

19-040

EXHIBIT A

Roetzel Draft 1-16-19

GUARANTY AGREEMENT

**THIS GUARANTY AGREEMENT** (this "Guaranty Agreement") is made as of March 1, 2019, among the **COUNTY OF SUMMIT, OHIO**, a county and political subdivision organized and validly existing under the laws of the State of Ohio and its Charter (the "County"), the **CITY OF AKRON, OHIO**, a municipal corporation duly organized and validly existing under the laws of the State of Ohio and its Charter (the "City," and together with the County, collectively, the "Guarantors"), **DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY**, a port authority and a body corporate and politic, duly created and validly existing under the laws of the State (the "Authority") and **AKRON COMMUNITY SERVICE CENTER AND URBAN LEAGUE, INC.**, an Ohio nonprofit corporation (the "Borrower"). Capitalized words and terms not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement dated as of March 1, 2019 (the "Loan Agreement") between the Authority and the Borrower.

**RECITALS:**

A. Pursuant to the Act, the Authority has determined to issue, sell and deliver the Bonds and loan the proceeds of the Bonds to the Borrower under the Loan Agreement to refinance certain existing indebtedness of the Borrower, and to finance new renovations, improvements and equipping of the Project.

B. In order to enhance, foster, aid, promote and provide for economic development, recreation and education in the City and the County within the jurisdiction of the Authority by inducing the Authority to issue the Bonds and loan the proceeds of the Bonds to the Borrower, the County and the City have agreed to deliver this Guaranty Agreement.

C. In order to enhance the marketability of the Bonds and to induce the Original Purchaser to purchase the Bonds, the City and the County have determined to enter into this Guaranty Agreement to agree to make the Guaranty Payments when and if due in accordance with the terms of this Guaranty Agreement.

D. The County, the City and the Borrower each have full right and lawful authority to enter into this Guaranty Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW, THEREFORE, in consideration of the covenants contained herein and the recitals herein expressed and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, each party hereby agrees as follows:

1. Representations and Warranties of County. The County represents and warrants as follows:

(a) The County is a county and political subdivision duly organized and existing under the laws of the State and its Charter. It has the power under the laws and

its Charter to enter into this Guaranty Agreement and perform its agreements hereunder. It has been authorized to enter into this Guaranty Agreement by all necessary and proper action of its Legislative Authority. The execution and delivery by it of this Guaranty Agreement and the performance of its obligations under this Guaranty Agreement do not contravene or constitute a default under any agreement, indenture, commitment, provision of its Charter or other requirement of law to which it is a party or by which it is bound.

(b) This Guaranty Agreement is in furtherance of the public purposes of the County and the assumption by the County of its obligations under this Guaranty Agreement will benefit the residents of the County.

(c) As an inducement to the Authority to issue the Bonds and loan the proceeds of the Bonds to the Borrower, and in consideration thereof, the County has authorized, executed and delivered this Guaranty Agreement.

2. Representations and Warranties of City. The City represents and warrants as follows:

(a) The City is a municipal corporation duly organized and existing under the laws of the State and its Charter. It has the power under the laws and its Charter to enter into this Guaranty Agreement and perform its agreements hereunder. It has been authorized to enter into this Guaranty Agreement by all necessary and proper action of its Legislative Authority. The execution and delivery by it of this Guaranty Agreement and the performance of its obligations under this Guaranty Agreement do not contravene or constitute a default under any agreement, indenture, commitment, provision of its Charter or other requirement of law to which it is a party or by which it is bound.

(b) This Guaranty Agreement is in furtherance of the public purposes of the City and the assumption by the City of its obligations under this Guaranty Agreement will benefit the residents of the City.

(c) As an inducement to the Authority to issue the Bonds and loan the proceeds of the Bonds to the Borrower, and in consideration thereof, the City has authorized, executed and delivered this Guaranty Agreement.

3. Representations and Warranties of Borrower. The Borrower represents and warrants as follows:

(a) The Borrower has been duly incorporated and is validly existing as a nonprofit corporation in good standing under the laws of the State.

(b) The Borrower has full power and authority to sign and deliver, and to perform its obligations under, this Guaranty Agreement and to enter into and carry out the transactions contemplated in this Guaranty Agreement. Such signing, delivery and performance are not in contravention of law or the Borrower's Articles of Incorporation, regulations or any bylaws or any indenture, agreement or undertaking to which the Borrower is a party or by which it is bound. This Guaranty Agreement has by proper

action been duly authorized, signed and delivered by the Borrower and all steps necessary have been taken by the Borrower to constitute valid and binding obligation of the Borrower.

4. Representations and Warranties of Authority. The Authority represents and warrants as follows:

(a) The Authority is a body corporate and politic and a port authority duly organized and validly existing under the laws of the State and has complied and continues to comply and will comply in all respects with all applicable provisions of the laws of the State relating to its organization and existence.

(b) The Authority has full power and authority to sign and deliver, and to perform its obligations under, this Guaranty Agreement and to enter into and carry out the transactions contemplated in this Guaranty Agreement. This Guaranty Agreement has by proper action been duly authorized, signed and delivered by the Authority and such authorization has not been repealed or modified.

5. Guaranty. The County and the City each guarantee, but only from their respective Nontax Revenues, the full and prompt payment when due in any given calendar year of each party's one-half share (50% County and 50% City) of the Loan Payments not made when due by the Borrower under the Loan Agreement for the payment of Bond Service Charges on the Bonds when due (each, a "Guaranty Payment"); provided, no payment by the County or the City shall be due and payable by either Guarantor in connection with the optional redemption of the Bonds in accordance with Section 4.01(b) of the Trust Agreement. This Guaranty Agreement is not a guaranty of collection, but rather this Guaranty Agreement is, subject to the terms hereof, an irrevocable, absolute and unconditional guarantee of payment of the Loan Payments.

**Commented [JD1]:** See comment to the Trust Agreement regarding mandatory redemption. If I am correct, it would change this to Section 4.01(a).

Notwithstanding anything in this Guaranty Agreement to contrary, the term of the guarantee provided by the County and the City hereunder shall expire when the Bonds are no longer Outstanding, whether at maturity or by earlier redemption.

The obligations of the County and the City to make payments under this Guaranty Agreement are limited to the Nontax Revenues, respectively, of the County and the City. For the purposes of this Guaranty Agreement, "Nontax Revenues" means:

(a) as to the City, means all money of the City that is not money raised by taxation, to the extent available for payment under the Guaranty Agreement, including, but not limited to the following: (a) grants from the United States of America and the State, (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures that are deposited in the City's General Fund; (d) fees deposited in the City's General Fund from properly imposed licenses and permits; (e) investment earnings on the City's General Fund and that are credited or transferred to the City's General Fund; (f) investment earnings of other funds of the City that are credited to the City's General Fund; (g) proceeds from the sale of assets that are deposited in the City's General Fund; (h) rental income that is deposited in the City's General Fund; (i) gifts and donations that are received and deposited in the City's General Fund; and (j) charges for services and payments received in reimbursement for services that are deposited in the

City's General Fund; provided, Nontax Revenues does not include any funds in the City's Knight Estate Fund; and

(b) as to the County, means all money of the County that is not money raised by taxation, to the extent available for payment under the Guaranty Agreement, including, but not limited to the following: (a) grants from the United States of America and the State, (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures that are deposited in the County's General Fund; (d) fees deposited in the County's General Fund from properly imposed licenses and permits; (e) investment earnings on the County's General Fund and that are credited or transferred to the County's General Fund; (f) investment earnings of other funds of the County that are credited to the County's General Fund; (g) proceeds from the sale of assets that are deposited in the County's General Fund; (h) rental income that is deposited in the County's General Fund; (i) gifts and donations that are received and deposited in the County's General Fund; and (j) charges for services and payments received in reimbursement for services that are deposited in the County's General Fund.

The maximum liability of each of the County and the City under this Guaranty Agreement while the Bonds remain outstanding may not exceed an amount equal to each party's one-half share of the Loan Payments not made when due by the Borrower under the Loan Agreement. The County and the City shall not be responsible for any payment of the other party's share of the Guaranty Payments.

6. Notice by Trustee; Payments Made to Trustee. Under Section 5.07 of the Trust Agreement, the Trustee shall notify the County and the City on each May 15 and November 15, commencing November 15, 2019, the amounts then on deposit in the Bond Fund and available to pay Bond Service Charges on the Bonds on the next succeeding Interest Payment Date (the Available Amount") and the amount of Bond Service Charges due and payable on the next succeeding Interest Payment Date (the "Required Amount"). The County and the City shall thereafter promptly, but not later than May 30 and November 30 following notice from the Trustee, pay to the Trustee at the Trustee's Notice Address each party's one-half share (50% County and 50% City, not to exceed each party's one-half share of the Loan Payments not made when due by the Borrower under the Loan Agreement) in the amount calculated as the difference between Required Amount and Available Amount. That payment by the County and the City shall be a Guaranty Payment under this Agreement.

7. Limited Obligations. The obligations of the County and the City under this Guaranty Agreement do not represent or constitute a general obligation, debt or pledge of the faith or credit or taxing power of the County or the City. The obligations of the County and the City under this Guaranty Agreement are special obligations of the County and the City, respectively, payable solely from their Nontax Revenues. Neither the Authority, the Trustee nor any holder of the Bonds have any right to have taxes levied by the County or the City for the payment of any obligations under this Guaranty Agreement.

8. Reimbursement of County and City by Borrower. The Borrower covenants and agrees to pay to the County and the City, respectively, on demand, the amount of any Guaranty Payments made by the County and the City to the Trustee under this Guaranty Agreement

(collectively, the "Reimbursement Obligations"). The Borrower agrees to pay interest, on demand, on any and all Reimbursement Obligations from the date such amounts become due until payment in full, at an interest rate equal to the Interest Rate for Advances.

The Borrower also covenants and agrees to pay to the County and the City, respectively, on demand, all costs and expenses, including reasonable attorney's fees and expenses, incurred by each of them in connection with the enforcement of this Guaranty Agreement and the exercise of their remedies under the Mortgage by the County and the City.

All payments of Reimbursement Obligations by the Borrower to the County and the City hereunder shall be made in lawful currency of the United States and in immediately available funds at the Notice Address of the County and the City, respectively.

To secure the Reimbursement Obligations of the Borrower to the County and the City under this Agreement, the Borrower has delivered to the County and the City the Mortgage and the Assignment of Rents.

9. No Set-Off. Except for the defense of payment, no set-off, counterclaim, reduction or diminution of an obligation, or any defense of any kind or nature which the Guarantors have or may have against the Borrower will be available under this Guaranty Agreement to the Guarantors against the Borrower.

10. Miscellaneous.

(a) This Guaranty is entered into by the Guarantors for the benefit of the Authority and their respective successors and permitted assigns, all of who shall be entitled to enforce the performance and observance of the provisions of this Guaranty Agreement to the same extent as if they were parties to this Guaranty; provided however this Guaranty Agreement and the obligations of the County and the City hereunder may not be assigned by the Authority without the prior written consent of the County and the City.

(b) No amendment, change or modification of the Loan Agreement may be made that would increase each of the Guarantors' maximum monetary obligations under this Guaranty Agreement without the prior written consent of the County and the City.

(c) No remedy conferred upon or reserved to the Authority under this Guaranty Agreement is intended to be exclusive of any other available remedy or remedies, but each is cumulative and is in addition to every other remedy given or available under this Guaranty Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default, omission or failure to perform under this Guaranty Agreement impairs or waives such right or power, and any such right or power may be exercised from time to time and as often as may be deemed expedient. If any provision of this Guaranty Agreement is breached by any party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not waive any other breach of this Guaranty Agreement. No waiver, amendment, release or modification of this Guaranty Agreement



may be established by conduct, custom or source of dealing, but solely by an instrument in writing executed by the parties to this Guaranty Agreement.

(d) This Guaranty shall be construed in accordance with the laws of the State of Ohio.

(e) If any term or provision of this Guaranty shall be held to be illegal or unenforceable, the validity of the remaining provisions shall not be affected thereby and shall remain in full force and effect.

(f) The County and City hereby agree to share equally in the attorney fees for the preparation and structuring of this Guaranty Agreement, the Bond Documents and any other documents necessary to consummate the transactions set forth in the Bond Documents, and all associated legal services rendered by Roetzel and Andress, LPA, which the parties anticipate to not exceed \$45,000.00.

(signatures on following page)

IN WITNESS WHEREOF, the parties have executed this Guaranty Agreement as of date first written above.

**CITY OF AKRON, OHIO**

By: \_\_\_\_\_  
Daniel M. Horrigan, Mayor

Approved as to form and correctness:

\_\_\_\_\_  
Eve V. Belfance, Director of Law  
City of Akron, Ohio

**COUNTY OF SUMMIT, OHIO**

By: \_\_\_\_\_  
Ilene Shapiro, Executive

Approved as to form and correctness:

\_\_\_\_\_  
Deborah Matz, Director of Department  
of Law, and Risk Management  
County of Summit, Ohio

**DEVELOPMENT FINANCE AUTHORITY OF  
SUMMIT COUNTY**

By: \_\_\_\_\_  
Christopher Burnham, President

**AKRON COMMUNITY SERVICE CENTER  
AND URBAN LEAGUE, INC.**

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

**FISCAL OFFICERS CERTIFICATE**  
**Summit County, Ohio**

The undersigned, the Fiscal Officer of the County of Summit, Ohio, under the foregoing Guaranty Agreement, certifies that the moneys required to meet the obligations of the County during the year 2019 under the Guaranty Agreement have been lawfully appropriated by the County Council of the County for that purpose, and are in the treasury or in the process of collection to the credit of an appropriate fund in the treasury, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

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Fiscal Officer  
County of Summit, Ohio

Dated: \_\_\_\_\_, 2019

[County Fiscal Officer's Certificate – Guaranty Agreement]



**FISCAL OFFICERS CERTIFICATE**  
**City of Akron, Ohio**

The undersigned, the Director of Finance of the City of Akron, Ohio, under the foregoing Guaranty Agreement, certifies that the moneys required to meet the obligations of the City during the year 2019 under the Guaranty Agreement have been lawfully appropriated by the City Council of the City for that purpose, and are in the treasury or in the process of collection to the credit of an appropriate fund in the treasury, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

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Director of Finance  
City of Akron, Ohio

Dated: \_\_\_\_\_, 2019

[City Fiscal Officer's Certificate – Guaranty Agreement]

**FISCAL OFFICER'S CERTIFICATE**  
**Development Finance Authority of Summit County**

The undersigned, Assistant Secretary and Assistant Fiscal Officer of the Development Finance Authority of Summit County (the "Authority"), hereby certifies that the moneys required to meet the obligations of the Authority during the year 2019 under the Agreement have been lawfully appropriated by the Legislative Authority of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

\_\_\_\_\_  
Assistant Secretary and Assistant Fiscal Officer  
Development Finance Authority of Summit County

Dated: \_\_\_\_\_, 2019