ORIGINAL CONTRACT
RETURN TO FINANCE DEPT.

Original Contract No.: 75x2017-091

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

This First 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 between the **City of Cincinnati**, an Ohio municipal corporation (the "**City**"), and **Ackermann Enterprises, Inc.**, an Ohio corporation ("**Developer**").

Recitals:

A. The City and Developer are parties to a *Funding, Acquisition and Development Agreement* dated October 6, 2016 (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 Agreement, the "**Project Site**"). Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Agreement.

B. Since the execution of the Agreement, Developer has acquired all Developer Option Properties within the SW Block, has demolished the existing structures thereon, and has conveyed such Developer Option Properties to the City. In addition, Developer has entered into an agreement with MCURC for the acquisition of one of the MCURC Properties, namely 5900 Madison Road, Cincinnati, Ohio, Auditor's Parcel No. 35-3-33 (being a former Fifth Third Bank location) ("**5900 Madison**"), which will be conveyed to Developer at or before the Initial Closing (as defined below).

C. As of the Effective Date, all funds appropriated by the Capital Appropriation Ordinance have been expended.

D. Since the execution of the Agreement, the City's Health Department has worked with Health Resources & Services Administration ("**HRSA**") to secure a grant in the amount of $1,000,000 (the "**HRSA Grant**") for the improvement of the existing Braxton Cann Health Clinic within the Madison Center Facility, which the Health Department intends to use for the expansion of current facilities to add a dental center, as will be described more particularly in the Health Clinic Sublease Agreement. In connection with the HRSA Grant, HRSA required the recordation of a Notice of Federal Interest ("NFI") against a portion of the Project Site which, among other things, prohibits transfers and further encumbrances of the portion of the Project Site so encumbered by the NFI. HRSA's consent will be required to permit the Lease Agreement, the encumbrance of the tenant's interest under the Lease Agreement to secure financing for the Project, and the Health Clinic Sublease Agreement, and to limit the effect of the NFI to the portion of the Project Property leased to the Board of Health of the City under the Health Clinic Sublease Agreement.

E. The Agreement currently (prior to giving effect to this Amendment) provides for a two-phase development, the first phase of which is defined therein as the "Project" and the second phase of which is defined therein as the "Phase II Project." However, Developer has received a time-sensitive offer from a prospective financial partner and wishes to accelerate the timing of a portion of the "Project," thereby necessitating a reallocation of the properties subject to the Agreement between the Project and the Phase II Project, as well as changing the time and manner in which Developer may acquire such properties. The effect of this Amendment, among other things, will be the division of the development provided for in the Agreement, and the properties defined therein, into the Project and the Phase II Project, in a different configuration than previously described in the Agreement, and made available to Developer in a different manner.

F. As used herein, and as redefined for purposes of the Agreement, (i) the term "**Project**" means (a) Developer's redevelopment of the portion of the Project Site comprising the Project Property (as defined below) into such redeveloped facilities as described in Exhibit B-1 (*Project Scope of Work – Public*

Infrastructure Improvements; Private Improvements), all at a total aggregate project cost of approximately $29,000,000, and (b) Developer's construction of all of the Public Infrastructure Improvements, in each case as more fully described in Exhibit B-1 (*Project Scope of Work – Public Infrastructure Improvements; Private Improvements*), and (ii) the term "**Phase II Project**" means Developer's potential redevelopment of the remainder of the Project Site, or some portion thereof, into such structures and uses as proposed by Developer and approved by the City's Department of Community and Economic Development ("**DCED**"), all at a total aggregate project cost to be determined at the time of such proposal. All references to Exhibit B in the Agreement are hereby amended to be references to Exhibit B-1 hereto.

G. The Project will be situated on the real property located within the NW Block (including the Madison Center Facility), the SW Block, 5900 Madison, and the parking lot located at 5105 Whetsel Avenue (the "**5105 Whetsel Avenue Parking Property**"), all as depicted in Exhibit A-1 (*Revised Site Plan – Breakdown of Project Property and Phase II Property*) and labeled "Project Property" (collectively, the "**Project Property**"). The Phase II Project will be situated on such real property which constitutes the remainder of the Project Site, being outside of the Project Property, and being namely the remainder of the NE Block that is not included within the Project Property (meaning effectively the entire NE Block minus 5900 Madison and any potential acquisition properties which were not acquired), the SE Block, and the North Sierra Properties, or some portion or combination thereof, which are collectively identified as the "**Phase II Property**" in Exhibit A-1. All references to Exhibit A in the Agreement are hereby amended to be references to Exhibit A-1 hereto. The "Project Property" shall include the 5105 Whetsel Avenue Parking Property. At Closing, Developer shall execute and cause the recordation of a restrictive covenant in the form of Exhibit J-1 (*Revised Form of Public Parking Covenant*) hereto. All references to Exhibit J in the Agreement are hereby amended to be references to Exhibit J-1 hereto.

H. The City and Developer wish to enter into this Amendment to facilitate this new definition of the Project, the reallocation of the properties composing the Project Site between the Project and the Phase II Project, the new definition of the Phase II Project as the preferential and exclusive right for Developer to submit a proposal for the future development of the Phase II Project and, subject to the review and approval of the same by DCED, the right to acquire the Phase II Property in connection with the proposed Phase II Project for a limited period of time subsequent to the Effective Date of this Amendment, and to allow the Developer to consummate a financial closing with respect to the newly defined Project and the Project Property as expeditiously as possible.

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

(i) bifurcate and redefine the Closing into the Initial Closing and the Optional Second Closing (in each case as defined herein) such that (a) the City will convey the Project Property within the SW Block to Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC and enter into the Master Lease for the Madison Center Facility with Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC as a part of the Initial Closing, (b) 5900 Madison will be conveyed to the City then re-conveyed to MCURC prior to or as a part of the Initial Closing, then MCURC will enter into a *Lease Agreement* with Developer or its designee as part of the Initial Closing, and (c) the Project Site property not conveyed as part of the Initial Closing, being the Phase II Property, or some portion thereof, will be included in the Optional Second Closing to the extent that Developer wishes to pursue such Optional Second Closing and meets certain conditions subject to the approval of DCED;

(ii) clarify the definition of "Project" as being only those improvements being undertaken upon the Project Property as described herein;

(iii) redefine certain seldom-used terms found in the Recitals to the Agreement and make other minor adjustments to the Recitals

(iv) amend the description of the TIF Ordinance in the Agreement so that it refers to two separate ordinances, namely, one ordinance exempting the value of improvements to the Project Property (other than 5900 Madison and the 5105 Whetsel Avenue Parking Property) pursuant to Ohio Revised Code 5709.41 (the "**Initial TIF Ordinance**"), on the one hand, and a like ordinance pertaining to the Phase II

Property (the "**Second TIF Ordinance**"), on the other hand, in the event that the Optional Second Closing should occur and that City Council shall approve of the same;

(v) modify the City's repurchase right in Section 2(D) of the Agreement to clarify the parties' respective rights and obligations thereunder;

(vi) establish Developer's rights with respect to submitting a Phase II Project proposal and acquiring the Phase II Property, or some portion thereof;

(vii) make certain modifications to the form of the Note to reflect these changes; and

(viii) establish certain terms and conditions regarding the Port Authority's involvement in the Project's financing; and

(ix) Outline a plan to request HRSA consent to terms necessary for the financing and completion of the Project.

J. This Amendment was authorized by Cincinnati City Council Ordinance No. 161-2018, passed June 20, 2018, as well as by Ordinance No. 241-2016, passed June 29, 2016, 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 AND OMITTING DEFINED TERMS. Some terms as defined in the Agreement which have not yet been mentioned or otherwise more specifically redefined by this Amendment are hereby redefined or omitted as follows:

(A) Redefinition of Seldom-Used Terms Defined in the Agreement and Modifications to Recitals B, D, and E.

(i) Recital B. The term "City Phase I Properties," which appears only in Recital B to the Agreement is hereby renamed "City-owned Project Properties," and denoted on the Exhibit A-1 (*Revised Site Plan – Breakdown of Project Property and Phase II Property*) attached to this Amendment. The term "City Phase II Properties," which appears in Recital B, Recital D, Section 2(D), and the Note, is hereby redefined to for purposes of Recital B to mean the property designated as such on Exhibit A-1 attached to this Amendment, and all other references to such term are hereby omitted, pursuant to the changes made to Recital D, Section 2(D), and the Note, respectfully, by this Amendment, below. The collective term "City Properties," as defined in Recital B and only appearing one other time, in Recital E, is hereby removed and omitted entirely from the Agreement. Recital E has been revised, below, pursuant to this Amendment.

(ii) Recital D. Is hereby replaced in its entirety with the following:

D. After commencing the Project, Developer may construct a second phase of development 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** (as previously defined in Recital C, above), and in this Agreement, to the extent such First Amendment dictates (all terms used herein such as "Project," "Phase II Property," and "DCED" have the meanings established by the First Amendment).

(iii) Recital E. The term "City Sale Property," as defined in Recital E, while not omitted or replaced in the Agreement, is hereby redefined to have the same meaning as the SW Block. Additionally, the first sentence, and only the first sentence, to Recital E is hereby replaced in its entirety with the following:

E. Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC seeks to acquire fee title to that portion of the Project Property other than 5900 Madisonville and the NW Block, meaning, effectively, the SW Block which is hereby alternatively defined as the "**City Sale Property**".

In addition, the title of the Lease Agreement referred to in Recital E has changed from Master Lease and Management Agreement to Master Lease Agreement.

(B) Note about Recital C. It should be noted that Recital C, which was referenced above in the revised Recital D, and which is purported to define this Amendment as the "First Amendment," is restated in its entirety in Section 2 to this Amendment, below.

2. GENERALLY; PROJECT DESCRIPTION AND DUE DILIGENCE. The Agreement is hereby amended as follows:

(A) Redefinition of Project and Phase II Project and Corresponding Definition of the Project Property and the Phase II Property. All references to Exhibit B in the Agreement are hereby amended to refer to Exhibit B-1 (*Project Scope of Work – Public Infrastructure Improvements; Private Improvements*) of this Amendment. All references to Exhibit C in the Agreement are hereby amended to refer to Exhibit C-1 (*Revised Budget and Sources of Funds*) of this Amendment. 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 more comprehensively described in Exhibit B-1 (*Project Scope of Work – Public Infrastructure Improvements; Private Improvements*) to the first amendment of this Agreement, namely the *First Amendment to Funding, Acquisition, and Development Agreement* executed in _____ of 2018 (the "**First Amendment**"). The improvements listed immediately above and as more comprehensively described in the 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. All references to Exhibit C in the Agreement are hereby amended to be references to Exhibit C-1 hereto. As described herein, (a) all individuals and entities providing guaranties with respect to Developer's private financing, or (b) if there are not guaranties provided in respect of Developer's private financing, one or more individuals or entities with net worth deemed reasonably adequate by the City (whether one or more than one, collectively, "**Initial Guarantor**") will provide a guaranty (or guaranties) of completion in favor of the City with respect to the construction of the Project in substantially the form of Exhibit D (*Form of Completion Guaranty*) hereto (whether one or more than one, collectively, the "**Initial Completion Guaranty**"). If this Agreement is assigned to an Eligible Affiliate (as defined below) in accordance with Section 12(A)(iii), then Ackermann Enterprises, Inc. will also execute a guaranty of completion in the form of Exhibit D in addition to the Initial Completion Guaranty to be executed by Initial Guarantor. The term "**Guarantor**" shall refer to each of, and collectively, Initial

Guarantor and Ackermann Enterprises, Inc., if applicable, and the term "**Completion Guaranty**" shall refer to each of, and collectively, the Initial Completion Guaranty and the guaranty of completion executed by Ackermann Enterprises, Inc., if applicable. Additionally, pursuant to the terms of the Agreement as amended by the First Amendment, should Developer obtain approval to pursue the Phase II Project, Developer's financing of the same shall be subject to the same guaranty conditions described immediately above, taking the form of the "**Second Guarantor**," and the "**Second Completion Guaranty**," respectively, 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 II Project in a like manner as they are described above in connection with the completion of the Project.

(B) Bifurcation of Due Diligence Investigations Regarding Initial Closing and Optional Second Closing. Notwithstanding anything to the contrary in Section 1(A) of the Agreement, 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 Initial Closing (with such due diligence pertaining to the Project Property only) and the Optional Second Closing (with such due diligence items pertaining to the Phase II Property only), as applicable. For example, (i) for purposes of the Initial Closing, Section 1(A)(v) shall be understood to impose, as a condition of the Initial Closing, the requirement that Developer has obtained the financing contemplated in such clause with respect to the Project only, not the Project and also the Phase II Project, and (ii) for purposes of the Optional Second Closing, Section 1(A)(v) shall be understood to impose, as a condition of the Optional Second Closing, the requirement that Developer has obtained the financing contemplated in such clause with respect to the Phase II Project, as approved of by DCED. To the extent it is ambiguous whether a condition or requirement applies to the Initial Closing, the Optional Second 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 and the Phase II 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 (but not, for the avoidance of doubt, the Phase II 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 (but not, for the avoidance of doubt, the Phase II Project), approval of the Initial TIF Ordinance, or approval of plans or specifications for the Project (but not, for the avoidance of doubt, the Phase II 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 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 Initial Closing, the termination rights of the parties under this paragraph 1(B) shall automatically terminate and cease.

(D) Acquisition of MCURC Properties. It is acknowledged by the Developer that the City intends to acquire 5900 Madison from MCURC before the Initial Closing and immediately re-convey 5900 Madison to MCURC (collectively, the "**5900 Madison Conveyance and Re-Conveyance Transaction**"). Notwithstanding anything to the contrary in the Agreement, (i) Developer shall thereafter enter into a lease with respect to 5900 Madison from MCURC at or prior to the Initial Closing and provide a draft copy of the same to DCED for its review and comment before it is executed, and (ii) the City and Developer agree that Developer will not be obligated under the Agreement to acquire the remainder of the MCURC Properties until the Optional Second Closing. The City consents to Developer's lease, as opposed to acquisition of fee ownership, of 5900 Madison.

(E) Acknowledgment Regarding 5911-13 Madison Road. The City acknowledges that it, through DCED, consented to Developer's acquisition of 5911-13 Madison Road in a manner different than what was provided in Section 1(D) of the Agreement. More specifically, (i) Developer's designee, Ackermann Madisonville LLC ("**Ackermann Madisonville**") acquired title to 5911-13 Madison Road for a purchase price of $512,621.87, (ii) Ackermann Madisonville then transferred title to the City by *General Warranty Deed*, recorded with the Hamilton County, Ohio Recorder at Official Record 13547, Page 2234, and the City reimbursed Developer $300,000 (being the entire remaining balance under the Capital Appropriation Ordinance plus a portion of the $2,200,000 in Funds allocated towards the Non-Right-of-Way Public Infrastructure Improvements), although Developer had not demolished the building located thereon at the time, and (iii) the City then re-conveyed 5911-13 Madison Road to Developer by *Quitclaim Deed* recorded with the Hamilton County, Ohio Recorder at Official Record 13547, Page 2242. Notwithstanding anything to the contrary in Section 1(D) of the Agreement, the City and Developer hereby ratify the aforementioned transaction.

(F) Contingency for Legislative Authorization. Section 12(O) (*Contingency for Legislative Authorization from City Council; Termination*) of the Agreement is modified in the following way: the date by which all necessary legislative authorizations must have occurred, lest it give rise to the right of either party to terminate the Agreement, is changed from December 31, 2018 to July 1, 2020.

(G) Revised Project Documents to Reflect Changed Transaction Structure. All references to Exhibit F in the Agreement are hereby amended to be references to Exhibit F-1 (*Revised Form of Promissory Note*) hereto. The parties agree that references to the "Service Agreement" in the Agreement shall collectively refer to 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*) hereto and a like agreement may, pursuant to the negotiated terms of the Phase II Project if and when such Phase II Project is agreed to pursuant to the terms of this Amendment, be executed with respect to the Phase II Property pursuant to the Second TIF Ordinance, should City Council approve of the same.

(H) Participation of Redevelopment Authority. In order to secure the bonds to be issued by the Port Authority to provide financing for costs of the Project (the "Bonds"), in addition to the Service Agreement, the Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC will execute a

declaration with mortgage covenants (the "Declaration") providing for the owners from time to time of the SW Block to pay minimum service payments sufficient in amount to pay debt service on the Bonds in the event of a shortfall in Service Payments (the "Minimum Service Payments"). The lien of the Declaration securing the Minimum Service Payments will have the same priority as the Service Payments and will have priority over the lien of the other 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 Project Property within the SW Block to the Port Authority and the Port Authority will lease those improvements back to the Developer or its designee (the "Port Lease Transaction"), subject to the Service Agreement. The City hereby consents to the Port Lease Transaction. The City hereby consents to the Port Lease Transaction and acknowledges that the Port Lease Transaction is not the transaction contemplated by Section 12(A)(i) of the Agreement and is not subject to the terms thereof, regardless of any of the provisions of the Development Agreement, as amended by this Amendment, to the contrary.

(I) Mortgage Financing; General Provisions Edits.

(1) Notwithstanding anything in Section 12(a)(iv) of the Agreement to the contrary, the City acknowledges and consents to Developer's Eligible Affiliate and Assignee, Madisonville Phase I LLC, granting mortgages that encumber the leasehold interest of Developer's Eligible Affiliate and Assignee, Madisonville Phase I LLC under the Lease Agreement (but not the City's fee simple interest) and consents to the rights granted to such mortgagees pursuant to Section 13 of the Lease Agreement. Developer or its designee may collaterally assign its rights under the Agreement, as amended, with respect to the Project to any mortgagee of the leasehold interest under the Lease Agreement.

(2) In the last sentence of Section 12(a)(iv) of the Agreement, the word "Operator" is hereby deleted and replaced with the word "Tenant".

(3) Section 12(a)(v) of the Agreement is hereby amended by adding the following at the end of such Section:

Notwithstanding anything to the contrary in this Section 12(a)(v), if a Developer default that cannot be cured by the payment of money can only be remedied by a Lender upon obtaining possession of the Property and access to the Property, then the period for cure by the Lender in this Section 12(a)(v) shall commence after Lender shall have obtained possession of the Property through a receiver or otherwise, provided that the Lender shall exercise good faith efforts to so obtain possession. However, in no event may the total period of time for cure by the Lender, inclusive of any time allotted for obtaining possession of the Property and/or any additional time thereafter to cure pursuant to Section 12(a)(v), extend more than 18 months.

(J) Revised City Quit Claim Deed. Exhibit I to the Agreement is hereby deleted and Exhibit I-2 attached hereto is inserted in its place.

3. INITIAL CLOSING AND OPTIONAL SECOND CLOSING. Notwithstanding anything to the contrary in Section 2 (*Closing*) of the Agreement, the term "**Closing**" in the Agreement shall refer primarily and initially to the "Initial Closing" and, to the extent that the "Optional Second Closing" does occur with respect to the Phase II Property and the yet to be determined scope, if any, of the Phase II Project upon such Phase II Property, the term "Closing" shall alternatively refer to such Optional Second Closing, and shall proceed as follows:

(A) Initial Closing.

(i) Generally. Provided that Developer has complied with all terms and conditions of the Agreement 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(A) (the "**Initial Closing**") shall take place on such date as the parties agree upon, provided

that such date shall be within 90 days of the Effective Date of this Amendment (the "**Initial Closing Date**"). It is the intention of the parties that all of the transactions contemplated by this Section 3(A) will occur on the same date in as immediate of a sequence as is possible on the Initial Closing Date.

(ii) Contingencies. The occurrence of the Initial 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 Project and the Project Property, (b) the prior occurrence of the 5900 Madison Conveyance and Re-Conveyance Transaction, (c) the execution and delivery of the Completion Guaranty (except that if subsequent guaranties would be required under the terms of the Agreement as a result of additional guarantor entities with respect to the financing of the Phase II Project, such additional guaranties are not required to be executed with respect to the Initial Closing), the Note, the Master Lease, the Health Clinic Sublease Agreement, a Mortgage applicable to the SW Block and 5900 Madisonville (but not the NW Block, being the last component of the Project Property, as ownership of the NW Block will be retained by the City), a Service Agreement applicable to the Project Property (other than 5900 Madison and the 5105 Whetsel Avenue Parking Property), a Cooperative Agreement applicable to the Project financing, the City's Deed to Developer with respect to the SW Block of the Project Property (being the only portion of the Project Property to which Developer shall actually take fee simple title from the City pursuant to the Initial 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 II Project, such additional agreements are not required to be executed prior to the Initial Closing), the Public Parking Covenant (as defined below), and the Parking Management Agreement (as defined below), in each case on or prior to the Initial Closing Date, (d) the occurrence of Developer's closing with its Lender and the Port Authority on financing that is sufficient to complete the Project on or prior to the Closing Date, and (e) the passage of the Initial TIF Ordinance prior to the Initial Closing Date.

(iii) Initial Closing Transactions. On the Initial Closing Date, (a) Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC shall have entered into a lease of 5900 Madison with MCURC that has been reviewed and approved by DCED, (b) the City shall convey all Project Property that it owns in the SW Block to Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC 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 (c) Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC shall execute and deliver a Mortgage with respect to all the Project Property it owns (being the SW Block) 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 Project Property will be recorded prior to the City's Mortgage, other than any mortgage in favor of Developer's New Markets Tax Credit lenders, First Financial Bank, the direct lender under the New Markets Tax Credit structure or 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 Project, including the Declaration (the "**Senior Mortgages**"). If required by the Senior Mortgages, the City agrees to enter into a subordination agreement subordinating the lien of the City's Mortgage to the lien of the Senior Mortgages and to record the City Mortgage subsequent to the Senior Mortgages. The City Mortgage 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. Developer acknowledges that 5021 Whetsel will not be included in the Master Lease, nor will Developer exercise its right to enter into a purchase option arrangement with respect to 5021 Whetsel as of the Initial Closing Date, and further acknowledges that by not including 5021 Whetsel in the Master Lease and by Developer not exercising its right to enter into a purchase option arrangement with respect to 5021 Whetsel as of the Initial Closing Date, Developer has forfeited its rights to such future options to lease or purchase 5021 Whetsel as provided for in the Agreement, and the City is under no obligation to comply with the same. Developer may, at its option, petition the City for a lease or purchase option with respect to 5021 Whetsel subsequent to the Initial Closing Date, and the City may consider the same, but shall not be required to grant such request from Developer. Artsville Corporation, an Ohio nonprofit corporation ("Artsville"), currently occupies 5021 Whetsel pursuant to a Lease Agreement from the City with an Effective Date of June 9, 2016 (the "Artsville Lease"). The City shall not sell 5021 Whetsel to Artsville, or any entity owned or controlled by any person owning all or any

portion of (directly or indirectly), or controlling, Artsville, unless and until (i) Artsville has occupied and operated its business at 5021 Whetsel for nine (9) years and exercised its final one year option under Paragraph 2(B) of the Artsville Lease, and (ii) Artsville has demonstrated capacity to continue operating in the property as a community arts center and to buy or lease the property at fair market value (as determined by City appraisal at the time of such sale or lease).

(B) Optional Second Closing.

(i) Generally. Provided that Developer has complied with all terms and conditions of the Agreement and the other Project Documents, and specifically subject to the terms and conditions of Section 2(F), as revised by this Amendment, the closing of the transactions described in this Section 3(B) (the "**Optional Second Closing**") shall take place approximately 30 days after the effective date of an agreement between the parties to govern the development of the Phase II Property, or 30 days after the 18-month anniversary of the First Amendment, whichever is first, unless otherwise mutually agreed upon by the parties (the "**Optional Second Closing Date**"). It is the intention of the parties that all of the transactions contemplated by this Section 3(B) will occur on the same date in as immediate of a sequence as is possible on the Optional Second Closing Date. Should the Optional Second Closing not occur within 90 days of the latest possible date for the stated Optional Second Closing Date, the City shall thereafter no longer be obligated to convey the Phase II Property, or any portion thereof, to Developer. Additionally, to the extent that the Optional Second Closing does occur with respect to only a portion of the Phase II Properties, the City shall thereafter no longer be obligated to convey the Phase II Property, or any portion thereof, to Developer.

(ii) Contingencies. The occurrence of the Optional 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 II Project and the Phase II Properties, (b) the City's review and approval of detailed plans and specifications with respect to the Phase II Project, and the parties' negotiation and execution of a binding written agreement or agreements, or Amendment or Addendum to this Agreement (with such terms and conditions as the City and Developer mutually agree) providing for the completion of the Phase II Project, (c) the execution and delivery of the Second Completion Guaranty, and (d) the occurrence of Developer's closing with its Lender, on or prior to the Optional Second Closing Date, on financing that is sufficient to complete the Phase II Project.

(iii) Optional Second Closing Transactions. On the Optional Second Closing Date, the City shall convey all Phase II Property that it owns, or such portion thereof as negotiated with Developer and as to be include in the Phase II Project, to Developer by a *Quitclaim Deed* in the form required by the Agreement for $0.00 (without the paragraph relating to the Repurchase Properties).

(C) Closings Generally. All terms and conditions of the Agreement applicable to the Closing in the Agreement (including, without limitation, Developer's obligation to pay all closing costs) remain in full force and effect, except as expressly amended hereby.

4. MODIFIED REPURCHASE RIGHT OF THE CITY. Section 2(D) of the Agreement is hereby deleted and the following is hereby inserted in its place:

> (D) City's Requirement and Right to Repurchase 5911-5913 Madison. Pursuant to Section 1(B), above, the City has an obligation to repurchase the property known as 5911-5913 Madison (the "**Repurchase Property**") in the event that Developer elects not to pursue the development of the Phase II Property, the Developer's proposal for the Phase II Project is rejected by DCED, the Phase II Project proposal which is agreed upon between Developer and the City does not include any portion of the SE Block, upon the expiration of the "Option Period" (as defined in Section 2(F) of the Agreement, as added in Section 5, below), or either party elects to terminate the Agreement or the agreement between the City and Developer with respect to the development of the Phase II Project (the "Phase II Agreement") pursuant to the Due

Diligence Investigations prior to the actual development of the Phase II Project (the "**City's Repurchase Requirement**"). Additionally, if Developer fails to complete the Phase II Project in accordance with the terms and conditions of the Phase II Agreement such that Developer is in default under the same (after any applicable notice and the expiration of any applicable cure period), the City, subject to the terms and conditions of such agreement involving default and remedies, has the right to repurchase the Repurchase Property, according to the following terms (the "**City's Repurchase Right**"). If (a) the City is required to repurchase the Repurchase Property pursuant to the City's Repurchase Requirements, or (b) the City elects to exercise the City's Repurchase Right, Developer shall, within 30 days after occurrence of the event triggering the City's Repurchase Requirement or within 30 days after Developer's receipt of the written notice from the City that the City is exercising the City's Repurchase Right, cause the Repurchase Property to be re-conveyed to the City by limited warranty deed. At the closing of such repurchase transaction (the "**Repurchase Closing**"), the City will pay Developer $212,621.87 (being Developer's unreimbursed out-of-pocket costs of acquiring 5911-5913 Madison aka the Repurchase Property) (the "**Repurchase Property Price**") in the following manner: the Note shall provide that any amounts which would otherwise be payable under the Note on and after the date of the Repurchase Closing, up to, but not in excess of, an amount equal to the Repurchase Property Price, shall be retained by the Developer and not paid or due and payable under the Note. The principal and interest due under the Note shall not be reduced or otherwise affected. Without limiting any other rights of the City under this Agreement, Developer agrees that, in connection with the possible exercise of its repurchase rights hereunder, the City and its designees and their respective employees and agents shall have the right, during normal business hours, to enter the Repurchase Property with reasonable prior written notice to Developer and conduct reasonable due diligence investigations with respect to the Repurchase Property. Finally, in the event that Developer elects not to pursue the development of the Phase II Property, the Developer's proposal for the Phase II Project is rejected by DCED, or the Phase II Project proposal which is agreed upon between Developer and the City does not include any portion of the SE Block, upon the expiration of the "Option Period" (as defined in Section 2(F) of the Agreement, as added in Section 5, below), the City shall also be able to invoke its Repurchase Right as described above, and in accordance with the terms and procedures outlined above.

5. DEVELOPER'S RIGHT TO SUBMIT DEVELOPMENT PROPOSAL FOR PHASE II PROJECT. The Agreement is hereby amended by adding the following as a new section, being Section 2(F) of the Agreement:

(F) Developer's Right to Submit Phase II Project Proposal for Future Development on Phase II Property. The parties acknowledge that Developer is interested in acquiring and developing the Phase II Property. For so long as Developer is not in default under this Agreement, after the giving any notice and the expiration of any cure period, the City agrees that, for a period of 18 months after the Effective Date of this Amendment (the "**Option Period**"), the City will not sell the Phase II Property to a third party and will entertain, in good faith, a development proposal from Developer. If, prior to the expiration of the Option Period, Developer timely submits a detailed development proposal for the Phase II 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 II Property to Developer, for a purchase price of $0.00. The closing on such Phase II Property shall take place in accordance with the terms described herein, and also in accordance with such terms described in the Optional Second Closing, as defined and described in the First Amendment, approximately 30 days after the effective date of an agreement between the City and Developer establishing and confirming the terms of the Development Proposal with respect to the

Phase II Property, or 30 days after the expiration of the Option Period, whichever is first, or at such other time as the parties may agree upon. Should the Optional Second Closing not occur within 90 days of the expiration of the Option Period, the City shall thereafter no longer be obligated to convey the Phase II Property, or any portion thereof, to Developer. Additionally, to the extent that the Optional Second Closing does occur with respect to only a portion of the Phase II Property, the City shall thereafter no longer be obligated to convey the remainder of such Phase II Property, or any portion thereof, to Developer. At the Closing, the City shall convey title to the Phase II 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 Option 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 Second Closing are in conflict, the terms of this clause shall control.

6. **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 Agreement shall be deemed to apply to the Project, determined with respect to the Initial Closing, and the Phase II Project, determined with respect to the Optional Second 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 II Project within 3 months following the Optional Second Closing Date, and so forth.

7. **LENDER.** For purposes of Section 12(A)(v)(a) and (b) of the Agreement, the Port Authority shall have all rights of a Lender thereunder with respect to the Declaration.

8. **HRSA/NFI.** The City will use commercially reasonable efforts to cause HRSA to: (i) consent to Developer's Eligible Affiliate and Assignee Madisonville Phase I LLC undertaking the New Markets Tax Credit financing for the Project; (ii) consent to the Lease Agreement and the Health Clinic Sublease Agreement; (iii) consent to the granting of certain mortgages by the Developer or its Eligible Affiliate and Assignee, Madisonville Phase I LLC, encumbering the leasehold interest under the Lease Agreement to secure the financing for the Project; (iv) amend the NFI so that it encumbers only the premises that are subject to the Health Clinic Sublease Agreement and that are to be used as a health center and not the balance of the Project Property, which is to be used for non-health center uses, and (iv) subordinate its interest in the Project and the NFI to the Lease Agreement, the Health Clinic Sublease Agreement and the liens of the mortgages securing financing for the Project obtained by Developer or its Eligible Affiliate and Assignee Madisonville Phase I LLC. Developer acknowledges that the City cannot predict whether or not HRSA will accept all such requests.

9. **NO CHANGES TO CITY'S FUNDING**. 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 Initial TIF Ordinance (applicable to the Project Property) and the Second TIF Ordinance (applicable to the Phase II 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 Project and the Phase II Project. The City acknowledges that Developer intends to undertake the Public Infrastructure Improvements as a part of, and on the same timeline as, the 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 Funds until the entire Project, including the Public Infrastructure Improvements, are completed. (The City acknowledges, for the avoidance of doubt, that its release of the retainage is not conditioned upon completion of the Phase II Project.)

10. REPRESENTATIONS AND WARRANTIES. 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 Agreement, and (ii) remakes each and every representation and warranty to the City in the Agreement as of the Effective Date of this Amendment.

11. REAFFIRMATION. Developer hereby expressly reaffirms all terms and conditions (except as amended by this Amendment) of the Agreement, which remains in full force and effect in all respects.

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

13. 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 Project, to Madisonville Phase I LLC, an Ohio limited liability company, 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 and the Phase II 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 attached hereto, prior to the Optional Second Closing on the Phase II Property.

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

Exhibit A-1 - Revised Site Plan – Breakdown of Project Property, Phase II Property
Exhibit B-1 - Project Scope of Work – Public Infrastructure Improvements; Private Improvements
Exhibit C-1 - Revised Budget & Source of Funds
Exhibit F-1 - Revised Form of Promissory Note
Exhibit I-2 – Revised Form of City Quitclaim Deed
Exhibit J-1 – Revised Form of Public Parking Covenant
Exhibit N - Form of Project Service Agreement
Schedule 12 – Form of Developer 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: _____, 2018

CITY OF CINCINNATI

By: _____
Patrick Duhaney, Acting City Manager

Date: Sept. 25, 2018

Recommended by:

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

Approved as to Form:

_____
Assistant City Solicitor

Approved by:

_____
Markiea Carter, Director
Department of Economic Inclusion

Certified Date: 24 SEP 2018

Fund/Code: CERTIFICATION OF FUNDS NOT REQUIRED

Amount: _____

By: _____
Reginald Zeno, City Finance Director

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: _____

Title: _____

Date: _____, 2018

CITY OF CINCINNATI

By: _____
Patrick Duhaney, Acting City Manager

Date: _____, 2018

Recommended by:

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

Approved as to Form:

_____
Assistant City Solicitor

Approved by:

Markiea L. Carter

_____
Markiea Carter, Director
Department of Economic Inclusion

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Reginald Zeno, City Finance Director

Exhibit A-1

to

First Amendment to Funding, Acquisition and Development Agreement

Revised Site Plan – Breakdown of Project Property, Phase II Property

EXHIBIT A-1

Madisonville Redevelopment Site Plan

5/18/18

Exhibit B-1

to

First Amendment to Funding, Acquisition and Development Agreement

Project Scope of Work – Public Infrastructure Improvements; Private Improvements

Exhibit B-1

to

Funding, Acquisition and Development Agreement

SCOPE OF WORK – PUBLIC INFRASTRUCTURE IMPROVEMENTS; PRIVATE IMPROVEMENTS

Note: All quantities below are preliminary and subject to change

Private Improvements

The Private Improvements on the Project will include the following:

Residential

- 106 Residential Apartments including a mix of Studio, One Bedroom and Two Bedroom units
- 100+ Car Surface Parking Lot
- 5,000 square feet of private residential amenity space

Commercial

- 5,000 leasable square feet of new construction retail including tenant improvements
- 13,500 leasable square feet of new construction commercial/office including tenant improvements
- Façade improvements to the Madison Retail Center building
- Tenant improvements for the Madison Retail Center building for re-tenanting of commercial spaces excluding the existing Braxton Cann Health Clinic and Family Dollar stores (approximately 6,000 leasable square feet of re-tenanted space.)
- Braxton Cann Health Clinic grant of $1 million of tenant improvements to be completed concurrent with Madison Retail Center building improvements

Site Improvements

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

Public Infrastructure Improvements

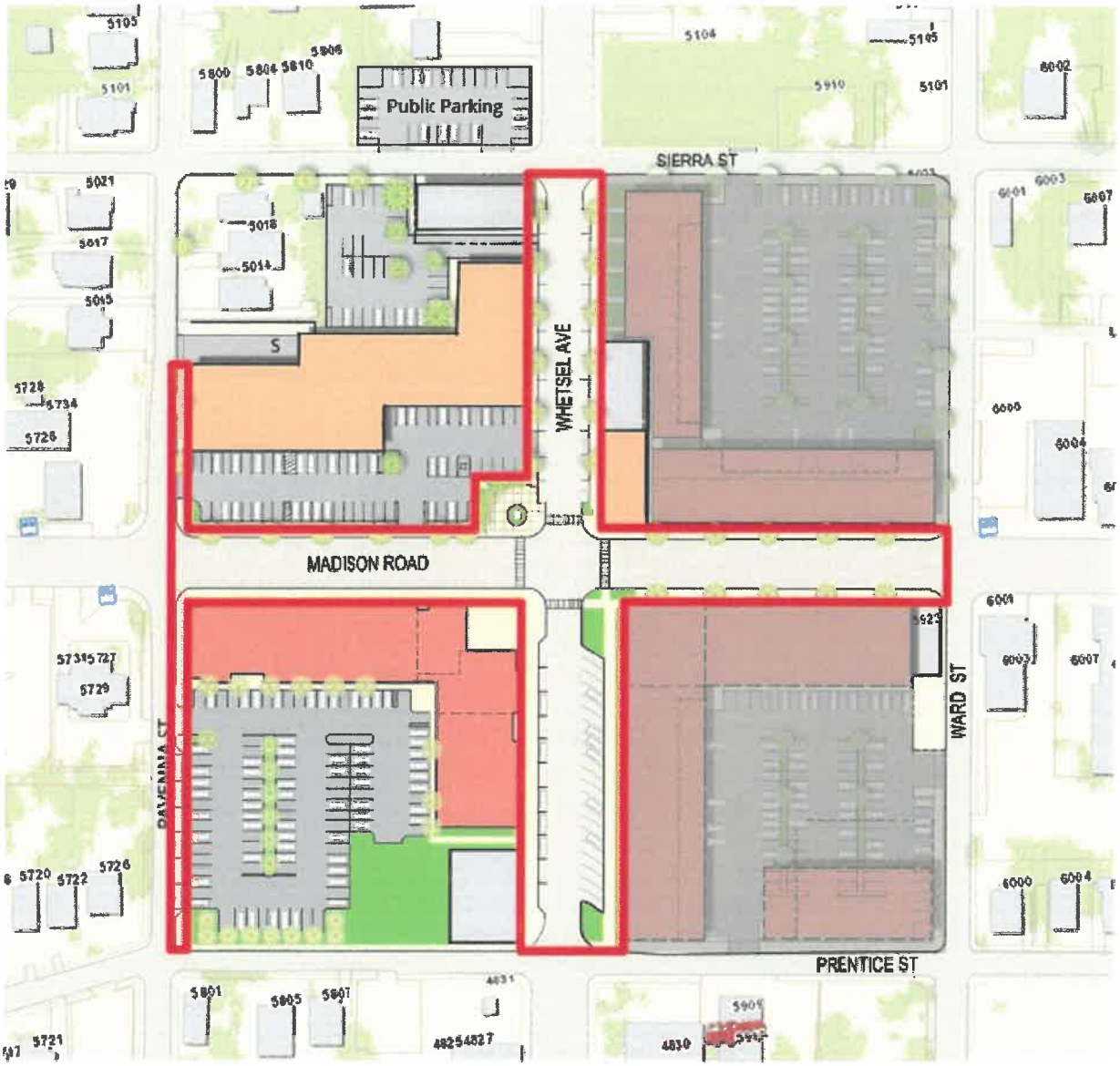
A. Right-of-Way Public Infrastructure Improvements
    - Public streetscape improvements for the two-block area of Madison Road and Whetsel Avenue between Ravenna Street and Ward Street (West to East) and between Sierra Street and Prentice Street (North to South) including, but not limited to:
        - Curbs and sidewalks, as necessary
        - Storm drainage and other public utility improvements, as necessary
        - Public parallel parking of approximately 36 spaces and 20 angled or perpendicular spaces (east side of Whetsel)
        - Paving resurfacing, as necessary
        - Street trees
        - Street lighting, including decorative post lighting
        - Site furnishings

B. Non-Right-of-Way Public Infrastructure Improvements

- Improvements in the Project Site including, but not limited to:
    - Demolition
    - Site improvements including:
        - Public plaza space at Madison and Whetsel intersection (NW corner Madison Road & Whetsel Avenue)
        - Utility improvements, as necessary
        - Landscaping and hard-scaping
        - Site furnishings

EXHIBIT B-1

Public Infastructure Improvements



Public Infastructure Improvements

5/18/18

Exhibit C-1

to

First Amendment to Funding, Acquisition and Development Agreement

Revised Budget & Source of Funds

Madisonville Redevelopment
Sources & Uses of Funds

ACKERMANN GROUP BUILDING COMMUNITY TOGETHER

Sources of Funds		
Mortgage		12,400,000
Sponsor Equity		2,750,000
NMTC Equity		6,372,600
District TIF - Public ROW		2,000,000
District TIF - Public Non-ROW		2,200,000
District TIF - Land Acquisition		1,050,000
Project TIF		2,000,000
Health Center Grant		1,000,000
Total Sources of Funds		**29,772,600**
Uses of Funds		
Land		**992,622**
Demolition and Acquisition Soft Costs		203,671
Residential & Commercial Construction		13,615,143
Contractor General Requirements/Contingency		2,088,779
Commercial Tenant Improvements		1,592,915
Streetscape Improvements - Public ROW	Allowance	2,000,000
Madison Center Façade Improvements	Allowance	400,000
Health Center Improvements	Allowance	1,000,000
Sales Tax Fee - Port Authority		120,808
Total Construction Costs		**21,021,316**
General Development Costs		4,456,191
NMTC Costs		1,455,000
Developer Fee		1,535,882
Guaranty Fee		311,589
Total Soft Costs		**7,758,662**
Total Uses of Funds		**29,772,600**

Exhibit F-1

to

First Amendment to Funding, Acquisition and Development Agreement

Revised Form of Promissory Note

$3,773,000.00

Date:_____, 2018
(the "**Effective Date**")
Cincinnati, Ohio

FOR VALUE RECEIVED, the undersigned ("**Borrower**") promises to pay to the order of the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which for purposes of this Note is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the "**City**"), the sum specified below together with interest thereon and upon the following terms and conditions. This Promissory Note (this "**Note**") evidences Developer's obligation to repay the Loan, as defined in that certain *Funding, Acquisition and Development Agreement* entered into by and between the City and Borrower as of 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 Three Million Seven Hundred Seventy-Three Thousand Dollars ($3,773,000.00). The actual principal amount of the loan evidenced hereby shall equal the sum of (i) the amount disbursed to Developer as a Loan pursuant to the Development Agreement, the maximum amount of which is $2,950,000, and (ii) $823,000, representing the fair market value of the Project Property and the Phase II Property 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).

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 $2,000,000 (the Equity Contribution) or $240,000. If the Net Cash Flow in Year 2 is $450,000 then the Annual Payment Amount would be ($450,000 - $240,000) x 25% or $52,500.

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

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

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

e. "**Internal Rate of Return**" means, as of the date of any given repayment, the monthly compounded rate at which the present value of all Equity Contributions equals the present value of all Equity Distributions. Internal Rate of Return shall be calculated using the Microsoft Excel 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.

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

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

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

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

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

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

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

6. Place of Payment. Payments shall be made to the City at the address set forth in the introductory paragraph of this Note or such other place as the Note holder may designate in writing from time to time. Borrower acknowledges that the City may designate a third party to service the loan.

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

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

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

9. General Provisions. This Note and any other Project Documents constitute the entire agreement of the parties with respect to the matters described herein and supersede any and all prior communications and agreements between the parties. This Note may be amended only by a written amendment signed by Borrower and the Note holder. This Note shall be governed by the laws of the City of Cincinnati and the State of Ohio. This Note shall be binding upon Borrower and its successors and assigns. If any provision of this Note is determined to be in violation of any applicable local, state or federal law, such provision shall be severed from this Note and the remainder of this Note shall remain in full force and effect. All notices given under this Note shall be sent by regular or certified U.S. mail to Borrower at its address set forth below and to the Note holder at the address where loan payments are made. Any action or proceeding arising under this Note shall be brought only in the Hamilton County Court of Common Pleas. Presentment, notice of dishonor, protest and notice of protest are hereby waived.

10. 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 Three Million Seven Hundred Seventy-Three Thousand Dollars ($3,773,000.00), consisting of (i) the amount disbursed to Developer as a Loan pursuant to the Development Agreement, the maximum amount of which is $2,950,000, and (ii) $823,000, representing the fair market value of the Project Property and the Phase II Property 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 II Property or some portion thereof, the Principal Amount shall be reduced in such event, and at such time as the disposition of the Phase II Property becomes final under the Development Agreement, and the same shall be memorialized pursuant to an Amendment to this 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, Cincinnati, Ohio].

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

☐ Guaranty

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

[*Signature Page Follows*]

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

Ackermann Enterprises, Inc.
an Ohio corporation

By: _____

Printed Name: _____

Title: _____

Borrower's Mailing Address:

[_____]
[_____]
[_____]

Contact No.: _____

Approved by:

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

Approved as to Form:

_____
Assistant City Solicitor

Exhibit I-2

to

Funding, Acquisition and Development Agreement

Form of Quitclaim Deed – City Conveyance

..... space above for Recorder's Office .....

QUITCLAIM DEED

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

See Attached Exhibit A (Legal Description of Property) incorporated by reference herein.
Together with all appurtenant easements and rights.
Auditor's Parcel ID No.: [_____]
Prior Instrument Reference: Official Record _____, Page _____
of the Hamilton County Recorder's Office

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

[Signature Page Follows]

Executed on _____, 20___.

CITY OF CINCINNATI,
an Ohio municipal corporation

By:_____
_____, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

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

_____
Notary Public
My commission expires:_____

Approved as to Form:

_____
Assistant City Solicitor

The instrument prepared by:

City of Cincinnati Law Department
801 Plum Street, room 214
Cincinnati, Ohio 45202

EXHIBIT A

to Quitclaim Deed

LEGAL DESCRIPTION OF PROPERTY

[TO BE ATTACHED]

Exhibit J-1

to

First Amendment to Funding, Acquisition and Development Agreement

REVISED FORM OF PUBLIC PARKING COVENANT

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

Property: [_____]

RESTRICTIVE COVENANT

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

Recitals:

A. By virtue of a deed recorded on [_____] in Official Record [_____], Page [_____], Hamilton County, Ohio Records ("**Deed**"), Owner is the owner of the real property located at [5801 Madison Road, Cincinnati, Ohio] in the Madisonville neighborhood of Cincinnati, as more particularly described on Exhibit A (Legal Description of the Parking Site) hereto (the "**Property**"). Owner undertook a project to, among other things, construct a public parking lot on the Property (the "**Project**"), which is to be financed, in whole or in part, by the City (the "**Funds**"), as described in that certain Funding, Acquisition and Development Agreement dated October 6, 2016 between the City and Developer, as amended by that certain First Amendment to Funding, Acquisition and Development Agreement dated [_____], 2018 (as amended, the "**Agreement**"). Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Agreement.

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

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

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

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

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

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

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

[Signature Page Follows]

This Restrictive Covenant is executed on _____, 2018 (the "**Effective Date**').

ACKERMANN ENTERPRISES, INC.,
an Ohio corporation

By:_____
Name:_____
Title:_____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

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

_____
Notary Public
My commission expires:_____

ACKNOWLEDGED AND ACCEPTED BY:

CITY OF CINCINNATI

By:_____
Patrick Duhaney, Acting City Manager

Recommended by:

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

Approved as to Form:

_____
Assistant City Solicitor

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

Exhibit A
to
Restrictive Covenant

Legal Description of Parking Site

[Intentionally Omitted]

Exhibit N

to

First Amendment to Funding, Acquisition and Development Agreement

Form of Project Service Agreement

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

SERVICE AGREEMENT
(Madison and Whetsel Project Phase I)

This Service Agreement (this "**Agreement**") is made and entered into as of [_____], 2018 (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 I 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 [_____], 2018 (the "**First Amendment**"; the Original Development Agreement, as amended by the First 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 southwest and northwest blocks of Madison Road and Whetsel Avenue, all as described on Exhibit A (*Legal Description*) hereto (the "**Property**"). As described more particularly in the Development Agreement as the "Project", the Company will construct a mixed-use development within the SW Block, and will make improvements to the existing Madison Center Facility within the NW Block (the "**Improvements**"). Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Development Agreement.

C. The City has conveyed to the Company all of the Property that it owns in the SW Block, as more fully identified on Exhibit A hereto (the "**SW Block Property**"), and the Company has fee simple title to the SW Block Property.

D. The City has retained fee simple title to that portion of the Property located in the NW Block on which the Madison Center Facility is located, as more fully identified on Exhibit A hereto (the "**NW Block Property**"), and, as contemplated by the Development Agreement, the City and the Company have entered into the Master Lease dated [_____], 2018 for the NW Block Property (as amended from time to time, the "**Master Lease**") and the Company and the City have entered into the Agreement of Lease dated [_____], 2018 (as amended from time to time, the "**Health Clinic Sublease Agreement**"), pursuant to which the Company has subleased back to the City the Braxton Cann Health Clinic within the Madison Center Facility (the "**Health Clinic**").

E. The City believes that the Improvements are 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.

F. In furtherance of the public purpose and to facilitate the Improvements, and as authorized by Ordinance No. 126-2018 passed by City Council on June 6, 2018 (the "**TIF Ordinance**"), the City has established a so-called project-based TIF for the Property under Section 5709.41, Ohio Revised Code ("**ORC**").

G. Under the TIF Ordinance and in accordance with ORC Section 5709.41, et seq., the increased value of the Improvements that is not exempt pursuant to ORC Section 3735.65 et. seq. shall be exempt from real property taxes, and all present and future owners of the Property, or any portion thereof, shall be required to make service payments in lieu of taxes, in semi-annual installments, in an amount equal to the amount of real property taxes that would have been paid on the Improvements had an exemption not been granted ("**Statutory Service Payments**").

H. Minimum service payment obligations to ensure sufficient funds to finance the Improvements, similar in nature to those described in ORC Section 5709.91, but not precisely the same as the Improvements being made are not public improvements and such payment obligations do not exist with respect to the City, will be required by the Port Authority (as defined below) and shall be made by the Company pursuant to a separate declaration with mortgage covenants which will be recorded with the Hamilton County, Ohio Recorder.

I. The 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 Improvements 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. The City intends initially to use the Statutory Service Payments actually received (e.g., for the avoidance of doubt, exclusive of any fees paid or withholdings from the service payments to or by the Hamilton County Auditor) by the City with respect to the Property (i) to satisfy its obligation to make payments to the Board of Education, and (ii) to assign to the Port of Greater Cincinnati Redevelopment Authority (the "**Port Authority**") to be applied towards debt service with respect to the bonds issued by the Port Authority to finance the Improvements, as described more particularly in the Cooperative Agreement between the City and the Port Authority executed on or about the date hereof.[1]

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 with respect to the Statutory Service Payments.

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

---

[1] Note: the City will need to review and negotiate the Cooperative Agreement. To the extent there are Statutory Service Payments after the bonds are paid in full, these are not pledged to the Project and would be retained by the City for all legally eligible uses.

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

1. CONSTRUCTION OF IMPROVEMENTS.

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

2. OBLIGATION TO MAKE PAYMENTS.

A. Declaration that Exempt Improvements are 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 assessed value of the Improvements (hereinafter, the "**Exempt Improvements**") are a public purpose and entitled to exemption 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 Exempt Improvements appear on the Hamilton County Auditor's tax duplicate. (For example, if any Exempt Improvements first appear on the tax rolls on January 1, 2019, the Company's first semi-annual tax payment will be for the tax bill for the First Half 2019, which will become due and payable to the County Treasurer on or about January 2020.) 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 semi-annual Statutory Service Payment shall be paid to the Hamilton County Treasurer in an amount equal to one-half (½) of the annual amount that would have been payable in that year as real property taxes with respect to the Exempt Improvements had an exemption not been granted. (However, if after the first semi-annual Statutory Service Payment has been determined and paid, the total annual amount for that year is adjusted by the taxing authorities, the amount of the second semi-annual Statutory Service Payment shall be adjusted accordingly.) The Statutory Service Payments shall vary as the assessed value of the Exempt Improvements 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 Exempt Improvements (if not exempt) cannot be or has not been finally determined, the amount of such taxes shall be estimated by the Hamilton County Auditor or by the City (even though such taxes may be subject to contest, later determination, or adjustment because of revaluation of the Improvements) for the applicable tax year. If the sum of Statutory Service Payments so calculated and paid in any year is subsequently determined not to be equal to the total amount of real property taxes that would have been paid in that year with respect to the Exempt Improvements (if not exempt), 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. To the extent permitted by law, the Statutory Service Payments shall be treated as a tax lien in the same manner as real property taxes and will have the same lien, rights and priority as all other real property taxes. Such a lien shall attach, and may be perfected, collected and enforced as provided by law, including enforcement by foreclosure upon such lien pursuant to the procedures and requirements of Ohio law relating to mortgages, liens, and delinquent real estate taxes. 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 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 Improvements or the Property. All instruments of conveyance of the Improvements or the 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 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 from time to time of the fee simple interest in the Property or as lessee under the Master Lease, 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 Property and Improvements. 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 Property or any part thereof, it shall automatically be released and relieved of and from all other and further obligation and liability 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 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.

D. Master Lease. The City acknowledges that the Company has agreed to make Statutory Service Payments with respect to the NW Block Property as lessee under the Master Lease (subject to reimbursement for Statutory Service Payments the Company makes with respect to the Health Clinic as provided for under the Health Clinic Sublease Agreement). Such obligation shall be binding upon the successors and permitted assigns of the Company as the lessee under the Master Lease. In the event that the Master Lease is terminated, or the Company or its successors or permitted assigns, are no longer obligated to make Statutory Service Payments with respect to the NW Block Property, the City, as owner of fee simple title to the NW Block Property, shall assume the obligation of the Company to make Statutory Service Payments hereunder and the provisions of this Agreement relating thereto, including those set forth in Sections 3, 4 and 5 hereof, shall apply to the City and its successors-in-interest and transferees as owners from time to time of the fee simple interest in the NW Block Property.

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 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 Property and which, if not paid, may become or be made a lien on the Property or the Improvements), and (ii) all utility and other charges incurred in the operation, maintenance, use and occupancy of the 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 Improvements by the County Auditor so as to reduce such valuation for real property tax purposes below the valuation initially assigned to the Improvements by the County Auditor upon completion, and (b) it will not seek any other real property tax exemption for the 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 Improvements and other improvements on the 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 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 Property and Improvements, 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 Property and Improvements.

C. Master Lease Provisions. For so long as the Master Lease is in effect, the provisions of the Master Lease governing insurance coverage for the NW Block Property and the application of the proceeds thereof shall control.

7. CONDEMNATION PROCEEDS.

In the event any portion of the Property or Improvements shall be taken as a result of the exercise of the power of eminent domain by any governmental entity or other person, association or corporation possessing the right to exercise the power of eminent domain, 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 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 intend that such exemption from real property taxation shall apply initially to the 2020 tax year. 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 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

By: _____
Patrick Duhaney, Acting City Manager

Recommended by:

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

Approved as to Form:

_____
Assistant City Solicitor

MADISONVILLE PHASE I LLC

By: _____
Printed name: _____

Title: _____

Approved by:

_____
Reginald Zeno, City Finance Director

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Patrick Duhaney, Acting 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 _____, 2018, by _____, the _____ of [_____], an [_____], on behalf of the [_____].

_____
Notary Public
My commission expires: _____

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

EXHIBIT A
TO
SERVICE AGREEMENT

LEGAL DESCRIPTIONS

SW BLOCK PROPERTY [TO BE PROVIDED BY DEVELOPER]

NW BLOCK PROPERTY [TO BE PROVIDED BY DEVELOPER]

SCHEDULE 12

TO

First Amendment to Funding, Acquisition and Development Agreement

Form of Assignment Agreement of Developer's Rights

Assignment

The undersigned, Ackermann Enterprises, Inc., an Ohio corporation ("AEI"), hereby assigns to Madisonville Phase I 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 (the "Agreement") as it relates to the Project (as defined in the Agreement). Assignee accepts such assignment and assumes all of Assignee's duties, obligations and liabilities under the Agreement with respect to the Project as of this _____ day of _____, 2018.

Madisonville Phase I LLC,
an Ohio limited liability company

By:_____
Its:_____
Name:_____

Ackermann Enterprises, Inc.
an Ohio corporation

By:_____
Its:_____
Name:_____

4835-8390-4353.8