

**ORIGINAL CONTRACT  
RETURN TO FINANCE DEPT.**

Original Contract No.: 75x2017-091

**SECOND AMENDMENT TO FUNDING, ACQUISITION AND DEVELOPMENT AGREEMENT  
(Madison & Whetsel Redevelopment – Phase IIA)**

This Second Amendment to Funding, Acquisition and Development Agreement (this "**Amendment**") is made and entered into effective as of the Effective Date (as defined herein) by and among the **City of Cincinnati**, an Ohio municipal corporation (the "**City**"), **Madisonville Phase I LLC**, an Ohio limited liability company ("**Phase I Developer**"), **Madisonville Phase II LLC**, an Ohio limited liability company ("**Phase IIA Developer**") and **Ackermann Enterprises, Inc.**, an Ohio corporation ("**Developer**", together with Phase I Developer and Phase IIA Developer, each a "**Company**" and collectively, the "**Companies**").

Recitals:

A. The City and Developer are parties to a *Funding, Acquisition and Development Agreement* dated October 6, 2016 (the "**Original Agreement**"), as amended by a *First Amendment to Funding, Acquisition and Development Agreement* (the "**First Amendment**") dated September 25, 2018 (the Original Agreement as amended by the First Amendment and this Amendment, the "**Agreement**"), pursuant to which, among other things, the City and Developer agreed to a plan for the redevelopment of the area surrounding the intersection of Madison Road and Whetsel Avenue (as described in the Original Agreement, the "**Project Site**"). Developer subsequently assigned its rights and obligations to the Project (as defined in the First Amendment) to Phase I Developer. Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Agreement, or the First Amendment, as applicable.

B. Since the execution of the First Amendment, the Initial Closing (as defined in the First Amendment) has occurred and Phase I Developer has commenced construction of the Project (as defined in the First Amendment). Developer, through its Eligible Affiliate (as defined in the Original Agreement), Phase IIA Developer, has submitted to the City's Department of Community and Economic Development ("**DCED**") a development proposal with respect to a portion of the Phase II Property (as defined in the First Amendment) that DCED desires to accept and memorialize as part of this Amendment.

C. The Agreement currently (prior to giving effect to this Amendment) provides for a two-phase development, the first phase of which is defined in the First Amendment as the "**Project**" and the second phase of which is defined in the First Amendment as the "**Phase II Project**". However, Developer and the City desire to bifurcate the Phase II Project into two discrete projects. The effect of this Amendment, among other things, will be the division of the development described as the Phase II Project in the Agreement into the Phase IIA Project and the Phase IIB Project (each as defined below), and the division of the Phase II Property into the Phase IIA Property and the Phase IIB Property (each as defined below).

D. As used herein, and for purposes of the Agreement, (i) the term "**Phase IIA Project**" means (a) Developer's, or upon assignment Phase IIA Developer's, redevelopment of a portion of the Phase II Property (being hereinafter described and referred to as the "**Phase IIA Property**") into approximately 120 market rate residential rental units (approximately 77,471 square feet in the aggregate), approximately 7,892 square feet of ground floor commercial space, and approximately 120 surface parking spaces, at an aggregate project cost of approximately \$20,240,000, and (b) Developer's, or upon assignment Phase IIA Developer's, construction of Right-of-Way Public Infrastructure Public Improvements benefitting the Phase IIA Property (the "**Phase IIA Right-of-Way Public Infrastructure Improvements**"), in each case as more fully described in Exhibit B-2 (Phase IIA Project Scope of Work – Phase IIA Right-of-Way Public Infrastructure Improvements; Private Improvements) and (ii) the term "**Phase IIB Project**" means Developer's (or its Eligible Affiliate's) potential redevelopment of the Phase II Property exclusive of the Phase IIA Property (being hereinafter described and referred to as the "**Phase IIB Property**"), or some portion thereof, into such structures and uses as proposed by Developer (or its Eligible Affiliate) and approved by DCED, all at a total aggregate project cost as agreed upon by the applicable parties at the time of such approval. All references to Exhibit B of the Original

Agreement are hereby amended to be references to Exhibit B-1 of the First Amendment and Exhibit B-2 hereto collectively.

E. The Phase IIA Project will be situated on certain real property located within the NE Block (less 5900 Madison and any Potential Acquisition Properties (as defined in the Original Agreement) which were not acquired), all as depicted in Exhibit A-2 (*Amended Site Plan – Breakdown of Project Property, Phase IIA Property, and Phase IIB Property*) and labeled “Phase IIA Property” (the “**Phase IIA Property**”). The Phase IIA Property shall include those parcels within the Phase IIA Property owned as of the date hereof by the City (the “**City Phase IIA Property**”) and the MCURC Properties (as defined in the Original Agreement) located within the Phase IIA Property (the “**MCURC Phase IIA Properties**”). The Phase IIB Project will be situated on such real property which constitutes the Phase II Property exclusive of the Phase IIA Property, namely, the SE Block, and the North Sierra Properties, or some portion or combination thereof, which are collectively identified as the “**Phase IIB Property**” in Exhibit A-2. All references to Exhibit A and Exhibit A-1 in the Agreement are hereby amended to be references to Exhibit A-2 hereto.

F. The City and the Companies wish to enter into this Amendment to provide an additional grant of \$500,000 to complete the Phase IIA Right-of-Way Public Infrastructure Improvements associated with the Phase IIA Project; to amend the scope of the Phase II Project; to bifurcate the Phase II Project into distinct elements, namely the Phase IIA Project and the Phase IIB Project; to provide for the Developer’s exclusive right to submit a proposal or proposals to DCED with respect to the development of the Phase IIB Project on the Phase IIB Property, subject to the review and approval of such proposal or proposals and upon satisfaction of the terms and conditions of this Amendment; to provide for the Developer’s right to acquire the Phase IIB Property on or before April 4, 2020, in furtherance of the Phase IIB Project; and to allow the Developer to consummate a financial closing with respect to the Phase IIA Project as expeditiously as possible.

G. More particularly, this Amendment will, among other things:

- (i) Bifurcate the Optional Second Closing (as defined in the First Amendment) into the Second Closing and the Optional Third Closing (in each case as defined herein) in order to (a) account for the occurrence of the Initial Closing (as defined in the First Amendment) prior to the date hereof, (b) facilitate the conveyance by the City of the City Phase IIA Property to the Phase IIA Developer, (c) provide for the future conveyance of the Phase IIB Property, or some portion thereof, in connection with the Optional Third Closing for the purpose of facilitating the development of the Phase IIB Property by the Developer or its Eligible Affiliate as assignee, to the extent that Developer or its Eligible Affiliate wishes to pursue such Optional Third Closing and meets certain conditions subject to the approval of DCED;
- (ii) Include the City in the chain of title for the parcels of the MCURC Phase IIA Properties that the City is not currently in such chain of title;
- (iii) Bifurcate the Phase II Project into the Phase IIA Project to be undertaken upon the Phase IIA Property, and the Phase IIB Project to be undertaken upon the Phase IIB Property, if undertaken;
- (iv) amend the description of the second TIF ordinance as described in the First Amendment so that it refers to two separate ordinances, namely, one ordinance exempting the value of improvements to Phase IIA Property pursuant to Ohio Revised Code 5709.41 (the “**Second TIF Ordinance**”) and a like ordinance pertaining to the Phase IIB Property (the “**Third TIF Ordinance**”) in the event that the Optional Third Closing should occur, all of which are subject to the approval of City Council;
- (v) provide an additional grant of \$500,000 from the TIF District Fund;
- (vi) modify the terms and conditions by which Developer may exercise its purchase option with respect to the Phase IIB Property;
- (vii) modify the Developer’s rights with respect to submitting a Phase IIB Project proposal and acquiring the Phase IIB Property, or some portion thereof;
- (viii) amend and restate the Note (the “**Phase I Note**”), a form of such Amended and Restated Note is attached hereto as Exhibit F-2 (*Form of Phase I Amended and Restated Promissory Note*) and execute an additional *Phase II Amended and*

*Restated Promissory Note* with respect to the Phase IIA Project and Phase IIB Project, a form of which is attached hereto as Exhibit F-3 (Form of Phase II Amended and Restated Promissory Note) (the "**Phase II Note**");

- (ix) establish certain terms and conditions regarding the Port Authority's involvement in the Phase IIA Project's financing; and
- (x) provide that the obligations, duties and liabilities under the Agreement, as amended hereby, with respect to the Project, the Phase IIA Project, and the Phase IIB Project (if any) are not cross-defaulted.

H. As of the Effective Date, the City's Real Estate Services Division has determined by appraisal that the fair market value of the Phase IIA Property is \$510,000, the SE Block is \$735,000, and the North Sierra Properties is \$121,500. DCED, in accordance with the terms of the Agreement and this Amendment, is willing to convey the Phase IIA Property for below fair market value (namely, \$0.00).

I. The City's Planning Commission, having the authority to approve the change in use of City-owned property, approved the transactions contemplated herein at its meeting on June 3, 2016.

J. This Amendment was authorized by Cincinnati City Council Ordinance No. 341-2019, passed September 11, 2019, as well as by Ordinance Nos. 241-2016 and 161-2018, passed June 29, 2016, and on June 20, 2018, respectively, which authorized the execution and administration of the Agreement.

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

**1. REVISIONS TO RECITALS INCLUDING REVISING TERMS.**

(A) Recital D of the Agreement is hereby replaced in its entirety with the following:

D. After commencing the Project (as defined in the First Amendment as defined below, the "**Project**"), Developer may construct a second phase of development, in two or more subphases, located on the Phase II Property or some portion thereof, consisting of a market-driven mix of: (i) market-rate multi-family housing, (ii) additional retail storefronts, (iii) office space, and (iv) related improvements thereto, or such other structures and uses as proposed by Developer and approved by DCED, all at a total aggregate project cost to be determined at the time of such proposal (collectively, the "**Phase II Project**"). The specific details regarding the manner and time in which Developer may potentially pursue such Phase II Project and potentially acquire such Phase II Property are more fully described in the *First Amendment to Funding, Acquisition and Development Agreement* (the "**First Amendment**") dated September 25, 2018, and the *Second Amendment to Funding, Acquisition and Development Agreement* (the "**Second Amendment**") dated \_\_\_\_\_, 2019; to the extent the First Amendment and the Second Amendment govern, for the purposes of this Agreement (the following terms shall have the meanings ascribed to them in the Second Amendment "**Phase II Property**," "**Phase IIA Project**," "**Phase IIB Project**," "**City Phase IIA Property**," "**Phase IIA Property**" and "**Phase IIB Property**").

(B) Recital F (i) of the Agreement is hereby replaced in its entirety with the following:

- (i) contributing up to \$4,200,000 to the Project and \$500,000 to the Phase II 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 the Right-of-Way Public Infrastructure Improvements (as defined herein) benefiting the Project Site, (b) a grant not to exceed \$500,000 to reimburse Developer for the costs of constructing the Phase IIA Right-of-Way Public Infrastructure Improvements (as defined in the Second Amendment, the "**Phase IIA**

**Right-of-Way Public Infrastructure Improvements**"; the Phase IIA Right-of-Way Public Infrastructure Improvements constitute a portion of the Public Infrastructure Improvements (as defined below), and (c) 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;

## 2. GENERALLY; PROJECT DESCRIPTION AND DUE DILIGENCE.

(A) Bifurcation of Phase II Project and Corresponding Definition of the Phase II Project. All references to Exhibit B of the Original Agreement are hereby amended to be references to Exhibit B-1 of the First Amendment and Exhibit B-2 of this Amendment, collectively. All references to Exhibit C in the Original Agreement are hereby amended to be references to Exhibit C-1 of the First Amendment and Exhibit C-2 hereto collectively. All references to Exhibit G of the Original Agreement are hereby amended to be references to Exhibit G-1 (Revised Disbursement of Funds) hereto. Recital C of the Agreement is hereby deleted and the following is inserted in its place:

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 revised and more comprehensively described in Exhibit B-1 (Project Scope of Work – Public Infrastructure Improvements; Private Improvements) to the First Amendment. The improvements listed immediately above and as revised and more comprehensively described in Exhibit B-1 to the First Amendment constitute the "**Project**," which shall be undertaken solely upon the Project Property, as defined in the First Amendment. The aggregate construction and acquisition cost of the Project is anticipated to equal approximately \$29,000,000, as is more fully described in Exhibit C-1 (Revised Budget and Sources of Funds) to the First Amendment. The second phase of the Project Site's redevelopment will initially involve (i) the construction of approximately 120 market rate residential rental units (approximately 77,471 square feet in the aggregate), (ii) the construction of approximately 7,892 square feet of ground floor commercial space, (iii) the construction of approximately 120 on-site surface parking spaces, and (iv) construction of all of the Phase IIA Right-of-Way Public Infrastructure Improvements, in each case as more comprehensively described in Exhibit B-2 (Phase IIA Project Scope of Work – Phase IIA Right-of-Way Public Infrastructure Improvements; Private Improvements) to the Second Amendment. The improvements listed immediately above and as revised and more comprehensively described in Exhibit B-2 to the Second Amendment constitute the "**Phase IIA Project**" which shall be undertaken solely upon the Phase IIA Property, as defined in the Second Amendment. The aggregate construction and acquisition of the Phase IIA Project is anticipated to equal approximately \$20,240,000, as is more fully described in Exhibit C-2 (Phase IIA Budget and Sources of Funds) to the Second Amendment. All references to Exhibit C in the Agreement are hereby amended to be references collectively to Exhibit C-1 to the First Amendment and Exhibit C-2 to the Second Amendment. As described herein, with respect to each of the Project and the Phase IIA Project, all (a) individuals and entities providing guaranties with respect to Developer's, or Developer's Eligible Affiliates' private financing (but excluding Phase I Developer as to the Phase IIA Project), 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, with respect to the Project, the "**Initial Guarantor**" and with respect to the Phase IIA Project, the "**Phase IIA Guarantor**") will provide a guaranty (or guaranties) of completion in favor of the City

with respect to the construction of each the Project and the Phase IIA Project in substantially the form of Exhibit D (Form of Completion Guaranty) hereto (whether one or more than one, collectively, with respect to the Project, the “**Initial Completion Guaranty**” and with respect to the Phase IIA Project, the “**Phase IIA Guaranty**”). If this Agreement, or any rights or obligations arising under this Agreement in connection with the development of any portion of the Project Site, 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 each of the Initial Completion Guaranty to be executed by Initial Guarantor and the Phase IIA Guaranty to be executed by the Phase IIA Guarantor. The term “**Guarantor**” shall refer to each of, and collectively, Initial Guarantor or the Phase IIA Guarantor, as applicable, and Ackermann Enterprises, Inc., if applicable. With respect to Phase IIA, “Guarantor” shall include Ackermann Enterprises, Inc. The term “**Completion Guaranty**” shall refer to (i) with respect to the Project, each of, and collectively, the Initial Completion Guaranty and the guaranty of completion executed by Ackermann Enterprises, Inc., if applicable, and (ii) with respect to the Phase IIA Project, each of, and collectively, the Phase IIA Completion Guaranty and the guaranty of completion executed by Ackermann Enterprises, Inc. Additionally, pursuant to the terms of the Agreement as amended by the First Amendment and the Second Amendment, should Developer obtain approval to pursue the Phase IIB Project, Developer’s financing of the same shall be subject to the same guaranty conditions described immediately above (provided that Madisonville Phase I LLC and Madisonville Phase II LLC shall not provide a guaranty for the Phase IIB Project), and in the event of assignment to an Eligible Affiliate in accordance with Section 12(A)(iii), the same terms regarding the execution of an additional guaranty substantially in the form of Exhibit D by Ackermann Enterprises, Inc. and the use of the terms “Guarantor” and “Completion Guaranty” with respect to such event shall be equally required and used in connection with the Phase IIB Project in a like manner as they are described above in connection with the completion of the Project and the Phase IIA Project. Notwithstanding anything in this Agreement, the First Amendment or the Second Amendment to the contrary, in no event shall the obligations of, or a default by, any Guarantor, with respect to a Guaranty for a particular phase of the Project Site be deemed to apply to, or cause a default with respect to, any other phase of the Project Site.

(B) Bifurcation of Due Diligence Investigations Regarding Second Closing and Optional Third Closing. Notwithstanding anything to the contrary in Section 1(A) of the Original Agreement and Section 2(B) of the First Amendment, the City and Developer agree that the delivery of satisfactory due diligence materials described therein as conditions to the Closing shall be deemed, as applicable, conditions to the Second Closing (as hereinafter defined) (with such due diligence pertaining to the Phase IIA Property only) and the Optional Third Closing (with such due diligence items pertaining to the Phase IIB Property only), as applicable. For example, (i) for purposes of the Second Closing, Section 1(A)(v) of the Original Agreement shall be understood to impose, as a condition of the Second Closing, the requirement that Developer has obtained the financing contemplated in such clause with respect to the Phase IIA Project only, not the Phase IIA Project and also the Phase IIB Project, and (ii) for purposes of the Optional Third Closing, Section 1(A)(v) of the Agreement shall be understood to impose, as a condition of the Optional Third Closing, the requirement that Developer has obtained the financing contemplated in such clause with respect to the Phase IIB Project, as approved of by DCED. To the extent it is ambiguous whether a condition or requirement applies to the Second Closing or the Optional Third Closing, or both, the ambiguity may be resolved by the Director of DCED in his discretion, exercised in good faith.

(C) Bifurcation of Contingency for City’s Satisfaction with Due Diligence Investigations. Section 1(B) of the Agreement is hereby deleted and the following is hereby inserted in its place:

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, the Phase IIA Project and the Phase IIB 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 or the Phase IIA Project, as applicable (but not, for the avoidance of doubt, the Phase IIB 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 or the Phase IIA Project, as applicable (but not, for the avoidance of doubt, the Phase IIB Project), approval of the Initial TIF Ordinance or the Second TIF Ordinance, as applicable, or approval of plans or specifications for the Project or the Phase IIA Project, as applicable (but not, for the avoidance of doubt, the Phase IIB 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 (i) the City shall retain title to each Developer Option Property, and all MCURC Property conveyed to the City prior to such termination date, and (ii) Developer shall, if requested by the City in writing and accompanied by the City's agreement to pay the sum of \$212,621.87 for such re-conveyance (representing Developer's unreimbursed out-of-pocket acquisition costs and expenses for the acquisition of such property), convey to the City the property at 5911-5913 Madison Road by limited warranty deed. 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 the Second Closing, the termination rights of the parties under this paragraph 1(B) shall automatically terminate and cease.

(D) Conveyance of the MCURC Phase IIA Properties. Notwithstanding anything to the contrary in the Agreement or the First Amendment, the Developer shall acquire title to the MCURC Phase IIA Properties. Subsequent to such acquisition and prior to the Second Closing, and upon the provision by the Developer to the City (i) of the items described in Section 1(A)(i) through (viii) of the Agreement with respect to the MCURC Phase IIA Properties and (ii) the Indemnity Agreement, the Developer shall convey to the City, and the City shall accept, title to the MCURC Phase IIA Properties via a general warranty deed in accordance with the form attached as Exhibit I-1 to the Original Agreement.

(E) Revised Project Documents to Reflect Changed Transaction Structure. All references to the Note in the Agreement are hereby amended to include the Phase II Note. Notwithstanding anything to the contrary in the Agreement, the parties agree that references to the "Service Agreement" in the Agreement shall collectively refer to (i) a *Service Agreement* pertaining to the Project Property (other than 5900 Madison and the 5105 Whetsel Avenue Parking Property) pursuant to the Initial TIF Ordinance to be executed by Developer's Eligible Affiliate and assignee Madisonville Phase I LLC in substantially the form of Exhibit N (*Form of Project Service Agreement*) to the First Amendment, (ii) a *Service Agreement* pertaining to the Phase IIA Property pursuant to the Second TIF Ordinance to be executed by Developer's Eligible Affiliate and assignee Madisonville Phase II LLC in substantially the form of Exhibit N-1 (*Form of Phase IIA Project Service Agreement*) hereto, and (iii) a like agreement that may, pursuant to the negotiated terms of the Phase IIB Project if and when such Phase IIB Project is agreed to pursuant to the terms of the Original Agreement, the First Amendment and this Amendment, be executed with respect to the Phase IIB Property pursuant to the Third TIF Ordinance, should City Council approve of the same.

(F) Participation of Redevelopment Authority. In order to secure the bonds to be issued by the Port Authority to provide financing for costs of the Phase IIA Project (the "**Phase IIA Bonds**"), in addition to the

Service Agreement, the Phase IIA Developer will execute a declaration with mortgage covenants (the "**Phase IIA Declaration**") providing for the owners from time to time of the Phase IIA Property to pay minimum service payments sufficient in amount to pay debt service on the Phase IIA Bonds in the event of a shortfall in Service Payments (the "**Phase IIA Minimum Service Payments**"). The lien of the Phase IIA Declaration securing the Phase IIA Minimum Service Payments will have the same priority as the Phase IIA Service Payments and will have priority over the lien of the other Phase IIA Senior Mortgages (as hereinafter defined) as well as the Mortgage in favor of the City. In addition, the Developer or its designee will enter into a transaction with the Port Authority in which it will lease the improvements to be constructed on the Phase IIA to the Port Authority and the Port Authority will lease those improvements back to the Phase IIA Developer or its designee (the "**Phase IIA Port Lease Transaction**"), subject to the Service Agreement. The City hereby consents to the Phase IIA Port Lease Transaction and acknowledges that the Phase IIA Port Lease Transaction is not the transaction contemplated by Section 12(A)(i) of the Original Agreement and is not subject to the terms thereof, regardless of any of the provisions of the Agreement, as amended by this Amendment, to the contrary.

### **3. INITIAL CLOSING, SECOND CLOSING AND OPTIONAL THIRD CLOSING.**

Notwithstanding anything to the contrary in Section 2 (*Closing*) of the Original Agreement and Section 3 of the First Amendment, the term "**Closing**" in the Agreement shall refer (i) to the "Initial Closing" with respect to the Project to be developed upon the Project Property, (ii) to the "Second Closing" with respect to the Phase IIA Project to be developed upon the Phase IIA Property, and (iii) to the extent that the "Optional Third Closing" does occur with respect to the Phase IIB Property and the yet to be determined scope, if any, of the Phase IIB Project upon such Phase IIB Property, the term "Closing" shall refer to such Optional Third Closing, and shall proceed as follows:

(A) Initial Closing. As of the Effective Date, the Initial Closing occurred in accordance with the terms and conditions in the Agreement.

(B) Second Closing.

(i) Generally. Provided that Developer has complied with all terms and conditions of the Original Agreement, the First Amendment and this Amendment and the other Project Documents and the Agreement has not been terminated in accordance with Section 1(B) of the Agreement, the closing of the transactions described in this Section 3(B) (the "**Second Closing**") shall take place on such date as the parties agree upon, provided that such date shall be no later than the date that is 90 days after the Effective Date of this Amendment (the "**Second Closing Date**").

(ii) Contingencies. The occurrence of the Second Closing is subject to (a) the parties' satisfaction with the various due diligence matters described in this Amendment, and the Agreement with respect to the Phase IIA Project and the Phase IIA Property, (b) the prior occurrence of the transfer of the MCURC Phase IIA Properties, (c) the execution and delivery of the Completion Guaranty, the Phase II Note, a Mortgage applicable to the Phase IIA Property securing the Phase II Note, a Service Agreement applicable to the Phase IIA Project, a Cooperative Agreement applicable to the Phase IIA Project financing, the City's Deed to Phase IIA Developer with respect to the City Phase IIA Property and the MCURC Phase IIA Properties (being the only portion of the Project Property to which Phase IIA Developer shall actually take fee simple title from the City pursuant to the Second Closing), the Indemnity Agreement (except that if subsequent indemnity agreements would be required under the terms of the Agreement as a result of additional guarantor entities with respect to the financing of the Phase IIA Project, such additional agreements are not required to be executed prior to the Second Closing), in each case on or prior to the Second Closing Date, (d) the occurrence of Developer's closing with its Lender and the Port Authority on financing that is sufficient to complete the Phase IIA Project on or prior to the Second Closing Date, and (e) the passage of the Second TIF Ordinance prior to the Second Closing Date.

(iii) Second Closing Transactions. On the Second Closing Date, (a) the City shall convey all City Phase IIA Property and MCURC Phase IIA Property that it owns to Phase IIA Developer by a *Quitclaim Deed* in the form required by the Agreement for \$0.00 (provided that since there is no Repurchase Property, the paragraph in the form deed relating to Repurchase Property shall be deleted),

and (b) Phase IIA Developer shall execute and deliver a Mortgage securing the Phase II Note (the "**City's Phase IIA Mortgage**") with respect to all the Phase IIA Property it owns to the City. Notwithstanding anything to the contrary in the Agreement, Developer represents and warrants to the City that no mortgages or other security instruments with respect to the Phase IIA Property will be recorded prior to the City's Phase IIA Mortgage, any mortgage which may be required by the Port Authority pursuant to their involvement in this transaction with respect to the issuance of bonds for the financing of the Phase IIA Project, including the Phase IIA Declaration, or the First Financial Bank mortgage filed to secure First Financial Bank's financing for the Phase IIA Project (collectively, the "**Phase IIA Senior Mortgages**"). If required by the Lenders of the Phase IIA Senior Mortgages, the City agrees to enter into a subordination agreement subordinating the lien of the City's Phase IIA Mortgage to the lien of the Phase IIA Senior Mortgages and to record the City's Phase IIA Mortgage on the Phase IIA Property subsequent to the Phase IIA Senior Mortgages. The City's Phase IIA Mortgage on the Phase IIA Property will also be subordinate to the lien of the Service Payments under the Service Agreement, and the City agrees to enter into a subordination agreement to effectuate such subordination.

(iv) Phase I Documents. Notwithstanding anything herein to the contrary, the parties to the Phase I Note and First Amendment to Mortgage for the Project shall execute (i) the Phase I Note and (ii) a First Amendment to Mortgage at such times as Phase I Developer has obtained the lender consents it requires and this provision shall survive the Second Closing.

(C) Optional Third Closing.

(i) Generally. Provided that Developer has complied with all terms and conditions of the Agreement, as amended hereby, and the other Project Documents, and specifically subject to the terms and conditions of Section 2(F) of the Agreement, as amended by this Amendment, the closing of the transactions described in this Section 3(C) (the "**Optional Third Closing**") shall take place no later than April 4, 2020 (the "**Optional Third Closing Date**"). It is the intention of the parties that all of the transactions contemplated by this Section 3(C) will occur on the same date in as immediate of a sequence as is possible on the Optional Third Closing Date. Should the Optional Third Closing not occur by the Optional Third Closing Date, the City shall thereafter no longer be obligated to convey the Phase IIB Property, or any portion thereof, to Developer. Additionally, to the extent that the Optional Third Closing does occur with respect to only a portion of the Phase IIB Property, the City shall thereafter no longer be obligated to convey the Phase IIB Property, or any portion thereof, to Developer.

(ii) Contingencies. The occurrence of the Optional Third Closing is subject to (a) the parties' satisfaction with the various due diligence matters described in the Agreement, as amended hereby, with respect to the Phase IIB Project and the Phase IIB Property, (b) the City's review and approval of detailed plans and specifications with respect to the Phase IIB Project, and the parties' negotiation and execution of a binding written agreement or agreements, or Amendment or Addendum to the Agreement (with such terms and conditions as the City and Developer mutually agree) providing for the completion of the Phase IIB Project, (c) the execution and delivery of the applicable Guaranty, and (d) the occurrence of Developer's closing with its Lender, on or prior to the Optional Third Closing Date, on financing that is sufficient to complete the Phase IIB Project.

(iii) Optional Third Closing Transactions. On the Optional Third Closing Date, the City shall convey all Phase IIB Property that it owns, or such portion thereof as negotiated with Developer and as to be include in the Phase IIB Project, to Developer by a *Quitclaim Deed* in the form required by the Agreement for \$0.00 (with the paragraph relating to the Repurchase Properties).

(D) Closings Generally. All terms and conditions of the Original Agreement and the First Amendment applicable to the Closing (including, without limitation, Developer's obligation to pay all closing costs) remain in full force and effect, except as expressly amended hereby or inconsistent with the provisions herein.

4. **PHASE IIB REPURCHASE RIGHT OF THE CITY**. Section 2(D) of the Agreement is hereby amended by (i) deleting all references to the term "Phase II Project" and replacing such references



with the term "Phase IIB Project" and (ii) deleting all references to the term "Phase II Agreement" and replacing such references with the term "Phase IIB Agreement".

**5. DEVELOPER'S RIGHT TO SUBMIT DEVELOPMENT PROPOSAL FOR PHASE IIB PROJECT.** Section 2(F) of the Agreement is hereby amended and restated in its entirety as follows:

(F) Developer's Right to Submit Phase IIA Project Proposal for Future Development of Phase IIA Property and Phase IIB Project Proposal for Future Development on Phase IIB Property.

(i) Developer has submitted a development proposal with respect to the Phase IIA Property that the City desires to accept and that the parties have memorialized in the Second Amendment. The Closing with respect to the Phase IIA Project will take place in accordance with the terms and conditions of this Agreement and the Second Amendment.

(ii) The parties acknowledge that Developer is also interested in acquiring and developing the Phase IIB Property. Provided that (a) the Second Closing occurs on or before November 1, 2019, and (b) Developer commences construction of the Phase IIB Project within thirty (30) days of the Second Closing Date (as evidenced by both (1) the City's Department of Buildings and Inspections issuing a cut and fill permit on or before such date for the entire Phase IIA Project, and (2) commencement of on-site construction of the Phase IIA Project and the related recordation of the applicable Notice of Commencement), for so long as Developer is not in default under this Agreement, the First Amendment or the Second Amendment, after the giving any notice and the expiration of any cure period, the City agrees that, for a period starting on the date hereof and ending on April 4, 2020 (the "**Option Period**"), the City will not sell the Phase IIB Property to a third party and will entertain, in good faith, a development proposal from Developer. If, prior March 4, 2020, Developer timely submits a detailed development proposal for the Phase IIB Property, or some portion thereof, to DCED which DCED determines to be feasible, including without limitation a Site Plan, Budget, Scope of Work, and evidence of financing, and such other materials as DCED may require (the "**Development Proposal**"), and DCED, in its sole discretion, approves of the same, the City agrees to sell the Phase IIB Property to Developer, for a purchase price of \$0.00. The closing on such Phase IIB Property shall take place in accordance with the terms described herein, and also in accordance with such terms described in a future agreement between the City and Developer memorializing the terms and conditions related to the Phase IIB Project, no later than April 4, 2020. Should the Optional Third Closing not occur by the end of the Option Period, the City shall thereafter no longer be obligated to convey the Phase IIB Property, or any portion thereof, to Developer. Additionally, to the extent that the Optional Third Closing does occur prior to the end of the Option Period with respect to only a portion of the Phase IIB Property, the City shall thereafter no longer be obligated to convey the remainder of such Phase IIB Property, or any portion thereof, to Developer. At the Closing, the City shall convey title to the Phase IIB Property, or the relevant portion thereof, to Developer by recordable quit claim deed, which shall create necessary utility easements and address the other conditions of such sale, if any, as set forth in the applicable Coordinated Report. The Closing shall take place at City Hall. Developer shall pay all costs associated with the Closing, including without limitation all transfer and recording fees, settlement fees, and the cost of title work obtained by Developer. There shall be no proration of real estate taxes or any other prorations as of the date of Closing, and from and after the Closing, Developer shall be solely responsible for the payment of all real estate tax bills, utility bills and all other bills for operating costs associated with the Phase IIB Property that become due following the date of Closing, regardless of the period to which such bills relate. The City shall not be obligated to pay or incur any costs of any kind associated with the Closing. At the Closing, the parties shall execute a customary settlement statement and other customary closing documents; provided however that the

City shall not be required to execute a title affidavit or the like. To the extent the terms of this clause and the terms of the Optional Third Closing are in conflict, the terms of this clause shall control.

**6. CITY'S FUNDING ASSISTANCE; CITY ASSISTANCE.** Section 6(B) of the Agreement is hereby replaced in its entirety with the following:

(B) Grant of TIF District Funds for Right-of-Way Public Infrastructure Improvements. Provided that Developer is not in breach of any Project Document, the City shall provide a grant to Developer (the Phase I Grant and the Phase IIA Grant (each as defined below) are collectively, the "Grant"; and, together with the Loan, collectively the "Funds"), up to (i) an amount of \$2,000,000 from the TIF District Fund (the "Phase I Grant"), 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, so long as the Closing with respect to the Project has occurred, and (ii) an amount of \$500,000 from the TIF District Fund (the "Phase IIA Grant"), on a reimbursement basis, concurrently with the construction of the Phase IIA Right-of-Way Public Infrastructure Improvements, with respect to hard costs and expenses actually incurred and paid by Developer in respect of such Phase IIA Right-of-Way Public Infrastructure Improvements and only for such costs that are eligible for reimbursement pursuant to Ohio law, so long as the Closing with respect to the Phase IIA Project has occurred. The Phase I Grant and the Phase IIA 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.

**7. PREPARATION OF PLANS AND SPECIFICATIONS; OBTAINING AND APPROVING CONSTRUCTION BIDS; CONSTRUCTION.** It is understood and acknowledged that all deadlines applicable to the "Project" determined with reference to the "Closing" in Sections 3, 4 and 5 of the Original Agreement shall be deemed to apply to the Project, determined with respect to the Initial Closing, the Phase IIA Project, determined with respect to the Second Closing, and the Phase IIB Project, determined with respect to the Optional Third Closing. For example, Section 5's requirement that Developer commence construction of the Project within 3 months of the Closing Date shall be understood to mean that (i) Developer shall commence construction of the Project within 3 months following the Initial Closing Date, and (ii) Developer shall commence construction of the Phase IIA Project within 3 months following the Second Closing Date, and so forth. Notwithstanding the foregoing, in order to exercise the purchase option contemplated in Section 2(F) of the Agreement, as amended by this Amendment, Developer must commence construction on the Phase IIA Project in accordance with the terms of Section 2(F) of the Agreement, as amended by this Amendment.

**8. LENDER.** For purposes of Section 12(A)(v)(a) and (b) of the Agreement, (i) the Port Authority shall have all rights of a Lender thereunder with respect to the Phase IIA Declaration and (ii) First Financial Bank shall have all rights of Lender thereunder with respect to its mortgage related to the financing for the Phase IIA Project.

**9. PHASE IIA PROJECT TIF.** During the first twenty-five years of the exemption provided by the Second TIF Ordinance (the "Phase IIA Project TIF"), up to 75% of the Service Payments required pursuant Second TIF Ordinance and the applicable Service Agreement (all of such Service Payments actually received by the City pursuant to the Second TIF Ordinance and the applicable Service Agreement are the "Phase IIA Service Payments") shall be assigned to the Port Authority in an amount necessary to secure the Phase IIA Bonds. The City will assign to the Port Authority the lesser of (a) the necessary under, and as described in, the applicable trust indenture and Cooperative Agreement to secure payment of debt service on the Phase IIA Bonds for the applicable period, or (b) 75% of Phase IIA Service Payments actually received by the City; provided that any amounts assigned to the Port Authority for the payment of debt service on the Phase IIA Bonds and not needed for such purpose shall be transferred to the City and used by the City for any lawful

purpose under the Ohio Revised Code. During the final five years of the Phase IIA Project TIF, 75% of the Phase IIA Service Payments shall be retained by the City. The City may use any retained Phase IIA Service Payments for any eligible purpose under Ohio law. In each case, 25% of the Phase IIA Service Payments shall be paid to the School Board. The City's funding commitment pursuant to this Section shall be subject to and contingent upon, without limitation, (i) the execution and continued effectiveness of this Amendment and the applicable Service Agreement, and (ii) the passage of the Second TIF Ordinance. To the extent Phase IIA Service Payments by the City is insufficient to satisfy the Phase IIA Bonds, Developer, or Phase IIA Developer upon assignment to Phase IIA Developer, shall be solely responsible for the shortfall. As between the City and Developer, and except for the City's agreement to provide the Phase IIA Service Payments to the Port Authority and the Phase IIA Grant, Developer, or Phase IIA Developer upon assignment to Phase IIA Developer, shall be solely responsible for all costs associated with the Phase IIA Project.

**10. CHANGES TO CITY FUNDING.** Other than as described in Sections 6 and 9 of this Amendment, nothing in this Amendment does, or is intended to, modify the financial support and other assistance the City is providing as described in Section 6 (*City's Funding Commitment; Other City Assistance*) of the Agreement. Nonetheless, the City acknowledges that, subject to the will and approval of City Council, it intends to provide for two separate TIF Ordinances, the Second TIF Ordinance (applicable to the Phase IIA Property), and potentially the Third TIF Ordinance (applicable to the Phase IIB Property) and enter into separate Service Agreements and Cooperative Agreements with respect to each such TIF Ordinance so as to facilitate separate financing arrangements for the Phase IIA Project and the Phase IIB Project. The City acknowledges that Developer intends to undertake the Phase IIA Right-of-Way Public Infrastructure Improvements as a part of, and on the same timeline as, the Phase IIA Project, and the City is agreeable to the same. Nonetheless, consistent with Exhibit G (*Disbursement of Funds*) of the Agreement, the City shall not be obligated to release the retainage with respect to the Phase IIA Grant until the entire Phase IIA Project, including the Phase IIA Right-of-Way Public Infrastructure Improvements, are completed.

**11. NO CROSS DEFAULTS; TRANSFERS.** (A) Notwithstanding anything to the contrary in the Agreement, as amended hereby, (i) Phase I Developer shall only be responsible under the Agreement, as amended hereby, for the obligations pertaining to the Project and the Project Property and is in no event responsible for the Phase II Project or the Phase II Property, (ii) Phase IIA Developer (after giving effect to the assignment contemplated hereunder) shall only be responsible under the Agreement, as amended hereby, for the obligations pertaining to the Phase IIA Project and the Phase IIA Property and is in no event responsible for the Project, the Phase IIB Project, the Project Property, or the Phase IIB Property, and (iii) after giving effect to the assignment contemplated hereunder, Developer shall only be responsible under the Agreement, as amended hereby, for the obligations pertaining to the Phase IIB Project and the Phase IIB Property and is in no event responsible for the Project, the Phase IIA Project, the Project Property or the Phase II Property. For the avoidance of doubt, to the extent that Developer in its capacity as Guarantor executes a guaranty with respect to the Project and/or the Phase IIA Project, Developer is obligated with respect to the Project and/or the Phase IIA Project only to the extent of the terms of the Initial Completion Guaranty and the Phase IIA Guaranty.

(B) In the event the City consents to a transfer in accordance with Section 12(a)(iv) of the Original Agreement, the City will (i) take such steps as reasonably necessary to memorialize such consent and (ii) execute an estoppel certificate in form and substance acceptable to the City, Developer (or any of its Eligible Affiliates, as applicable) and the proposed transferee.

**12. PREVAILING WAGE DETERMINATION.** The prevailing wage determination attached as Addendum I to Exhibit M of the Agreement is hereby supplemented with the prevailing wage determination attached hereto with respect to the Phase IIA Project as Phase IIA Addendum I to Exhibit M (*Phase IIA Project Prevailing Wage Determination*).

**13. ENTIRE AGREEMENT; INCONSISTENCIES.** This Amendment, the Original Agreement, the First Amendment and the other Project Documents contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. In the event of any conflicts

or inconsistencies between this Amendment and the Original Agreement, the First Amendment or any other Project Document, the applicable terms and conditions of this Amendment shall control.

**14. REPRESENTATIONS AND WARRANTIES.** Each of Developer, Phase I Developer and Phase IIA Developer hereby (i) represents and warrants to the City that no circumstance which would, through the passage of time, the provision of notice, or otherwise, constitute an event of default has occurred or is continuing under the Original Agreement, the First Amendment or this Amendment, and (ii) remakes each and every representation and warranty to the City in the Original Agreement and the First Amendment as of the Effective Date of this Amendment.

**15. REAFFIRMATION.** The Companies hereby expressly reaffirm all terms and conditions (except as amended by this Amendment) of the Original Agreement and the First Amendment, which remain in full force and effect in all respects.

**16. WAIVER.** In consideration of the City's execution of this Amendment, the Companies hereby waive any and all defaults or failures on the part of the City to observe or perform the City's obligations under the Original Agreement or the First Amendment to the extent any such default or failure occurred on or prior to the Effective Date of this Amendment.

**17. PARTIAL ASSIGNMENT.** Without limiting the terms of Section 12(A)(iii) of the Agreement, the City acknowledges and consents to Developer assigning its rights and interests under the Agreement, as amended hereby relating to the Phase IIA Project, to the Phase IIA Developer, an Eligible Affiliate, pursuant to an assignment in the form of Schedule 12, attached hereto and made a part hereof. Additionally, without otherwise limiting the terms of Section 12(A)(iii) of the Agreement, for purposes of interpreting such section and for those purposes only, the term Closing as found in such section shall be interpreted to apply separately to each the Project, the Phase IIA Project and the Phase IIB Project such that Developer retains the same rights regarding assignment to an Eligible Affiliate, in accordance with the terms of the Agreement, as amended, and pursuant to Schedule 12 (Form of Phase IIA Assignment) attached hereto, prior to the Optional Third Closing on the Phase IIB Property. The parties acknowledge that all rights, title, interests, obligations, and duties of Developer to the Project were assigned to Phase I Developer.

**18. EXHIBITS.** The following exhibits are hereby incorporated by reference and made a part hereof:

Exhibit A-2 - Amended Site Plan – Breakdown of Project Property, Phase IIA Property, and Phase IIB Property

Exhibit B-2 - Phase IIA Project Scope of Work – Phase IIA Right-of-Way Public Infrastructure Improvements; Private Improvements

Exhibit C-2 - Phase IIA Budget and Sources of Funds

Exhibit F-2 - Form of Phase I Amended and Restated Promissory Note

Exhibit F-3 - Form of Phase II Amended and Restated Promissory Note

Exhibit I-3 - Revised Form of General Warranty Deed – Developer Conveyance of MCURC Phase IIA Properties

Exhibit G-1 - Revised Disbursement of Funds

Phase IIA Addendum 1 to Exhibit M - Phase IIA Project Prevailing Wage Determination

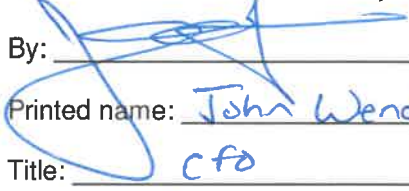
Exhibit N-1 - Form of Phase IIA Project Service Agreement

Schedule 12 - Form of Phase IIA Assignment


[Signature Page Follows]

This Amendment is executed by the parties on the dates indicated below, to be effective as of the Effective Date.


**ACKERMANN ENTERPRISES, INC.**

By:   
Printed name: John Wendt  
Title: CFO  
Date: 9/23, 2019


**MADISONVILLE PHASE I LLC**

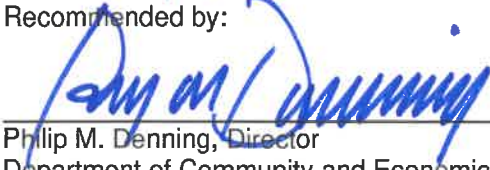
*by Ackermann madisonville Phase I LLC its manager*  
By:   
Printed name: John Wendt  
Title: Vice President  
Date: 9/23, 2019


**MADISONVILLE PHASE II LLC**

*by Ackermann madisonville Phase II LLC its manager*  
By:   
Printed name: John Wendt  
Title: Vice President  
Date: 9/23, 2019

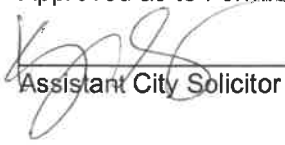
**CITY OF CINCINNATI**

By:   
Patrick A. Duhaney, City Manager  
Date: 9/20, 2019

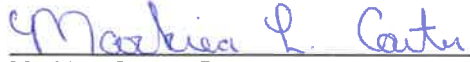
Recommended by:   
Philip M. Denning, Director  
Department of Community and Economic Development

Approved as to Form:  
  
Assistant City Solicitor

Approved as to Form: \_\_\_\_\_

  
Assistant City Solicitor

Approved by: \_\_\_\_\_



Markiea Carter, Director  
Department of Economic Inclusion

Certified Date: 9/30/2019

Fund/Code: 980X164X0000X7689

Amount: \$500,000.00

By: ANS   
Karen Alder, Interim City Finance Director

Exhibit A-2

to

Second Amendment to Funding, Acquisition and Development Agreement

Amended Site Plan – Breakdown of Project Property, Phase IIA Property, Phase IIB Property



Exhibit B-2

to

Second Amendment to Funding, Acquisition and Development Agreement

**Phase IIA Project Scope of Work – Phase IIA Right-of-Way Public Infrastructure Improvements; Phase IIA Private Improvements**

**Phase IIA Private Improvements**

The Private Improvements included in the Phase IIA Project will include the following:

Residential

- Approximately 120 Residential Apartments including a mix of Studio One-Bedroom and Two-Bedroom units
- Approximately 120 Car Surface Parking Lot
- 1,000 square foot apartment lobby

Commercial

- Approximately 7,892 leasable square feet of new construction commercial/office including tenant improvements

Site Improvements

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

**Phase IIA Right-of-Way Public Infrastructure Improvements**

Public streetscape improvements for the block area of Madison Road, Whetsel Avenue, Sierra Street & Ward Street including, but not limited to:

- Curbs and sidewalks, as necessary
- Storm drainage and other public utility improvements, as necessary
- Paving resurfacing, as necessary
- Street trees
- Street lighting, including decorative post lighting
- Site furnishings

The Phase IIA Right-of-Way Public Infrastructure Improvements do not include, as determined by the City in good faith, (i) any improvements unrelated to the right-of-way, (ii) any improvements that primarily benefit the Project Property, and (iii) any improvements that are ineligible for reimbursement pursuant to Ohio Revised Code Section 5709.40.



Exhibit C-2

to

Second Amendment to Funding, Acquisition and Development Agreement

**Amended Budget & Source of Funds**

**Sources of Funds**

• Sponsor Equity	\$3,599,053
• Mortgage	\$13,000,000
• Phase IIA Grant	\$500,000
• Port TIF Bond from Project TIF	\$3,141,128
• Total	\$20,240,181

**Uses of Funds – Phase IIA Right-of-Way Public Infrastructure Improvements**

• Mobilization & General Conditions	\$47,915
• Design Fees	\$12,500
• Demolition	\$32,715
• Ward Water Main	\$100,000
• Curb	\$81,450
• Sidewalk	\$51,000
• Asphalt	\$44,920
• Striping	\$4,500
• Landscaping	\$3,000
• Furnishings	\$67,000
• Pedestrian Light Poles	\$21,000
• Sidewalk Elevator Repair	\$10,000
• Permit allowance	\$9,000
• Contingency	\$15,000
• Total	\$500,000

**Uses of Funds - Phase IIA Private Improvements and Non-ROW Public Improvements**

• Land Acquisition	\$100,000
• Construction Costs (Phase IIA Private Improvements)	\$16,260,282
• Soft Costs	\$3,379,899
• Total	\$19,740,181

**Phase IIA Total Uses** **\$20,240,181**

Exhibit F-2

to

Second Amendment to Funding, Acquisition and Development Agreement

**Form of Phase I Amended and Restated Promissory Note**

**\$2,429,649.34**

Date: \_\_\_\_\_, 2019  
(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 Phase I Amended and Restated 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 October 6, 2016, as amended (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 Two Million Four Hundred Twenty-Nine Thousand Six Hundred Forty-Nine and 34/100 Dollars (~~\$2,429,649.34~~). 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 ~~\$2,155,649.34~~, and (ii) ~~\$274,000~~, representing the fair market value of the Project Property as of the date of the Original Note (as defined below) that the City has agreed to convey to Developer, pursuant to the terms of the Development Agreement (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 the order of the City. 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  $(\$450,000 - \$240,000) \times 25\%$  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 related to the Project 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 XIRR 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 XIRR 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 and New Market Tax Credit Lenders and bank lenders in such calendar year related to the Project.
- 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 for the Project, 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) 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.
- (vi) Maturity Date; Forgiveness. The Remaining P&I Obligations, together with any outstanding fees, shall be due and payable on the 30<sup>th</sup> 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. Amendment and Restatement. As of the Effective Date, the Promissory Note made by Borrower payable to the City in the original principal amount of \$3,773,000 (the "**Original Note**") and the debt thereunder is hereby (i) split into two separate loans, one of which is evidenced by this Note and one is in the original principal amount of \$1,343,350.66 evidenced by that certain *Promissory Note* made by Madisonville Phase II LLC payable to the City, and (ii) the portion of the Original Note attributable to the Project is amended and restated by this Note. The debt evidenced by the Original Note and not previously forgiven by the City is continuing indebtedness and nothing contained herein shall be deemed to constitute payment, settlement or a novation of the Original Note.

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

- Mortgage* on Borrower's real property located at 5801 Madison Road (including future addresses 5807, 5813, 5819, 5825, and 5829 Madison Road; and 4925, 4919 and 4909 Whetsel Avenue).
- 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 the undersigned on the date first above written.

**Madisonville Phase I LLC,**  
an Ohio limited liability company

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

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

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

Borrower's Mailing Address:  
4030 Smith Road, Suite 130  
Cincinnati, Ohio 45209

Contact No.: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
Philip M. Denning, Director  
Department of Community and Economic Development

Approved as to Form:

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

Exhibit F-3

to

Second Amendment to Funding, Acquisition and Development Agreement

**Form of Phase II Amended and Restated Promissory Note**

**\$1,343,350.66**

Date: \_\_\_\_\_, 2019  
(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 Phase II Amended and Restated 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 October 6, 2016, as amended (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 One Million Three Hundred Forty-Three Thousand Three Hundred Fifty and 66/100 Dollars (\$1,343,350.66). The actual principal amount of the loan evidenced hereby shall equal the sum of (i) the amount disbursed to Developer in connection with the Phase II Project as a Loan pursuant to the Development Agreement, the maximum amount of which is \$794,350.66, and (ii) \$549,000, representing the fair market value of the Phase II Property as of the date of the Original Note (as defined below) that the City has agreed to convey to Developer, pursuant to the terms of the Development Agreement (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 Phase II 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 the order of the City. 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).
- c. Notwithstanding the foregoing or anything else herein to the contrary, in the event Borrower is obligated to make payment hereunder in an amount equal to the Annual Payment Amount on or after the Repurchase Closing (as defined in the Development Agreement), Borrower shall be entitled to offset against any such amounts due hereunder from time to time in an amount up to an amount equal to the Repurchase Property Price owed by the City to Borrower (as defined in the Development Agreement) until the aggregate amount offset hereunder is equal to such Repurchase Property Price.

(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 \$3,599,035 (the Equity Contribution) or \$431,884.20. If the Net Cash Flow in Year 2 is \$450,000 then the Annual Payment Amount would be  $(\$450,000 - \$431,884.20) \times 25\%$  or \$4,528.95.
- 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 related to the Phase II Project of \$3,599,035, 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 Phase II Project, including, for the avoidance of doubt, any equity distributions made as a result of or in connection with any refinancing of the Phase II 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 XIRR 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 XIRR 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 and bank lenders in such calendar year related to the Phase II Project.
  - g. **"Net Operating Income"** means, for the applicable calendar year, collected Phase II Project revenue minus, in each case with respect to the Phase II 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 for the Phase II Project, 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) 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.
  - (vi) Maturity Date; Forgiveness. The Remaining P&I Obligations, together with any outstanding fees, shall be due and payable on the 30<sup>th</sup> 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. Reduction of the Principal Amount Pursuant to some or all of the Phase II Property not being Acquired by Borrower per the Development Agreement. As defined above, the Principal Amount of the Loan is One Million Three Hundred Forty-Three Thousand Three Hundred Fifty and 66/100 Dollars (\$1,343,350.66), consisting of (i) the amount disbursed to Developer as a Loan pursuant to the Development Agreement, the maximum amount of which is \$794,350.66, and (ii) \$549,000, representing the fair market value of the Phase II Property as of the date of the Original Note that the City has agreed to convey to Developer, pursuant to the terms of the Development Agreement. Given that Developer may not, pursuant to the terms of the Development Agreement, ultimately acquire the Phase IIB Property, which at the time of the Original Note (as defined below) had a fair market value of \$366,500, or some portion thereof, the Principal Amount shall be reduced in such event, and at such time as the disposition of the Phase IIB Property becomes final under the Development Agreement, and the same shall be memorialized pursuant to an Amendment to this Note.
11. Amendment and Restatement. As of the Effective Date, the Promissory Note made by Madisonville Phase I LLC ("**Phase I Borrower**") payable to the City in the original principal amount of \$3,773,000 (the "**Original Note**") and the debt thereunder is hereby (i) split into two separate loans, one of which is evidenced by this Note and one is in the original principal amount of \$2,429,649.34 evidenced by that certain *Amended and Restated Promissory Note* made by Original Borrower payable to the City, and (ii) the portion of the Original Note attributable to the Phase II Project is amended and restated by this Note. The debt evidenced by the Original Note and not previously forgiven by the City is continuing indebtedness and nothing contained herein shall be deemed to constitute payment, settlement or a novation of the Original Note.
12. 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 the undersigned on the date first above written.

**Madisonville Phase II LLC,**  
an Ohio limited liability company

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

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

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

Borrower's Mailing Address:

4030 Smith Road, Suite 130  
Cincinnati, Ohio 45209

Contact No.: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
Philip M. Denning, Director  
Department of Community and Economic Development

Approved as to Form:

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

Exhibit G-1

to

Second Amendment to Funding, Acquisition and Development Agreement

**Revised Disbursement of Funds**

(A) Conditions to be Satisfied Prior to Disbursement of Phase I Grant and Loan. The City shall be under no obligation to disburse the Phase I Grant and the Loan (collectively, the “**Phase I Funds**”) until the following conditions are satisfied:

(i) Developer shall have executed and delivered the Phase I Note (as defined in the Second Amendment) to the City;

(ii) Developer shall have provided the City with evidence of insurance required for the Project 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 for the Project;

(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 for the Project 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) Conditions to be Satisfied Prior to Disbursement of Phase IIA Grant. The City shall be under no obligation to disburse the Phase IIA Grant until the following conditions are satisfied:

(i) Developer shall have executed and delivered the Phase II Note (as defined in the Second Amendment) to the City;

(ii) Developer shall have provided the City with evidence of insurance required for the Phase IIA Project 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 for the Phase IIA Project;

(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 for the Phase IIA Project under this Agreement to the City;

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

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

(C) 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 or the Phase IIA Project, as applicable (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 Phase I Funds and shall use the Phase I Funds solely to pay for the following uses and for no other purpose: (i) construction of the applicable Public Infrastructure Improvements, (ii) acquisition of Developer Option Properties, and (iii) demolition on Developer Option Properties, in each case as described in this Agreement. Developer shall request the Phase IIA Grant and shall use the Phase IIA Grant solely to pay for the Phase IIA Right-of-Way Public Infrastructure Improvements. 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, such entity 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 or the Phase IIA Project, as applicable, 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 such entities 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 and the Phase IIA 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 of (i) the Project with respect to the Phase I Funds and (ii) the Phase IIA Project with respect to the Phase IIA Grant.

(D) 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.

(E) Phase I Funds 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 applicable 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 (E) 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 caused by Developer 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.

(F) Phase IIA Grant Retainage. After review and approval of a disbursement request, then the City shall disburse (i) prior to 50% completion of the Phase IIA Right-of-Way 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 Phase IIA Right-of-Way 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 Phase IIA 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 applicable 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 Phase IIA 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.

(G) 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 such entity 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 and the Phase IIA Project, as applicable, is being completed in accordance with the Final Plans, and (iii) such entity 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 such entity 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.



Phase IIA Addendum 1 to Exhibit M to  
 Second Amendment to Funding, Acquisition and Development Agreement

**Phase IIA Project Prevailing Wage Determination**

REQUEST FOR PROJECT WAGE DETERMINATION

**DATE RECEIVED:**  
 9.9.19

**ORIGINAL ASSIGNED NUMBER:**  
 201-170

**DEJ USE ONLY**  
 Fillout and Circle all that Apply Below:

**REQUESTING AGENCY OR DEPT:**  
 Community and Economic Development

**FUNDING GUIDELINES:**  
 (State or Federal)

**CONTACT PERSON AND PHONE NUMBER:**  
 Marc Von Allmen x4549

**RATES THAT APPLY:**  
 (Building, Heavy, Highway, Residential)  
 State Heavy Highway Prevailing Wage Apply

**Requested Date:** 09/09/2019  
**Estimated Advertising Date:** 09/24/2019  
**Estimated Bid Opening Date:** 09/25/2019  
**Estimated Starting Date:** 10/01/2019

**DECISION NUMBER:**

**MODIFICATIONS:**

**DECISION DATE:** 9.11.19

**SOURCE AND FUND NUMBER**

**EXPIRATION DATE:** 12.11.19

**CITY**        X        **FUND** Capital

**STATE**                        **FUND**

**SUPERSEDES DECISION NUMBER:**

**COUNTY**                      **FUND**

**DETERMINATION BY:**  
 Name: Edgar De Veyra

**FEDERAL**                      **FUND**

**Title:** Deputy Director

**PROJECT ACCOUNT NUMBER:**

**Date:** 9.13.19

**AMT. OF PUB. FUNDING \$:** 500000

**APPROVED BY:**

**TOTAL PROJECT DOLLARS:** 20240000

  
 DIRECTOR, DEPARTMENT OF ECONOMIC  
 INCLUSION

**NAME OF PROJECT**  
 Madison & Whetsel Redevelopment Phase IIA

**COMMENTS:**

- As described the Right of Way (ROW) public improvement is above the prevailing wage threshold for construction of roads under ORC 4115.03(B) (3); which is \$91,156.00 as updated by the Ohio Department of Commerce, so State Heavy Highway prevailing wage rates will apply.
- The Non-Right-of-Way Public Infrastructure Improvements are funded by private dollars. Since these are public improvements on City property and the amount is above the prevailing wage threshold, State Heavy Highway prevailing wage rates will apply.
- The Port Authority will own the private improvements and lease them to the developer. If the Port Authority has any possessory or property interest in the finalized improvement, prevailing wage does not apply as public improvements undertaken by the Port Authority are exempt, under ORC 4582.01 - 4582.21, and therefore, are not subject to State prevailing wage under ORC 4115.01 (B) (6).
- Local prevailing wage will not apply as the project does not meet the definition of "Development Agreement" as set forth in CMC 321-1-02.
- Note: Any changes to the scope, funding or development structure of the development may require revisions to this wage determination.

**TYPE OF WORK**

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

**PROJECT LOCATION**

The private improvements will be located within the NE block of the Madison Rd. and Whetsel Ave. intersection in Madisonville. 1 new four story building to be constructed that includes 120 residential units and approximately 8K SF of retail space. This will also include 120 surface parking lots. The ROW public improvements are located in the ROW immediately surrounding the NE block (Madison from Whetsel to Ward, Whetsel from Madison to Sierra, Sierra from Whetsel to Ward, and Ward from Sierra to Madison). The ROW public improvements will include curb, sidewalk, resurfacing, streetscaping, and utility improvements.

**PROJECT FUNDING SOURCE**

The total funding for the overall project is \$20.2MM. The private improvements has the following funding sources: Sponsor Equity \$3,599,053 Mortgage \$13,000,000 Port TIF Bond from Project TIF \$3,141,128 Total Sources \$20,240,181 The ROW public improvements include only one source, \$500K in district TIF funds.

**PROJECT SCOPE OF WORK AND BUDGET**

Project description to be emailed. \*Note\* The Port will be involved with a leaseback to the developer for the private improvements. Also, work category 2 Heavy only applies to the public improvements.

DEI 217 Form  
REV: 6/12/2017

Exhibit N-1

to

Second Amendment to Funding, Acquisition and Development Agreement

**Form of Phase IIA Project Service Agreement**

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

**SERVICE AGREEMENT**  
(Madison and Whetsel Project Phase IIA)

This Service Agreement (this "**Agreement**") is made and entered into as of [\_\_\_\_\_] 2019 (the "**Effective Date**"), by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **MADISONVILLE PHASE II LLC**, an Ohio limited liability company, having an address of 4030 Smith Road, Suite 130, Cincinnati, Ohio 45209 (the "**Company**"), an assignee of Ackermann Enterprises, Inc., pursuant to the Development Agreement (as defined below).

Recitals:

A. The City and Ackermann Enterprises, Inc., an Ohio corporation ("**Ackermann Enterprises**"), have entered into a *Funding, Acquisition and Development Agreement* between the City and the Company dated October 6, 2017 (the "**Original Development Agreement**"), as amended by a *First Amendment to Funding, Acquisition and Development Agreement* dated September 25, 2018 (the "**First Amendment**"), and a *Second Amendment to Funding, Acquisition and Development Agreement* dated [\_\_\_\_\_] 2019 (the "**Second Amendment**", the Original Development Agreement, as amended by the First Amendment and the Second Amendment, and as it may be further amended from time to time, the "**Development Agreement**").

B. Ackermann Enterprises has assigned certain of its rights under the Development Agreement to the Company, in which Ackermann Enterprises is indirectly a member, with respect to certain real property generally located in the block to the northwest of the corner of Madison Road and Whetsel Avenue, all as described on Exhibit A (Legal Description) hereto (the "**Phase IIA Property**"). As described more particularly in the Development Agreement as the "**Phase IIA Project**", the Company will construct a mixed-use development upon the Phase IIA Property. Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Development Agreement.

C. The Company has acquired fee simple title to the entirety of the Phase IIA Property.

D. The City believes that the Phase IIA 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.

E. In furtherance of the public purpose and to facilitate the Phase IIA Project, and as authorized by Ordinance No. [\_\_\_\_]-2019 passed by City Council on [\_\_\_\_\_] 2019 (the "**TIF Ordinance**"), the City has established a so-called project-based TIF for the Phase IIA Property under Section 5709.41, Ohio Revised Code ("**ORC**").

F. Under the TIF Ordinance and in accordance with ORC Section 5709.41, et seq., the increase in the assessed value of the Phase IIA Property after passage of the TIF Ordinance (such increase referred to herein as the "**Improvement**") shall be exempt from real property taxes, and all present and

future owners of the Phase IIA Property, or any portion thereof, shall be required to make service payments in lieu of taxes, in semi-annual installments, in an amount equal to the amount of real property taxes that would have been paid on the Improvement had an exemption not been granted (“**Statutory Service Payments**”).

G. Pursuant that certain Mortgage and Declaration of Covenants and Conditions Relative to Service Payments in Lieu of Taxes, Minimum Service Payments and Other Matters of even date herewith (the “**Mortgage and Declaration**”) given by the Company in favor of the Port Authority (as defined below) and the Bank of New York Mellon Trust Company, N.A. (the “**Trustee**”), the Company has agreed to pay minimum service payments (the “**Minimum Service Payments**”) to the Trustee to the extent required to pay debt service on those certain Taxable Development Revenue Bonds (Southwest Ohio Regional Bond Fund), Series 2019E (Madison & Whetsel Phase II Development Project) (the “**Series 2019E Bonds**”). The proceeds of the Series 2019E Bonds shall be used to pay a portion of the costs of the Phase IIA Project. Pursuant to the Mortgage and Declaration, the obligation of the Company and future owners of the Phase IIA Property to pay Minimum Service Payments shall be a covenant running with the land and the Mortgage and Declaration shall be recorded with the Hamilton County, Ohio Recorder after only this Agreement and prior to any other mortgages or security instruments affecting the Phase IIA Property.

I. The Phase IIA Property is located within the City School District of the City of Cincinnati, and the Board of Education of the City School District of the City of Cincinnati (“**Board of Education**”) has, by resolution adopted on October 11, 1999, and by an agreement entered into with the City dated July 2, 1999, approved an exemption of 100% of the assessed valuation of the Improvement for thirty (30) years (subject to the obligation of the City to make, or cause to be made, payments to the Board of Education as provided in Section II.C.2 of that agreement).

J. In accordance with the Second Amendment, the City intends to use the Statutory Service Payments actually received (e.g., for the avoidance of doubt, exclusive of any fees paid or withholdings from the Statutory Service Payments to or by the Hamilton County Auditor) by the City with respect to the Phase IIA Property (i) to satisfy its obligation to make payments to the Board of Education, (ii) to assign to the Port of Greater Cincinnati Development Authority (the “**Port Authority**”) to be applied towards debt on the Series 2019E Bonds, as described more particularly in the Cooperative Agreement dated as of October 1, 2019, by and among the City, the Port, and the Company, and acknowledged by the Trustee, and (iii) in the event Statutory Service Payments are received in excess of the aforementioned obligations, for any other lawful purpose.

K. The parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by ORC Section 5709.42, et seq. and shall define the obligations of the Company and future owner or owners of the Phase IIA Property, or any portion thereof, with respect to the Statutory Service Payments.

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

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

1. **CONSTRUCTION OF PHASE IIA PROJECT.**

The Company shall cause the Phase IIA Project to be constructed in accordance with the terms of the Development Agreement. The Company shall use, develop and redevelop the Phase IIA Project with respect to the Phase IIA Property in accordance with the Development Agreement throughout the Exemption Period (as hereinafter defined). Failure to use and operate the Phase IIA Project as required under the Development Agreement shall not relieve the Company of its obligations to make Statutory Service Payments as required hereunder. During the Exemption Period, the Company shall not change the principal use of the Phase IIA Project (which are commercial and multi-family apartment units) without the City’s prior written consent.

## **2. OBLIGATION TO MAKE PAYMENTS.**

A. Declaration that Improvement is a Public Purpose. The City hereby confirms that, pursuant to ORC Chapter 5709.41, et seq. and the TIF Ordinance, the City declared that 100% of the Improvement is a public purpose and exempt from real property taxes for a period of thirty (30) years commencing on the effective date of the TIF Ordinance (the "**Exemption Period**").

B. Commencement of Statutory Service Payments. The Company shall commence paying Statutory Service Payments no later than the final date for payment (the last day that payment can be made without penalty or interest) of the first semi-annual installment of real property taxes in the first calendar year after the first tax year in which any Improvement appears on the Hamilton County Auditor's tax duplicate. (For example, if any Improvement first appears on the tax rolls on January 1, 2020, the Company's first semi-annual tax payment will be for the tax bill for the First Half 2020, which will become due and payable to the County Treasurer on or about January 2021.) The Company shall pay Statutory Service Payments in semi-annual installments (i) on the earlier of such final date for payment of the first semi-annual installment of real property taxes, or February 1, in each year, and (ii) on the earlier of such final date for payment of the second semi-annual installment of real property taxes, or August 1, in each year (each such final date for payment is referred to herein as a "**Service Payment Date**"). The Company shall continue to make Statutory Service Payments until such time as the Company has paid the final Statutory Service Payment applicable to the Exemption Period.

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

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

E. Late Payment. If any Statutory Service Payment, or any installment thereof, is not paid when due, then, to the extent that Hamilton County does not impose a late fee or delinquency charge, the Company shall pay to the City, as a late payment charge, the amount of the charges for late payment of real property taxes, including penalty and interest, that would have been payable pursuant to ORC Section 323.121 on the delinquent amount.

## **3. PAYMENT OBLIGATIONS TO HAVE LIEN PRIORITY.**

The Statutory Service Payments shall be treated as a tax lien in the same manner as real property taxes and will have the same lien, rights and priority as all other real property taxes. Such a lien shall attach, and may be perfected, collected and enforced as provided by law, including enforcement by foreclosure upon such lien pursuant to the procedures and requirements of Ohio law relating to mortgages, liens, and delinquent real estate taxes. The Company hereby agrees that the obligation of the Company to make Statutory Service Payments shall have the same priority as the obligation to pay real estate taxes in the event of any bankruptcy or other like proceeding instituted by or against the Company. The Company

agrees not to contest the lien, rights or priority of the Statutory Service Payments with respect to the Improvements or the Phase IIA Property.

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

A. Recording. Promptly after the execution of this Agreement, the Company shall cause this Agreement to be recorded in the Hamilton County, Ohio Recorder's Office, at its expense, prior to any mortgage, assignment or other conveyance of any part of the Phase IIA Project or the Phase IIA Property. All instruments of conveyance of the Phase IIA Project or the Phase IIA Property or the Company's ownership of the same (or portions thereof) to subsequent mortgagees, successors, assigns or transferees shall be subject to this Agreement, and the Company shall cause all instruments of conveyance of interests in all or any portion of the Phase IIA Property to subsequent mortgagees, successors, lessees, assigns or other transferees to be made expressly subject to this Agreement.

B. Covenants Running with the Land. The obligation to perform and observe the agreements on the Company's part contained herein shall be covenants running with the land and, in any event and without regard to technical classification or designation, legal or otherwise, shall be binding and enforceable by the City against the Company and its successors-in-interest and transferees as owners of the fee simple interest in the Phase IIA Property, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. The Company shall not assign its interests or obligations under this Agreement to a third party except in connection with a simultaneous conveyance by the Company of its interests in the Phase IIA Property and Phase IIA Project. The foregoing, however, shall not be construed as prohibiting the Company from assigning its interests under this Agreement, as collateral security, to the lender(s) or other parties that will be providing financing for the Improvements or other financial incentives. If the Company shall sell, convey, or otherwise transfer its interest in the Phase IIA Property or any part thereof, it shall automatically be released and relieved of and from all other and further obligations and liabilities under this Agreement which arise, mature, or relate to any period from and after the date of such sale, conveyance or transfer, but not prior thereto, it being intended hereby that the covenants and obligations on the part of the Company and each such successor shall be binding upon and enforceable against the Company and their respective successors and assigns only in respect of their respective periods of ownership in the Phase IIA Property (or portion thereof). The provisions of this paragraph are not intended to, and shall not be construed to, release or modify any covenant created hereunder that is intended to run with the land.

C. Obligations are Absolute and Unconditional. The obligations of the Company to make Statutory Service Payments under this Agreement will not be terminated for any cause including, without limitation, failure to commence or complete the Improvements; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Improvements; commercial frustration of purpose; or any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State or any political subdivision thereof.

**5. PAYMENT OF TAXES; TAX CONTESTS.**

A. Payment of Taxes. With respect to real property taxes that are not exempted under this Agreement, the Company shall pay or cause to be paid, as the same become due, (i) all such taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Phase IIA Property and/or the non-exempt improvements or any personal property or fixtures of the Company installed or brought thereon (including, without limitation, any taxes levied against the Company with respect to income or profits from operations at the Phase IIA Property and which, if not paid, may become or be made a lien on the Phase IIA Property or the Phase IIA Project), and (ii) all utility and other charges incurred in the operation, maintenance, use and occupancy of the Phase IIA Property and Improvements.

B. No Tax Contests. The Company, its successors, assigns and transferees hereby agree that, during the term of this Agreement, (a) it will not contest or appeal the real property valuation assigned to the Phase IIA Property by the County Auditor so as to reduce such valuation for real property tax

purposes below the valuation initially assigned to the Phase IIA Property by the County Auditor upon completion of the Phase IIA Project, and (b) it will not seek any other real property tax exemption or abatement for the Phase IIA Property, during the term of this Agreement.

**6. INSURANCE COVERAGE AND PROCEEDS.**

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

B. Proceeds. Upon written request, the Company shall furnish to the City such evidence or confirmation of the insurance required under this section. The Company shall give immediate notice to the City of any final settlement or compromise in connection with any claims for or collection of insurance proceeds. The City shall have fifteen (15) days in which it may disapprove of any such settlement or compromise, which shall be deemed approved if not so disapproved. Proof of loss under any applicable insurance policy may be made by the City in the event the Company fails to take such action in a timely manner. The proceeds of any insurance recovery shall be used by the Company to restore, replace and/or rebuild the Phase IIA Property and Phase IIA Projected, excluding the Company's furniture, fixtures and equipment. Any excess over the amounts required for such purposes shall be the property of the Company or other person or entity to whom the insurance proceeds are payable. The Company acknowledges that application of the property insurance proceeds hereunder shall be superior to the rights of any and all mortgagees of the Phase IIA Property and Phase IIA Project.

**7. CONDEMNATION PROCEEDS.**

In the event any portion of the Phase IIA Property or Phase IIA Project shall be taken as a result of the exercise of the power of eminent domain by any governmental entity or other person, association or corporation possessing the right to exercise the power of eminent domain, unless otherwise agreed to by the City, the proceeds of such eminent domain award received by the Company shall be used for the same purposes specified with respect to insurance proceeds in Section 6 above.

**8. NOTICES.**

All notices or other communications under this Agreement shall be deemed given on receipt when personally delivered, or forty eight (48) hours after being mailed by U.S. registered or certified mail, postage prepaid, addressed to the City at 801 Plum Street, Cincinnati, Ohio 45202, Attention: City Manager, with a copy to the Director of the Department of Community and Economic Development, City of Cincinnati, 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; and to the Company at its address set forth in the introductory paragraph hereof. The City and the Company may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices or other communications shall be sent.

**9. COVENANTS AND REPRESENTATIONS.**

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

**10. EXEMPTION APPLICATION.**

Pursuant to ORC Section 5709.911(A), the Company or its legal counsel shall prepare, submit to the City for review and approval, and file, at its sole cost and expense, such applications, documents and

other information with the appropriate officials of the State of Ohio and Hamilton County, or other public body as may be required to effect and maintain during the Exemption Period as described in ORC Chapter 5709.41 the exemption from real property taxation as contemplated hereby. The Company and the City expect that such exemption from real property taxation shall apply initially to the 2021 tax year, i.e., the first year in which the Improvement is expected to appear on the tax rolls. The Company shall continuously use due diligence and employ commercially reasonable efforts to keep such exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within the Company's control. This provision shall not be construed and is not intended to constitute the Company's consent to the City's filing for the exemption under ORC Section 5709.911(B).

**11. DEFAULTS AND REMEDIES.**

If the Company fails to make any Statutory Service Payment when due (time being of the essence), or if the Company fails to observe or perform any other obligation hereunder (including the Company's obligation to comply with the terms of the Development Agreement) and such other failure continues for more than thirty (30) days after the City notifies the Company in writing thereof, the City shall be entitled to exercise and pursue any and all rights and remedies available to it hereunder, at law or in equity, including, without limitation, (i) foreclosing on the lien created hereby, and (ii) terminating the Company's rights under this Agreement without modifying or abrogating the Company's obligation to make Statutory Service Payments; *provided, however*, that if the nature of the default (other than a payment default, with respect to which there is no cure period) is such that it cannot reasonably be cured during an applicable cure period, the Company shall not be in default under this Agreement so long as the Company commences to cure the default within such cure period and thereafter diligently completes such cure within a reasonable time period (but not exceeding 90 days) after the Company's receipt of the City's initial notice of default. The Company shall pay to the City upon demand an amount equal to all costs and damages suffered or incurred by the City in connection with such default, including, without limitation, attorneys' fees. Waiver by the City of any default shall not be deemed to extend to any subsequent or other default under this Agreement. All rights and remedies hereunder are cumulative.

**12. DURATION OF AGREEMENT.**

This Agreement shall become effective on the Effective Date and, with reference to Section 2(B) (pertaining to Statutory Service Payments), shall expire on the day following the date of payment of the final Statutory Service Payment applicable to the Exemption Period under Section 2(B) hereof. This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon such expiration, the City shall deliver to the Company such documents and instruments as the Company may reasonably request to evidence such expiration.

**13. GENERAL PROVISIONS.**

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

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

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

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



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

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

*[Signature Page Follows]*

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

**CITY OF CINCINNATI**

**MADISONVILLE PHASE II LLC**

By: \_\_\_\_\_  
Patrick Duhaney, City Manager

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

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

Recommended by:

Approved by:

\_\_\_\_\_  
Philip M. Denning, Director  
Department of Community and Economic Development

\_\_\_\_\_  
Karen Alder, Interim City Finance Director

Approved as to Form:

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Patrick Duhaney, 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 \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, an \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

This instrument prepared by: Kaitlyn Geiger, Esq.; City of Cincinnati, Office of the City Solicitor; 801 Plum Street, Room 214; Cincinnati, Ohio 45202

EXHIBIT A  
TO  
SERVICE AGREEMENT

LEGAL DESCRIPTION

[TO BE PROVIDED BY DEVELOPER]

SCHEDULE 12

TO

Second Amendment to Funding, Acquisition and Development Agreement

Form of Assignment Agreement of Developer's Rights

Assignment

The undersigned, Ackermann Enterprises, Inc., an Ohio corporation ("Assignor"), hereby assigns to Madisonville Phase II LLC, an Ohio limited liability company ("Assignee"), all of its right, title and interest under that certain Funding, Acquisition and Development Agreement dated October 6, 2016, as amended by that certain First Amendment to Funding, Acquisition and Development Agreement dated September 25, 2018, as amended by that certain Second Amendment to Funding, Acquisition and Development Agreement of even date herewith (collectively, the "Agreement"), as it relates to the Phase IIA Project (as defined in the Agreement). Assignee accepts such assignment and assumes all of Assignor's duties, obligations and liabilities under the Agreement with respect to the Phase IIA Project as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

ACKERMANN ENTERPRISES, INC.  
an Ohio corporation

MADISONVILLE PHASE II LLC,  
an Ohio limited liability company

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

By: Ackermann Madisonville Phase II LLC,  
an Ohio limited liability company,  
its Manager

By: \_\_\_\_\_  
John Wendt, Vice President