inclusion

2016-091

Culbreath, Barbara

From:	CityMatters@rcc.org
Sent:	Tuesday, May 24, 2016 2:13 PM
To:	DeVeyra, Edgar; Culbreath, Barbara; Levy, Ruth; DEI
Subject:	Community & Economic Development - Form217

REQUEST FOR PROJECT WAGE DETERMINATION

OCC USE ONLY
Fillout and Circle all that Apply Below:

DATE RECEIVED: 5-25-16

FUNDING GUIDELINES:
(State or Federal)

RATES THAT APPLY:
(Building, Heavy, Highway, Residential, Demolition, Other)
STATE BLDG PW RATES APPLY

DECISION NUMBER:

MODIFICATIONS:

DECISION DATE: 5-20-16

EXPIRATION DATE: 8-20-16

SUPERSEDES DECISION NUMBER:

DETERMINATION BY:
Name: Wiley Ross

Title: CCS

Date: 5-25-16

APPROVED BY:

for T. Corey Way: E. DeVeyra
DEPARTMENT OF ECONOMIC INCLUSION DIRECTOR SIGNATURE

COMMENTS:
Prevailing wage rates will apply to public improvements which include demolition, site preparation, construction of parking lot and public plaza.

ORIGINAL ASSIGNED NUMBER:

REQUESTING AGENCY OR DEPT.
Community & Economic Development

CONTACT PERSON AND PHONE NUMBER
Kathleen Colley 352-6129

Requested Date: 05/24/2016
Estimated Advertising Date: 07/01/2016
Estimated Bid Opening Date: 07/22/2016
Estimated Starting Date: 08/01/2016

SOURCE AND FUND NUMBER

CITY	X	**FUND**	980
STATE		**FUND**	
COUNTY		**FUND**	
FEDERAL		**FUND**	

PROJECT ACCOUNT NUMBER: N/A

AMT. OF PUB. FUNDING $: Equal 5,000,000

TOTAL PROJECT DOLLARS: 36,000,000

NAME OF PROJECT AND LOCATION OF PROJECT
Madison & Whetsel Public Infrastructure Improvements

TYPE OF WORK

1. Building	X	**2. Heavy**
3. Highway	X	**4. Residential**
5. Demolition	X	
6. Other		

DESCRIPTION

1. Total number of Buildings to be affected by the project	6
2. Number of Floors for each building	2
3. Number of UNITS for each building	0
4. Are buildings contiguous?	No
5. Are buildings owned by same owner?	No
6. Does each building have its own deed?	No
7. Does any building contain commercial space?	No
8. Are CDBG Funds used to upgrade commercial space?	No

DESCRIPTION OF THE PROJECT AND THE WORK TO BE PERFORMED (Provide a COMPLETE description of the project and the work to be performed. Give COMPLETE DETAILS and SPECIFICS about the use of all public funding and non-public funding in the project. Please be DETAILED & SPECIFIC about the work for each site. e.g., painting, plastering, roof repair, installation of heating or air conditioning, etc. Please provide responses below or email project descriptions to edgar.deveyra@cincinnati-oh.g ov.)

The City is providing TIF funding to the Ackermann Group for a series of Public Improvements in support of adjacent Private Improvements for the Madison & Whetsel Redevelopment Effort. The Public Improvements will include: building acquisition, demolition, site preparation, construction of public parking lots, construction of public plaza. The City's agreement with Ackermann Group will allow the acquisition and demolition of buildings prior to the commencement of the remaining public improvements and all of the private improvements.

DEI 217 Form
REV: 12/23/2015