

Proposed: 11/22/2021

RESOLUTION NO. 154-2021 (PD), *Second Reading*

By Council Member Ungar

A Resolution authorizing the City Manager to enter into a Development Agreement with F&C Development, Inc. concerning the “Cedar-Lee Meadowbrook” development; and declaring an emergency.

WHEREAS, the City has identified the opportunity to develop the site known as “Cedar-Lee Meadowbrook,” located on land situated north of Meadowbrook Boulevard, east of Lee Road and south of Cedar Road, utilizing vacant land as well as parking facilities, specifically PPN 687-06-009, 678-06-010, 687-06-013, 687-06-088, 687-06-089, 687-06-090, 687-06-091, 687-06-092, 687-06-093, 687-06-094, 687-06-095, 687-06-096, 687-06-159, and 687-08-00; and

WHEREAS, pursuant to Resolution No. 99-2021, this Council authorized the City Manager to enter into a Memorandum of Understanding with F&C Development, Inc. and move forward with negotiation of a Development Agreement consistent therewith; and

WHEREAS, the terms of the original Memorandum of Understanding, which was executed on July 12, 2021, provided for a period of 60 days for the completion of certain due diligence and for the parties to enter into a Development Agreement; and

WHEREAS, on August 30, 2021, this Council adopted Resolution 118-2021, authorizing an amendment to the Memorandum of Understanding to allow an additional 60 days to enter into a Development Agreement; and

WHEREAS, on November 8, 2021, this Council adopted Resolution 137-2021, authorizing a second amendment to the Memorandum of Understanding to allow a further extension of 30 days, until December 9, 2021, for the parties to enter into a Development Agreement; and

WHEREAS, after extensive negotiations, the parties have reached a tentative agreement on the specific terms and conditions of a Development Agreement; and

WHEREAS, this Council has determined that it is in the best interest of the City and its residents to move forward with the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. It is hereby determined that the property owned by the City located on land situated north of Meadowbrook Boulevard, east of Lee Road and south of Cedar Road, PPN 687-06-009, 678-06-010, 687-06-013, 687-06-088, 687-06-089, 687-06-090, 687-06-091, 687-06-092,

RESOLUTION NO. 154-2021 (PD), *Second Reading*

687-06-093, 687-06-094, 687-06-095, 687-06-096, 687-06-159, and 687-08-00, commonly known and hereafter referred to as “Cedar-Lee Meadowbrook,” need not be retained by the City any longer for a public purpose.

SECTION 2. This Council hereby authorizes the City Manager to enter into a Development Agreement with F&C Development, Inc., and to sign any other related documents, concerning the development of Cedar-Lee Meadowbrook. The Development Agreement shall be substantially in accordance with the Development Agreement attached hereto as Exhibit A. The Development Agreement and any related documents shall be approved as to form by, and subject to the final approval of, the Director of Law.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to enter into the above-referenced Development Agreement and facilitate the construction of the project at the earliest time possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

JASON S. STEIN
President of the Council

AMY HIMMELEIN
Clerk of Council

PASSED:

City Draft 11/17/2021

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DEVELOPMENT AGREEMENT

by and between

CITY OF CLEVELAND HEIGHTS, OHIO

and

F & C DEVELOPMENT, INC.

Project Name: Cedar-Lee-Meadowbrook Development

Date: _____, 2021

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the “City”), and **F & C DEVELOPMENT, INC.**, an Indiana corporation, licensed to do business in the State of Ohio, having an address of One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 (“Developer”).

RECITALS:

A. The City owns certain parcels of land commonly known as the Cedar-Lee-Meadowbrook parcels, consisting of approximately 4.8 acres located between Cedar Road and Meadowbrook Road, as shown on **Exhibit A** (Site Plan) hereto (together with the Added Property, as hereinafter defined, the “Project Site”) and, consistent with the City’s prior and current plans for urban redevelopment, the City has, from time to time, requested proposals for the redevelopment of all or portions of the Project Site.

B. Pursuant to a request for proposals process initiated by the City in October 2020, consistent with City’s current urban redevelopment plan for the Project Site, Developer proposes to develop the Project Site generally as follows:

(i) Developer proposes to build in a single phase a mixed-use development that shall include (a) one or more buildings of varying heights including approximately 200-225 market-rate apartments (some of which may be in apartments that “wrap” the existing City parking garage and some of which shall have universal design and accessibility to the extent required by the Final Development Plan (as defined in Section 5 hereof), (b) approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and/or restaurant space, (c) public gathering and green spaces, and (d) all private and public sidewalks located on the Project Site, as well as driveways, access ways, street and parking lot lighting and utility connections on the Project Site, and sanitary, stormwater drainage and other infrastructure improvements on the Project Site, in each case, to the extent required as part of the Final Development Plan (collectively, the “Project Improvements”), all as further outlined below and as depicted and described on **Exhibit B** (Developer Proposal dated December 30, 2020, including the Conceptual Drawing depicting the Project Improvements) hereto (all of the foregoing being referred to herein collectively as the “Project”);

(ii) In connection with a prior plan for the redevelopment of the Project Site, the City constructed and owns a structured parking garage located within the Project Site (the “City Parking Garage”), the ownership, use, management and maintenance of which shall be on the terms provided in Section 2(C) hereof;

(iii) The City will retain ownership of the Project Site;

(iv) Developer will lease the Project Site from the City at a nominal rental rate for a period of 99 years with an option to purchase the Project Site for \$10.00 at any time after the fortieth (40th) anniversary of the Effective Date; and

(v) The City and Developer acknowledge the possible addition of certain adjacent property into the Project Site (collectively, the “Added Property”) in accordance with an Added Property plan as described in Section 2(D) hereof, and if the Added Property is acquired by the City, such Added Property will be incorporated into the Project Site on the terms described in Section 2(D).

C. Developer and the City propose to collaboratively create a signature destination district on the Project Site. The City and Developer agree that the development of the Project Site shall be completed in a manner which, at a minimum:

(i) Creates a dense, vibrant, pedestrian-friendly and unique mixed-use development that leverages the place-making opportunities of the Project Site;

(ii) Dovetails with the architecture and aesthetics of the surrounding Cedar-Lee District;

(iii) Complements and is harmonious with adjacent residential neighborhoods;

(iv) Creates positive economic and fiscal benefits for the neighborhood and the City;

(v) Incorporates gathering and public spaces and/or a strong landscaping plan into the design and construction of the development;

(vi) Effectively incorporates community feedback into the design;

(vii) Strongly encourages the use of commercially reasonable efforts to achieve inclusion of minority-owned and female-owned business enterprises in the construction of the development, as well as the use of commercially reasonable efforts to ensure that laborers and mechanics employed on the project shall be paid at a prevailing wage rate to the extent reasonably practicable and, in any event, at an aggregate level of not less than 20% of the costs of the laborers and mechanics employed on the construction of the Project Improvements;

(viii) Uses commercially reasonable efforts to achieve the goal of local worker participation by having an approximate minimum aggregate level of 85% of workers participating in the construction of this project being residents of Northeast Ohio; and

(ix) Employs or utilizes sustainability best practices acceptable to the City that are consistent with sustainability best practices and standards outlined in Developer’s Proposal attached as **Exhibit B** and consistent with the terms of Section 7(J) below.

D. Developer currently anticipates that the costs associated with designing and constructing all of the Project Improvements will be approximately \$50,000,000.00, as shown on **Exhibit C** (Preliminary Budget - Improvements) hereto.

E. Developer has represented to the City that it intends to use various sources of funds to finance the costs associated with the Project Improvements, as set forth on **Exhibit D** (Sources and Uses of Funds) hereto, including a Developer contribution (which includes a construction loan) of approximately \$35,000,000.00 (the “Developer Contribution”). The actual costs incurred by Developer in designing and constructing all of the Project Improvements, including Developer’s debt service on the various financings related to the Project, are referred to herein collectively as the “Project Costs” or “Improvement Costs.”

F. Developer presently intends to substantially complete the Project within 30 months after the Closing.

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

H. In furtherance of urban redevelopment and for the public purposes of the City, and to facilitate the Project, Developer has requested that the Cleveland Heights City Council (the “City Council”) adopt an ordinance or ordinances (collectively the “TIF Ordinance”) to create a project-based tax increment financing area for the Project Site (including the Added Property) pursuant to Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the “TIF Statutes”), and to exempt one hundred percent (100%) of the increase in assessed value of each parcel of real property included in the Project Site after such parcel was acquired by the City while engaged in urban redevelopment (being the “Improvement” thereto as defined in Section 5709.40(a) of the Ohio Revised Code) for a period of thirty (30) years (the “TIF Exemption”), commencing, with respect to each parcel within the Project Site, in the year or years specified in or pursuant to the TIF Ordinance, and to provide for the payment of Improvement Costs from service payments in lieu of taxes generated by the Improvement to the parcels within the Project Site (“Service Payments”) and minimum service payment obligations imposed by the City at the request of Developer pursuant to Section 5709.91 of the Ohio Revised Code (“Minimum Service Payments”), subject to the approval of the Cleveland Heights-University Heights City School District (the “School District”) unless the TIF Ordinance specifies that Service Payments shall be paid to the School District in the amount of the taxes that would have been payable to the School District if the Improvement to the parcels within the Project Site had not been exempted from taxation.

I. The City has determined that it is in the best interest of the City to lease the Project Site to Developer for \$10.00 per year with an option to purchase the Project Site for \$10.00 at any time after the fortieth (40th) anniversary of the Effective Date because the City will receive equivalent economic and non-economic benefits from the Project that equal or exceed the value of the Project Site and Improvements because Developer will procure one hundred percent (100%) of the Improvement Costs and all of the operational costs of the Project Improvements and the Project will create jobs, stimulate economic growth in the area, and enable the Project Site to be put to its highest and best use, for the benefit of the people of the City.

J. The City has determined that eliminating competitive bidding with respect to the City's lease of the Project Site to Developer is in the best interest of the public because the lease of the Project Site to Developer is necessary for the Project.

K. The City has determined that granting Developer the option to purchase the Project Site, for \$10.00, at any time after the fortieth (40th) anniversary of the Effective Date, is justified because the Project Improvements will yield an estimated 300 new residents living in the Cedar-Lee district of the City, and will add to the vibrancy and livability of the Cedar-Lee District.

L. The parties contemplate that the project-based TIF for the Project Improvements will be created, subject to the passage of separate ordinances by City Council following the parties' execution of this Agreement.

M. At Closing, the City and Developer shall enter into a lease in substantially the form attached as **Exhibit E** (Form of Ground Lease) hereto (the "Lease"), which shall be a lease for a term of ninety-nine (99) years under which Developer will develop and operate the Project.

N. Execution of this Agreement was authorized by Ordinance No. _____, passed by City Council on _____, 2021.

O. The parties desire to memorialize in this Agreement their understandings as to the various responsibilities and obligations with respect to the Project and certain related matters.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows;

1. INCORPORATION OF RECITALS.

The Recital clauses set forth above are fully incorporated in this Agreement and specifically made a part hereof, as if fully restated herein, and such Recitals are deemed to be fully effective and a reflection of the agreements and understandings of the parties.

2. DESCRIPTION OF THE PROJECT IMPROVEMENTS.

Subject to adjustments that may be made as part of the development and approval of the Final Development Plan (as defined in 5(B) hereof) and any adjustments to the Final Development Plan that are made in accordance with Section 7(A) hereof, and further subject to any prior termination of this Agreement pursuant to Section 4(C) or 9(A) below, the parties agree that the Project will include the following Improvements:

(A) ***Apartments.*** The Project shall include approximately 200-225 market-rate apartments with full amenity packages in one or more buildings that may vary in height (collectively, the "Apartments"). Some of the Apartments may "wrap" the existing City parking garage and some of the Apartments shall have universal design and accessibility. The Apartments are expected to be first-class in all respects and shall be constructed to be considered top of the market.

(B) ***Non-Residential and Commercial Space.*** The Project shall include between 5,000 and 9,000 square feet of new non-residential space such as commercial, retail and/or restaurant space (collectively, the “Non-Residential Space”). The anticipated retail categories include the concepts described in the Merchandising Plan attached as **Exhibit F**, and Developer agrees that it shall not lease any Non-Residential Space in the Project in a manner that (i) is inconsistent with the Merchandising Plan, or (ii) results in a relocation of existing businesses within the City unless, in either case, the City Manager consents to such lease, which consent shall not be unreasonably withheld, delayed or conditioned (the parties hereto acknowledge and agree that all references to the term “City Manager” herein shall be deemed to be references to the City Mayor from and after the date the elected Mayor replaces the City Manager as the chief executive official of the City, which is expected occur on or about January 1, 2022).

(C) ***City Parking Garage.*** The City owns the City Parking Garage located within the Project Site. The City Parking Garage may be “wrapped” with multi-family housing units developed by Developer as part of the Project. The City and Developer intend to enter into a parking facilities agreement substantially in the form of **Exhibit K** (the “Parking Facilities Agreement”) following the approval of the Final Development Plan pursuant to the terms of which (i) the City will undertake to refinance the City’s current tax-exempt debt associated with the City Parking Garage (the “Tax-Exempt Garage Debt”), which currently matures on December 1, 2028, with a federally taxable financing (the “Taxable Garage Debt”) with the goal of having the Taxable Garage Debt mature on or about December 1, 2033, and the City currently expects such refinancing to lower the City’s annual debt service requirements with respect to the City Parking Garage to approximately \$300,000 annually; (ii) on the terms described in the Parking Facilities Agreement, from and after the Occupancy Date (as defined in the Parking Facilities Agreement), to, but not including, the Stabilization Date (as defined in the Parking Facilities Agreement), Developer will assume a proportionate amount equal to the Applicable Percentage (as hereinafter defined) of all maintenance costs and property tax payments associated with the City Parking Garage; (iii) on the terms described in the Parking Facilities Agreement, from and after the Stabilization Date, (a) Developer will agree to purchase permits from the City for the Applicable Percentage of the parking spaces in the City Parking Garage for use by Developer’s tenants and guests in an area of the City Parking Garage that is reserved for such tenants’ use for an aggregate annual purchase price equal to the Applicable Percentage multiplied by the aggregate annual debt service on the Taxable Garage Debt; and (b) the remaining spaces in the City Parking Garage and certain parking spaces in areas outside the City Parking Garage but on the Project Site as further described in the Parking Facilities Agreement (the “Project Site Parking Areas”) will remain public parking at all times throughout the term of the Ground Lease (collectively, the “Public Parking Spaces); and (iv) Developer will continue to purchase the number of permits as described in subsection (iii)(a) above until the maturity date of the Taxable Garage Debt, at which time the City will transfer ownership of the City Parking Garage to Developer, for no consideration, subject to (1) the Ground Lease, which shall remain in place, and (2) the agreement of Developer to continue to provide public access to the Public Parking Spaces until the earlier of (i) the expiration of the term of the Ground Lease, or (ii) the exercise by the Developer of its option to purchase the Project Site pursuant to the terms of the Ground Lease, all as more specifically described in the Parking Facilities Agreement. As used herein, the term “Applicable Percentage” will mean, (1) from and after the Occupancy Date to but not including the Stabilization Date, approximately 30%, and (2) from and after the Stabilization Date until the maturity date of the Taxable Garage Debt, approximately 60%, except that, for purposes of determining the number of Public Parking Spaces

in the City Parking Garage, the Applicable Percentage will be approximately 60% (such that there will be approximately 225 private parking spaces and approximately 152 Public Parking Spaces in the City Parking Garage). Such percentages and the allocation of parking spaces in the City Parking Garage to private parking spaces and Public Parking Spaces, as well as the percentage of the Apartments that must be leased to achieve stabilization of the Project (and the date by which stabilization must occur), are to be determined by the City and Developer after approval of the Final Development Plan based on the timing of the approval of the Final Development Plan in the context of the overall construction schedule for the Project and the total number of private parking spaces in the City Parking Garage to be reserved for tenants in the Project Improvements (which shall not be less than 200 or more than 225 of the total parking spaces in the City Parking Garage). Developer intends to provide any landscaping for the area surrounding the City Parking Garage, even if such landscaping is on City-owned property. Developer may enter into one or more subleases or rental agreements with its tenants for the parking spaces for which Developer purchases permits pursuant to the Parking Facilities Agreement as needed to support the viability of the Apartments.

(D) ***Added Property.*** The City and Developer will coordinate on efforts to include any Added Property into the Project Site. This coordination will be consistent with an Added Property plan. The City and Developer intend for this plan to be included in this Development Agreement when appropriate. Developer and City agree to include up to \$500,000.00 of the City's cost associated with any Added Property as part of the Project Costs to be financed within the TIF Financing described in Section 8 hereof.

(E) ***Gathering and Green Spaces.*** Gathering and green/open space locations shall be clearly delineated on all plans and materials, with indications of which locations are open to the public and which locations are for use by residential tenants of the Project. All open spaces and gathering locations on the Project Site will be owned and maintained by the Developer. Programming of the public spaces and/or their use for activity, public information, signage, etc. shall require notification to and approval from the Developer (not to be unreasonably withheld, conditioned or delayed) and may be facilitated through the City.

(F) ***Infrastructure Needs and Upgrades Directly Resulting From the Development.*** Any infrastructural needs or infrastructure upgrades that directly result from the construction of the Project shall be the responsibility of the Developer to the extent required as part of the Final Development Plan. The parties shall collaborate and coordinate with regard to design, engineering and construction of such upgrades with any City infrastructural improvements so as to streamline construction and reduce costs where possible.

(G) ***Offline Flow Detention Facility at Lee Road and Meadowbrook Road.*** The parties shall collaborate and coordinate with regard to the City's identified need to construct offline storm and sewer flow detention capacity on the east side of Lee Road north of Meadowbrook Road.

3. LEASE OF PROJECT SITE.

(A) ***Execution of Lease.*** At Closing (as defined in Section 4(A)(iii)), the City shall lease the Project Site to Developer, for a term of ninety-nine (99) years, at rent of \$10.00/year, by executing the Lease in substantially the form of **Exhibit E**. Under the Lease, Developer shall be solely responsible for all operating costs, insurance premiums, real estate taxes and assessments, and all other costs associated with the Project Site and the Project Improvements during the term of the Lease; provided that certain costs associated with the City Parking Garage shall be allocated between the City and Developer at various times during the term of the Lease as provided in the Parking Facilities Agreement. If requested by the Developer, the Lease may include a ground lease to one affiliate of Developer and a sublease by that affiliate to a separate affiliate of Developer that will construct and own the Project Improvements.

(B) ***City's Recording of Memorandum of Lease.*** At the request of either party, the parties shall execute and record a statutory form of Memorandum of Lease in the Cuyahoga County Recorder's Office, which shall provide that it shall automatically terminate upon the exercise and closing of the purchase option under the Lease and the City shall execute any documents appropriate to evidence such termination. The Lease shall "run with the land" and be binding upon Developer and its successors and assigns.

(C) ***Option to Purchase.*** As provided in the Lease, at any time after the fortieth (40th) anniversary of the Effective Date, Developer shall have the right to purchase the Project Site for \$10.00, exercisable by giving no less than 90 days prior written notice to the City, as more particularly set forth in the Lease.

(D) ***Financing of the Project.*** If necessary or appropriate for any portion of the financing of the Project, at the request of Developer, Developer and the City shall negotiate diligently and in good faith to structure the Lease as a financeable ground lease.

(E) ***Sales Tax Savings.*** In addition to the TIF Exemption, the City will, to the extent permitted by law and if requested by Developer, either structure the Lease, or permit Developer to enter into a sublease of the Project, to allow for an exemption from state and local sales taxes on all materials purchased for the construction of the Project.

4. CLOSING ON LEASE OF PROJECT SITE.

(A) ***Closing.*** Provided the Conditions (as defined in Section 4(B) below) have been satisfied, the City shall (i) execute the Lease and the Parking Facilities Agreement, (ii) transfer exclusive possession of the Project Site to Developer, and while retaining possession of the City Parking Garage consistent with the Parking Facilities Agreement, (iii) take such other actions or execute such other documents as contemplated hereunder, reasonably appropriate to consummate the transactions contemplated hereunder, or required to evidence satisfaction of the conditions or required by Developer's title company to insure Developer's leasehold interest in the Property (the "Closing") on or before the date which is the later of (a) December 31, 2022 or (b) six (6) months following the date of the approval of the Final Development Plan (as it may be extended, the "Outside Closing Date") so as to enable Developer to commence construction activities; subject, however, to any and all easements, covenants, restrictions and other matters of

record existing on the Effective Date affecting the Project Site, and further subject to the public parking requirements set forth in the Parking Facilities Agreement. If all of the Conditions have not been met by the Outside Closing Date, the date of the Closing may be extended by the City for up to six (6) months at the request of Developer, as set forth in Section 4(C) below, and any such request shall not be unreasonably denied as long as Developer is working diligently to satisfy the Conditions. Subject to the provisions in the last paragraph of Section 9(A), Developer will use good faith efforts to complete its due diligence in accordance with Section 9 on or prior to the date set forth above such that, at the Closing, Developer will be in a position to lease the Project Site for the term of the Lease without any environmental, title, financing or other contingencies of any kind.

(B) **Conditions.** The Closing shall not occur until all of the following conditions (“Conditions”) have been met:

(i) Developer shall have provided to the City a certificate certifying that Developer has secured all funding required by Developer in order to complete the Project Improvements in substantial accordance with the Budget (as defined in Section 6(C)), the Final Development Plan and the Final Schedule (each as defined in Section 5);

(ii) Developer shall have received all governmental or other permits, licenses and approvals necessary or appropriate for the commencement of the Project and is prepared to commence construction within 60 days of the Closing;

(iii) Developer shall have obtained approval (as contemplated under Section 5) of the Final Development Plan and the Final Schedule, and Developer shall have delivered to the City a written confirmation that Developer no longer has the right to terminate this Agreement under Section 5(C) hereof;

(iv) Developer shall have entered into a construction agreement with the general contractor for the Project;

(v) Developer and City shall have entered into the Parking Facilities Agreement in substantially the form attached hereto as **Exhibit K**;

(vi) Developer shall have paid or reimbursed the City for the “Costs” as defined and contemplated in Section 8(B);

(vii) Developer shall have provided evidence to the City that it has obtained the amounts and types of insurance required to be obtained by Developer as provided in Section 11;

(viii) Developer shall have delivered to the City a detailed construction Budget for the Project as provided in Section 6(C);

(ix) Developer shall have delivered to the City (a) a completion guaranty of Developer and David M. Flaherty as required by Section 7(D) below, and (b) if required, a guaranty by David M. Flaherty of Developer’s payment obligations relating to any TIF financing related to the Project in a form reasonably satisfactory to the City;

(x) Developer shall have delivered to the City a final Merchandising Plan for commercial tenants consistent with the plan described in **Exhibit F**;

(xi) Developer shall have delivered to the City a detailed traffic impact and parking study as described in Section 5(B) of this Agreement;

(xii) Developer shall have delivered to the City a preliminary pro forma statement of revenues and expenses of the Project following completion as described in Section 5(D) of this Agreement;

(xiii) Developer shall have delivered a detailed plan reasonably acceptable to the City relating to security and avoidance of nuisances on the Project Site during construction as is typical for projects of similar nature and scope;

(xiv) Developer shall have delivered to the City (contemporaneously with the Closing) evidence that it has completed its due diligence in accordance with Section 9(A) and shall have delivered to the City a written confirmation that Developer no longer has the right to terminate this Agreement under Section 9(A) hereof;

(xv) Developer shall have delivered to the City evidence that it has complied with the requirements of Section 9(B) with respect to the Cedar Lee Special Improvement District;

(xvi) The City Council shall have adopted the TIF Ordinance providing for the TIF Exemption and authorizing the charge and collection of the Service Payments and, if requested by Developer, the Minimum Service Payments for the payment of Improvement Costs;

(xvii) The City and the School District shall have entered into a compensation agreement (the "School Compensation Agreement") providing for the compensation of the School District for a portion of the real estate taxes that would have been paid to the School District had the City not granted the TIF Exemption, which compensation shall be payable solely from the Service Payments and shall otherwise be acceptable in amount to Developer;

(xviii) Developer shall have updated its due diligence and feasibility studies, tests, reports and analyses and there have been no material changes.

(C) ***Failure to Meet Conditions.*** In the event either party determines that the Conditions have not been met by the Outside Closing Date, and the City has not agreed to an extension of such date in accordance with the last sentence of this Section 4(C), each party shall have the right to terminate this Agreement by written notice to the other at any time after such date (but prior to the date on which both parties agree that all Conditions have been met), and upon such notice this Agreement shall terminate and except as provided in Section 8(B), neither party shall thereafter have any rights or obligations under this Agreement. Notwithstanding the foregoing, the City may extend the foregoing termination date by up to sixty (60) days at the request of Developer, and such request shall not be unreasonably denied as long as Developer is working diligently to satisfy the Conditions.

5. TIMELINE; PREPARATION OF PLANS AND SPECIFICATIONS; TRAFFIC STUDY.

(A) ***Timeline/Schedule.*** A Preliminary Schedule/Timeline is attached as **Exhibit H.** Prior to execution of the Lease, Developer shall deliver to the City a final schedule/timeline (the “Final Schedule”), which shall be in the form of a project critical path schedule, resource loaded, and coordinating and integrating the anticipated design and construction schedules, Developer’s responsibilities, City responsibilities, governmental agency reviews, submittal and procurement schedules and other activities as are necessary for timely completion of the Project. The Final Schedule shall indicate proposed sequences and durations, milestone dates for receipt and approval of pertinent information, processing of shop drawings and samples, delivery of materials or equipment requiring long lead-time procurement, anticipated occupancy dates showing portions of the Project having occupancy priority, if any, over other portions and an estimated completion date. Developer agrees that the Project shall be developed substantially in accordance with the Final Schedule, subject to delays caused by Force Majeure.

(B) ***Preliminary and Final Development Plan.*** Developer shall be solely responsible for the planning, design, construction, administration, oversight and completion of the Project. At such time as Developer deems appropriate, it shall begin preparing a preliminary development plan for the Project Site. Developer shall submit such “Preliminary Development Plan” to the City’s Director of Planning (“Planning Director”), for review and comment, with copies to the City’s Director of Economic Development (“EDD”). Any objections by the City’s Planning Director shall be submitted in writing to Developer within fifteen (15) business days of receipt of said drawings. The presentation of the Preliminary Development Plan to the Planning Commission, and final approval of a Final Development Plan for the Project Site, by the Planning Commission, Architectural Board of Review (the “ABR”), and any other City board or commission as appropriate as determined by the City, shall all proceed in accordance with the steps outlined in the City of Cleveland Heights Zoning Code. None of those approvals are guaranteed by this Agreement. Nothing in this Agreement shall require Developer to include in the Preliminary Development Plan or the Final Development Plan (as defined below) any specific component of the Project Improvements described in Section 2 if Developer reasonably determines that completing such component is not economically feasible. The basis for Developer’s determination that completing a component of the Project Improvements is not economically feasible shall be set forth in a report submitted to the EDD and the Planning Director prior to consideration of the Final Development Plan by the appropriate City board or commission.

As part of this process, Developer shall submit a traffic impact (including, but not limited to, vehicular, pedestrian and bicycle) study and parking studies to the City’s Planning Department, and Departments of Public Works, Fire, and Police for review, with copies to the Economic Development Department and hereby agrees to cooperate and coordinate with the City to use commercially reasonable efforts to mitigate traffic and parking problems identified in such studies to the satisfaction of these Departments. If requested by the City, Developer agrees to have a district-wide parking study completed (in which case the City will pay the incremental cost of expanding such study to a district-wide study). The Preliminary and Final Development Plan, including all proposed parking, traffic, architectural design and site improvements, shall be reviewed by the Planning Director and other Departments as noted above. The Planning Director and other Departments as noted above shall provide recommendations based on such review. The

Preliminary and Final Development Plan for the Project Site, as submitted and proposed by Developer, and as approved by the Planning Commission, the Architectural Board of Review (ABR), and any other City board or commission as appropriate as determined by the City, as the same may thereafter be modified during construction following the process outlined in the City of Cleveland Heights Zoning Code, is referred to herein as the “Final Development Plan.”

(C) ***Right to Terminate Agreement for Failure to Approve Final Development Plan.*** The parties agree to work diligently and cooperatively with each other for City approval of the Final Development Plan. If for any reason the parties, after exercising reasonable efforts, are unable to obtain approval of the City and other governmental authorities as needed for the Final Development Plan, by the Outside Closing Date, and that date has not been extended by the City in accordance with Section 4(C), each party shall have the right to terminate this Agreement by giving written notice thereof to the other party no later than sixty (60) days thereafter (but prior to the date on which the Final Development Plan is approved), whereupon neither party shall thereafter have any further rights or obligations hereunder except as described in Section 8(B). For purposes of this Section 5(C) and Section 4(B)(iii), the term “approval” means final legislation or administrative action without further appeal or referendum adopted in accordance with the Charter and Ordinances of the City and with standards of other applicable governmental authorities that approves all aspects of the Final Development Plan.

(D) ***Preliminary Pro Forma.*** Prior to the Closing, Developer shall submit to the City a preliminary pro forma statement of revenues and expenses for the Project following construction, consisting of Developer’s good faith projection of revenues and expenses of the Project following completion, based on sound accounting principles consistently applied, and including assumptions utilized by Developer in deriving the information contained therein.

6. OBTAINING & APPROVING CONSTRUCTION BIDS.

(A) ***Final Bids.*** Developer shall not solicit bids from contractors or subcontractors that are listed on the Federal Debarred List or the State Debarred List or that are identified as being debarred on the City’s Vendor’s Performance list. The final bids for the Project, as approved by Developer, are referred to herein as the “Final Bids.”

(B) ***MBE/FBE Participation.*** Developer shall use commercially reasonable efforts to achieve MBE/FBE participation goals established by the City in connection with the Project as may be set by mutual agreement of Developer and the City.

(C) ***Prevailing Wage.*** Developer shall use commercially reasonable efforts to ensure that laborers and mechanics employed on the Project shall be paid at a prevailing wage rate to the extent reasonably practicable and, in any event, at an aggregate level of not less than 20% of the costs of the laborers and mechanics employed on the construction of the Project Improvements;

(D) ***Budget.*** Promptly after the approval of the Final Development Plan contemplated under Section 5(B), Developer shall provide the City with an updated construction budget for the Project specifying all projected costs and expenses of every kind and nature to be incurred in connection with the Project, including all costs of labor, materials, equipment and

fixtures needed for completion of the Project and all other costs, fees and expenses relating to construction of the Project Improvements (as the same may thereafter be updated from time to time during construction, the “Budget”).

7. CONSTRUCTION.

(A) **Construction.** Once the parties have approved the Final Development Plan and the Closing has occurred, and Developer has received all necessary and required permits and approvals, including but not limited to, approval of building plans by the City’s Building Department, Developer shall proceed with construction of the Project. Developer shall thereafter complete construction of the Project in substantial accordance with the Final Development Plan, provided that Developer may make changes to the Final Development Plan in accordance with the process set forth in the City’s Zoning Code. Except for assistance to be provided by the City to Developer under this Agreement, Developer shall be solely responsible for constructing and paying for the Project. Developer represents and warrants to the City that the sources of funding set forth on Exhibit D hereto are expected to be adequate to enable Developer to complete the Project in accordance with the current scope of the Project; subject to cost increases resulting from matters approved in the Final Development Plan.

The Project shall be performed and completed by Developer, its contractors and subcontractors, or any successors thereof, in a good and workmanlike manner using first-class materials in accordance with all federal, state or local laws, statutes, ordinances, building codes, orders, rules and regulations applicable to the Project, whether in force on the Effective Date or enacted thereafter (the “Legal Requirements”). Responsibility for acceptable quantity and quality of work performed rests with Developer. The City makes no warranty relative thereto. Further, Developer agrees not to hold the City liable in any manner for any deficiency in the quantity or quality of work performed or to be performed. All work in any existing and future right of way shall only be done under permit from the City. Developer shall be responsible for obtaining and paying for all necessary permits and licenses and for obtaining all necessary third-party approvals for the Project, including but not limited to, driveway and other access or ingress/egress permits or easements. Developer shall be responsible for all tap-in fees, impact fees or other fees related to procuring, upgrading, or bringing utilities to, and through, the Project Site, as required to construct and operate the Project.

Upon the commencement of construction of the Project Improvements, Developer shall diligently pursue such construction to completion in accordance with the Final Schedule, subject to delays caused by Force Majeure (as defined in Section 13(A)), and shall use its commercially reasonable efforts to avoid delays and resolve disputes. Developer shall give the City notice of the initial occurrence of each and every individual event of Force Majeure which may materially impact the construction of the Project Improvements within thirty (30) days after the commencement of such event.

Developer will not deviate from the Final Development Plan in any material fashion without obtaining approval of a revised Final Development Plan by the Planning Commission and City Council to the extent required by and in accordance with the process set forth in the City of Cleveland Heights planning and zoning ordinances.

(B) **Construction Sequencing.** The sequencing of construction of the Project Improvements shall be in accordance with the Final Development Plan.

(C) **Surety Bonds.** Prior to commencing construction of the Project, Developer shall provide the City with evidence that the general contractor for the Project is bondable.

(D) **Completion Guaranty.** At the Closing, Developer shall cause Developer and David M. Flaherty (“Guarantors”) to deliver to the City a Completion Guaranty (the “Completion Guaranty”) for the Project, which Completion Guaranty shall be in a form reasonably acceptable to the City, subject to the approval of the Director of Law.

(E) **Applicable Laws.** Developer shall obtain and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements relating to development of the Project. By executing this Agreement, the City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits and other approvals from the City’s Department of Planning, the City’s Department of Public Works, the City’s Planning Commission, Architectural Board of Review or any other City board or commission, that may be required in connection with the Project. Developer agrees that it will comply with all applicable federal, state and local laws with regard to housing opportunities and fair employment practices and will not discriminate on the basis of the protected classes identified in Section 749.01 of the Cleveland Heights Codified Ordinances (age, race, color, religion, sex, familial status, national origin, disability, sexual orientation, or gender identity or expression) in connection with the development of the Project Site or any related activities pursuant to this Development Agreement.

(F) **Inspection of Work.** During construction, the City, its employees and agents, at its own expense, shall have the right at all reasonable times, after written notice to Developer, subject to Developer’s reasonable guidelines and in a manner not to unreasonably interfere with or delay construction activities, to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement and for any other reasonable purpose. The foregoing shall not be deemed as limiting in any way the rights of the City’s building inspectors to conduct inspections from time to time and without prior notice, in accordance with normal City inspection procedures.

(G) **Mechanics Liens.** If a mechanics’ lien shall at any time be filed against the Project, Developer shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged as a lien against the Project, by bonding or otherwise.

(H) **Hazardous Materials.** Developer, its officers, agents, employees, contractors, subcontractors, guests and invitees shall not bring in, on or incorporate into the real property or any of the Project, any asbestos or other hazardous or toxic substance in contravention of any federal, state, county or city health, safety, or sanitation law, ordinance, regulation or rule. If it is determined that Developer has caused or permitted hazardous materials to be brought in, on or incorporated into the Project Site or the Project Improvements in violation of law, Developer shall fully remediate such condition within thirty (30) calendar days following any determination by any government authority. In the event such remediation reasonably requires a longer period of

time to complete, such thirty-day period shall be reasonably extended provided Developer has commenced such remediation within the initial thirty-day period and pursues and completes such remediation with due diligence.

(I) ***Sales Tax Exemption.*** Upon the request of Developer, and as provided in Section 3(E) hereof, the City shall cooperate with Developer, contractors and subcontractors working on the Project Improvements to facilitate Developer's obtaining sales tax exemption certificate(s) under Section 5739.02 of the Ohio Revised Code, if available under existing law, for the purchase of materials to be used in the construction of the Project Improvements. The Developer acknowledges that any such exemption will require the participation of another governmental entity and may increase costs as a result of fees payable for that participation and increased complexity and resulting increases in fees and expenses of counsel and other advisors to transaction participants.

(J) ***Green Infrastructure and Utilization of Alternative Sources of Energy.*** Developer shall design and construct, at its expense, the Project to incorporate a variety of green building components. This shall be demonstrated through indication of meeting the criteria for standards such as the United States Green Building Council Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND), Enterprise Community Partners Enterprise Green Communities, Institute of Sustainable Infrastructure (ISI) Envision, Green Building Initiatives Green Globes, National Association of Home Builders National Green Building Standard, International Living Building Institute Living Building Challenge or equivalent green building/infrastructure program criteria acceptable to the Planning Director. The Project shall make best efforts to integrate various components but will not be required to meet specific thresholds and/or achieve a predetermined level of green building (or similar designation).

8. FINANCING; FEES AND EXPENSES OF CITY.

(A) ***Financing.*** Subject to Section 10(B) hereof, the City will cooperate with Developer to establish the TIF Exemption under the TIF Statutes. The TIF Ordinance establishing the TIF Exemption will provide for the charge and collection of Service Payments and, if requested by Developer, Minimum Service Payments for the payment of Improvement Costs, and, as applicable, provide for the assignment of the Service Payments and any Minimum Service Payments, as follows: (i) by the City to another governmental issuer to enable that issuer to issue revenue bonds or provide financing for the Improvement Costs, and (ii) by the City or other governmental issuer to a corporate bond trustee acceptable to the Developer and City (the "TIF Financing"). The City will work with Developer to structure the TIF Exemption, and any TIF Financing, in a manner that is consistent with other components of Developer's plan of finance for the Project. Notwithstanding anything in this Agreement to the contrary, if requested, the City will cooperate with Developer and take such actions and execute and deliver such documents, including a loan or cooperative agreement, as may be reasonably required to enable the applicable issuer to provide the TIF Financing. The City will assist Developer, if requested, with its negotiations with the School District concerning the compensation to be paid to the School District pursuant to the School Compensation Agreement. Any Service Payments not required to pay debt service on the TIF Financing or compensation payable to the School District pursuant to the School Compensation Agreement will be applied, at the sole discretion of the City, to one of the following uses: (a) to reimburse Developer for Improvement Costs paid by Developer, (b) to pay costs of

additional improvements to the Project Site, or (c) to prepay a portion of the indebtedness incurred as part of the TIF Financing.

The City acknowledges that in addition to the TIF Financing, Developer expects to create a multi-tiered plan of finance for the Project and that Developer shall have the right to grant a security interest, mortgage or other encumbrance (in any event, an “Encumbrance”) to secure debt related thereto (“Developer Financing”) in Developer’s leasehold interest in the Project Site and all of Developer’s right, title and interest in the Project Improvements, the Parking Facilities Agreement and any fixtures, equipment and personal property of the Developer located in or on the Project Improvements or the City Parking Garage. Except as described in Section 3 of this Agreement and this Section 8, no such Encumbrance shall extend to, affect or be a lien upon the fee simple estate and interest of the City in the Project Site, any part thereof or the City Parking Garage, and any Encumbrance securing the Developer Financing shall be subordinate to the liens on the Project Site, the Project Improvements and the City Parking Garage securing the TIF Financing and any lender, as part of the Developer Financing, shall acknowledge and consent to such subordination in a manner acceptable to the City.

In connection with any Developer Financing, the City shall cooperate with Developer in the giving of any estoppel certificates with respect to the Lease and the Parking Facilities Agreement granting of any customary recognition and non-disturbance agreements with respect to the Lease and the Parking Facilities Agreement as may be reasonably required with respect to Developer Financing.

(B) ***Fees and Expenses.*** Developer agrees to reimburse the City for all out-of-pocket costs incurred by the City in connection with the preparation and negotiation of the Memorandum of Understanding fully executed on July 13, 2021 (the “MOU”), this Agreement and any other documentation contemplated hereby upon the execution of the Lease of the Project Site to Developer (the “Costs”); provided the Costs are consistent with the estimates provided by the City to Developer which is attached hereto as Exhibit J. Developer acknowledges that the estimate of the Costs is based upon certain assumptions, and that such estimate may need to be adjusted by mutual agreement of the City and Developer to the extent circumstances change as the Project progresses. In the event this Agreement terminates for any reason prior to execution of the Lease, Developer shall be obligated to reimburse the City for the Costs, but the amount of such reimbursement shall not exceed \$25,000. Such amount is exclusive of and in addition to any amount payable by the Developer directly to bond counsel, or other transaction participants or advisors, under any separate agreement signed or otherwise accepted by Developer

Developer will pay all costs and expenses incurred by Developer in connection with the development of the Project (subject to its rights to contest), including, but not limited to, all costs and expenses incurred by Developer in connection with title searches and title insurance, environmental studies and reports, feasibility studies, traffic impact studies and parking studies, appraisals, surveys and plats, architectural and construction costs, financing costs, and all legal fees incurred by Developer.

9. DUE DILIGENCE; ECONOMIC FEASIBILITY; COMMUNITY ENGAGEMENT; CITY COOPERATION.

(A) *Due Diligence.* Developer or its designee shall have a period of time commencing on the Effective Date and continuing for 90 days (the “Inspection Period”) to conduct inspections, studies and investigations of the Project Site and the Project. Developer and its agents, representatives and contractors has been granted full access to the land comprising the Project Site, and to the City Parking Garage, pursuant to an Access Agreement dated as of _____, 2021 (the “Access Agreement”) for purposes of conducting such physical and environmental inspections, tests and surveys, including without limitation a Phase I environmental survey, soil borings, geotechnical testing, surveys and title searches (collectively, the “Inspections”) of the Project Site as Developer deems necessary or appropriate, in Developer’s sole discretion, to determine the feasibility, costs and physical and other impediments to development of the Project. Developer and City hereby agree the Access Agreement shall remain in full force and effect through the first to occur of the Closing or the termination of this Agreement.

Developer shall allow the City to review any and all test results and reports relating to Inspection Work performed at the Project Site. Developer shall be responsible for any damage to the Project Site caused by Developer or Developer’s inspectors or contractors during such Inspections, shall repair and restore the Project Site to its condition immediately prior to said Inspections, and shall indemnify and hold the City harmless from and against any and all costs, claims and liabilities arising therefrom except arising out of pre-existing conditions.

The City shall furnish or make available to Developer upon the Effective Date, all available information with respect to the history and physical and environmental condition of the Project Site which is in the City’s possession or control, including without limitation any studies or tests, surveys, plats and title reports. Additionally, the City agrees that between the Effective Date and the date of Closing it will not take any actions or steps that might have a material impact on the environmental condition, soil condition, survey status or title of the Project Site or the City Parking Garage without Developer’s prior consent.

Developer agrees that during the Inspection Period it will complete or cause to be completed, at its cost, such market studies and analysis (collectively, “Market Studies”) as it deems necessary or appropriate to determine the economic feasibility of the Project as described in this Agreement. Developer shall allow the City to review any and all such Market Studies and analysis.

In the event that Developer is dissatisfied with the results of the Inspections for any reason whatsoever, or determines, based upon the Market Studies, that the Project, or any portion thereof, as described in this Agreement is not economically feasible for the Project Site, Developer may give written notice to the City to such effect and thereafter shall have no obligation or liability with respect to the Project other than the reimbursement of the Costs not to exceed \$25,000 to the City. Alternatively, Developer may propose changes to the nature and scope of the proposed Project. If such changes are rejected by the City, Developer may likewise give written notice to the City and thereafter shall have no obligation or liability with respect to the Project other than the reimbursement of the Costs to the City not to exceed \$25,000. Such amount is exclusive of and in addition to any amount payable by the Developer directly to bond counsel, or other transaction participants or advisors, under any separate agreement signed or otherwise accepted by Developer

(B) ***Community Engagement.*** Developer acknowledges that the City considers community engagement to be a critical component of the development process for the Project, and Developer agrees to cooperate with the City to gather input concerning the Project from residents and businesses in the Cedar-Lee district and the greater Cleveland Heights community.

Developer agrees that it shall meet personally with the Cedar Lee Special Improvement District (the “SID”) to review for potential incorporation into the Project the design elements set forth in the SID’s transportation and streetscape plan known as the Lee Road Streetscape Plan. Developer shall use reasonable efforts to enter into an agreement to participate in the SID that is acceptable to both Developer and the SID.

Developer agrees that as part of its Project review process it will make itself reasonably available to meet at convenient times and places with interested/inquiring task forces and community groups and to participate upon reasonable request in City Council meetings, public briefings and information sessions that are open to all interested parties. Developer agrees that, to the extent commercially reasonable, it will endeavor to incorporate into the Project, if and where appropriate, suggestions made during the foregoing.

(C) ***City Cooperation.*** The City intends to work collaboratively with Developer to refine the Project and to assist Developer as much as possible with streamlining City zoning, permitting and design review and approval processes.

The City will cooperate with Developer in connection with the vacation of existing streets, dedication of new streets, re-platting/reconfiguration of the Project Site, changes in zoning (if applicable) and execution of reciprocal easement agreements or similar instruments with respect to the Project which are reasonably necessary to facilitate ingress, egress, access to utilities and access to the City Parking Garage and to other public improvements.

The City will cooperate with Developer with respect to requests that Developer makes, from time to time, of other governmental or quasi-governmental entities providing resources or funding to the Project (*i.e.*, Federal, State, County, Port Authority).

(D) ***Existing/Future Easements/Agreements/Restrictions.*** In designing the Project Site improvements, Developer shall reasonably consider and plan to reasonably accommodate adjacent property owners and businesses that utilize portions of the Project Site to serve and/or facilitate access to or use of the rear of these adjacent properties. Continuation of such uses may be reasonably pursued through establishment of easements or other similar instruments as may be required.

10. TAXES AND IMPOSITIONS; REAL PROPERTY TAX EXEMPTION.

(A) ***Taxes and Impositions.*** Commencing on the Closing and thereafter during the term of the Lease, except as otherwise provided in the Parking Facilities Agreement, Developer shall pay all real property taxes, service payments, minimum service payments, assessments and other similar impositions (prorated on a lien basis) with respect to the Project Site directly to the taxing authority before the same become overdue. The City will cooperate with Developer to cause all bills and statements for such taxes, assessments and other impositions to be delivered directly to Developer and shall promptly deliver to Developer any such bills and statements which

the City receives. Except as otherwise provided in this Agreement or under the terms of the proposed TIF Financing, Developer shall be permitted to contest any real property taxes, assessments or other impositions with respect to the Project in accordance with applicable law and procedures. Developer may apply for and receive any and all other incentives available and applicable to the Project from any and all federal, state and local governmental authorities and the City will cooperate with Developer to apply for such incentives.

Developer shall direct its general contractor to make all income tax payments associated with such work during construction of the Project and to direct its subcontractors to do the same.

(B) ***TIF Exemption.*** The City agrees to take all such actions as are necessary to establish the TIF Exemption under the TIF Statutes; provided that the parties acknowledge that the establishment of the TIF Exemption under the TIF Statutes will require the passage of by the City Council of the TIF Ordinance. The parties acknowledge that the TIF Exemption shall not occur unless and until the City Council has passed the TIF Ordinance (provided that the passage of the TIF Ordinance is not guaranteed by this Agreement) and the State of Ohio Department of Taxation has issued a final determination with respect to “improvements”, as defined in the TIF Statutes, to one or more parcels included in the Project Site in accordance with Section 5715.27 of the Ohio Revised Code. The City will cooperate with Developer in filing an application with the State of Ohio Tax Commissioner, including signing such application if required.

11. INSURANCE; INDEMNITY.

(A) ***Insurance during Construction.*** Until such time as all construction has been completed, Developer shall maintain the following insurance: (i) Commercial General Liability insurance of at least Ten Million Dollars (\$10,000,000) per occurrence, combined single limit/\$10,000,000 aggregate (through a combination of primary and excess/umbrella coverage), naming the City as an additional insured and providing that Developer’s policy is primary and any City policy is secondary and non-contributing, (ii) customary builder’s risk insurance in the amount of one-hundred percent (100%) of the value of the Project Improvements (exclusive of land and foundation), (iii) worker’s compensation insurance in such amount as required by law, and (iv) all insurance as may be required by Developer’s lenders or the TIF Financing documents. Developer shall also require any contractors and subcontractors working on the Project Site to maintain (x) Commercial General Liability insurance of at least Five Million Dollars (\$5,000,000) per occurrence, combined single limit/\$5,000,000 aggregate, naming the City as additional insured and providing that the contractor’s or subcontractor’s policy is primary and any City policy is secondary and non-contributing, (y) worker’s compensation insurance in such amount as required by law, and (z) all insurance as may be required by Developer’s lenders or the TIF Financing documents. All insurance policies (excluding worker’s compensation insurance) shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City (ten days for cancellation for nonpayment of premiums).

(B) ***Waiver of Subrogation in Favor of City.*** Notwithstanding anything in this Agreement to the contrary, Developer hereby waives all claims and rights of recovery, and on

behalf of its respective insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would be covered by the insurance required under this Agreement to be maintained by Developer, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Developer shall at all times protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its respective property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) **General Indemnity.** Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, and except to the extent caused by the negligence or willful misconduct of the Indemnified Parties (as defined below) or any one or combination thereof, Developer agrees to defend, indemnify and hold the City, its employees, agents, contractors and subcontractors (collectively, the “Indemnified Parties”) harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys’ fees), demands, judgments, liability and damages for personal injury or property damage (excluding diminution in value or claims of eminent domain) asserted against the Indemnified Parties as a result of or arising directly from the acts of Developer or its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Project (collectively referred to as “Claims”). Developer shall undertake, at its sole expense and through counsel reasonably satisfactory to the City’s Law Director, the defense of the City in any Claims covered by the foregoing indemnification.

(D) **Survival of Claims.** Developer’s indemnification and defense obligations shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Legal Requirements.

(E) **Indemnification for Environmental Matters.** Developer agrees to indemnify and hold the Indemnified Parties harmless from and against all Claims asserted against any Indemnified Party as a result of the existence on, or release from, the Property, of Hazardous Materials, or arising out of any claim for violation or failure to comply with Legal Requirements concerning environmental protection, as well as wetlands protection laws, applicable to the construction site or its environs in connection with the Project, but only to the extent any of the foregoing are caused by any act of omission or commission of Developer, or any party under Developer’s direction, or any of their agents, employees, independent contractors, invitees, licensees, successors or assignees. Nothing in this Agreement is meant to release, extinguish or otherwise alter or interfere with any rights which the Indemnified Parties may now or hereafter have against any other Person for any environmental liabilities as a result of such Person’s former, present or future ownership, occupancy or use of or interest in, any real property included in or in the vicinity of the Project Site.

(F) **Claims.** In case any Claim or demand is at any time made, or action or proceeding is brought against or otherwise involving an Indemnified Party in respect of which indemnity may be sought hereunder, the Indemnified Party seeking indemnity promptly shall give notice of that action or proceeding to Developer, who upon receipt of that notice shall have the

obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Indemnified Party to give that notice shall not relieve Developer from any obligation under this section unless, and only to the extent, that a failure to give notice materially prejudices the defense of the action or proceeding by Developer. An Indemnified Party may employ separate counsel and participate in the defense of an indemnified Claim, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless (a) the employment of such counsel has been specifically authorized by Developer in writing, (b) Developer has failed to assume the defense and to employ counsel, or (c) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and Developer and such Indemnified Party has been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to Developer, in which case, if the Indemnified Party notifies Developer in writing that it elects to employ separate counsel at Developer's expense, Developer shall not have the right to assume the defense of such action on behalf of such Indemnified Party and Developer shall be responsible for payment of the fees and expenses of such separate counsel. An Indemnified Party seeking indemnity agrees to fully cooperate with Developer, to the extent such cooperation does not prejudice the position of such Indemnified Party, and lend Developer such assistance as Developer shall reasonably request in defense of any claim, demand, action or proceeding. Developer shall not, nor shall any Indemnified Party, be liable for any settlement made without its consent.

(G) ***Successors and Assigns.*** The indemnification set forth in this Section is intended to and shall include the indemnification of all affected officers, officials, directors, employees and agents of each Indemnified Party, respectively, and their successors and permitted assigns. That indemnification is intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Agreement.

12. CASUALTY.

In the event of damage to the and the Project Improvements or the City Parking Garage by fire or other casualty, the casualty provisions set forth in the Lease or Parking Facilities Agreement, each to the extent applicable, shall govern.

13. DEFAULT; REMEDIES.

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

(i) The dissolution of Developer or the filing of any bankruptcy or insolvency proceedings by or against it which is not dismissed or removed in 90 days, the appointment of a receiver (temporary or permanent) for Developer which is not dismissed or removed in 90 days, the attachment of, levy upon, or seizure by legal process of any property of Developer which is not dismissed or removed in 90 days; or

(ii) A default by Developer under the Lease (after giving effect to any notice or grace period provided for therein);

(iii) The failure of Developer to perform or observe any of its obligations, duties, or responsibilities under this Agreement (including without limitation

the failure to timely complete the Project Improvements), and failure by Developer to correct such failure within thirty (30) days after receipt of written notice thereof from the City; provided, however, that if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, an event of default shall not be deemed to have occurred if Developer commences to cure the default within such thirty day period and thereafter diligently completes such cure; or

(iv) The failure of the City to perform or observe any of its obligations, duties or responsibilities under this Agreement, which continues for sixty (60) days after receipt of written notice thereof from Developer; or

(v) Any representation or warranty made by Developer herein or any statement made by Developer (as opposed to a third party) in any report, certificate, financial statement, in any agreements or other instruments furnished in connection with this Agreement or the development of the Project shall at any time prove to have been materially false or misleading in any material respect when made or given.

Notwithstanding the foregoing, if, by reason of Force Majeure, Developer is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (ii) or (iii) hereof, Developer shall not be deemed in default during the continuance of such inability. However, Developer shall promptly give notice to the City of the existence of an event of Force Majeure within thirty (30) days after the commencement thereof and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within Developer's discretion. The term "Force Majeure" shall mean, without limitation, the following:

acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; delays caused by City or any governmental authority with respect to permitting, zoning or similar issues; or any cause, circumstance or event, whether similar or dissimilar to the foregoing, not reasonably within the control of Developer; provided that inability to obtain necessary financing shall not, by itself, constitute an event of Force Majeure.

The declaration of an Event of Default under subsection (i) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

(B) **Remedies.** Upon the occurrence of an event of default by Developer under this Agreement, the City shall be entitled to (i) take such actions in the way of “self help” as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of the defaulting party, and (ii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including without limitation pursuing an action for specific performance against the defaulting party. Upon the occurrence of an event of default by the City under this Agreement, Developer will be entitled to enforce the obligation of the City through exercising its rights under law or in equity. Developer shall be liable for all direct costs and damages, including without limitation reasonable attorneys’ fees, suffered or incurred by the City as a result of Developer’s default under this Agreement or the City’s termination of this Agreement. The failure of the City or Developer to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

(C) **Lender’s Rights to Notice and Opportunity to Cure.** Developer’s lender’s rights to notice and opportunity to cure a default under Section 9(B) of the Lease shall apply to this Agreement such that all of the obligations of the City and all of the rights of a lender with respect to an event of default by Developer under the Lease shall apply to an event of default by Developer under this Agreement as if such Section 9(B) of the Lease was restated herein in its entirety with the references to “Lease” changed to “Agreement”.

14. **NOTICES.**

All notices given by the parties hereunder shall be deemed given if delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City: City of Cleveland Heights
 40 Severance Circle
 Cleveland Heights, Ohio 44118
 Attention: Economic Development Director

With a copy to: City of Cleveland Heights
 40 Severance Circle
 Cleveland Heights, Ohio 44118
 Attention: City Manager

And a copy to: City of Cleveland Heights
 40 Severance Circle
 Cleveland Heights, Ohio 44118
 Attention: Director of Law

To Developer: F & C Development, Inc.
One Indiana Square, Suite 3000
Indianapolis, IN 46204
Attention: Deron J. Kintner

And a copy to: Arik A. Sherk, Esq.
Thompson Hine LLP
10050 Innovation Drive, Suite 300
Dayton, Ohio 45342-4934

If Developer sends a notice to the City alleging that the City is in default under this Agreement, they shall simultaneously send a copy of such notice by U.S. certified mail to: Law Director, City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, OH 44118.

15. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(A) Developer is a corporation duly organized and validly existing under the laws of the State of Indiana, licensed to do business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(B) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for therein. This Agreement has by proper action been duly authorized, executed and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, a valid and binding obligation of Developer.

(C) The execution, delivery and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality applicable to Developer, or the organizational documents of Developer, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(D) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority that, if determined adversely to Developer, would have a material impact on Developer's ability to perform its obligations hereunder.

(E) Developer shall use commercially reasonable efforts to take all actions as are necessary to satisfy or fulfill the Conditions listed in Section 4(B) that are to be satisfied by Developer.

(F) The statements made by Developer in the documentation provided by Developer to the City that are descriptive of Developer or the Project have been reviewed by Developer and do not, to the knowledge of Developer, solely as of the Effective Date, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

The City represents that the City has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed and delivered by the City and all actions necessary have been taken to constitute this Agreement, when executed and delivered, a valid and binding obligation of the City. The City shall use its reasonable best efforts to take all actions as are necessary to satisfy or fulfill the conditions listed in Section 4(B) that are to be satisfied by the City.

16. REPORTING REQUIREMENTS; COMMUNICATIONS; PRESS RELEASES.

(A) ***Submission of Records and Reports; Records Retention.*** Until such time as the and the Project Improvements have been completed, Developer shall collect, maintain, and furnish to the City upon the City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information as may be reasonably requested by the City pertaining to Developer, the Project, or this Agreement, including without limitation financial statements certified by an officer of Developer, construction contracts and subcontracts, all design documents and drawings, and such other reports and information as may be required for compliance with programs and projects funded by the City or Developer's lender (including periodic reports prepared by any construction inspector reporting to such lender) (collectively, "Records and Reports"). All Records and Reports compiled by Developer and furnished to the City shall be in such reasonable form as the City may from time to time require.

(B) ***City's Right to Inspect and Audit.*** From and after the Effective Date, Developer shall permit the City and its designees and auditors, at the City's cost and expense, to have reasonable access to and to inspect and audit Developer's Records and Reports. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its reasonable out-of-pocket costs associated with such inspection or audit.

(C) ***Communications and Coordination.*** Attached as Exhibit I is the plan for communication and coordination between Developer and the City during the pre-construction planning period and the construction period for the Project, and such plan is incorporated as part of this Agreement.

(D) ***Press Releases.*** Developer agrees not to issue any press releases or make other public announcements with respect to the Project without prior written approval of the City.

(E) ***Litigation Notice.***

(i) Developer shall give the City prompt notice of any action, suit or proceeding by or against Developer at law or in equity, or before any governmental

instrumentality or agency, or of any of the same which is threatened in writing, of which Developer has notice, and which, if adversely determined, would materially impair the right or ability of Developer to carry on the business activities of Developer or the right or ability to operate the Project or would materially and adversely affect its ability to perform its obligations hereunder.

(ii) The City shall give Developer prompt notice of any action, suit or proceeding by or against the City at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which the City has notice, and which, if adversely determined, would materially impair the right or ability of the City to carry on the business activities of the City or would materially and adversely affect its ability to perform its obligations hereunder.

17. DISPUTE RESOLUTION.

If the parties cannot reach resolution on a matter relating to or arising out of the Agreement, the parties shall endeavor to reach resolution through good faith direct discussions between the parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the parties' representatives are not able to resolve such matter within five (5) business days of the date of first discussion, the parties' representatives shall immediately inform senior executives of the parties in writing that resolution was not effected. Upon receipt of such notice, the senior executives of the parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) business Days from the date of first discussion, the parties shall submit such matter to dispute resolution procedures provided herein.

Should the parties be unable to resolve said dispute through good faith negotiations, the dispute shall be decided by arbitration in accordance the Construction Industry Rules of the American Arbitration Association before an arbitrator with substantial experience in construction law. Any arbitration shall provide for the conduct of discovery by both parties pursuant to the Ohio Rules of Civil Procedure. Failure of either party to provide discovery in a pending arbitration shall terminate the agreement to arbitrate upon written notice of termination by the party requesting discovery to the opposing party. Such termination shall divest the arbitrator(s) of jurisdiction and neither party shall be bound by any determination of the arbitrator(s). The arbitrator(s) are not empowered to award punitive damages and each party expressly waives any right to punitive damages. The conduct of any hearing shall be in accordance with the Ohio Rules of Evidence and Civil Procedure and the arbitrator shall apply Ohio law. Nothing contained in this paragraph shall prevent either party from obtaining injunctive relief from a court of competent jurisdiction to obtain provisional relief pending a decision on the merits by the arbitrator(s). The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

18. GENERAL PROVISIONS.

(A) *Assignment.* Developer shall not assign its rights or interests under this Agreement without the prior written consent of the City Manager, which shall not be unreasonably

withheld, delayed and conditioned; except that Developer's assignment to an affiliate of Developer (with prior written notice to the City), and Developer's collateral assignment of its rights under this Agreement to its lenders for the Project, and full and unfettered assignability by such lender, without the consent of the City, upon an exercise by such lender of its rights under its loan documents, shall be permitted; provided however that no such assignments by Developer to an affiliate or lender shall relieve Developer of its obligations or liability to the City under this Agreement.

(B) ***Entire Agreement; Conflicting Provisions.*** This Agreement (including the exhibits hereto) and the other agreements referred to herein contain the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

(C) ***Amendments and Supplements.*** Recognizing the likelihood of changing conditions (such as demand and supply factors and changes in available tenants in the market area), the need for development of the Final Development Plan and the need to finalize terms and conditions of financings relating to the Project, the parties agree to review and consider in good faith amendments to this Agreement as necessary or appropriate. This Agreement may be amended only by a written amendment signed by all parties. The City agrees to reasonably consider any requests for amendments to this Agreement requested by Developer's lender.

(D) ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the City of Cleveland Heights and the State of Ohio. All actions regarding this Agreement shall be brought in the Cuyahoga County Court of Common Pleas, and Developer agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

(E) ***Binding Effect.*** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement.

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

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

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

(I) ***Time.*** Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement, provided that the time periods for the performance of Developer's obligations shall be extended for delays caused by Force Majeure as described in Section 13 hereof.

(J) ***No Third Party Beneficiaries.*** The parties hereby agree that, except for the rights of Developer's lenders under Section 13 (Default; Remedies) hereof, no third party beneficiary rights are intended to be created by this Agreement.

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

(L) ***Official Capacity.*** All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount or amounts which may become due to Developer or any successor to Developer or on any obligations under the terms and conditions of this Agreement.

(M) ***Contingency for Legislative Authorization from City Council.*** Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council does not pass any and all additional ordinances as may be necessary for the City to enter into any amendments to this Agreement.

(N) ***Waiver.*** No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

(O) ***Termination Upon Completion.*** Upon completion of construction of the Project in substantial accordance with the terms of this Agreement, this Agreement shall terminate and be void and of no further force and effect except as provided herein with respect to provisions that survive termination. The City shall execute any reasonable certificates requested by Developer to memorialize such termination, provided that the execution of such document or documents shall not be a condition to such termination.

(P) ***Agency.*** Notwithstanding anything herein to the contrary, where Developer is identified herein as acting as the agent of the City, such designation shall not impose any

additional duties, liabilities or obligations upon Developer outside or in addition to those specifically and expressly set forth in this Agreement.

(Q) ***Exhibits.*** The following Exhibits are attached to this Agreement and made a part hereof:

- Exhibit A - Site Plan
- Exhibit B - Revised Developer Proposal dated December 30, 2020 including the Conceptual Drawing Depicting Improvements
- Exhibit C - Preliminary Budget – Improvements
- Exhibit D - Source and Uses of Funds
- Exhibit E - Form of Ground Lease
- Exhibit F - Merchandising Plan
- Exhibit G - [Intentionally Omitted]
- Exhibit H - Preliminary Schedule/Timeline
- Exhibit I - Plan for Communication and Coordination between Developer and City
- Exhibit J - Estimate of City Costs
- Exhibit K - Form of Parking Facilities Agreement

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT A
RESOLUTION 154-2021

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

CITY OF CLEVELAND HEIGHTS, OHIO

F & C DEVELOPMENT, INC.

By: _____

_____, City
Manager

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____

City Law Director

CITY'S FISCAL OFFICER CERTIFICATE

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment or expenditure for the attached agreement between F & C Development, Inc. and the City of Cleveland Heights has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

Amy Himmelein, Director of Finance

Date: _____

EXHIBIT A
TO DEVELOPMENT AGREEMENT
SITE PLAN

[SEE ATTACHED]

D. PROPOSED DEVELOPMENT VISION – SITE PLAN



CEDAR-LEE-MEADOWBROOK
CONCEPTUAL SITE PLAN

FI AHERTY & COLLINS PROPERTIES
CITY ARCHITECTURE

D. PROPOSED DEVELOPMENT VISION – SITE PLAN – EXPANDED OPTION



CEDAR-LEE-MEADOWBROOK
CONCEPTUAL EXPANDED SITE PLAN - 2 ADDITIONAL SITES (CUT BEAUTY SCHOOL & HEIGHTS ANIMAL HOSPITAL)

FLAHERTY & COLLINS PROPERTIES
CITY ARCHITECTURE

EXHIBIT B

**REVISED DEVELOPER PROPOSAL DATED DECEMBER 30, 2020 INCLUDING
THE CONCEPTUAL DRAWING DEPICTING IMPROVEMENTS**

On file with the City's Economic Development Department and available to view on the City's website at: <https://www.clevelandheights.com/DocumentCenter/View/8864/Flaherty-and-Collins-Cedar-Lee-Meadowbrook-RFQ-RFP-Response?bidId=>

EXHIBIT C

PRELIMINARY BUDGET – PROJECT IMPROVEMENTS

PRELIMINARY IMPROVEMENTS BUDGET

Site Work	3,500,000
Hard Construction Cost	34,000,000
Commercial Hard Costs	1,000,000
Total Hard Construction Cost	\$38,500,000

EXHIBIT D

SOURCES AND USES OF FUNDS

USES OF FUNDS	Total
To Purchase Land	\$500,000
Constructon Costs, incl Sitework	38,500,000
Total Hard Construction Cost	\$38,500,000
Architectural & Engineering	
Architectural and Engineering Fees	1,925,000
Architectural Services Fees	150,000
Construction Period Costs	
Real Estate Attorney & Consultant	200,000
Construction Loan Legal	100,000
Construction Loan - Lender	75,000
City Fees	50,000
Title and Recording	200,000
Construction Interest	1,433,369
Financing Fee - Construction	318,527
Furnishings and Equipment	575,000
Other Period Costs	
Taxes	500,000
Lease-up Incentive	61,800
Commercial Leasing Commissions	196,800
Capitalized Lease-up Marketing	15,000
Working Cap. / Init. Oper. Def.	300,000
City Connection/Impact Fees/Perm.	824,000
Tenant Improvements	656,000
Market Study	5,000
Appraisal	15,000
Insurance	300,000
Land Broker Fee	-
Organizational (e.g. Partnership)	10,000
Construction Management	770,000
Development Contingency	1,925,000
Total Development Cost	\$49,605,496
Developer Overhead	2,408,606
TOTAL USES	\$52,014,102
SOURCES OF FUNDS	Total
Developer Contribution	38,014,102
Project Gap/TIF Proceeds	14,000,000
TOTAL SOURCES	\$52,014,102

EXHIBIT E
FORM OF GROUND LEASE

[SEE ATTACHED]

FORM OF
GROUND LEASE

THIS GROUND LEASE (“Lease”) is made and entered into as of _____, _____ (the “Effective Date”) by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the “City”), and [_____, _____], an Ohio limited liability company, having an address of One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 (together with its successors and permitted assigns, “Ground Lessee”).

RECITALS:

A. The City and F & C Development, Inc. (“Developer”) are parties to a Development Agreement with the effective date of _____, 2021 (the “Development Agreement”), which provides for the development of the property commonly known as the “Cedar-Lee-Meadowbrook” parcels, consisting of approximately ____ acres [acreage without garage] located between Cedar Road and Meadowbrook Road, in the City of Cleveland Heights, Ohio, as described in Exhibit A attached to this Lease [legal description should carve out garage so that it is not in Project Site until Transfer Date] (the “Project Site”). The Project Site is currently owned by the City.

B. Pursuant to the City’s prior and current urban redevelopment plans for the Project Site and the Development Agreement, (i) the City agreed that upon fulfillment of certain conditions specified in the Development Agreement it will lease the Project Site to Ground Lessee, and (ii) the Developer has agreed, subject to the terms of the Development Agreement, to build a mixed-use development on the Project Site that will include (a) approximately 200-225 market-rate apartments, (b) approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and restaurant space, (c) public gathering and green spaces, and (d) all sidewalks located on Project Site, as well as driveways, access ways, street and parking lot lighting and utility connections on the Project Site, and sanitary storm water drainage and other infrastructure improvements on the Project Site, in each case, to the extent required in the Final Development Plan (as defined in the Development Agreement) (collectively, the “Project”), all as further outlined in the Development Agreement.

C. In connection with a prior plan for redevelopment of the Project Site, the City constructed and owns a structured parking garage (the “City Parking Garage”) that will be incorporated into the Project, and the ownership, use, management and maintenance of the City Parking Garage will be on the terms provided in a Parking Facilities Agreement dated as of _____, _____ (the “Parking Facilities Agreement”) between the City and the Developer.

[D. Pursuant to an Assignment and Assumption Agreement dated of even date herewith between Developer and Ground Lessee, Developer assigned, on a non-exclusive basis, all of its rights, title, interests, duties, obligations and liabilities (other than _____) under the Development Agreement to Ground Lessee, an affiliate of Developer, and Ground Lessee (without release of, or other limitation on, the Developer as to any of such duties,

obligations and liabilities under the Development Agreement) assumed all such rights, title, interests, duties, obligations and liabilities under the Development Agreement.]

E. The City and Ground Lessee now desire to execute this Lease to memorialize the City's lease of the Project Site to Ground Lessee, an affiliate of Developer, and Ground Lessee's obligations with respect to construction and operation of the Project, as contemplated by the Development Agreement.

F. Execution of this Lease was authorized by [Ordinance No. _____, passed by City Council on _____].

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT.

(A) Grant. On the terms and conditions set forth in this Lease, the City does hereby lease the Project Site to Ground Lessee, and Ground Lessee does hereby lease the Project Site from the City, for the Term established under section 3 below. The parties acknowledge that, as part of the transactions contemplated under the Development Agreement, Ground Lessee has conducted its own title search, survey work, environmental assessments, soil and geotechnical studies, and other due diligence in order to familiarize itself with the condition and characteristics of the Project Site. The City has not made any representations or warranties concerning the condition or characteristics of the Project Site or the suitability or fitness of the Project Site for the construction and operation of the Project, and Ground Lessee acknowledges and agrees that Ground Lessee is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Project Site. On the Commencement Date (as defined in section 3 below), Ground Lessee shall accept the Project Site in "as is" condition.

(B) Title Matters. The City is leasing the Project Site to Ground Lessee subject to and together with (as the case may be) any and all easements, covenants, restrictions and other matters of record affecting the Project Site as of the Effective Date of the Development Agreement and any other encumbrances agreed to in writing by the City and Ground Lessee (hereinafter defined; collectively "Record Matters"). Ground Lessee shall not take any actions that would violate any Record Matters. Except for Permitted Mortgages under section 9 (Permitted Leasehold Mortgages) below and easements, covenants, conditions and restrictions that are consistent with the Final Development Plan (as defined in the Development Agreement), in the exercise of reasonable judgment, or any future development, improvement or alteration of the Property, or any portion thereof (collectively, the "Development Encumbrances") which future development, alteration or improvement has been approved (to the extent such approval is required by Legal Requirements) through the applicable review process of the City (the "Approved Process"), Ground Lessee shall not have the right to grant any additional easements or otherwise further encumber or restrict the City's title to the Project Site without the City's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. The City shall not have the right to grant any additional easements or otherwise further encumber the City's title to the Project Site or materially and adversely affect Ground Lessee's ability to construct and operate the Project Site and the

Improvements, or any future alterations, additions or improvements, without the Ground Lessee's prior written consent, which consent may be withheld in Ground Lessee's sole discretion.

2. CONSTRUCTION; OWNERSHIP OF PROJECT SITE AND IMPROVEMENTS.

(A) Construction of Improvements. Ground Lessee shall construct the Improvements in accordance with the requirements set forth in the Development Agreement. As used herein, the term "Improvements" shall mean the Project, together with all other alterations, additions, modifications and improvements made now or in the future to the Project Site; provided that prior to the Transfer Date (as defined in the Parking Facilities Agreement) the term "Improvements" shall not include the City Parking Garage

(B) Ownership of Project Site and Improvements. Throughout the Term, the Ground Lessee shall be deemed to be the owner of Improvements, and except as set forth herein, the City shall remain the owner of the Project Site.

3. TERM.

(A) Term. The term ("Term") of this Lease shall commence on the Effective Date, as defined on the signature page hereof (also referred to herein as the "Commencement Date"), and, unless extended or sooner terminated in accordance with the provisions of this Lease, shall expire on the last day of the calendar month in which the ninety-ninth anniversary occurs. All obligations of Ground Lessee under this Lease that have accrued but have not been fully performed as of the end of the Term, including without limitation indemnity obligations, shall survive the expiration or termination of the Term until fully performed, provided that in the event Ground Lessee exercises its option to purchase under Section 3(c) only Ground Lessee's indemnity obligations shall survive.

(B) Grant and Exercise of Right of First Offer. Ground Lessee shall provide written notice to the City if Ground Lessee intends to sell some or all of the Improvements, identifying those Improvements Ground Lessee desires to sell and any material terms of the sale determined by Ground Lessee at that time, specifically including the purchase price at which said Improvements will be offered. The City and Ground Lessee shall negotiate in good faith for sixty (60) days for the City to buy such Improvements. In the event the City (or a related body or entity) and Ground Lessee have not executed a purchase agreement for such Improvements within such sixty (60) day period, Ground Lessee shall be free to sell the Improvements to any third party, subject to the requirements in Section 13 hereof relating to the assignment of the portion of the Lease attributable to such Improvements, and further provided that (i) the sales price of such Improvements to such third party is equal to or greater than 80% of the lowest sales price offered to the City during such negotiations, and (ii) Ground Lessee consummates such sale within 12 months after the expiration of such sixty (60) day period. If the conditions in (i) or (ii) of the immediately preceding sentence are not met, then provided that this Lease hasn't otherwise expired or been terminated pursuant to the terms and conditions hereof, the right of first offer to purchase such Improvements granted hereby shall be reinstated for the remainder of the term of this Lease with respect to the applicable Improvements. The foregoing right of first offer shall be personal to Ground Lessee and shall not run with the land and upon sale by Ground Lessee of any

Improvements in accordance with the terms and conditions contained herein, City shall have no further right of first offer with respect to the Improvements so sold.

(C) Purchase Option.

(i) Provided that an Event of Default has not occurred and is continuing at the time of Ground Lessee's exercise, Ground Lessee shall have the option to purchase fee simple title to the Project Site from the City at any time after the fortieth (40th) anniversary of the Effective Date for \$10.00 upon ninety (90) days prior written notice to the City.

(ii) If Ground Lessee exercises its option to purchase, the City shall convey to Ground Lessee all of its right, title and interest to the Project Site, by transferable and recordable limited warranty deed, in its AS-IS, WHERE-IS condition and with ALL FAULTS, and subject the following (the "Permitted Exceptions"): (a) real estate taxes and assessments not then due and payable; (b) Record Matters and encumbrances created by City but only to the extent and in the manner permitted hereunder or which are created by Ground Lessee; (c) zoning, building and other laws, ordinances and regulations; and (d) all legal highways (collectively, the "Permitted Exceptions").

If the City's title to the Project Site is subject to any liens, encumbrances, easements, conditions, restrictions or encroachments created by the City in violation of this Lease (any of these matters being referred to as a "Title Defect"), other than the Permitted Exceptions, the City, within 30 days after written notice from Ground Lessee of the Title Defect, shall remedy or remove the Title Defect. If the City is unable to remedy or remove the Title Defect within the 30-day period, Ground Lessee may, at its option, by written notice to the City, (i) accept such title to the Project Site as the City is able to convey, (ii) if City caused such encumbrance in violation of the terms and conditions contained in this Lease, remove such Title Defect and recover reasonable and actual, out-of-pocket costs thereof from the City, or (iii) terminate its exercise of the option to purchase the Project Site, in which case the parties shall be released from all further obligations under this Section. Notwithstanding the foregoing, the City shall have the obligation to discharge any monetary liens placed or suffered to be placed upon the Project Site by the City.

(iii) The closing shall occur within 90 days after Ground Lessee gives the City notice of Ground Lessee's exercise of option as provided in Section 3(C)(i). At the closing, Ground Lessee or its designee shall pay the purchase price for the Project Site. The rent and other sums then due and payable under this Lease shall be prorated to and including such date of purchase, and the City shall deliver to Ground Lessee its limited warranty deed and any other instruments reasonably required by Ground Lessee's title company or otherwise necessary to effectively convey to Ground Lessee the title to the Project Site, provided that the City shall not take on material, additional liability thereby, nor have any obligation whatsoever to indemnify any party in connection therewith.

(iv) If the City fails or refuses to convey title to the Project Site to Ground Lessee in accordance with, and by the time required by, this Lease, then Ground Lessee shall have the right to enforce specific performance of the City's obligations to convey the Project Site to Ground Lessee by writ of mandamus (in which event the City waives the defense

of adequate remedy at law). Until such time as the City shall convey the Project Site with the title as required by this Lease, Ground Lessee may extend the term of this Lease on all of the terms and conditions as provided in this Lease.

4. PERMITTED USE.

Ground Lessee shall initially use the Project Site for the construction, use, maintenance, replacement and operation of the Project (including any and all ancillary or related uses) and for no other purposes without the consent of the City's Mayor which shall not be unreasonably withheld, delayed or conditioned. After the completion of the construction of the Project, Ground Lessee may use the Project Site for all lawful purposes so long as Ground Lessee complies with the Approved Process to the extent applicable and applicable law and without consent of the City's Mayor (unless such consent is required by the Approved Process). Ground Lessee shall operate the Project Site and Improvements during the Term in a first-class manner. Ground Lessee shall obtain and maintain all necessary licenses and permits and shall operate and maintain the Project Site and Improvements in compliance with all Legal Requirements, as defined below. Throughout this Agreement, the term "Legal Requirements" shall mean all applicable federal, state and local laws, codes, ordinances and other governmental requirements, including without limitation all environmental laws, all open meeting laws and all public records laws. As provided in the Parking Facilities Agreement, commencing on the Stabilization Date (as defined in the Parking Facilities Agreement) and continuing through the remainder of the Term, Ground Lessee shall make no fewer than ___ parking spaces in the City Parking Garage available at all times for use by the general public (the "Public Parking Spaces") as provided in Section 7(C) hereof.

5. RENT.

(A) Base Rent. Beginning on the Commencement Date, and on each anniversary thereof throughout the Term, Ground Lessee shall pay the City annual base rent ("Base Rent") in the amount of Ten and No/100 Dollars (\$10.00). Ground Lessee may, at its option, prepay Base Rent for the entire Term on the Commencement Date.

(B) Additional Rent. This is a "triple net" lease, and throughout the Term, Ground Lessee shall pay all costs associated with the Project Site and Improvements, including without limitation, taxes (or payments in lieu thereof, whether imposed by law, by contract or by covenant running with the land), insurance, maintenance costs and operating expenses. Ground Lessee shall make such payments directly to the persons or entities to whom such payments are owed.

(C) Net Lease. This Lease is a net lease and City, in its private capacity as landlord hereunder, shall not be required to provide any services or security, incur any costs or do any act or thing with respect to the Project Site or the appurtenances thereto, except as may be specifically provided herein or in the Parking Facilities Agreement. The foregoing shall not relieve the City of its obligations as a municipal corporation.

6. REAL ESTATE TAXES.

Ground Lessee shall pay all real estate taxes and assessments levied against the Project Site and Improvements that become due and payable during the Term (or payments in lieu thereof, whether imposed by law, by contract or by covenant running with the land). Upon each such

payment, Ground Lessee shall furnish the City with appropriate evidence of payment. Ground Lessee is permitted to contest the validity or amount of taxes or assessments. If Ground Lessee institutes proceedings to so contest the validity or amount of such taxes or assessments and such proceedings are not prohibited by applicable law or contractual agreement, the City, at no cost to the City, shall cooperate with Ground Lessee to a reasonable extent and to the extent that the participation of the owner of the lessor's interest under this Lease is required, but Ground Lessee may not defer payment of such taxes during such contest unless permitted by law. Ground Lessee shall be entitled to any and all amounts recovered which relate to tax payments previously made by Ground Lessee.

7. OPERATION OF THE PROJECT.

(A) Maintenance & Repairs: Services. Throughout the Term after completion of the construction of the initial Improvements, Ground Lessee shall keep the Project Site and Improvements, including all abutting sidewalk areas, in good, clean and safe condition and repair, subject however, to reasonable wear and tear and to damage by fire or other casualty (as more specifically provided in Section 11) or taking by eminent domain (as more specifically provided in Section 11). The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Project Site or Improvements under this Lease. The foregoing shall not relieve City of its obligation as a municipal corporation.

(B) Revenue from Project. Throughout the Term, Ground Lessee shall be entitled to collect all revenue generated from the operation of the Project Site and Improvements ("Project Revenue").

(C) City Parking Garage; Parking Facilities Agreement. The City Parking Garage may be "wrapped" with multi-family housing units developed by Developer as part of the Project. The City and Developer have entered into the Parking Facilities Agreement pursuant to the terms of which (i) the City has refinanced the City's tax-exempt debt associated with the City Parking Garage (the "Tax-Exempt Garage Debt"), with a federally taxable financing (the "Taxable Garage Debt") that matures on _____, and the City's annual debt service requirements with respect to the Taxable Garage Debt are approximately \$_____ annually; (ii) on the terms described in the Parking Facilities Agreement, from and after the Occupancy Date (as defined in the Parking Facilities Agreement), to, but not including, the Stabilization Date (as defined in the Parking Facilities Agreement), Developer will assume a proportionate amount equal to the Applicable Percentage (as hereinafter defined) of all maintenance costs and property tax payments associated with the City Parking Garage; (iii) on the terms described in the Parking Facilities Agreement, from and after the Stabilization Date, (a) Developer will agree to purchase permits from the City for the Applicable Percentage of the parking spaces in the City Parking Garage for use by Developer's tenants and guests in an area of the City Parking Garage that is reserved for such tenants' use for an aggregate annual purchase price equal to the Applicable Percentage multiplied by the aggregate annual debt service on the Taxable Garage Debt; and (b) the remaining spaces in the City Parking Garage and certain parking spaces in areas outside the City Parking Garage but on the Project Site as further described in the Parking Facilities Agreement (the "Project Site Parking Areas") will remain public parking at all times throughout the term of this Ground Lease (collectively, the "Public Parking Spaces"); and (iv) Developer will continue to purchase the number of permits as described in subsection (iii)(a) above until the maturity date of

the Taxable Garage Debt, at which time the City will transfer ownership of the City Parking Garage to Developer, for no consideration, subject to (1) this Ground Lease, which shall be amended to include the City Parking Garage parcel and otherwise remain in place, and (2) the agreement of Developer to continue to provide public access to the Public Parking Spaces until the earlier of (i) the expiration of the term of this Ground Lease, or (ii) the exercise by the Developer of its option to purchase the Project Site pursuant to the terms of this Ground Lease, all as more specifically described in the Parking Facilities Agreement. As used herein, the term “Applicable Percentage” will mean, (1) from and after the Occupancy Date to but not including the Stabilization Date, [30]%, and (2) from and after the Stabilization Date until the maturity date of the Taxable Garage Debt, [60]%. Such percentages and the allocation of parking spaces in the City Parking Garage to private parking spaces and Public Parking Spaces, as well as the percentage of the Apartments that must be leased to achieve stabilization of the Project (and the date by which stabilization must occur), have been determined by the City and Developer as part of the Final Development Plan based on the total number of private parking spaces in the City Parking Garage to be reserved for tenants in the Project Improvements. Developer intends to provide any landscaping for the area surrounding the City Parking Garage, even if such landscaping is on City-owned property. Developer may enter into one or more subleases or rental agreements with its tenants for the parking spaces for which Developer purchases permits pursuant to the Parking Facilities Agreement as needed to support the viability of the Apartments.

(D) Parking Garage Operator. In accordance with the Parking Facilities Agreement, after the Stabilization Date the Ground Lessee may hire a parking operator to manage and operate the Parking Garage. Such parking operator (which may be an affiliate of Ground Lessee) shall be reputable, and shall have prior experience in operating similar-sized parking garages. The hiring by Ground Lessee of a parking operator for the Parking Garage shall not relieve Ground Lessee from any obligations or liability under this Lease or the Parking Facilities Agreement.

(E) Reporting Requirements. The City shall be entitled to receive copies of all financial reports and such other reports and information as may be required for compliance with any public agency providing or overseeing funding in connection with the Project Site and Improvements (all reports, records, statements and other information furnished by Ground Lessee under this paragraph being referred to herein collectively as “Records and Reports”), and Ground Lessee shall further promptly notify the City of any and all notices alleging default by Ground Lessee with respect to any financing for the project; provided that, notwithstanding the foregoing, the City may review but shall not receive copies of any Records and Reports that contain confidential information regarding the Ground Lessee or the Project (and default notices described above) and shall not disclose any such information to the public unless and until required by Legal Requirements (as defined in Section 4).

(F) Commercial Tenants. During the first twenty (20) years of the term of this Lease, Ground Lessee shall only lease the non-residential space in the Project to tenants consisted with the Merchandising Plan attached hereto as Exhibit D, as amended from time to time. In the event that Ground Lessee proposes to lease any of the non-residential space in the Project to tenants which are not consistent with the Merchandising Plan, during the first twenty (20) years of the term of this Lease such proposed tenants shall be subject to prior approval of the City, not to be unreasonably withheld or delayed.

(G) City's Right to Inspect. The City shall have the right to inspect the Project Site and Improvements from time to time for any proper purpose.

8. ALTERATIONS; SIGNS; NO LIENS.

(A) Alterations. From and after substantial completion of construction of the Project, Ground Lessee shall be permitted to alter or modify the Improvements or construct additional improvements on the Project Site. Any and all alterations, modifications or additions made by Ground Lessee shall be made in a good and workmanlike manner and in compliance with all Legal Requirements.

(B) Signs. Ground Lessee shall be permitted to install such directional, informational, advertising and other signs at the Project Site which Ground Lessee deems appropriate, provided that all such signs are professionally prepared and comply with all Legal Requirements. Ground Lessee shall, at its expense, keep all signs in good condition and repair, reasonable wear and tear excepted.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Project Site as a result of labor or material furnished at Ground Lessee's request. Ground Lessee shall cause the lien to be released or bonded off within sixty (60) days following the filing of such lien.

9. PERMITTED LEASEHOLD MORTGAGES.

(A) Permitted Mortgages. The parties acknowledge and agree that (i) Ground Lessee has obtained or may obtain one or more loans from time to time in connection with the construction of any Improvements, and (ii) following the parties' execution of this Lease, Ground Lessee may grant to its lenders a leasehold mortgage and other security instruments with respect to Ground Lessee's leasehold interests in the Project Site as security for the repayment of such loans (herein, a "Permitted Mortgage", and one or more extensions, modifications, renewals or replacements of a Permitted Mortgage, in such amounts and in such terms as Ground Lessee may from time to time determine with the holder of each such Permitted Mortgage being referred to herein as a "Permitted Mortgage"). Except to the extent Ground Lessee purchases the fee title to the Project Site, at the end of the Term, Ground Lessee shall surrender the Project Site and Improvements to the City free and clear of all Permitted Mortgages.

(B) Notice to Permitted Mortgagees; Opportunity to Cure Ground Lessee's Default. If the City sends a notice of default to Ground Lessee under this Lease and intends to exercise any right it may have under this Lease to terminate this Lease by reason of such default, the City shall, prior to exercising such right, send a copy of such notice of default to each Permitted Mortgagee (but only if the Permitted Mortgagee shall have previously provided the City with the address to which such notices to the Permitted Mortgagee shall be sent). The City shall send notices to the Permitted Mortgagees in the same manner in which the City sends notices to Ground Lessee under this Lease. Notwithstanding anything in section 12 (Default; Remedies) below to the contrary, the City shall permit each Permitted Mortgagee a reasonable opportunity to cure Ground Lessee's default; provided, however, that if the Permitted Mortgagee has not notified the City in writing, within thirty (30) days after receiving a copy of the notice of default, that they have commenced to cure the default (with respect to the Permitted Mortgagee, by way of instituting foreclosure

proceedings or otherwise), or if the Permitted Mortgagee notifies the City in writing, within thirty (30) days after receiving a copy of the notice of default, that they have commenced to cure the default but they fail to completely cure the default to the City's reasonable satisfaction within ninety (90) days after receiving a copy of the notice of default or within such additional period of time as may be reasonably required in order for the Permitted Mortgagee to complete the foreclosure proceedings, obtain possession of the Project Site and Improvements and thereafter cure the default, the City may exercise its right to terminate this Lease. Nothing in this Lease shall be construed as requiring any Permitted Mortgagee to cure defaults of Ground Lessee under this Lease.

(C) Right to Obtain New Lease. In the event of the termination of this Lease by reason of the happening of any default, or of the rejection of this Lease in any bankruptcy of the then Ground Lessee, the City shall give prompt notice thereof to any Permitted Mortgagee. The City shall, subject to Legal Requirements, on written request of any Permitted Mortgagee, made at any time within thirty (30) days after the giving of such notice by the City, enter into a new lease of the Project Site with the Permitted Mortgagee within ninety (90) days after receipt of such request, which new lease shall be effective as of the date of such termination of this Lease for the remainder of the Term of this Lease, at the rent provided for in this Lease, and upon the same terms, covenants, conditions and agreements as are contained in this Lease; provided that the Permitted Mortgagee shall (i) contemporaneously with the delivery of such request pay to the City all the installments of rent and all items of additional rent and other charges payable by Ground Lessee under this Lease that are then due, whether or not the City has specified them as due in any notice to the Permitted Mortgagee; (ii) pay to the City at the time of the execution and delivery of the new lease any and all sums for rent and additional rent and other charges payable by Ground Lessee to and including the date of the new lease (which shall be determined as if this Lease had remained in effect), together with all out-of-pocket costs and expenses, including reasonable attorney's fees, incurred by the City in connection with the termination of this Lease and with the execution and delivery of the new lease; and (iii) on or prior to the execution and delivery of the new lease, agree in writing that promptly following the delivery of the new lease, the Permitted Mortgagee will perform or cause to be performed all of the other covenants and agreements contained in this Lease on Ground Lessee's part to be performed to the extent that Ground Lessee shall have failed to perform the same to the date of delivery of such new lease (which shall be determined as if this Lease had remained in effect), except for any non-curable default, which shall be deemed waived.

(D) Subordination of City's Rights of Distraint with Respect to Ground Lessee's Personal Property. Notwithstanding any existing or future statute, law or rule of law to the contrary, the City hereby agrees that any rights of distraint or liens arising in favor of the City under this Lease to machinery, equipment, apparatus, appliances, goods, chattels and any other personal property located at the Project Site and belonging to Ground Lessee shall be subject and subordinate to the rights of any holder of a Permitted Mortgage. Although the foregoing subordination shall be self-operative without the necessity for any further instrument or document, the City hereby agrees, upon written request from Ground Lessee, to furnish written confirmation thereof to Ground Lessee and any vendor, supplier, holder of a security interest in Ground Lessee's property, or any other third party designated by Ground Lessee.

(E) City's Transfer of its Interest in the Project Site and Improvements. If during the Term of this Lease the City sells or otherwise transfers its interest in the Project Site to a third

party, such sale or transfer shall be subject to this Lease and to the rights of each Permitted Mortgagee hereunder. Ground Lessee agrees to attorn to any such transferee provided such transferee agrees to be bound by, and perform all of its obligations under, this Lease.

(F) No Surrender. If any Permitted Mortgage is in effect, the City will not accept a voluntary surrender of this Lease. If any Permitted Mortgage is in effect, this Lease shall not be modified or amended without the prior written consent of the Permitted Mortgagee.

(G) Nonliability for Covenants. The provisions of this Section 9 are for the benefit of the Permitted Mortgagee(s) and may be relied upon and shall be enforceable by the Permitted Mortgagee(s). Neither the Permitted Mortgagee(s) nor any other holder or owner of the indebtedness secured by the Permitted Mortgage(s) or otherwise shall be liable upon the covenants, agreements or obligations of Ground Lessee contained in this Lease, unless and until the Permitted Mortgagee(s) or that holder or owner acquires the interest of Ground Lessee, and then only for the period that the Permitted Mortgagee(s) owns such interest.

10. INSURANCE; INDEMNITY.

(A) Insurance. From and after the completion of the Project, Ground Lessee shall maintain, or cause to be maintained, the following insurance:

(i) special peril (formerly known as “all-risk”) full replacement cost insurance on the Project;

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

(iii) liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at the Project Site in an amount not less than Five Million Dollars (\$5,000,000) per accident, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary, together with umbrella liability insurance in the amount of not less than \$10,000,000, naming the City as an additional insured;

(iv) workers compensation insurance as required by law;

(v) such other or additional amounts of insurance as may be required under any and all Permitted Mortgages; and

(vi) the insurance requirements during construction of the Improvements as are set forth in the Development Agreement.

(B) Policy Requirements. Ground Lessee’s insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide (if commercially available) that the insurer will notify the City thirty (30) days prior to any cancellation or modification of the policy, and (iii) be primary and non-contributory with respect to insurance maintained by the City. Upon the initial completion of the Improvements and annually thereafter, Ground Lessee shall provide the City with a

certificate of insurance evidencing the insurance required to be maintained by Ground Lessee hereunder and naming City as an additional insured.

(C) Self-Insurance. Any insurance required to be maintained by Ground Lessee may be maintained in whole or in part either on its own plan of self-insurance, or from a carrier which specializes in providing coverage to or for such party or its affiliates, or firms in the same or related businesses, if (i) such party's net worth exceeds \$250,000,000.00, as shown in its most recent audited financial statements, and (ii) such party maintains appropriate loss reserves for the amount of its self-insurance obligations under this Lease and otherwise which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. Any successor to the named Ground Lessee under this Lease may retain (in whole or in part) the financial risk for any claim as long as such successor maintains the net worth and loss reserves set forth in clauses (i) and (ii) above and such successor maintains a ratio of current assets to current liabilities of at least 2 to 1. In the event that Ground Lessee self-insures under the provisions of this Section 10(C), Ground Lessee agrees to indemnify, defend and hold harmless the City from any loss, damage, liability expense, suits, claims, or judgments which would have been covered had the City been named as an additional insured with a third party (procured by the self-insuring party). Ground Lessee shall be permitted to have an affiliate provide the insurance required hereunder, if such affiliate agrees in writing that its program is applicable to such party and that it guarantees performance of such party's insurance and indemnification obligations under this Lease; provided, however, such affiliate may undertake the self-insurance obligation only if it satisfies the financial criteria requirement. If Ground Lessee shall elect to self-insure, the City shall have all of the benefits provided by this Section 10 that it would have had if Ground Lessee carried the required insurance.

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

(E) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Ground Lessee or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Ground Lessee. Ground Lessee shall defend, indemnify and hold the City, its employees and agents ("Indemnified Parties") harmless from and against all costs (including without limitation reasonable legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Ground Lessee, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Ground Lessee in connection with Ground Lessee's activities at or with respect to the Project Site or in connection with any breach by Ground Lessee under this Lease.

11. CASUALTY; EMINENT DOMAIN.

(A) Casualty. If the Project shall be damaged or rendered wholly or partially untenantable by fire or other casualty during the term of this Lease, no rent shall abate during such period, this Lease shall remain in effect, and Ground Lessee shall promptly clear the damage in a manner to create, as nearly as reasonably practicable, a Project Site clean of debris and ready for construction activities. Thereafter Ground Lessee shall rebuild or repair the Improvements to substantially their former condition, or, at Ground Lessee's sole option, build new or different improvements, or repair or rebuild the existing Improvements to a condition, reflecting current market conditions. Ground Lessee's obligation to rebuild shall not be limited by the amount of insurance proceeds available for rebuilding. However, if Ground Lessee rebuilds the Project to the condition as required by this Lease and there are excess proceeds, the excess proceeds shall belong to Ground Lessee.

(B) Condemnation.

(i) Unless this Lease is terminated pursuant to Section 11(B)(ii), if a portion of the Project Site or Improvements shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority ("Condemning Authority") having the power of eminent domain, or is sold to a Condemning Authority under threat of the exercise of that power, this Lease shall continue and Ground Lessee shall restore the affected Improvements, to the extent practicable, to complete architectural unit(s), or otherwise as market conditions may dictate or require, and the Project Site so that it continues to function as an integrated project.

(ii) If a portion of the Project Site and Improvements is so taken or sold, and that portion in Ground Lessee's judgment is material to Ground Lessee's use and occupancy of the Project Site and Improvements, or if all of the Project Site and Improvements is so taken or sold, Ground Lessee may terminate this Lease by giving written notice to the City. This Lease shall then terminate on the day following the vesting of title in the Condemning Authority, except as provided below and except with respect to obligations and liabilities of Ground Lessee and the City under this Lease that have arisen on or before the date of termination. Rent and other charges under this Lease shall be prorated as of the date of termination, and upon termination Ground Lessee shall satisfy and cause to be released any mortgages (including any Permitted Mortgage), liens or other encumbrances placed or suffered to be placed on the Project Site and Improvements by Ground Lessee. In the event that Ground Lessee shall fail to exercise its option to terminate this Lease as provided in this subsection, or in the event that a part of the Project Site and Improvements shall be taken under circumstances under which Ground Lessee will have no such option, Ground Lessee shall have the sole responsibility for restoring the affected Improvements to complete architectural unit(s), or otherwise as market conditions may dictate or require, and the Project Site so that it continues to function as an integrated project.

(iii) Any award or compensation paid on account of any taking or sale described in this Section 11(B) shall, as to the Improvements, belong to Ground Lessee, and shall, as

to the Project Site (the land value), be divided between the City and Ground Lessee based upon their respective interests in the Project Site.

12. DEFAULT: REMEDIES.

(A) Default. Each of the following shall constitute an event of default (an “Event of Default”) by Ground Lessee under this Lease;

(i) If Ground Lessee fails to pay any sum payable to the City hereunder when due, and such failure to pay continues for longer than thirty (30) days after Ground Lessee receives written notice thereof from the City;

(ii) If Ground Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than thirty (30) days after Ground Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if Ground Lessee commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as reasonably determined by the City, an event of default shall be deemed to have occurred if Ground Lessee fails to take corrective action promptly after written notice from the City that the City has determined such a condition exists;

(iii) Ground Lessee files or there is filed against Ground Lessee a petition in bankruptcy or a petition or answer seeking reorganization under the Federal Bankruptcy Code or any other applicable statute (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution); or an order is entered adjudicating Ground Lessee a bankrupt or approving an involuntary petition seeking a reorganization of Ground Lessee under the Federal Bankruptcy Code or any other applicable statute or appointing a receiver, trustee or conservator for all or any substantial part of the property of Ground Lessee, and the order is not vacated or stayed within 90 days of entry; and

(iv) If Ground Lessee has “abandoned” the Improvements and/or Project Site and fails to cure such abandonment as provided in paragraph 12(B), below. For purposes of this Lease, “abandoned”, “abandon”, “abandonment” and words of the like shall mean that Ground Lessee (a) voluntarily relinquished its interest in the Improvements and/or the Project Site or failed to use the Improvements and/or the Project Site without vesting such interest in another party; and (b) does not intend to reclaim or continue with the operation or use of the Improvements and/or the Project Site (in accordance with the Approved Process, if applicable). [Subject to final discussion and lender consent].

(B) Remedies. Upon the occurrence of an Event of Default that continues beyond the applicable notice and cure period provided for under paragraph 12(A) above, the City shall be entitled, subject to the rights of any Permitted Mortgagee as provided in this Lease, to (i) take such actions in the way of “self-help” as the City determines to be reasonably necessary or appropriate

to cure or lessen the impact of such Event of Default, all at the expense of Ground Lessee, including without limitation paying any costs due and owing by Ground Lessee for which the Ground Lessee shall promptly reimburse the City within thirty (30) days after demand therefor, and (ii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative, provided that in no event shall the City be entitled to exercise the remedy of termination and the City hereby waives its right to terminate the Lease as a remedy for an Event of Default except to the extent an Event of Default occurs due to Ground Lessee abandoning the Project. Ground Lessee shall be liable for all direct, actual costs and damages, including without limitation reasonable legal fees, suffered or incurred by the City as a result of the occurrence of an Event of Default of Ground Lessee under this Lease or the City's enforcement or termination of this Lease. Ground Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved. Notwithstanding anything contained herein to the contrary, in the event that Ground Lessee has abandoned the Improvements and/or the Project Site, then City may terminate this Lease by written notice to Ground Lessee, and City shall thereafter have the right to reenter or repossess the Project Site, either by summary proceedings, surrender or otherwise, and dispossess and remove therefrom Ground Lessee, and, at City's option, title to all Improvements owned by Ground Lessee shall revert to City; provided, however, that City shall not have the right to terminate this Lease until City has provided written notice of the alleged abandonment to Ground Lessee and its lender and has provide Ground Lessee and its lender thirty (30) days to cure such abandonment.

(C) Rights of Permitted Mortgagees. Notwithstanding the City's rights provided for in paragraph 12(B) above, prior to exercising such rights the City shall provide each Permitted Mortgagee with notice and an opportunity to cure as described in paragraph 9(B) above.

13. ASSIGNMENT AND SUBLETTING; SEPARATION OF GROUND LEASE.

(A) Ground Lessee acknowledges that the City is entering into this transaction because of the City's confidence that Ground Lessee has the financial backing, business experience and community support that are necessary to carry out the construction and operation of the Project in accordance with the provisions of this Lease. Ground Lessee acknowledges that the City shall not be expected to consent to a proposed assignment by Ground Lessee of its interests under this Lease prior to the expiration of the fifth (5th) anniversary of the Effective Date (the period between the Effective Date and the fifth (5th) anniversary of the Effective Date is hereafter referred to as the "Hold Period") to any person or entity in whom the City does not have similar confidence. Any attempt by Ground Lessee to assign or otherwise transfer its interests under this Lease to a third party prior to the expiration of the Hold Period without the City's prior written consent (which shall not be unreasonably withheld, delayed or conditioned) shall be null and void and shall, at the option of the City, constitute a default of Ground Lessee under this Lease. The foregoing notwithstanding, if Ground Lessee transfers its interests under this Lease, or a portion of this Lease,

(i) to an affiliate of Ground Lessee, or to the surviving entity in a merger involving Ground Lessee, to the purchaser of all or substantially all of Ground Lessee's assets or ownership interests, or (ii) after the expiration of the Hold Period, to an entity which has experience in the asset class which is the subject of the assignment of this Lease, or portion thereof, any transfer of the foregoing shall not constitute a prohibited assignment for purposes of this section and shall be permitted without the consent of the City. As used in the preceding sentence, an "affiliate" of Ground Lessee means an entity that controls, or is controlled by, or is under common control with Ground Lessee. For purposes hereof "control" shall mean the power, exercisable jointly or severally, to manage and direct the business and affairs of a party through the ownership of more than fifty percent (50%) of membership or partnership interests, corporate stock and/or voting rights. Ground Lessee shall not assign its interests under this Lease pursuant to the preceding three sentences without giving the City at least thirty (30) days prior written notice thereof. The foregoing limitations shall not apply to a transfer upon foreclosure of a Permitted Mortgage or a deed in lieu of foreclosure, nor to the subsequent transfer by a Permitted Mortgagee acquiring Ground Lessee's interests under this Lease by foreclosure or deed in lieu of foreclosure. There are no restrictions on Ground Lessee's right to sublease the Project Site and Improvements, provided that any sublease shall be in compliance with the terms hereof and all Record Matters. No assignment (other than with the consent of the City or otherwise as permitted without the consent of the City) or sublease by Ground Lessee of its rights or obligations under this Lease to any third party shall relieve Ground Lessee from any liability to the City under this Lease.

(B) Provided no Event of Default has occurred and is continuing, in connection with a permitted assignment of a portion of this Ground Lease set forth in Section 13(A) above, Ground Lessee shall have the right to separate the portion of the Ground Lease being assigned from the portion of the Ground Lease being retained by Ground Lessee. Ground Lessee shall give written notice to the City at least sixty (60) days prior to the desire to separate the Ground Lease which notice shall describe the portion of the Improvement and the Project Site subject to the assignment of the portion of the Ground Lease. The new ground lease with respect to the assignment of a portion of this Ground Lease (the "New Ground Lease") shall be in form and contain terms and conditions substantially and materially similar to this Ground Lease and will be coterminous with this Ground Lease, provided that the New Ground Lease shall not be cross defaulted with this Ground Lease. The parties shall finalize and execute a partial termination of this Ground Lease as to the portion of the Project Site and Improvements being transferred by an assignment permitted in Section 13(A) above and New Ground Lease prior to the closing of such partial assignment.

14. ESTOPPEL CERTIFICATES.

Within fifteen (15) days after written request from the other party (or, with respect to certificates from the City, within such longer period of time (not to exceed thirty (30) days) as may be reasonably needed in order to obtain all required governmental authorizations and signatures), each party shall execute and deliver to the requesting party an estoppel certificate (i) certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Lease, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Lease as the requesting party may reasonably request.

15. SURRENDER; HOLDOVER.

(A) Surrender. On the last day of the Term of this Lease (and unless Ground Lessee shall have purchased the Project from the City), Ground Lessee shall surrender the Project Site and Improvements to the City in good condition and repair, reasonable wear and tear excepted, and free and clear of all mortgages and other monetary liens. On or before the last day of the Term, Ground Lessee shall remove all of Ground Lessee's personal property, trade fixtures and equipment, and any property not so removed shall be deemed abandoned. Ground Lessee shall not remove any signs, ordinary fixtures or equipment used in connection with the Project unless the City approves of such removal in writing, which shall not be unreasonably withheld, delayed or conditioned. Ground Lessee shall promptly repair any and all damage to the Project caused by its removal of any items under this paragraph.

(B) Holdover. If Ground Lessee fails to surrender possession of the Project Site and Improvements to the City at the end of the Term if Ground Lessee has not exercised the purchase option hereunder, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable by the City upon thirty (30) days' notice by giving written notice thereof to Ground Lessee. Ground Lessee shall be liable for all direct, actual costs and damages suffered or incurred by the City as a result of Ground Lessee's holding over after the initial thirty (30) days of holdover.

(C) Documents to be Delivered to City. At the end of the Term of this Lease and if Ground Lessee has not exercised the purchase option hereunder, Ground Lessee shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, contracts with third parties, warranty information, and all other written materials and documents that are in Ground Lessee's possession or under Ground Lessee's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Project.

16. NOTICES.

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

To the City: City of Cleveland Heights
 40 Severance Circle
 Cleveland Heights, OH 44118
 Attention: Economic Development Director

With a copy to: City of Cleveland Heights
 40 Severance Circle
 Cleveland Heights, OH 44118
 Attention: City Law Director

To the Ground
Lessee:

Cleveland Heights FC II, LLC
One Indiana Square, Suite 3000
Indianapolis, IN 46240
Attention: Deron Kintner

With a copy to:

Arik Sherk, Esq.
Thompson Hine LLP
Austin Landing I
10050 Innovation Drive
Suite 400
Dayton, Ohio 45342-4934

If Ground Lessee sends a notice to the City alleging that the City is in breach of this Lease, Ground Lessee shall simultaneously send a copy of such notice by U.S. certified mail to: Law Director, City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, Ohio 44118.

17. INTELLECTUAL PROPERTY.

(A) Grant of License. Subject to the further terms and conditions of this Lease and provided Ground Lessee has the right to so permit such use, the City shall have the right to use the Intellectual Property (hereinafter defined) during the Term in connection with the promotion, advertising, reporting and dissemination of information with respect to the Project and the Project Site, whether as a part of internally-prepared materials and media, or other materials or media prepared at the direction of City. For purposes of this Lease, the term "Intellectual Property" shall mean all right, title, claim and interest of Seller and its affiliates in and to any trademarks, service marks, trade names or copyrights used exclusively in connection with the Project Site and Project, whether registered or unregistered, and any applications therefore, as may exist as of the Effective Date or thereafter. Notwithstanding the foregoing, the City shall follow reasonable direction from Ground Lessee regarding the use of the Intellectual Property.

(B) Conveyance Upon Default. Upon the expiration of the Term and Ground Lessee has not exercised its purchase option hereunder, Ground Lessee hereby agrees to take any and all actions reasonably necessary to grant, convey and transfer all of Ground Lessee's rights in and to the Intellectual Property to City to the extent the Intellectual Property is transferable. Upon the expiration of the Term and Ground Lessee has not exercised its purchase option hereunder, Ground Lessee by these presents does hereby make, constitute and appoint City its true and lawful attorney with respect to the granting, conveying and transfer set forth in the first sentence of this Section 18(B), giving and granting unto City full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done with respect to the Intellectual Property with respect to the transactions contemplated in the first sentence of this Section 18(B), as fully, to all intents and purposes, as the Ground Lessee might or could do, with full power of substitution and revocation, hereby ratifying and confirming all that said attorney in fact or its substitute shall lawfully do or cause to be done by virtue hereof.

18. GENERAL PROVISIONS.

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

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

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the City of Cleveland Heights and the State of Ohio. All actions regarding this Lease shall be brought in the Cuyahoga County Court of Common Pleas, and Ground Lessee agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

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

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

(G) No Recording. This Lease shall not be recorded in the Cuyahoga County Recorder's office. The parties shall execute a memorandum of lease for recording purposes in substantially the form attached hereto as Exhibit B (Form of Memorandum of Lease).

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

(I) No Third Party Beneficiaries. The parties hereby agree that, except for the rights of Permitted Mortgagees under section 9 (Permitted Leasehold Mortgages) hereof, no third party beneficiary rights are intended to be created by this Lease.

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

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity.

No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. The City and Ground Lessee each represents to the other that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease have been duly authorized by all necessary actions on the part of the performing party.

(M) The City's Assistance. From time to time during the Term at the request of Ground Lessee, and without further consideration, but subject to all Legal Requirements (as defined in Section 4), the City, in its capacity as landlord, shall execute and deliver, and/or join with Ground Lessee in executing and delivering, such applications for licenses, variances, zoning changes, approvals, permits and consents from governmental bodies, utility companies and other entities and shall supply such information, execute such forms and take such actions as Ground Lessee may reasonable request in connection with the construction, development, use, ownership, operation, maintenance or replacement of any of the Improvements or Project Site; provided, however, that the City shall not be required to incur any expense or liabilities in connection with these matters or to agree to any material restrictions or limitation of City's rights hereunder, encumbrances on title to the Project Site (except as permitted herein), transfers of any portion of the Project Site (except as permitted herein), or modifications to this Lease.

(O) Exhibits. The following Exhibits are attached hereto and made a part hereof:

Exhibit A – Legal Description

Exhibit B – Form of Memorandum of Lease

Exhibit C – Merchandising Plan

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DRAFT

[SIGNATURE PAGE TO GROUND LEASE]

This Lease is executed by the parties on the dates indicated below their respective signatures as of the Effective Date.

CITY OF CLEVELAND HEIGHTS, OHIO

By: _____
_____, _____

Date: _____, _____

Approved as to Form:

By: _____
_____, City Law Director

CITY'S FISCAL OFFICER CERTIFICATE

It is hereby certified, as of the above date, that the amount required to meet the contract, agreement, obligation, payment or expenditure by the City of Cleveland Heights for the attached agreement between the City, as ground lessor, and _____, as ground lessee, has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

_____, Director of Finance

STATE OF OHIO

COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, _____ of the City of Cleveland Heights, an Ohio municipal corporation, on behalf of the corporation. No oath or affirmation was given in connection with this notarial act.

Notary Public

My commission expires: _____

[SIGNATURE PAGE TO GROUND LEASE]

_____, LLC,
an Ohio limited liability company

By: _____
_____, _____

Date: _____

STATE OF INDIANA

COUNTY OF INDIANAPOLIS

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of _____, LLC, an Ohio limited liability company, on behalf of the company. No oath or affirmation was given in connection with this notarial act.

Notary Public

My commission expires: _____

This instrument prepared by:
Tucker Ellis LLP
950 Main Avenue, Suite 1100
Cleveland, Ohio 44113

EXHIBIT A
LEGAL DESCRIPTION

DRAFT

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

(Ground Lease – Cedar-Lee-Meadowbrook)

This Memorandum of Lease is executed by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the “City”), and _____, **LLC**, an Ohio limited liability company, having an address of One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 (the “Ground Lessee”).

1. The City and Ground Lessee entered into a certain Ground Lease (“Lease”) dated as of _____, _____ pursuant to which the City has leased to Ground Lessee certain real estate (the “Project Site”), being the real property commonly known as the Cedar-Lee-Meadowbrook parcel, consisting of approximately _____ acres located between Cedar Road and Meadowbrook Road, in the City of Cleveland Heights, Ohio. The legal description of the Project Site is attached hereto as Exhibit A.

2. The initial term of the Lease commenced on the date of the Lease and will expire ninety-nine (99) years following the Effective Date of the Lease.

3. The Lease contains an option to purchase in favor of Ground Lessee and certain rights of first offer in favor of the City.

4. This Memorandum of Lease is executed solely for recording purposes, and nothing herein shall be deemed as modifying any of the terms or conditions of the Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Exhibit B to Form of Ground Lease]

B-1

[SIGNATURE PAGE TO MEMORANDUM OF LEASE]

CITY OF CLEVELAND HEIGHTS, OHIO

By: _____
_____, _____

Date: _____, _____

Approved as to Form:

By: _____
_____, City Law Director

CITY'S FISCAL OFFICER CERTIFICATE

It is hereby certified, as of the above date, that the amount required to meet the contract, agreement, obligation, payment or expenditure by the City of Cleveland Heights for the attached agreement between the City, as ground lessor, and _____, LLC, as ground lessee, has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

_____, Director of Finance

STATE OF OHIO

COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____ of the City of Cleveland Heights, an Ohio municipal corporation, on behalf of the corporation. No oath or affirmation was given in connection with this notarial act.

Notary Public

My commission expires: _____

[Exhibit B to Form of Ground Lease]

B-2

[SIGNATURE PAGE TO MEMORANDUM OF LEASE]

_____, LLC,
an Ohio limited liability company

By: _____

Date: _____

STATE OF INDIANA

COUNTY OF INDIANAPOLIS

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of _____, an Ohio limited liability company, on behalf of the company. No oath or affirmation was given in connection with this notarial act.

Notary Public

My commission expires: _____

This instrument prepared by:
Tucker Ellis LLP
950 Main Avenue, Suite 1100
Cleveland, Ohio 44113

[Exhibit B to Form of Ground Lease]

B-3

EXHIBIT A TO MEMORANDUM OF LEASE

[LEGAL DESCRIPTION]

DRAFT

[Exhibit A to Form of Ground Lease]

A-1

EXHIBIT C

MERCHANDISING PLAN

Cleveland Heights – Cedar-Lee-Meadowbrook Commercial Strategy

[See Exhibit __ of Development Agreement]

DRAFT

[Exhibit C to Form of Ground Lease]

C-1

EXHIBIT F

MERCHANDISING PLAN

In keeping with goals of Developer's Proposal, specifically that the City is seeking for the Project to be a dense, vibrant, pedestrian friendly commercial district that dovetails with the architecture and aesthetics of the surrounding neighborhood, Developer expects to propose a fully integrated, regional mixed-use experience, consisting of approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and/or restaurant space and concepts that may not currently exist in the region. Developer will endeavor to attract retail tenants including, but not limited to, the following: apparel, home stores, chef-driven restaurants, and service providers. Developer agrees that no retail or restaurant concepts will be inconsistent with existing zoning for the Project Site, and further agrees that no retail, commercial or service tenants will be relocated from anywhere within the City without prior consent of the City Manager which shall not be unreasonably withheld, delayed or conditioned.

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

PRELIMINARY SCHEDULE/TIMELINE

Preliminary Project Schedule

Fourth Quarter 2021 – Development Agreement Approved

First Quarter 2022 – Plan Approvals and Due Diligence

Fourth Quarter 2022 – Design Complete and Permits Issued

Fourth Quarter 2022 – Financial Closing

First Quarter 2023 – Construction Commences

Fourth Quarter 2024 – Project Complete

EXHIBIT I

**PLAN FOR COMMUNICATION AND
COORDINATION BETWEEN DEVELOPER AND THE CITY**

The plan for communication and coordination between Developer and the City during the pre-construction planning period and the construction period for the Project shall be as follows:

I. Pre-Construction Planning Period:

All Press releases, briefings, City Council updates, public briefings or information sessions shall be coordinated between the two parties and shall be approved, issued and provided solely by the City of Cleveland Heights.

Community Meetings intended to update the community, answer questions and receive input from residents on the project will be held periodically throughout this period. Community engagement is a key element for a successful development project and input from citizens will be a vital ingredient in the final development agreement for this project. Anyone interested in this important project is encouraged to attend these community meetings.

The Preliminary and Final Development Plan review process will involve several meetings. Please refer to Chapter 1147 of the City of Cleveland Heights' Zoning Code for additional details.

A meeting representing the Closing shall be held at such time as deemed acceptable so as to enable Developer to commence all construction activities.

At least one (1) pre-construction meeting will be held between the parties to this agreement, general contractor and subcontractor and all other parties as determined by the City. The purpose of this meeting is to exchange contact information and discuss all pertinent construction related issues in prepare for commencement of the building of the project improvements. A complaint resolution process shall also be negotiated and agreed to by the parties at this meeting.

II. Construction Period:

All Press releases, briefings, City Council updates, public briefings or information sessions shall be coordinated between the two parties and shall be approved, issued and provided solely by the City of Cleveland Heights.

A Ground-Breaking Ceremony shall be held at the Project Site prior to commencement of construction. The City shall issue invitations to this event and coordinate all media coverage as deemed necessary.

A schedule for periodic Construction Progress meetings shall be agreed to at the pre-construction meeting for the project. Notes will be taken at these meetings and distributed to all parties within a reasonable time after the progress meeting is held.

The City shall have the right to inspect the project at all reasonable times during construction, after written notice to Developer, and following all other requirements stated in this agreement. The foregoing shall not be deemed as limiting in any way the rights of the City's building inspectors to conduct inspections from time to time and without prior notice, in accordance with normal City inspection procedures.

EXHIBIT J

ESTIMATE OF CITY COSTS

City of Cleveland Heights		10/31/2021
MEADOWBROOK & LEE Project Expenses - Accrued and Estimated		
Phase I	Legal Assistance with Structuring Transaction & Negotiation of MOU:	
Tucker Ellis		\$11,093.00
Phase II	Drafting/Negotiating Development Agreement/Parking Agreement/Ground Lease	
Tucker Ellis		\$25,360.00
To Date		\$5,000.00
Estimate to Completion		
OTHER Costs Incurred:		
Tucker Ellis		
(Attention to Reversion Right in Prior Owner)		\$9,800.00
Phase III	Estimated Costs	
	Real Estate Issues/Diligence Issues:	
Legal fees		\$35,000.00
Phase VI	Estimated Costs	
	TIF Negotiations, Analysis, Legislation, Implementation, School Compensation/Financing/ Lease (Not including any Bond Counsel Work) :	
Legal		\$40,000.00
Total (Payable at closing of TIF/construction cost financing):		<u>\$126,253</u>

EXHIBIT K
FORM OF PARKING FACILITIES AGREEMENT

[SEE ATTACHED]

PARKING FACILITIES AGREEMENT

THIS PARKING FACILITIES AGREEMENT (this “**Agreement**”) has been executed as of _____, _____ (the “**Effective Date**”), by and between F&C Development, Inc., [or a designated affiliate of F&C Development, Inc. acceptable to City], an [Indiana corporation] having an address at One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 (“**Developer**” and, together with its affiliates participating in the development contemplated by the Development Agreement (defined below), “**Developer Parties**”) and the CITY OF CLEVELAND HEIGHTS, OHIO, an Ohio municipal corporation, having an address at 40 Severance Circle, Cleveland Heights, Ohio 44118 (the “**City**”).

RECITALS

A. The City owns certain parcels of land commonly known as the Cedar-Lee-Meadowbrook parcels consisting of approximately 4.8 acres as shown on Exhibit A hereto (the “**Project Site**”).

B. In connection with a prior plan for the redevelopment of the Project Site, the City constructed and owns a structured public parking garage containing approximately 377 spaces, and including all related driveways, ramps, easements or other rights of access from the public streets of the City, located within the Project Site (collectively, the “**Garage**”).

C. Pursuant to a request for proposals process initiated by the City in October 2020, consistent with City’s current urban redevelopment plan for the Project Site, Developer proposes to build a mixed-use development on the Project Site as further described in a Development Agreement dated _____, 2021 (as supplemented and amended, the “**Development Agreement**”) between Developer and the City, which development is expected to include one or more buildings of varying height including approximately 200-225 market-rate apartments, approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and/or restaurant space, and public gathering and green spaces (as constructed pursuant to the Development Agreement, the “**Project Improvements**”), with a portion of the Project Improvements expected to “wrap” a portion of the Garage.

D. Contemporaneously herewith, City and a Developer Party have entered into that certain Ground Lease (as amended from time to time, the “**Ground Lease**”) whereby such Developer Party, as Ground Lessee (as hereinafter defined), has leased the Project Site (but not the Garage) from the City, the City has leased the Project Site to Ground Lessee, and the Ground Lessee has agreed to construct, own and operate the Project Improvements on the Project Site, or cause the same to be done all consistent with the urban redevelopment plans of the City.

E. City desires to provide for (i) Developer Parties’ rights to utilize the Garage for use by or for Ground Lessee’s tenants and/or sub-tenants, and (ii) continued public access for employees of and visitors to all Cedar-Lee neighborhood businesses.

F. Capitalized terms used herein not otherwise defined shall have the meaning ascribed to such terms in Article I hereof.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated in and made a part of this Agreement, and the covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I - DEFINITIONS

Section 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings specified below:

(a) **“Applicable Law”** means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, bonds, courts, authorities, agencies, officials and officers, foreseen and unforeseen, ordering or extraordinary, which now or at any time hereafter may be applicable to the Project Site or any parts thereof (specifically including, without limitation, the Americans with Disabilities Act).

(b) **“Comparable Parking Spaces”** means: (i) for parking spaces in the Garage, spaces that are in the Top of the Hill covered parking garage in the City, and (ii) for surface parking spaces in the Project Site Parking Areas, spaces that are in similar public surface parking lot areas in the region.

(c) **“Ground Lessee”** means: (i) a Developer Party that is the ground lessee under the Ground Lease, or (ii) a Developer Party that is a sub-lessee of the Project Site that is the owner of the Project Improvements.

(d) **“Occupancy Date”** means the date on which the City issues the first occupancy permit for the multi-family housing portion of the Project Improvements.

(e) **“Stabilization Date”** means the earlier of (i) the date [ninety] percent [(90%)] of the apartment units in the Project Improvements are leased to tenants or (ii) [January 1, 2026].

(f) **“Transfer Date”** means the first business day following the maturity date of the Taxable Garage Debt (defined below).

(g) **“Project Site Parking Areas”** means any parking spaces in areas outside the Garage, but on the Project Site, after completion of the Project Improvements, excluding therefrom up to fifteen (15) parking spaces adjacent to the Project Improvements that may be reserved by the Developer or Ground Lessee for the exclusive use of the Ground Lessee’s tenants

and/or sub-tenants, as specified in the Final Development Plan (which parking spaces shall not be considered to be in the Project Site Parking Areas).

ARTICLE II – INCORPORATION OF CITY PARKING GARAGE INTO THE PROJECT

Section 1. Restructuring City Indebtedness Relating to Garage. The Garage is currently financed through tax-exempt debt (the “**Tax-Exempt Garage Debt**”), on which the City pays approximately \$460,000.00 in debt service annually. The Tax-Exempt Garage Debt is scheduled to mature on or about December 1, 2028. In order to provide maximum flexibility for locating residential parking within the Garage, thereby facilitating the Developer’s proposed residential uses, the City hereby agrees to refinance the Tax-Exempt Garage Debt with an issuance of taxable revenue bond debt secured only by non-tax revenues of the City (the “**Taxable Garage Debt**”), as soon as reasonably practicable on or after the Effective Date, with the objective of reducing, to the extent possible, the annual debt service to be paid on Garage-related indebtedness. The City currently estimates that annual debt service on Garage-related indebtedness could be reduced to approximately \$300,000.00, but the actual final debt service will depend on the par amount of the Taxable Garage Debt and the security therefor, the maturity and average life of the Taxable Garage Debt, market interest rates on the date of issuance of the Taxable Garage Debt and the final costs of issuance of the Taxable Garage Debt. The City expects that the Taxable Garage Debt can be structured so that it matures on or about December 1, 2033.¹

Section 2. Portion of Garage Reserved for Tenant Use. A total of up to [225] parking spaces in the Garage (the “**Tenant Spaces**”) will be provided by the City for use by Ground Lessee’s tenants and/or sub-tenants and those Tenant Spaces will be separated into an area on floors [] and [] of the Garage reserved exclusively for tenant use (the “**Tenant Area**”). The Tenant Area, with [225] spaces, will constitute [60] % of all spaces in the Garage.

Section 3. Purchase of Parking Permits Prior to Stabilization. During the period commencing on the Occupancy Date and ending on the Stabilization Date (the “**Pre-Stabilization Period**”), Developer or Ground Lessee may purchase parking permits for Tenant Spaces for its tenants and/or sub-tenants (the “**Pre-Stabilization Tenant Permits**”). Pre-Stabilization Tenant Permits (not to exceed the number of Tenant Spaces) may be purchased from the City at the same rate per month/per Tenant Space purchased as the City charges to members of the general public during the Pre-Stabilization Period.

Section 4. Purchase of Permits after Stabilization. During the period commencing on the Stabilization Date and ending on the Transfer Date, Developer or Ground Lessee shall purchase [225] Tenant Permits (the “**Tenant Permits**”) at an aggregate annual purchase price for all Tenant Permits (which amount shall be payable without deduction or set-off until the Transfer Date by Developer in equal quarterly installments in advance commencing with the first day of the calendar

¹ Section 1 to be revised to reflect actual annual debt service on Taxable Garage Debt if known at the time this Agreement is executed.

quarter following the quarter in which the Stabilization Date occurs) in an amount equal to [sixty percent (60%)] of the total annual debt service required to be paid on the Taxable Garage Debt. Developer or Ground Lessee shall have the right to provide such Tenant Permits to its tenants and/or sub-tenants on whatever terms it determines. In the event any quarterly installment is not received by the City within thirty (30) days of the date the same is due and payable, Developer shall pay a late charge to the City in the amount of five percent (5%) of the sum then due and payable. In the event any quarterly installment plus any applicable late fee is not received by the City within (15) days of the date the same is due and payable, the City may in its discretion terminate this Agreement.

Section 5. Public Parking Spaces. [152] of the parking spaces that are not in the Tenant Area of the Garage (the “**Public Parking Spaces**”), as well as any spaces located in the Project Site Parking Areas, shall remain as public parking spaces available to the general public on a non-reserved, first-come first served, daily/monthly basis at all times until the earlier of (i) the expiration of the term of the Ground Lease, or (ii) the exercise by the Developer of its option to purchase the Project Site pursuant to the terms of the Ground Lease (the “**Termination Date**”). Prior to the Transfer Date, the City shall set the rates and fees to be charged for the use of such Public Parking Spaces and Project Site Parking Areas, and shall receive any and all revenue generated by such Public Parking Spaces and Project Site Parking Areas. From and after the Transfer Date, revenue generated by such Public Parking Spaces and Project Site Parking Areas shall be retained by Developer or Ground Lessee as the owner of the Garage; provided that until the Termination Date, the daily/monthly rate that may be charged for the use of such Public Parking Spaces and Project Site Parking Areas shall not exceed the daily/monthly rate charged for Comparable Parking Spaces. Developer shall determine and disclose to the City at the Transfer Date the daily/monthly rate to be charged for the use of the Public Parking Spaces and Project Site Parking Areas, and shall notify the City in writing not less than thirty (30) days in advance whenever Developer (or Ground Lessee) intends to change such rates.

Section 6. Maintenance Cost and Property Tax. Prior to the Occupancy Date, the City shall pay property taxes, service payments, assessments and other similar impositions associated with the Garage and shall perform all necessary maintenance and repairs on the Garage in a good and workmanlike manner in full compliance with Applicable Law. From and after the Occupancy Date, Developer (or Ground Lessee) shall reimburse the City within 30 days for [thirty percent (30%)] of the property taxes, service payments, assessments and other similar impositions associated with the Garage, and shall reimburse the City for [thirty percent (30%)] of the cost of all necessary maintenance and repairs on the Garage equal to the Tenant Usage Percentage. From and after the Stabilization Date and prior to the Transfer Date, Developer (or Ground Lessee) shall pay the property taxes, service payments, assessments and other similar impositions associated with the Garage and shall perform all necessary maintenance and repairs on the Garage in a good and workmanlike manner in full compliance with Applicable Law and without unreasonable interference with the use by the public of the Public Parking Spaces and Project Site Parking Areas; provided, however, that the City shall be responsible to reimburse Developer and Ground Lessee

within thirty (30) days for a pro rata share of such real estate taxes and maintenance and repair costs, to be determined based upon the number of spaces in the Garage that are Public Parking Spaces at the end of the calendar quarter in which such costs have been incurred. From and after the Transfer Date, Developer (or Ground Lessee) shall be solely responsible for payment of the property taxes, service payments, assessments and other similar impositions associated with the Garage and shall be solely responsible for performing all necessary maintenance and repairs on the Garage in a good and workmanlike manner in full compliance with Applicable Law and without unreasonable interference with the use by the public of the Public Parking Spaces and Project Site Parking Areas

Section 7. Management. Prior to the Stabilization Date, the City shall manage the operations of the Garage. Commencing on the Stabilization Date, Developer or Ground Lessee shall assume management responsibilities for the Garage, subject to the continued rights of the City to receive both the revenue from the Developer for the Tenant Permits and the revenue generated by the Public Parking Spaces and Project Site Parking Areas until the Transfer Date. Upon assuming management responsibilities for the Garage, Developer may engage a parking management company to manage the Garage on behalf of Developer. Developer covenants that during any period it is managing the Garage (either directly or through a third-party management company) it will not take, and will make reasonable efforts to prevent, any actions or circumstances in the Garage that would interfere with the public access to or use of the Public Parking Spaces or the Project Site Parking Areas.

Section 8. Transfer of Ownership on the Transfer Date. On the Transfer Date, in consideration of the undertakings by the Developer and Ground Lessee hereunder and under the Development Agreement and the Ground Lease, and the performance thereof, and for no additional consideration, the City shall transfer ownership of the Garage to Developer or Ground Lessee by means of one or more instruments of transfer reasonably satisfactory to Developer, but shall retain the fee simple interest in the underlying ground, which shall continue to be leased to Ground Lessee as part of the Ground Lease on the same terms as the remainder of the Project Site. From and after the Transfer Date, all revenue from the Garage shall be retained by Developer or Ground Lessee; provided that the Developer shall comply with the restrictions related to the number of Public Parking Spaces and the rates and fees that can be charged for such Public Parking Spaces as provided in this Agreement until the Termination Date.

Section 9. Construction Period Parking Arrangements and Parking in the Cedar-Lee District outside of the Project Site After Construction. The parties acknowledge that some or all of the Project Site Parking Areas, over time, may be utilized for staging and construction during development, creating a reduction in public parking in the Cedar-Lee District. Therefore, during construction of the Project, the City and Developer will develop an acceptable temporary parking plan which will allow for parking to be shifted from staging/construction areas to other available locations including the Garage, on-street parking and/or other parking made available by the City, the CHUH School District, or the Cleveland Heights Library System. This section should not be

construed in any way to prevent the possibility of the parking spaces resulting from the temporary parking plan from becoming permanent in nature through future agreements or arrangements between the Developer or Ground Lessee and the CHUH School District and/or the Library, or action by the City relating to on-street parking and/or parking on City-owned property.

Section 10. Claims; Indemnity and Insurance. From and after the Stabilization Date, the City shall not be liable for any damage or injury to Ground Lessee's tenants and/or sub-tenants using the Garage or occurring at the Garage or any part thereof, and Developer and the Ground Lessee agree to hold the City harmless for any tenant claim for damages during the term of this Agreement, except to the extent such damage or injury is the result of the gross negligence of the City or any of the City's agents. From and after the Stabilization Date, the City shall not be responsible for any theft, loss or damage to any vehicle or property left in any vehicle. Commencing on the Stabilization Date, Developer (or a parking management company engaged by Developer) shall procure and maintain throughout the term of this Agreement a policy or policies of insurance insuring Developer, Ground Lessee and the City against all claims, demands or actions arising out of or in connection with any tenant's use or occupancy of the Garage, the limit of such policy or policies to be in an amount not less than \$500,000 in respect of injuries to or death of any one person, and in an amount not less than \$1,000,000 in respect of any one accident or disaster, and in an amount not less than \$100,000 in respect of property damaged or destroyed, all of such liability insurance to be written by insurers or recognized responsibility which are acceptable to the City.

Section 11. Default and Remedies. Upon the occurrence of any material default by Developer or Ground Lessee, the City shall have the option to terminate this Agreement, in which event Developer and Ground Lessee shall immediately provide the City with access to the Tenant Area (and any gates or other devices segregating the Tenant Area from the remainder of the Garage and any related key-card software and systems) and if Developer and the Ground Lessee fail to do so the City may enter and take possession of the Tenant Area or any other portion of the Garage and/or expel or remove any tenant or other person who may be occupying any of the Tenant Spaces. Pursuit of any remedy shall not preclude pursuit of any other remedies provided by law, nor shall pursuit of any remedy constitute a forfeiture or waiver of any payment due to the City hereunder or any damages accruing to the City by reason of the violation of any of the terms of this Agreement.

ARTICLE III – MISCELLANEOUS

Section 1. Term. The Term of this Agreement shall expire upon the expiration or termination of the Ground Lease.

Section 2. Recording. This Agreement or a memorandum thereof shall be recorded in the Office of the Recorder in the Fiscal Office of Cuyahoga County, Ohio immediately following the recording of the Ground Lease or a memorandum thereof.

Section 4. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Ohio.

Section 5. Relationship of Parties. Nothing contained herein shall be deemed or construed by Developer, Ground Lessee or City as creating the relationship of principal and agent or of partnership or joint venture between Developer or Ground Lessee and the City, it being understood and agreed that the only relationship between the parties is contractual in nature as described herein.

Section 6. Headings. Sections and paragraph headings in this Agreement are for convenience or reference only, and shall not affect the interpretation or construction of the provisions hereof.

Section 7. Severability. Invalidation of any of the provisions contained in this Agreement or the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof of the application thereof to any other person and the same shall remain in full force and effect.

Section 8. Assignment; Lender Recognition. Developer and Ground Lessee shall not assign their respective rights or interests under this Agreement without the prior written consent of the chief executive or administrative officer of the City, which shall not be unreasonably withheld, delayed and conditioned; except that Developer's or Ground Lessee's assignment to an affiliate of Developer (with prior written notice to the City), and Developer's, Ground Lessee's or any such assignee's collateral assignment of its rights under this Agreement to its lenders for the Project, and full and unfettered assignability by such lender, without the consent of the City, upon an exercise by such lender of its rights under its loan documents, shall be permitted; provided however that no such assignments by Developer or Ground Lessee to an affiliate or lender shall relieve Developer or Ground Lessee of its obligations or liability to the City under this Agreement. The City agrees to provide to such lender (a) reasonable rights to cure defaults by Developer or Ground Lessee under this Agreement, and (b) any estoppel certificates with respect to this Agreement, as may be reasonably required by such lender.

[Balance of Page Intentionally Omitted]

IN WITNESS WHEREOF, Developer, Ground Lessee and the City have executed this Agreement on the day and year first above written.

“Developer”

[_____] ,
a _____

By: _____
Its: _____

The legal form and correctness
of this Agreement is hereby approved:

“City”

City of Cleveland Heights, Ohio

Date: _____

By: _____
Its: _____

[Add Form of Fiscal Officer Certificate and notary acknowledgments]