

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

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

Recitals:

A. The City and Developer are parties to a *Funding, Acquisition and Development Agreement* dated October 6, 2016 (the “**Original Agreement**”), as amended by a *First Amendment to Funding, Acquisition and Development Agreement* (the “**First Amendment**”) dated September 25, 2018, a *Second Amendment to Funding, Acquisition and Development Agreement* (the “**Second Amendment**”) dated September 30, 2019, and a *Third Amendment to Funding, Acquisition and Development Agreement* (the “**Third Amendment**”) dated July 28, 2020 (the Original Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment and this Amendment, the “**Agreement**”), pursuant to which, among other things, the City and Developer agreed to a plan for the redevelopment of the area surrounding the intersection of Madison Road and Whetsel Avenue (as described in the Original Agreement, the “**Project Site**”). Developer subsequently assigned its rights and obligations to (i) the Project (as defined in the First Amendment) to Phase I Developer and (ii) Phase IIA Project (as defined in the Second Amendment) to Phase IIA Developer. Capitalized terms used, but not defined, herein have the meanings ascribed thereto in the Agreement, the First Amendment, the Second Amendment, or the Third Amendment as applicable.

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

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

D. As used herein, and for purposes of the Agreement, (i) the term “**Phase IIB Project**” means (a) Developer’s, or upon assignment Phase IIB Developer’s, redevelopment of a portion of the Phase IIB Property (as previously defined in the Second Amendment) as depicted in Exhibit A-3 (*Amended Site Plan – Breakdown of Project Property, Phase IIA Property, Phase IIB Property, and North Sierra Properties*) and labeled “Phase IIB Property” (redefined as the “**Phase IIB Property**”) into approximately 92 market rate residential rental units (approximately 73,900 square feet in the aggregate), approximately 18,900 square feet of ground floor commercial space, approximately 94 surface parking spaces, and approximately 15 public

parking spaces on Prentice Street at an aggregate project cost of approximately \$24,030,095, and (b) Developer's, or upon assignment Phase IIB Developer's, construction of Right-of Way Public Infrastructure Public Improvements benefitting the Phase IIB Property, including the Public Plaza (as defined below) (the "**Phase IIB Right-of-Way Public Infrastructure Improvements**"), in each case as more fully described in Exhibit B-3 (*Phase IIB Project Scope of Work – Phase IIB Right-of-Way Public Infrastructure Improvements; Private Improvements*) and (ii) the term "**North Sierra Project**" means Developer's (or its Eligible Affiliate's) potential redevelopment of the North Sierra Properties, or some portion thereof, into such structures and uses as proposed by Developer (or its Eligible Affiliate) and approved by DCED, all at a total aggregate project cost as agreed upon by the applicable parties at the time of such approval. All references to Exhibit B of the Original Agreement are hereby amended to be references to Exhibit B-1 of the First Amendment, Exhibit B-2 of the Second Amendment, and Exhibit B-3 hereto collectively.

E. The Phase IIB Project will be situated on the Phase IIB Property. The Phase IIB Property shall include those parcels within the Phase IIB Property owned as of the date hereof by the City (the "**City Phase IIB Property**"). The North Sierra Project will be situated on such real property, or some portion or combination thereof, which is identified as the "**North Sierra Properties**" in Exhibit A-3. All references to Exhibit A, Exhibit A-1, and Exhibit A-2 in the Agreement are hereby amended to be references to Exhibit A-3 hereto.

F. The City and the Companies wish to enter into this Amendment to provide an additional grant of \$950,000 to complete the Phase IIB Right-of-Way Public Infrastructure Improvements associated with the Phase IIB Project; to amend the scope of the Phase IIB Project; to bifurcate the Phase IIB Project into distinct elements, namely the Phase IIB Project and the North Sierra Project; to provide for the Developer's exclusive right to submit a proposal or proposals to DCED with respect to the development of the North Sierra Project on the North Sierra Properties, subject to the review and approval of such proposal or proposals and upon satisfaction of the terms and conditions of this Amendment; to provide for the Developer's right to acquire the North Sierra Properties on or before March 31, 2021, in furtherance of the North Sierra Project; and to allow the Developer to consummate a financial closing with respect to the Phase IIB Project as expeditiously as possible.

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

- (i) Bifurcate the Optional Third Closing (as defined in the Second Amendment) into the Third Closing and the Optional Fourth Closing (in each case as defined herein) in order to (a) account for the occurrence of the Initial Closing (as defined in the First Amendment) prior to the date hereof, (b) account for the occurrence of the Second Closing (as defined in the Second Amendment) prior to the date hereof, (c) facilitate the conveyance by the City of the City Phase IIB Property to the Phase IIB Developer, (d) provide for the future conveyance of the North Sierra Properties, or some portion thereof, in connection with the Optional Fourth Closing for the purpose of facilitating the development of the North Sierra Properties by the Developer or its Eligible Affiliate as assignee, to the extent that Developer or its Eligible Affiliate wishes to pursue such Optional Fourth Closing and meets certain conditions subject to the approval of DCED;
- (i) Bifurcate the Phase IIB Project into the Phase IIB Project to be undertaken upon the Phase IIB Property, and the North Sierra Project to be undertaken upon the North Sierra Properties, if undertaken;
- (ii) acknowledge that on December 11, 2019, pursuant to Ordinance No. 495-2019, City Council approved the Third TIF Ordinance notwithstanding that the Third Closing did not occur yet;
- (iii) provide an additional grant of \$950,000 from the TIF District Fund (the "**Phase IIB Grant**");
- (iv) modify the terms and conditions by which Developer may exercise its purchase option with respect to the North Sierra Properties;
- (v) modify the Developer's rights with respect to submitting a North Sierra Project proposal and acquiring the North Sierra Properties, or some portion thereof;

- (vi) amend and restate the Phase II Note (as defined in the Second Amendment) (the “**Phase IIA Note**”), a form of such Amended and Restated Note is attached hereto as Exhibit F-4 (Form of Phase IIA Amended and Restated Promissory Note) and execute an additional *Phase IIB Amended and Restated Promissory Note* with respect to the Phase IIB Project and the North Sierra Project, a form of which is attached hereto as Exhibit F-3 (Form of Phase IIB Amended and Restated Promissory Note) (the “**Phase IIB Note**”);
- (vii) establish certain terms and conditions regarding the Port Authority’s involvement in the Phase IIB Project’s financing;
- (viii) provide that the obligations, duties and liabilities under the Agreement, as amended hereby, with respect to the Project, the Phase IIA Project, the Phase IIB Project, and the North Sierra Project (if any) are not cross-defaulted; and
- (ix) contemplate a public plaza on the SE Block of Madison and Whetsel and provide the funding mechanism for such plaza.

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

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

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

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

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

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

D. After commencing the Project (as defined in the First Amendment as defined below, the “**Project**”), Developer may construct a second phase of development, in two or more subphases, located on the Phase II Property or some portion thereof, consisting of a market-driven mix of: (i) market-rate multi-family housing, (ii) additional retail storefronts, (iii) office space, and (iv) related improvements thereto, or such other structures and uses as proposed by Developer and approved by DCED, all at a total aggregate project cost to be determined at the time of such proposal (collectively, the “**Phase II Project**”). The specific details regarding the manner and time in which Developer may potentially pursue such Phase II Project and potentially acquire such Phase II Property are more fully described in the *First Amendment to Funding, Acquisition and Development Agreement* (the “**First Amendment**”) dated September 25, 2018, the *Second Amendment to Funding, Acquisition and Development Agreement* (the “**Second Amendment**”) dated September 30, 2019, the *Third Amendment to Funding, Acquisition and Development Agreement* (the “**Third Amendment**”), dated July 28, 2020, and the *Fourth Amendment to Funding, Acquisition and Development Agreement* (the “**Fourth Amendment**”) dated \_\_\_\_\_, 2020; to the extent the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment govern, for the purposes of this Agreement (the following terms shall have the meanings ascribed to them in the Fourth Amendment, “**Phase IIB Property**”, “**Phase IIB Project**”, “**North Sierra Project**”, and “**City Phase IIB Property**”).

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

- (i) contributing up to \$4,200,000 to the Project, up to \$500,000 to the Phase IIA Project, and up to \$950,000 from Incentive District No. 19, commonly known as the Madisonville TIF District (the “**TIF District**”), from Fund 498 (the “**TIF District Fund**”), as follows: (a) a grant not to exceed \$2,000,000 to reimburse Developer for the cost of constructing the Right-of-Way Public Infrastructure Improvements (as defined herein) benefiting the Project Site, (b) a grant not to exceed \$500,000 to reimburse Developer for the costs of constructing the Phase IIA Right-of-Way Public Infrastructure Improvements (as defined in the Second Amendment, the “**Phase IIA Right-of-Way Public Infrastructure Improvements**”; the Phase IIA Right-of-Way Public Infrastructure Improvements constitute a portion of the Public Infrastructure Improvements (as defined below)), (c) a grant not to exceed \$950,000 to reimburse Developer for the costs of constructing the Phase IIB Right-of-Way Public Infrastructure Improvements (as defined in the Fourth Amendment, the “**Phase IIB Right-of-Way Public Infrastructure Improvements**”), and (d) a potentially forgivable cash-flow loan not to exceed \$2,200,000 to reimburse Developer for the cost of constructing Non-Right-of-Way Public Infrastructure Improvements (as defined herein) benefiting the Project Site and for the acquisition of Developer Option Properties and the demolition of structures thereon;

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

(A) Bifurcation of Phase IIB Project and Corresponding Definition of the Phase IIB Project. All references to Exhibit B of the Original Agreement are hereby amended to be references to Exhibit B-1 of the First Amendment, Exhibit B-2 of the Second Amendment, and Exhibit B-3 of this Amendment collectively. All references to Exhibit C in the Original Agreement are hereby amended to be references to Exhibit C-1 of the First Amendment, Exhibit C-2 of the Second Amendment, and Exhibit C-3 hereto collectively. All references to Exhibit G of the Original Agreement and Exhibit G-1 of the Second Amendment are hereby amended to be references to Exhibit G-2 (*Revised Disbursement of Funds*) hereto. Recital C of the Agreement is hereby deleted and the following is inserted in its place:

C. The Project Site’s redevelopment will initially involve: (i) the retention and improvement of the approximately 24,542 square foot retail facility in the NW Block (the “**Madison Center Facility**”), (ii) the addition of approximately 7,543 square feet of new retail store front and an additional approximately 5,000 square feet of residential amenity space, (iii) the construction of approximately 24,850 square feet of office space, (iv) the construction of approximately 185 units of residential apartments, and (v) the construction of approximately 440 on-site surface parking spaces, in each case as revised and more comprehensively described in Exhibit B-1 (*Project Scope of Work – Public Infrastructure Improvements; Private Improvements*) to the First Amendment. The improvements listed immediately above and as revised and more comprehensively described in Exhibit B-1 to the First Amendment constitute the “**Project**”, which shall be undertaken solely upon the Project Property, as defined in the First Amendment. The aggregate construction and acquisition cost of the Project is anticipated to equal approximately \$29,000,000, as is more fully described in Exhibit C-1 (*Revised Budget and Sources of Funds*) to the First Amendment. The second phase of the Project Site’s redevelopment will initially involve (i) the construction of approximately 120 market rate residential rental units (approximately 77,471 square feet in the aggregate), (ii) the construction of approximately 7,892 square feet of ground floor commercial space, (iii) the construction of approximately 120 on-site surface parking spaces, and (iv) construction of all of the Phase IIA Right-of-Way Public Infrastructure Improvements, in each case as more comprehensively described in Exhibit B-2 (*Phase IIA Project Scope of Work – Phase IIA Right-of-Way Public Infrastructure Improvements; Private Improvements*) to the Second Amendment. The improvements listed

immediately above and as revised and more comprehensively described in Exhibit B-2 to the Second Amendment constitute the “**Phase IIA Project**” which shall be undertaken solely upon the Phase IIA Property, as defined in the Second Amendment. The aggregate construction and acquisition costs of the Phase IIA Project is anticipated to equal approximately \$20,240,000, as is more fully described in Exhibit C-2 (Phase IIA Budget and Sources of Funds) to the Second Amendment. The remainder of the second phase of the redevelopment of the Project Site will involve the construction of (i) approximately 92 market rate residential rental units (approximately 73,900 square feet in the aggregate), (ii) approximately 18,900 square feet of ground floor commercial space, (iii) approximately 94 surface parking spaces, (iv) approximately 15 public parking spaces on Prentice Street, and (v) all of the Phase IIB Right-of-Way Public Infrastructure Improvements. The improvements listed immediately above and as revised and more comprehensively described in Exhibit B-3 to the Second Amendment constitute the “**Phase IIB Project**” which shall be undertaken solely upon the Phase IIB Property, as defined in the Fourth Amendment. The aggregate construction costs of the Phase IIB Project is anticipated to equal approximately \$[24,030,095], as is more fully described in Exhibit C-3 (Phase IIB Budget and Sources of Funds) to the Fourth Amendment. All references to Exhibit C in the Agreement are hereby amended to be references collectively to Exhibit C-1 to the First Amendment, Exhibit C-2 to the Second Amendment, and Exhibit C-3 to the Fourth Amendment. As described herein, with respect to each of the Project, the Phase IIA Project, and the Phase IIB Project, all (a) individuals and entities providing guaranties with respect to Developer’s, or Developer’s Eligible Affiliates’ private financing (but excluding Phase I Developer as to the Phase IIA Project and the Phase IIB Project and excluding Phase IIA Developer as to the Project and the Phase IIB Project), or (b) if there are not guaranties provided in respect of Developer’s private financing, one or more individuals or entities with net worth deemed reasonably adequate by the City (whether one or more than one, collectively, with respect to the Project, the “**Initial Guarantor**”, with respect to the Phase IIA Project, the “**Phase IIA Guarantor**”, and with respect to the Phase IIB Project, the “**Phase IIB Guarantor**”) will provide a guaranty (or guaranties) of completion in favor of the City with respect to the construction of each the Project, the Phase IIA Project and the Phase IIB Project in substantially the form of Exhibit D (Form of Completion Guaranty) hereto, whether one or more than one, collectively, with respect to the Project, the “**Initial Completion Guaranty**”, with respect to the Phase IIA Project, the “**Phase IIA Completion Guaranty**”, and in substantially the form of Exhibit D-1 (Form of Phase IIB Completion Guaranty) with respect to the Phase IIB Project, the “**Phase IIB Completion Guaranty**”. If this Agreement, or any rights or obligations arising under this Agreement in connection with the development of any portion of the Project Site, is assigned to an Eligible Affiliate (as defined below) in accordance with Section 12(A)(iii), then Ackermann Enterprises, Inc. will also execute a guaranty of completion in the form of Exhibit D or Exhibit D-1, as applicable, in addition to each of the Initial Completion Guaranty to be executed by Initial Guarantor, the Phase IIA Completion Guaranty to be executed by the Phase IIA Guarantor, and the Phase IIB Completion Guaranty to be executed by the Phase IIB Guarantor. The term “**Guarantor**” shall refer to each of, and collectively, Initial Guarantor, the Phase IIA Guarantor, or the Phase IIB Guarantor, as applicable, and Ackermann Enterprises, Inc., if applicable. With respect to the Phase IIA Project and the Phase IIB Project, “Guarantor” shall include Ackermann Enterprises, Inc. The term “**Completion Guaranty**” shall refer to (i) with respect to the Project, each of, and collectively, the Initial Completion Guaranty and the guaranty of completion executed by Ackermann Enterprises, Inc., if applicable, (ii) with respect to the Phase IIA Project, each of, and collectively, the Phase IIA Completion Guaranty and the guaranty of completion executed by Ackermann Enterprises, Inc., and (iii) with respect to the Phase IIB Project, each of, and collectively, the Phase IIB Completion Guaranty and the guaranty of completion executed by Ackermann Enterprises, Inc. Additionally, pursuant to the terms of the Agreement as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, should Developer obtain approval to pursue the North Sierra Project, Developer’s financing of the same shall be subject to the same guaranty conditions described immediately above

(provided that Madisonville Phase I LLC, Madisonville Phase II LLC, and Madisonville Phase III LLC shall not provide a guaranty for the North Sierra Project), and in the event of assignment to an Eligible Affiliate in accordance with Section 12(A)(iii), the same terms regarding the execution of an additional guaranty substantially in the form of Exhibit D by Ackermann Enterprises, Inc. and the use of the terms “Guarantor” and “Completion Guaranty” with respect to such event shall be equally required and used in connection with the North Sierra Project in a like manner as they are described above in connection with the completion of the Project, the Phase IIA Project, and the Phase IIB Project. Notwithstanding anything in this Agreement, the First Amendment, the Second Amendment, the Third Amendment, or the Fourth Amendment to the contrary, in no event shall the obligations of, or a default by, any Guarantor, with respect to a Guaranty for a particular phase of the Project Site be deemed to apply to, or cause a default with respect to, any other phase of the Project Site.

(B) Bifurcation of Due Diligence Investigations Regarding Third Closing and Optional Fourth Closing. Notwithstanding anything to the contrary in Section 1(A) of the Original Agreement, Section 2(B) of the First Amendment, and Section 2(B) of the Second Amendment, the City and Developer agree that the delivery of satisfactory due diligence materials described therein as conditions to the Closing shall be deemed, as applicable, conditions to the Third Closing (as hereinafter defined) (with such due diligence pertaining to the Phase IIB Property only) and the Optional Fourth Closing (with such due diligence items pertaining to the North Sierra Properties only), as applicable, *provided that*, the City and Developer agree that the financial closing with respect to the Phase IIB Project will occur not later than 60 calendar days after the conveyance from the City to Developer or its Eligible Affiliate (the “**Financial Closing**”), Phase IIB Developer, of the Phase IIB Property. For example, (i) for purposes of the Third Closing, Section 1(A)(v) of the Original Agreement shall be understood to impose, as a condition of the Third Closing, the requirement that Developer will obtain financing sufficient to complete the Phase IIB Project no later than the date that is 60 calendar days after the Third Closing Date, as memorialized at the time of the Third Closing in a term sheet acceptable to the City, and (ii) for purposes of the Optional Fourth Closing, Section 1(A)(v) of the Agreement shall be understood to impose, as a condition of the Optional Fourth Closing, the requirement that Developer has obtained the financing contemplated in such clause with respect to the North Sierra Project, as approved of by DCED. To the extent it is ambiguous whether a condition or requirement applies to the Third Closing or the Optional Fourth Closing, or both, the ambiguity may be resolved by the Director of DCED in his discretion, exercised in good faith.

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

B. Contingency for City’s Satisfaction with Due Diligence Investigations. All reports and the like obtained by Developer from third parties and delivered to the City shall be recent (*i.e.*, prepared or updated, as the case may be, within three (3) months preceding the date that the item is delivered to the City) and shall be prepared by properly licensed and qualified companies or individuals acceptable to the City. In addition to the above due diligence items, Developer and the City may conduct whatever additional investigations concerning the Project, the Phase IIA Project, and the Phase IIB Project as they deem necessary, including without limitation investigations into the feasibility and likelihood of Developer obtaining all building, zoning and other approvals from the Department of Buildings and Inspections, the City Planning Commission, and any other applicable City departments, agencies or boards. If, during or at the conclusion of the due diligence investigations, either party determines, in good faith and based upon its due diligence, that the Project, the Phase IIA Project, or the Phase IIB Project, as applicable (but not, for the avoidance of doubt, the North Sierra 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, the Phase IIA Project, or the Phase IIB Project, as applicable (but not, for the avoidance of doubt, the North Sierra Project), approval of the Initial TIF Ordinance, the Second TIF Ordinance, or the Third TIF Ordinance, as applicable, or approval of plans or specifications for the Project, the Phase IIA Project, the Phase IIB Project, as applicable (but not, for the avoidance of doubt, the North Sierra 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 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 reconveyance (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 Third Closing, the termination rights of the parties under this paragraph 1(B) shall automatically terminate and cease.

(D) Revised Project Documents to Reflect Changed Transaction Structure. All references to the Note in the Agreement are hereby amended to include the Phase IIA Note and the Phase IIB Note and the term Phase II Note in the Second Amendment is hereby amended and restated to the Phase IIA Note and the Phase IIB Note. Notwithstanding anything to the contrary in the Agreement, the parties agree that references to the "Service Agreement" in the Agreement shall collectively refer to (i) a *Service Agreement* pertaining to the Project Property (other than 5900 Madison and the 5105 Whetsel Avenue Parking Property) pursuant to the Initial TIF Ordinance to be executed by Developer's Eligible Affiliate and assignee Madisonville Phase I LLC in substantially the form of Exhibit N (Form of Project Service Agreement) to the First Amendment, (ii) a *Service Agreement* pertaining to the Phase IIA Property pursuant to the Second TIF Ordinance to be executed by Developer's Eligible Affiliate and assignee Madisonville Phase II LLC in substantially the form of Exhibit N-1 (Form of Phase IIA Project Service Agreement) to the Second Amendment, and (iii) a *Service Agreement* pertaining to the Phase IIB Property in accordance with the Third TIF Ordinance to be executed by Developer's Eligible Affiliate and assignee Madisonville Phase III LLC in substantially the form of Exhibit N-2 (Form of Phase IIB Project Service Agreement) hereto. As of the Effective Date, the parties do not anticipate any tax increment financing related to the North Sierra Project.

(E) Participation of Port Authority. To facilitate the financing of a portion of the costs of the Phase IIB Project, the Port Authority may issue one or more series of bonds (the "**Phase IIB Bonds**") secured by a portion of the Service Payments actually received by the City pursuant to the Third TIF Ordinance and the applicable Service Agreement (all of such Service Payments, the "**Phase IIB Service Payments**") and, to the extent Phase IIB Service Payments are insufficient to pay principal, interest and administrative fees and expenses on the Phase IIB Bonds, minimum service payments (the "**Phase IIB Minimum Service Payments**"). The Phase IIB Project Service Agreement will memorialize the obligation to pay the Phase IIB Service Payments, and the Phase IIB Minimum Service Payments will be secured by a mortgage and declaration of covenants and restrictions made by the Phase IIB Developer on behalf of itself and future owners of the Phase IIB Property (the "**Phase IIB Declaration**"). The lien of the Phase IIB Declaration will be a first priority lien with priority over the liens of the Phase IIB Senior Mortgages (as hereinafter defined) as well as the City's Phase IIB Mortgage (defined herein). In addition to issuing the Phase IIB Bonds, the Port Authority will cooperate with the Phase IIB Developer or its designee to undertake a capital lease transaction pursuant to which the Port Authority will (i) enter into a ground lease for the Phase IIB Property with the Phase IIB Developer, (ii) enter into a project lease and construction manager at-risk agreement with the Phase IIB Developer pursuant to which the Phase IIB Developer will construct the Phase IIB Project on the Phase IIB Property, and (iii) issue one or more series of lease revenue bonds to finance a portion of the costs of the Phase IIB Project (collectively, the "**Phase IIB Port Lease Bond Transaction**"). The City hereby consents to the Phase IIB Port Lease Bond Transaction and acknowledges that the Phase IIB Port Lease Bond Transaction is not the transaction contemplated by Section 12(A)(i) of the Original Agreement and is not subject to the terms thereof, regardless of any of the provisions of the Agreement, as amended by this Amendment, to the contrary.

**3. INITIAL CLOSING, SECOND CLOSING, THIRD CLOSING AND OPTIONAL FOURTH CLOSING.** Notwithstanding anything to the contrary in Section 2 (*Closing*) of the Original Agreement and Section 3 of the First Amendment and the Second Amendment, the term "**Closing**" in the Agreement shall

refer (i) to the “Initial Closing” with respect to the Project to be developed upon the Project Property, (ii) to the “Second Closing” with respect to the Phase IIA Project to be developed upon the Phase IIA Property, (iii) to the “Third Closing” with respect to the Phase IIB Project to be developed upon the Phase IIB Property, and (iv) to the extent that the “Optional Fourth Closing” does occur with respect to the North Sierra Properties and the yet to be determined scope, if any, of the Phase IIB Project upon such Phase IIB Property, the term “Closing” shall refer to such Optional Third Closing, and shall proceed as follows:

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

(B) Third Closing.

(i) Generally. Provided that Developer has complied with all terms and conditions of the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, this Amendment and the other Project Documents and the Agreement has not been terminated in accordance with Section 1(B) of the Agreement, the closing of the transactions described in this Section 3(B) (the “**Third Closing**”) shall take place on such date as the parties agree upon, provided that such date shall be no later than September 30, 2020 (the “**Third Closing Date**”).

(ii) Contingencies. The occurrence of the Third 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 IIB Project and the Phase IIB Property and (b) the execution and delivery of the Phase IIA Note, the Phase IIB Completion Guaranty, the Phase IIB Note, a Mortgage applicable to the Phase IIB Property securing the Phase IIB Note, the City Phase IIB Quitclaim Deed (as defined below) to Phase IIB Developer with respect to the City Phase IIB Property, 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 IIB Project, such additional agreements are not required to be executed prior to the Third Closing), in each case on or prior to the Third Closing Date.

(iii) Third Closing Transactions. On the Third Closing Date, (a) the City shall convey all City Phase IIB Property that it owns to Phase IIB Developer by a *Quitclaim Deed* in the form required by the Agreement for \$0.00 (provided that since there is no Repurchase Property, the paragraph in the form deed relating to Repurchase Property shall be deleted), and (b) Phase IIB Developer shall execute and deliver a Mortgage securing the Phase IIB Note (the “**City’s Phase IIB Mortgage**”) with respect to all the Phase IIB Property it owns to the City. On or prior to the Third Closing Date, and notwithstanding anything to the contrary in the Agreement, Developer represents and warrants to the City that no mortgages or other security instruments with respect to the Phase IIB Property will be recorded prior to the City’s Phase IIB Mortgage, including, the Phase IIB Declaration, any mortgage which may be required by the Port Authority pursuant to its involvement in this transaction with respect to the issuance of the Phase IIB Bonds to finance Phase IIB Project, any mortgage securing any loan funded through a new market tax credit structure, and the First Financial Bank’s mortgage filed to secure First Financial Bank’s financing for the Phase IIB Project, which mortgage shall also secure the repayment of the Port Authority’s lease revenue bonds (collectively, the “**Phase IIB Senior Mortgages**”). To the extent the Third Closing Date occurs prior to the closing date for the senior financing and the Phase IIB Bonds (the “**Phase IIB Senior Financing Closing Date**”), on the Phase IIB Senior Financing Closing Date, the City agrees to enter into a subordination agreement subordinating the lien of the City’s Phase IIB Mortgage to the liens of the Service Agreement, Phase IIB Declaration and the Phase IIB Senior Mortgages; provided however, if the Phase IIB Senior Financing Closing Date occurs simultaneously with the Third Closing Date, the City agrees to record the City’s Phase IIB Mortgage on the Phase IIB Property subsequent to the Service Agreement, Phase IIB Declaration and the Phase IIB Senior Mortgages. Developer shall provide the City with the fully executed Phase I Note and the First Amendment to Mortgage (each as defined in the Second Amendment) no later than the Phase IIB Senior Financing Closing Date. On the Phase IIB Senior Financing Closing Date, the City will release all of its repurchase rights and interests in the instrument filed in OR 13547, Page 2242 et seq. in the Hamilton County, Ohio Records.



(C) Optional Fourth Closing.

(i) Generally. Provided that Developer has complied with all terms and conditions of the Agreement, as amended hereby, and the other Project Documents, and specifically subject to the terms and conditions of Section 2(F) of the Agreement, as amended by this Amendment, the closing of the transactions described in this Section 3(C) (the "**Optional Fourth Closing**") shall take place no later than March 31, 2021 (the "**Optional Fourth Closing Date**"). It is the intention of the parties that all of the transactions contemplated by this Section 3(C) will occur on the same date in as immediate of a sequence as is possible on the Optional Fourth Closing Date. Should the Optional Fourth Closing not occur by the Optional Fourth Closing Date, the City shall thereafter no longer be obligated to convey the North Sierra Properties, or any portion thereof, to Developer. Additionally, to the extent that the Optional Fourth Closing does occur with respect to only a portion of the North Sierra Properties, the City shall thereafter no longer be obligated to convey the North Sierra Properties, or any portion thereof, to Developer.

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

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

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

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

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

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

(ii) The parties acknowledge that Developer is also interested in acquiring and developing the North Sierra Properties. Provided that (a) the Third Closing occurs on or before September 30, 2020, (b) the Financial Closing occurs on or before the date that is 60 days after the Third Closing Date, and (c) Developer commences construction of the Phase IIB Project within thirty (30) days of the date of the Financial Closing (as evidenced by both (1) the City's Department of Buildings and Inspections issuing a cut and fill permit on or before such date for the entire Phase IIB Project, and (2) commencement of on-site construction of the Phase IIB Project and the related recordation of the applicable Notice of Commencement), for so long as Developer is not in default under this Agreement, the First Amendment, the Second Amendment, the Third Amendment, or the Fourth

Amendment, after the giving of any notice and the expiration of any cure period, the City agrees that, for a period starting on the date hereof and ending on March 31, 2021 (the “**Option Period**”), the City will not sell the North Sierra Properties to a third party and will entertain, in good faith, a development proposal from Developer. If, prior to March 1, 2021, Developer timely submits a detailed development proposal for the North Sierra Properties, 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 North Sierra Properties to Developer, for a purchase price of \$0.00. The closing on such North Sierra Properties shall take place in accordance with the terms described herein, and also in accordance with such terms described in a future agreement between the City and Developer memorializing the terms and conditions related to the North Sierra Project, no later than March 31, 2021. Should the Optional Fourth Closing not occur by the end of the Option Period, the City shall thereafter no longer be obligated to convey the North Sierra Properties, or any portion thereof, to Developer. Additionally, to the extent that the Optional Fourth Closing does occur prior to the end of the Option Period with respect to only a portion of the North Sierra Properties, the City shall thereafter no longer be obligated to convey the remainder of such North Sierra Properties, or any portion thereof, to Developer. At the Closing, the City shall convey title to the North Sierra Properties, 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 North Sierra Properties 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 Fourth Closing are in conflict, the terms of this clause shall control.

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

(B) **Grant of TIF District Funds for Right-of-Way Public Infrastructure Improvements**. Provided that Developer is not in breach of any Project Document, the City shall provide a grant to Developer (the Phase I Grant, the Phase IIA Grant, the Phase IIB Grant (each as defined below) are collectively, the “**Grant**”; and, together with the Loan, collectively the “**Funds**”), up to (i) an amount of \$2,000,000 from the TIF District Fund (the “**Phase I Grant**”), on a reimbursement basis, concurrently with the construction of the Right-of-Way Public Infrastructure Improvements, with respect to hard costs and expenses actually incurred and paid by Developer in respect of the Right-of-Way Public Infrastructure Improvements, and only for such costs that are eligible for reimbursement pursuant to Ohio law, so long as the Closing with respect to the Project has occurred, (ii) an amount of \$500,000 from the TIF District Fund (the “**Phase IIA Grant**”), on a reimbursement basis, concurrently with the construction of the Phase IIA Right-of-Way Public Infrastructure Improvements, with respect to hard costs and expenses actually incurred and paid by Developer in respect of such Phase IIA Right-of-Way Public Infrastructure Improvements and only for such costs that are eligible for reimbursement pursuant to Ohio law, so long as the Closing with respect to the Phase IIA Project has occurred, and (iii) an amount of \$950,000 from the TIF District Fund (the “**Phase IIB Grant**”), on a reimbursement basis, concurrently with the construction of the Phase IIB Right-of-Way Public Infrastructure

Improvements, with respect to costs and expenses as identified on Exhibit C-3 to the Fourth Amendment actually incurred and paid by Developer in respect of such Phase IIB Right-of-Way Public Infrastructure Improvements and only for such costs that are eligible for reimbursement pursuant to Ohio law, so long as the Closing with respect to the Phase IIB Project has occurred. The Phase I Grant, the Phase IIA Grant, and the Phase IIB Grant shall be disbursed in accordance with Exhibit G-2. For the avoidance of doubt, if Developer is in breach of any of the Project Documents but cures such breach within any applicable cure periods, Developer shall be entitled to any disbursements of the Grant it would otherwise be entitled to hereunder following such cure.

**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 Original Agreement shall be deemed to apply to the Project, determined with respect to the Initial Closing, the Phase IIA Project, determined with respect to the Second Closing, the Phase IIB Project, determined with respect to the Third Closing, and the North Sierra Project, determined with respect to the Optional Fourth 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 (which has occurred), (ii) Developer shall commence construction of the Phase IIA Project within 3 months following the Second Closing Date (which has occurred), (iii) Developer shall commence construction of the Phase IIB Project within 3 months following the Third Closing Date, and so forth. Notwithstanding the foregoing, in order to exercise right to purchase the North Sierra Properties contemplated in Section 2(F) of the Agreement, as amended by this Amendment, Developer must commence construction on the Phase IIB Project in accordance with the terms of Section 2(F) of the Agreement, as amended by this Amendment. For the avoidance of doubt, the Phase IIA Right-of-Way Public Infrastructure Improvements and the Phase IIB Right-of-Way Public Infrastructure Improvements constitute "Right-of-Way Public Infrastructure Improvements" and "Public Infrastructure Improvements" for the purposes of the Agreement.

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

**8. PHASE IIB PROJECT TIF.** During the thirty (30) year exemption period granted pursuant to the Third TIF Ordinance (the "**Phase IIB Project TIF Exemption**"), the City will assign up to seventy percent (70%) of the Phase IIB Service Payments it actually receives from the Hamilton County Treasurer to the Port Authority to secure the Phase IIB Bonds (such assigned amount representing the Service Payments paid by the owners of the Phase IIB Property net of auditor's fees, less (i) School Board compensation payments and (ii) City Retained Service Payments (defined below), the "**Phase IIB Assigned Service Payments**"). During the term of the Phase IIB Bonds, the City will transfer all or a portion of the Phase IIB Assigned Service Payments as Scheduled Transfer Amounts (defined below) semiannually to the Phase IIB Trustee in an amount equal to (i) the principal, interest and administrative fees and expenses on the Phase IIB Bonds and (ii) the amount, if any, necessary to replenish any debt service reserve fund created under the applicable indenture (together, items (i) and (ii) shall constitute "**Phase IIB Scheduled Transfer Amounts**"); provided that any Phase IIB Scheduled Transfer Amounts transferred to the Phase IIB Trustee and not used for the foregoing purposes shall be returned to the City and used by the City for any lawful purpose under the Ohio Revised Code; and provided further that, with respect to the total payments of Phase IIB Scheduled Transfer Amounts made by the City in any calendar year, the City shall in no event be required to transfer as Phase IIB Scheduled Transfer Amounts an amount greater than the aggregate amount of (i) Phase IIB Assigned Service Payments, and (ii) Phase IIB Minimum Service Payments received by the City, if any, in such calendar year. During the Phase IIB Project TIF Exemption, the City will retain 5% of the Phase IIB Service Payments (the "**City Retained Service Payments**"). The City will use such City Retained Service Payments to fund the ongoing maintenance and programming of the public plaza in the SE Block (the "**Public Plaza**") and intends to enter into a management agreement with a third-party non-profit, Developer, Phase IIB Developer, and Phase IIB Guarantor for the management and maintenance of the Public Plaza (the "**Public Plaza Management Agreement**"). The parties will execute the Public Plaza Management Agreement no later than March 1, 2022.

25% of the Phase IIB Service Payments shall be paid to the School Board. The City's funding commitment pursuant to this Section shall be subject to and contingent upon, without limitation, the execution and continued effectiveness of this Amendment, a Cooperative Agreement by and among the City, the Port Authority, and Phase IIB Developer or other affiliate of the Developer, and acknowledged by the Phase IIB Trustee (the "**Phase IIB Cooperative Agreement**"), and the applicable Service Agreement. To the extent the amount of Phase IIB Service Payments available to be transferred as Scheduled Transfer Amounts are insufficient to pay principal, interest and administrative fees and expenses on the Phase IIB Bonds, such shortfall shall be the sole responsibility of Developer, or Phase IIB Developer upon assignment to Phase IIB Developer. As between the City and Developer, and except for the City's agreement to assign the Phase IIB Service Payments to the Port Authority and the Phase IIB Grant, Developer, or Phase IIB Developer upon assignment to Phase IIB Developer, shall be solely responsible for all costs associated with the Phase IIB Project.

**9. CHANGES TO CITY FUNDING.** Other than as described in Sections 5 and 8 of this Amendment, nothing in this Amendment does, or is intended to, modify the financial support and other assistance the City is providing as described in Section 5 (*City's Funding Commitment; Other City Assistance*) of the Agreement. Prior to the Effective Date, the City passed the Third TIF Ordinance and intends to enter into, subject to the will and approval of City Council, a separate Service Agreement and Cooperative Agreement with respect to the Third TIF Ordinance so as to facilitate separate financing arrangements for the Phase IIB Project. The City and Developer acknowledge and agree, as of the Effective Date, the parties do not intend to pursue a tax increment financing exemption for the North Sierra Properties. The City acknowledges that Developer intends to undertake the Phase IIB Right-of-Way Public Infrastructure Improvements as a part of, and on the same timeline as, the Phase IIB Project, and the City is agreeable to the same. Nonetheless, consistent with Exhibit G-2 (*Revised Disbursement of Funds*) of the Agreement, the City shall not be obligated to release the retainage with respect to the Phase IIB Grant until the entire Phase IIB Project, including the Phase IIB Right-of-Way Public Infrastructure Improvements, are completed.

**10. PUBLIC PLAZA.** As part of the Phase IIB Project, Developer, or upon the assignment contemplated hereunder, Phase IIB Developer, is constructing the Public Plaza. The Public Plaza will remain open to the public during the period of the Phase IIB Project TIF upon completion of its construction and the construction of the Phase IIB Project. The City's Deed for the conveyance of the Phase IIB Property will memorialize a permanent, non-exclusive easement for the general public's access to the Public Plaza and for the future manager pursuant to the Public Plaza Management Agreement to maintain and program the Public Plaza, in addition to any necessary Coordinated Report conditions (the "**City Phase IIB Quitclaim Deed**"). The form of the City Phase IIB Quitclaim Deed is attached hereto as Exhibit I-3 (*Form of City Phase IIB Quitclaim Deed*). Any reference to the City Deed shall be deemed to include a reference to the City Phase IIB Quitclaim Deed, as applicable. The City will contribute to Developer, Phase IIB Developer, and Phase IIB Guarantor, as applicable, the City Retained Service Payments prior to the execution of the Public Plaza Management Agreement, on a reimbursement basis following written request and invoices substantiating such costs. Following the execution of the Public Plaza Management Agreement, the City will provide the City Retained Service Payments in accordance with such Public Plaza Management Agreement. Until such time as the Public Plaza Management Agreement is executed, (i) Developer, Phase IIB Developer, and Phase IIB Guarantor are solely responsible for the maintenance and management of the Public Plaza in accordance with the terms of the Phase IIB Completion Guaranty and this Amendment, (ii) in the event that the maintenance costs related to the Public Plaza exceed the City Retained Service Payments, Developer, Phase IIB Developer and Phase IIB Guarantor are solely responsible for any such excess cost and the City will not provide any additional funding beyond the City Retained Service Payments for any costs, and (iii) no public events shall be held on the Public Plaza. Upon the execution of the Public Plaza Management Agreement, the Public Plaza Management Agreement constitutes a Project Document for the purposes of the Agreement. Developer and Phase IIB Developer, as applicable, each further acknowledges and agrees that the City's obligation to make any payment of Phase IIB Grant hereunder for the costs of the Public Plaza is conditional upon the legality of the same, and that the City shall be under no obligation to make payments of Phase IIB Grant in respect of the TIF District that are otherwise eligible to be reimbursed hereunder if the Public Plaza does not constitute "public infrastructure improvements" as defined in Ohio Revised Code § 5709.40. Phase IIB Developer is permitted to convey the Public Plaza to an Eligible Affiliate provided that (a) the City review and approve the form of deed to convey the Public Plaza to ensure it does not interfere with any of the City's rights pursuant to the City Phase

IIB Quitclaim Deed and (ii) Phase IIB Developer assigns and the Eligible Affiliate assumes any and all rights and obligations of Phase IIB Developer to maintain and program the Public Plaza.

**11. NO CROSS DEFAULTS; TRANSFERS.** (A) Notwithstanding anything to the contrary in the Agreement, as amended hereby, (i) Phase I Developer shall only be responsible under the Agreement, as amended hereby, for the obligations pertaining to the Project and the Project Property and is in no event responsible for the Phase II Project or the Phase II Property, (ii) Phase IIA Developer shall only be responsible under the Agreement, as amended hereby, for the obligations pertaining to the Phase IIA Project and the Phase IIA Property and is in no event responsible for the Project, the Phase IIB Project, the North Sierra Project, the Project Property, the Phase IIB Property, or the North Sierra Properties, and (iii) after giving effect to the assignment contemplated hereunder, Developer shall only be responsible under the Agreement, as amended hereby, for the obligations pertaining to the Phase IIB Project and the Phase IIB Property and is in no event responsible for the Project, the Phase IIA Project, the Project Property or the Phase IIB Property. For the avoidance of doubt, (a) no event of default under the Agreement, as amended hereby, by Phase I Developer, Phase IIA Developer, Phase IIB Developer or Developer which relates to the Project, the Phase IIA Project or the Phase IIB Project, shall impact the rights and interests of the Companies with respect to the Project, the Phase IIA Project or the Phase IIB Project to which the event of default does not relate, and (b) to the extent that Developer in its capacity as Guarantor executes a guaranty with respect to the Project, the Phase IIA Project, and/or the Phase IIB Project, Developer is obligated with respect to the Project, the Phase IIA Project, and/or the Phase IIB Project only to the extent of the terms of the Initial Completion Guaranty, the Phase IIA Completion Guaranty, and the Phase IIB Completion Guaranty.

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

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

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

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

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

**16. WAIVER.** In consideration of the City's execution of this Amendment, the Companies hereby waive any and all defaults or failures on the part of the City to observe or perform the City's obligations under the Original Agreement, the First Amendment, the Second Amendment, or the Third

Amendment to the extent any such default or failure occurred on or prior to the Effective Date of this Amendment.

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

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

Exhibit A-3 - Amended Site Plan – Breakdown of Project Property, Phase IIA Property, Phase IIB Property, and North Sierra Properties

Exhibit B-3 - Phase IIB Project Scope of Work – Phase IIB Right-of-Way Public Infrastructure Improvements; Private Improvements

Exhibit C-3 - Phase IIB Budget and Sources of Funds

Exhibit D-1 - Form of Phase IIB Completion Guaranty

Exhibit F-4 - Form of Phase IIA Amended and Restated Promissory Note

Exhibit F-5 - Form of Phase IIB Amended and Restated Promissory Note

Exhibit G-2 - Revised Disbursement of Funds

Exhibit I-3 - Form of City Phase IIB Quitclaim Deed

Phase IIB Addendum I to Exhibit M - Phase IIB Project Prevailing Wage Determination

Exhibit N-2 - Form of Phase IIB Project Service Agreement

Schedule 12 - Form of Phase IIB 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: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2020

**MADISONVILLE PHASE I LLC**

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

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

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

Date: \_\_\_\_\_, 2020

**MADISONVILLE PHASE II LLC**

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

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

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

Date: \_\_\_\_\_, 2020

**MADISONVILLE PHASE III LLC**

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

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

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

Date: \_\_\_\_\_, 2020

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Paula Boggs Muething, Interim City Manager

Date: \_\_\_\_\_, 2020

Approved as to Form:

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

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

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

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

By: \_\_\_\_\_  
Karen Alder, City Finance Director

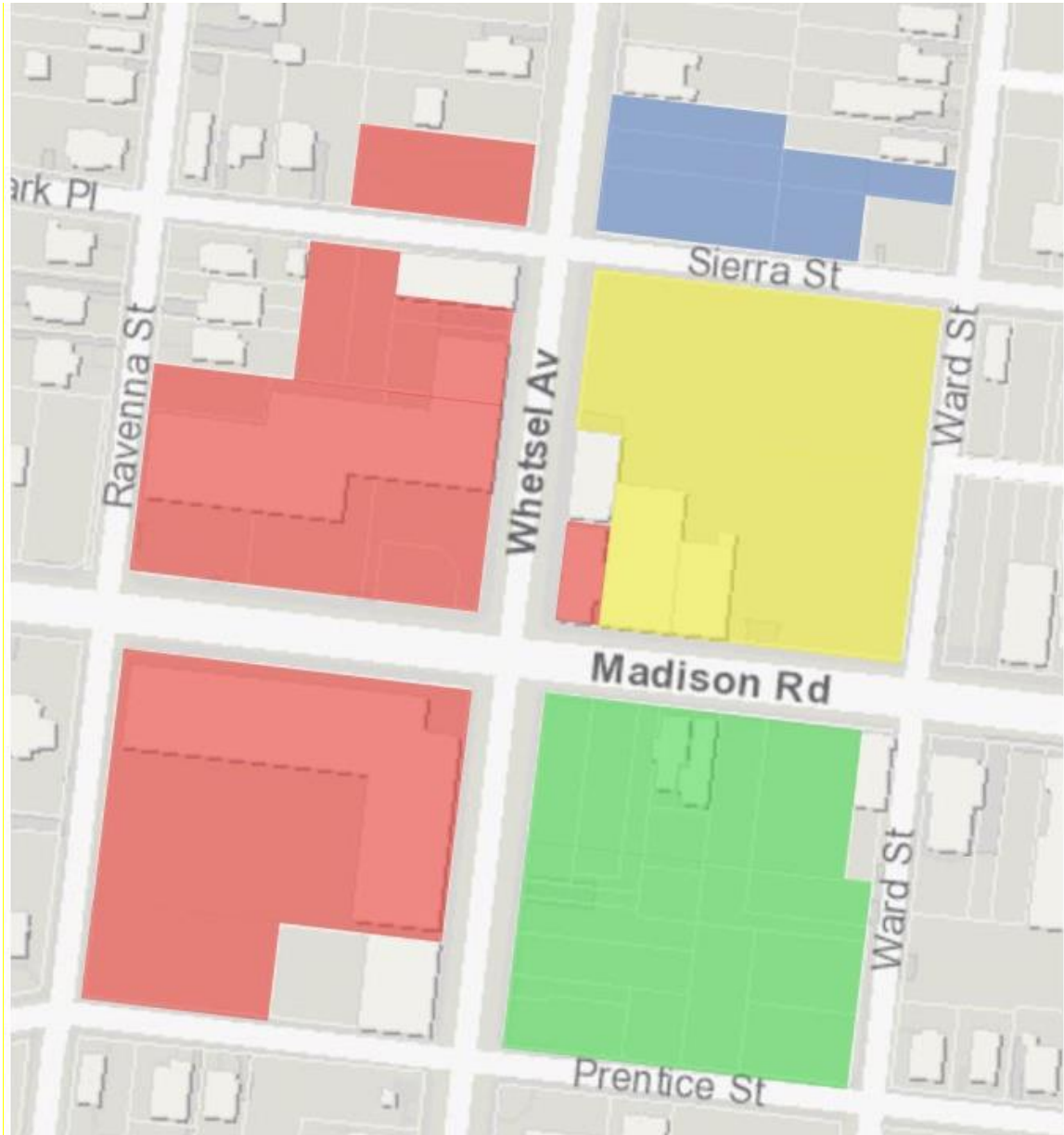


Exhibit A-3

to

Fourth Amendment to Funding, Acquisition and Development Agreement

**Amended Site Plan – Breakdown of Project Property, Phase IIA Property, Phase IIB Property, and North Sierra Properties**



	Phase I (Ongoing)
	Phase IIA (Ongoing)
	Phase IIB (Proposed)
	North Sierra Properties(Proposed)

Exhibit B-3

to

Fourth Amendment to Funding, Acquisition and Development Agreement

**Phase IIB Private Improvements**

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

Residential

- Approximately 92 Residential Apartments including a mix of Studio and One-Bedroom units
- Approximately 94 Car Surface Parking Lot
- 1,000 square feet Apartment Lobby

Commercial

- Approximately 18,900 leasable square feet of new construction commercial/office including tenant improvements

Site Improvements

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

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

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

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

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

Exhibit C-3

to

Fourth Amendment to Funding, Acquisition and Development Agreement

**Phase IIB Budget and Sources of Funds**

<b>Funding Sources</b>		
Sponsor Equity		3,500,000
OZ Fund Preferred Equity		1
Mortgage		12,800,000
District TIF (Public Improvements)		950,000
Federal NMTC Equity		2,589,600
State NMTC Equity		650,000
Project TIF		3,508,497
Gap Financing		31,997
<b>Total Sources</b>		<b>24,030,095</b>
<b>Uses of Funds</b>		
Land Acquisition		-
Construction Costs		17,381,785
Public Use Costs		
Civil/Engineering	17,500	
Landscape Design	15,000	
Mobilization and General Condition	10,000	
Whetsel Plaza	235,719	
Electric - Plaza Lighting & Design	30,000	
Prentice Curb and Walk	60,000	
Prentice Angled Parking	88,000	
Ward Curb and Walk	90,000	
Ward Water Main	175,000	
Bond Cost	20,400	
Erosion Control and Maintenance	1,000	
Landscaping	15,000	
Permit & Fees Allowance	10,000	
Public FF&E	50,000	
Construction Fee - 6.56%	50,174	
Contingency - 10%	82,207	950,000
<b>Development Soft Costs</b>		<b>5,698,310</b>
<b>Total Uses</b>		<b>24,030,095</b>

Exhibit D-1

to

Fourth Amendment to Funding, Acquisition and Development Agreement

[TO BE ATTACHED TO EXECUTION VERSION]

Exhibit F-4

to

Fourth Amendment to Funding, Acquisition and Development Agreement

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

**[\$187,502.78]**

Date: \_\_\_\_\_, 2020  
(the "**Effective Date**")  
Cincinnati, Ohio

FOR VALUE RECEIVED, the undersigned ("**Borrower**") promises to pay to the order of the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which for purposes of this Note is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the "**City**"), the sum specified below together with interest thereon and upon the following terms and conditions. This Phase IIA Amended and Restated Promissory Note (this "**Note**") evidences Developer's obligation to repay the Loan, as defined in that certain *Funding, Acquisition and Development Agreement* entered into by and between the City and Borrower as of October 6, 2016, as amended (the "**Development Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

1. Amount. [The maximum principal amount of the Loan is One Hundred Eighty-Seven Thousand Five Hundred Two and 78/100 Dollars (\$187,502.78). The actual principal amount of the loan evidenced hereby shall equal the sum of \$182,500 representing the fair market value of the Phase IIA Property as of the date of the Original Note that the City has agreed to convey to Developer and \$5,002.78 representing a portion of the holding and legal costs related to the Phase IIA Property, 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 Development Agreement with respect to the determination of the Sale Payment Amount. Borrower shall promptly provide any additional documentation requested by the City in order to determine the Sale Payment Amount in accordance with clause (iv) below. Borrower acknowledges that the Development Agreement prohibits the sale of all or any portion of the Project Site owned by Borrower and its affiliates without the City's consent (provided in accordance with the Development Agreement).

(ii) Definitions. As used herein:

- a. "**Annual Payment Amount**" means (1) the amount by which Net Cash Flow in an applicable calendar year exceeds the amount of Net Cash Flow that would be necessary (if received on an annualized basis) to enable Developer, or its private equity investors, as applicable, to achieve a Cash on Cash Rate of Return of 12%, multiplied by (2) 25%. By way of example of this definition, the Net Cash Flow required to achieve a 12% Cash on Cash Rate of Return would be calculated by 0.12 (Cash on Cash Rate of Return) x \$3,599,035 (the Equity Contribution) or \$431,884.20. If the Net Cash Flow in Year 2 is \$450,000 then the Annual Payment Amount would be  $(\$450,000 - \$431,884.20) \times 25\%$  or \$4,528.95.
- b. "**Cash on Cash Rate of Return**" shall mean the ratio of Net Cash Flow to the Equity Contributions expressed as a percentage.
- c. "**Equity Contributions**" shall mean the initial equity contribution related to the Phase IIA Project of \$3,599,035, and shall exclude any future equity contributions.
- d. "**Equity Distributions**" shall mean any and all equity distributions made as a result of or in connection with the Phase IIA Project, including, for the avoidance of doubt, any equity distributions made as a result of or in connection with any refinancing of the Phase IIA Project.
- e. "**Internal Rate of Return**" means, as of the date of any given repayment, the monthly compounded rate at which the present value of all Equity Contributions equals the present value of all Equity Distributions. Internal Rate of Return shall be calculated using the Microsoft Excel XIRR function (or if such program is no longer available, such other similar software program specified by the Director). Borrower shall provide the excel document used to calculate XIRR to the City for review.
- f. "**Net Cash Flow**" means (1) Net Operating Income in a calendar year, minus (2) any payments of principal and interest with respect to Borrower's construction loan facilities and bank lenders in such calendar year related to the Phase IIA Project.
- g. "**Net Operating Income**" means, for the applicable calendar year, collected Phase IIA Project revenue minus, in each case with respect to the Phase IIA Project, (1) reasonable and customary expenses relating to salaries, insurance, taxes (including Service Payments), utilities, management fees, administration,

marketing, contract services, repairs, maintenance expenses, replacement reserves (which shall equal a minimum of \$250 per apartment per year and \$0.50 per square foot of commercial/office space per year), capital expenses that exceed available replacement reserves (provided that Borrower may demonstrate annual contributions of at least the minimum amount referred to above to such reserves), and payments of the deferred developer fee included in the final budget for the Phase IIA Project, and (2) other expenses as may be deemed appropriately deducted as determined by the Director of DCED (the “**Director**”) in his discretion, exercised in good faith.

- h. “**Sale Payment Amount**” means (1) the amount by which Sale Proceeds in an applicable calendar year exceeds the amount of Sale Proceeds that would be necessary to enable Developer, or its private equity investors, as applicable, to achieve an Internal Rate of Return of 20%, multiplied by (2) 25%. By way of example of this definition, the Sale Payment Amount required to achieve a 20% Internal Rate of Return would be calculated by setting up an excel sheet where the Equity Contributions are expressed as a negative number in year 0 and all of the Net Cash Flows (less any Annual Payment Amounts) derived by the Developer and any Sale Proceeds previously received by Developer from a partial sale of the Project Site are listed as positive numbers in subsequent years along with the Sale Proceeds in the year in which the Project Site or a portion thereof is sold.
- i. “**Sale Proceeds**” means the purchase price and any other consideration paid by or on behalf of a purchaser in connection with a sale of all or any portion of the Project Site, less the reasonable, documented expenses of such a sale.
- (iii) Late Charges. A late payment fee equal to five percent (5%) of the annual loan payment, or \$2,500, whichever is greater, shall be due if a required annual payment and corresponding Annual Report (as defined in the Development Agreement) are not received on the due date. If any amount remains unpaid for longer than thirty (30) days past the due date, interest shall accrue on such past due amount at a default rate of 12% per annum. Time is of the essence.
- (iv) Documentation. In addition to the Annual Report described in the Development Agreement, Borrower shall submit such information and documentation as is requested by the City in order to determine the Annual Payment Amount or Sale Payment Amount (including, without limitation, any information and documentation sufficient to calculate Net Operating Income, Net Cash Flow, Sale Proceeds, Internal Rate of Return, and Cash on Cash Rate of Return).
- (v) Forgiveness Prior to Maturity Date. If a sale of the entire (or entire remainder of the) Project Site owned by Borrower or its affiliates (it being understood that the Madison Center Facility is not owned by Borrower or its affiliates for the purposes of this sentence) occurs following Closing, and if Borrower pays to the City the Sale Payment Amount upon the closing of such sale, then any and all outstanding principal and interest hereunder (the “**Remaining P&I Obligations**”) shall be forgiven effective as of the time of the City’s receipt of the Sale Payment Amount; *provided*, however, that to the extent any fees owed to the City under this Note or any other Project Document remain outstanding, such fees shall not be forgiven and shall be immediately due and payable as of the closing of such sale. For the avoidance of doubt, a partial sale of the Project Site will not trigger forgiveness prior to the Maturity Date.
- (vi) Maturity Date; Forgiveness. The Remaining P&I Obligations, together with any outstanding fees, shall be due and payable on the 30<sup>th</sup> anniversary of the Commencement Date (or the next succeeding business day) (the “**Maturity Date**”); *provided, however* that the Remaining P&I Obligations shall not be due and payable and shall instead be forgiven on



the Maturity Date if, and only if, (a) Borrower has promptly and fully made all payments hereunder which were due and owing prior to the Maturity Date (or has remedied any such failures to the satisfaction of the City prior to the Maturity Date in accordance with the Project Documents) and (b) is not otherwise in default under the Development 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.

4. 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).
5. 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.
6. 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).
7. 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.
8. 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.
9. Amendment and Restatement. The *Promissory Note* made by Madisonville Phase I LLC ("**Original Borrower**") payable to the City in the original principal amount of \$3,773,000 (the "**Original Note**") and the debt thereunder was (i) split into two separate loans, one is in the original principal amount of \$1,343,350.66 evidenced by that certain *Phase II Amended and Restated Promissory Note* dated October 3, 2019 made by Borrower (the "**Phase II Note**") and one is in the original principal amount of \$2,429,649.34 evidenced by that certain *Amended and Restated Promissory Note* made by Original Borrower payable to the City, and (ii) the portion of the Original Note and the Phase II Note attributable to the Phase IIA Project is amended and restated by this Note. The debt evidenced by the Original Note and the Phase II Note and not previously forgiven by the City is continuing

indebtedness and nothing contained herein shall be deemed to constitute payment, settlement or a novation of the Original Note or the Phase II Note.

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

- Mortgage* on the Phase IIA Property.
- Security interest in all business assets/other collateral as described in a certain Security Agreement & UCC-1 Financing Statements
- Guaranty

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

*[Signature Page Follows]*

Executed by the undersigned on the date first above written.

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

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

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

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

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

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

Approved as to Form:

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

Exhibit F-5

to

Fourth Amendment to Funding, Acquisition and Development Agreement

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

**[\$1,155,847.88]**

Date: \_\_\_\_\_, 2020  
(the "**Effective Date**")  
Cincinnati, Ohio

FOR VALUE RECEIVED, the undersigned ("**Borrower**") promises to pay to the order of the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which for purposes of this Note is 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202; Attention: Director, Department of Community and Economic Development (the "**City**"), the sum specified below together with interest thereon and upon the following terms and conditions. This Phase IIB Amended and Restated Promissory Note (this "**Note**") evidences Developer's obligation to repay the Loan, as defined in that certain *Funding, Acquisition and Development Agreement* entered into by and between the City and Borrower as of October 6, 2016, as amended (the "**Development Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed thereto in the Development Agreement.

1. Amount. [The maximum principal amount of the Loan is One Million One Hundred Fifty-Five Thousand Eight Hundred Forty-Seven and 88/100 Dollars (\$1,155,847.88). The actual principal amount of the loan evidenced hereby shall equal the sum of (i) the amount disbursed to Developer in connection with the Phase IIB Project as a Loan pursuant to the Development Agreement, the maximum amount of which is \$789,347.88, and (ii) \$366,500.00, representing the fair market value of the Phase IIB Property and the North Sierra Properties as of the date of the Original Note (as defined below) that the City has agreed to convey to Developer, pursuant to the terms of the Development Agreement (collectively, the "**Principal Amount**").]
2. Interest Rate. Interest shall accrue on the Principal Amount at a fixed rate of 1.50% per annum. Interest on the Principal Amount shall commence on the date of disbursement.
3. Payments; Late Charge; Maturity Date. The Principal Amount, together with interest on the unpaid principal balance at the rate described above, compounded annually, shall be repayable as follows:
  - (i) Annual Payments; Sale Payment.
    - a. Beginning with the first April 1 following completion of construction (as evidenced by the issuance of a certificate of occupancy with respect to any portion of the Phase IIB 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 Development 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)  $\times$  \$3,500,000 (the Equity Contribution) or \$420,000. If the Net Cash Flow in Year 2 is \$450,000 then the Annual Payment Amount would be  $(\$450,000 - \$420,000) \times 25\%$  or \$7,500.
- b. "**Cash on Cash Rate of Return**" shall mean the ratio of Net Cash Flow to the Equity Contributions expressed as a percentage.
- c. "**Equity Contributions**" shall mean the initial equity contribution related to the Phase IIB Project of \$3,500,000, 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 Phase IIB Project, including, for the avoidance of doubt, any equity distributions made as a result of or in connection with any refinancing of the Phase IIB 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 New Market Tax Credit Lenders and bank lenders in such calendar year related to the Phase IIB Project.
  - g. **“Net Operating Income”** means, for the applicable calendar year, collected Phase IIB Project revenue minus, in each case with respect to the Phase IIB Project, (1) reasonable and customary expenses relating to salaries, insurance, taxes (including Service Payments), utilities, management fees, administration, marketing, contract services, repairs, maintenance expenses, replacement reserves (which shall equal a minimum of \$250 per apartment per year and \$0.50 per square foot of commercial/office space per year), capital expenses that exceed available replacement reserves (provided that Borrower may demonstrate annual contributions of at least the minimum amount referred to above to such reserves), and payments of the deferred developer fee included in the final budget for the Phase IIB Project, and (2) other expenses as may be deemed appropriately deducted as determined by the Director of DCED (the **“Director”**) in his discretion, exercised in good faith.
  - h. **“Sale Payment Amount”** means (1) the amount by which Sale Proceeds in an applicable calendar year exceeds the amount of Sale Proceeds that would be necessary to enable Developer, or its private equity investors, as applicable, to achieve an Internal Rate of Return of 20%, multiplied by (2) 25%. By way of example of this definition, the Sale Payment Amount required to achieve a 20% Internal Rate of Return would be calculated by setting up an excel sheet where the Equity Contributions are expressed as a negative number in year 0 and all of the Net Cash Flows (less any Annual Payment Amounts) derived by the Developer and any Sale Proceeds previously received by Developer from a partial sale of the Project Site are listed as positive numbers in subsequent years along with the Sale Proceeds in the year in which the Project Site or a portion thereof is sold.
  - i. **“Sale Proceeds”** means the purchase price and any other consideration paid by or on behalf of a purchaser in connection with a sale of all or any portion of the Project Site, less the reasonable, documented expenses of such a sale.
- (iii) Late Charges. A late payment fee equal to five percent (5%) of the annual loan payment, or \$2,500, whichever is greater, shall be due if a required annual payment and corresponding Annual Report (as defined in the Development Agreement) are not received on the due date. If any amount remains unpaid for longer than thirty (30) days past the due date, interest shall accrue on such past due amount at a default rate of 12% per annum. Time is of the essence.

- (iv) Documentation. In addition to the Annual Report described in the Development Agreement, Borrower shall submit such information and documentation as is requested by the City in order to determine the Annual Payment Amount or Sale Payment Amount (including, without limitation, any information and documentation sufficient to calculate Net Operating Income, Net Cash Flow, Sale Proceeds, Internal Rate of Return, and Cash on Cash Rate of Return).
  - (v) Forgiveness Prior to Maturity Date. If a sale of the entire (or entire remainder of the) Project Site owned by Borrower or its affiliates (it being understood that the Madison Center Facility is not owned by Borrower or its affiliates for the purposes of this sentence) occurs following Closing, and if Borrower pays to the City the Sale Payment Amount upon the closing of such sale, then any and all outstanding principal and interest hereunder (the “**Remaining P&I Obligations**”) shall be forgiven effective as of the time of the City’s receipt of the Sale Payment Amount; *provided*, however, that to the extent any fees owed to the City under this Note or any other Project Document remain outstanding, such fees shall not be forgiven and shall be immediately due and payable as of the closing of such sale. For the avoidance of doubt, a partial sale of the Project Site will not trigger forgiveness prior to the Maturity Date.
  - (vi) Maturity Date; Forgiveness. The Remaining P&I Obligations, together with any outstanding fees, shall be due and payable on the 30<sup>th</sup> anniversary of the Commencement Date (or the next succeeding business day) (the “**Maturity Date**”); *provided, however* that the Remaining P&I Obligations shall not be due and payable and shall instead be forgiven on the Maturity Date if, and only if, (a) Borrower has promptly and fully made all payments hereunder which were due and owing prior to the Maturity Date (or has remedied any such failures to the satisfaction of the City prior to the Maturity Date in accordance with the Project Documents) and (b) is not otherwise in default under the Development 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.
4. 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).
  5. 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.
  6. 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).
  7. 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.

8. 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.
9. [Reduction of the Principal Amount Pursuant to some or all of the North Sierra Properties not being Acquired by Borrower per the Development Agreement. As defined above, the Principal Amount of the Loan is One Million One Hundred Fifty-Five Thousand Eight Hundred Forty-Seven and 88/100 Dollars (~~\$1,155,847.88~~), consisting of (i) the amount disbursed to Developer as a Loan pursuant to the Development Agreement, the maximum amount of which is ~~\$789,347.88~~, and (ii) ~~\$366,500~~, representing the fair market value of the Phase IIB Property and the North Sierra Properties as of the date of the Original Note that the City has agreed to convey to Developer, pursuant to the terms of the Development Agreement. Given that Developer may not, pursuant to the terms of the Development Agreement, ultimately acquire the North Sierra Properties, which at the time of the Original Note (as defined below) had a fair market value of \$77,500, or some portion thereof, the Principal Amount shall be reduced in such event, and at such time as the disposition of the North Sierra Properties becomes final under the Development Agreement, and the same shall be memorialized pursuant to an Amendment to this Note.]
10. Amendment and Restatement. The *Promissory Note* made by Madisonville Phase I LLC (“**Original Borrower**”) payable to the City in the original principal amount of \$3,773,000 (the “**Original Note**”) and the debt thereunder was (i) split into two separate loans, one is in the original principal amount of \$1,343,350.66 evidenced by that certain *Phase II Amended and Restated Promissory Note* dated October 3, 2019 made by Borrower (the “**Phase II Note**”) and one is in the original principal amount of \$2,429,649.34 evidenced by that certain *Amended and Restated Promissory Note* made by Original Borrower payable to the City, and (ii) the portion of the Original Note and the Phase II Note attributable to the Phase IIB Project is amended and restated by this Note. The debt evidenced by the Original Note and the Phase II Note and not previously forgiven by the City is continuing indebtedness and nothing contained herein shall be deemed to constitute payment, settlement or a novation of the Original Note or the Phase II Note.
11. Security. This Note is secured by the following (check all that apply):
  - Mortgage* on Borrower’s real property located at Phase IIB Property.
  - Security interest in all business assets/other collateral as described in a certain Security Agreement & UCC-1 Financing Statements
  - Guaranty

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



[*Signature Page Follows*]

Executed by the undersigned on the date first above written.

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

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

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

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

Borrower's Mailing Address:

4030 Smith Road, Suite 130  
Cincinnati, Ohio 45209

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

Approved as to Form:

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

Exhibit G-2

to

Fourth Amendment to Funding, Acquisition and Development Agreement

**Revised Disbursement of Funds**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

from all funding sources with respect to the Project, the Phase IIA Project, or the Phase IIB Project, as applicable, are not sufficient to pay for all the costs to complete construction. Developer acknowledges that the obligation of the City to disburse the Funds to such entities for construction shall be limited to the Funds to be made available by the City under this Agreement. Developer shall provide all additional funds from other resources to complete the Project, the Phase IIA Project, and the Phase IIB Project. Notwithstanding anything in this Agreement to the contrary, the City's obligation to make the Funds available to Developer, to the extent such Funds have not been disbursed, shall terminate (i) with respect to the Project and the Phase I Funds, on September 30, 2020, and (ii) with respect to the Phase IIA Project and the Phase IIB Project, ninety (90) days following completion of construction of (x) the Phase IIA Project with respect to the Phase IIA Grant and (y) the Phase IIB Project with respect to the Phase IIB Grant.

(E) Draw Procedure

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

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

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

(G) Phase IIA Grant Retainage. After review and approval of a disbursement request, then the City shall disburse (i) prior to 50% completion of the Phase IIA Right-of-Way Public Infrastructure Improvements, ninety percent (90%) of the amount requested (with retainage of 10%), and (ii) on and after the 50% completion point of the Phase IIA Right-of-Way Public Infrastructure Improvements, ninety-five percent (95%) of the amount requested (with retainage of 5%). The retained amount shall be disbursed when (a) construction of the Phase IIA Project (including the Private Improvements) has been completed (as evidenced by a certificate of occupancy for all buildings with respect to the Private Improvements, and as determined by the City with respect to the applicable Public Infrastructure Improvements), (b) the City

has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment, (c) Developer has provided the City with a complete set of “as built” drawings for the Phase IIA Project if required by the City, and (d) Developer has complied with all of its other obligations under this Agreement as determined by the City in its sole discretion.

(H) Phase IIB Grant Retainage. After review and approval of a disbursement request, then the City shall disburse (i) prior to 50% completion of the Phase IIB Right-of-Way Public Infrastructure Improvements, ninety percent (90%) of the amount requested (with retainage of 10%), and (ii) on and after the 50% completion point of the Phase IIB Right-of-Way Public Infrastructure Improvements, ninety-five percent (95%) of the amount requested (with retainage of 5%). The retained amount shall be disbursed when (a) construction of the Phase IIB Project (including the Private Improvements) has been completed (as evidenced by a certificate of occupancy for all buildings with respect to the Private Improvements, and as determined by the City with respect to the applicable Public Infrastructure Improvements), (b) the City has obtained final lien waivers and all other conditions to payment set forth in this Agreement have been satisfied with respect to such payment, (c) Developer has provided the City with a complete set of “as built” drawings for the Phase IIB Project if required by the City, and (d) Developer has complied with all of its other obligations under this Agreement as determined by the City in its sole discretion.

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

Exhibit I-3 to  
Fourth Amendment to Funding, Acquisition and Development Agreement  
**Form of City Phase IIB Quitclaim Deed**

[TO BE ATTACHED TO EXECUTION VERSION]

Phase IIB Addendum I to Exhibit M to  
Fourth Amendment to Funding, Acquisition and Development Agreement

**Phase IIB Project Prevailing Wage Determination**

[TO BE ATTACHED TO EXECUTION VERSION]



Exhibit N-2

to

Fourth Amendment to Funding, Acquisition and Development Agreement

**Form of Phase IIB Project Service Agreement**

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

**SERVICE AGREEMENT**

(Madison and Whetsel Project Phase IIB)

This Service Agreement (this "**Agreement**") is made and entered into as of [\_\_\_\_\_], 2020 (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 III 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* (the "**First Amendment**") dated September 25, 2018, the *Second Amendment to Funding, Acquisition and Development Agreement* (the "**Second Amendment**") dated September 30, 2019, the *Third Amendment to Funding, Acquisition and Development Agreement* (the "**Third Amendment**"), dated July \_\_\_\_, 2020, and the *Fourth Amendment to Funding, Acquisition and Development Agreement* (the "**Fourth Amendment**") dated \_\_\_\_\_, 2020, (the Original Development Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and as it may be further amended from time to time, the "**Development Agreement**").

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

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

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

E. In furtherance of the public purpose and to facilitate the Phase IIB Project, and as authorized by Ordinance No. 495-2019 passed by City Council on December 11, 2019 (the "**TIF Ordinance**"), the City has established a so-called project-based TIF for the Phase IIB Property under Section 5709.41, Ohio Revised Code ("**ORC**").

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

G. Pursuant that certain Mortgage and Declaration of Covenants and Conditions Relative to Service Payments in Lieu of Taxes, Minimum Service Payments and Other Matters of even date herewith (the "**Mortgage and Declaration**") given by the Company in favor of the Port of Greater Cincinnati Development Authority (the "**Port Authority**") and the trustee for the Series 2020 Bonds (the "Trustee"), the Company has agreed to pay minimum service payments (the "**Minimum Service Payments**") to the Trustee to the extent required to pay principal, interest and administrative fees and expenses on the Port Authority's Taxable Development Revenue Bonds issued to pay a portion of the costs of the Phase IIB Project (the "**Series 2020 Bonds**"). Pursuant to the Mortgage and Declaration, the obligation of the Company and future owners of the Phase IIB Property to pay Minimum Service Payments shall be a covenant running with the land and the Mortgage and Declaration shall be recorded with the Hamilton County, Ohio Recorder after only this Agreement and prior to any other mortgages or security instruments affecting the Phase IIB Property.

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

I. In accordance with the Fourth Amendment, the City intends to use the Statutory Service Payments actually received (e.g., for the avoidance of doubt, exclusive of any fees paid or withholdings from the Statutory Service Payments to or by the Hamilton County Auditor) by the City with respect to the Phase IIB Property (i) to satisfy its obligation to make payments to the Board of Education, (ii) to assign to the Port Authority to be applied towards debt service on the Series 2020 Bonds, as described more particularly in the Cooperative Agreement dated as of [\_\_\_\_], by and among the City, the Port, and the Company, and acknowledged by the Trustee, (iii) to maintain and program the Public Plaza, and (iv) in the event Statutory Service Payments are received in excess of the aforementioned obligations, for any other lawful purpose.

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

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

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

**1. CONSTRUCTION OF PHASE IIB PROJECT.**

The Company shall cause the Phase IIB Project to be constructed in accordance with the terms of the Development Agreement. The Company shall use, develop and redevelop the Phase IIB Project with respect to the Phase IIB Property in accordance with the Development Agreement throughout the Exemption Period (as hereinafter defined). Failure to use and operate the Phase IIB Project as required under the Development Agreement shall not relieve the Company of its obligations to make Statutory Service Payments as required hereunder. During the Exemption Period, the Company shall not change

the principal use of the Phase IIB Project (which are commercial and multi-family apartment units) without the City's prior written consent.

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

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

B. Commencement of Statutory Service Payments. The Company shall commence paying Statutory Service Payments no later than the final date for payment (the last day that payment can be made without penalty or interest) of the first semi-annual installment of real property taxes in the first calendar year after the first tax year in which any Improvement appears on the Hamilton County Auditor's tax duplicate. (For example, if any Improvement first appears on the tax rolls on January 1, 2021, the Company's first semi-annual tax payment will be for the tax bill for the First Half 2021, which will become due and payable to the County Treasurer on or about January 2022.) The Company shall pay Statutory Service Payments in semi-annual installments (i) on the earlier of such final date for payment of the first semi-annual installment of real property taxes, or February 1, in each year, and (ii) on the earlier of such final date for payment of the second semi-annual installment of real property taxes, or August 1, in each year (each such final date for payment is referred to herein as a "**Service Payment Date**"). The Company shall continue to make Statutory Service Payments until such time as the Company has paid the final Statutory Service Payment applicable to the Exemption Period.

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

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

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

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

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

make Statutory Service Payments shall have the same priority as the obligation to pay real estate taxes in the event of any bankruptcy or other like proceeding instituted by or against the Company. The Company agrees not to contest the lien, rights or priority of the Statutory Service Payments with respect to the Phase IIB Project or the Phase IIB Property.

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

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

B. Covenants Running with the Land. The obligation to perform and observe the agreements on the Company's part contained herein shall be covenants running with the land and, in any event and without regard to technical classification or designation, legal or otherwise, shall be binding and enforceable by the City against the Company and its successors-in-interest and transferees as owners of the fee simple interest in the Phase IIB Property, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. The Company shall not assign its interests or obligations under this Agreement to a third party except in connection with a simultaneous conveyance by the Company of its interests in the Phase IIB Property and Phase IIB Project. The foregoing, however, shall not be construed as prohibiting the Company from assigning its interests under this Agreement, as collateral security, to the lender(s) or other parties that will be providing financing for the Phase IIB Project or other financial incentives. If the Company shall sell, convey, or otherwise transfer its interest in the Phase IIB Property or any part thereof, it shall automatically be released and relieved of and from all other and further obligations and liabilities under this Agreement which arise, mature, or relate to any period from and after the date of such sale, conveyance or transfer, but not prior thereto, it being intended hereby that the covenants and obligations on the part of the Company and each such successor shall be binding upon and enforceable against the Company and their respective successors and assigns only in respect of their respective periods of ownership in the Phase IIB 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 Phase IIB Project; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Phase IIB Project; commercial frustration of purpose; or any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State or any political subdivision thereof.

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

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

B. No Tax Contests. The Company, its successors, assigns and transferees hereby agree that, during the term of this Agreement, (a) it will not contest or appeal the real property valuation assigned to the Phase IIB Property by the County Auditor so as to reduce such valuation for real property tax purposes below the valuation initially assigned to the Phase IIB Property by the County Auditor upon completion of the Phase IIB Project, and (b) it will not seek any other real property tax exemption or abatement for the Phase IIB Property, during the term of this Agreement.

**6. INSURANCE COVERAGE AND PROCEEDS.**

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

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

**7. CONDEMNATION PROCEEDS.**

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

**8. NOTICES.**

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

**9. COVENANTS AND REPRESENTATIONS.**

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

**10. EXEMPTION APPLICATION.**

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

#### **11. DEFAULTS AND REMEDIES.**

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

#### **12. DURATION OF AGREEMENT.**

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

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

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

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

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

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

part of this Agreement provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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

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

*[Signature Page Follows]*

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

**CITY OF CINCINNATI**

**MADISONVILLE PHASE III LLC**

By: \_\_\_\_\_  
Paula Boggs Muething, Interim City Manager

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

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

Approved by:

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

Approved as to Form:

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Paula Boggs Muething, Interim 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 \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of [\_\_\_\_\_], an [\_\_\_\_\_], on behalf of the [\_\_\_\_\_].

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

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



EXHIBIT A  
TO  
SERVICE AGREEMENT

LEGAL DESCRIPTION

[TO BE PROVIDED BY DEVELOPER]

SCHEDULE 12

TO

Fourth Amendment to Funding, Acquisition and Development Agreement

Form of Assignment Agreement of Developer's Rights

Assignment

The undersigned, Ackermann Enterprises, Inc., an Ohio corporation ("Assignor"), hereby assigns to Madisonville Phase III LLC, an Ohio limited liability company ("Assignee"), all of its right, title and interest under that certain Funding, Acquisition and Development Agreement dated October 6, 2016, as amended by that certain First Amendment to Funding, Acquisition and Development Agreement dated September 25, 2018, as amended by that certain Second Amendment to Funding, Acquisition and Development Agreement dated September 30, 2019, as amended by that certain Third Amendment to Funding, Acquisition, and Development Agreement dated July \_\_, 2020, and as amended by that certain Fourth Amendment to Funding, Acquisition, and Development Agreement dated as of even date herewith (collectively, the "Agreement"), as it relates to the Phase IIB Project (as defined in the Agreement). Assignee accepts such assignment and assumes all of Assignor's duties, obligations and liabilities under the Agreement with respect to the Phase IIB Project as of this \_\_\_ day of \_\_\_\_\_, 2020.

ACKERMANN ENTERPRISES, INC.  
an Ohio corporation

MADISONVILLE PHASE III LLC,  
an Ohio limited liability company

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

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

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