



# CLEVELAND HEIGHTS

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**Council Committee of the Whole**

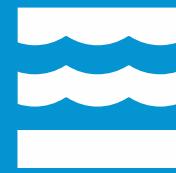
**Monday, November 7, 2022**

**6:00 p.m.**

**City Hall – Executive Conference Room**

## **Agenda**

1. NEORSD Update to City Council (20 minutes)
2. CP Media Demo by Ryan Cram (20-30 minutes)
3. Executive Session (20 minutes)
  - a. *To discuss with an attorney for the public body, claims or disputes involving the public body that are the subject of pending court action.*
4. Legislation Review/Caucus (20 minutes)



**Northeast Ohio  
Regional Sewer District**

# Doan Brook Restoration at Horseshoe Lake

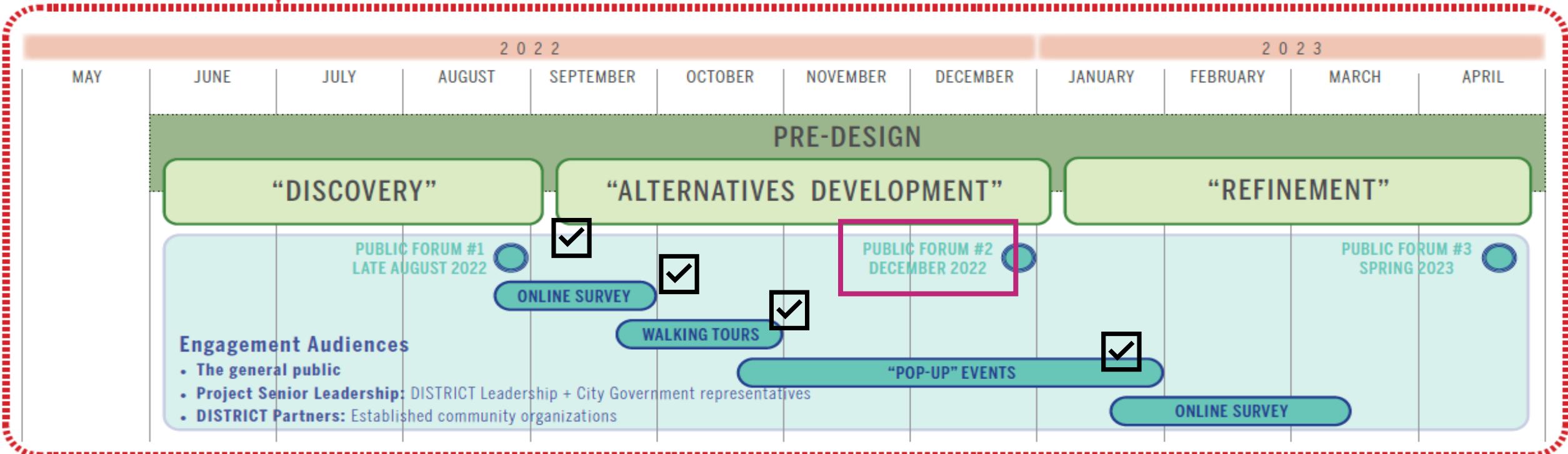
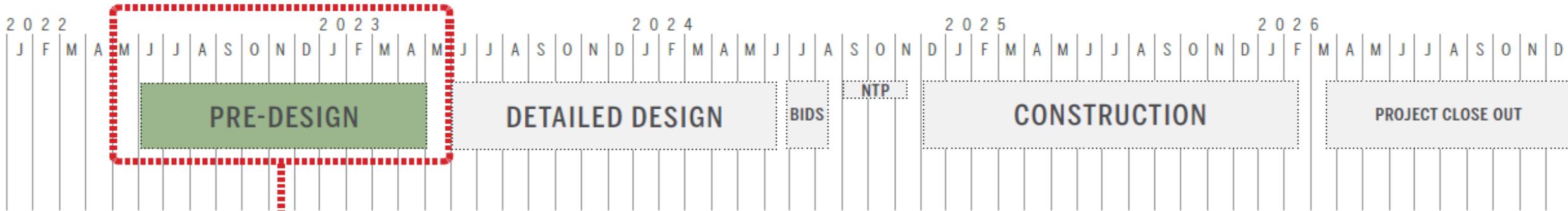
A photograph showing a group of approximately ten people gathered in a natural setting. They are looking towards a waterfall cascading down a rocky cliff. The people are dressed in outdoor attire, such as jackets and hats. The background features dense green foliage and the rocky, layered rock of the cliff face. The overall scene is a mix of natural beauty and human activity, likely a field trip or a community event.

# PROJECT SCHEDULE & ENGAGEMENT PLAN

 Northeast Ohio  
Regional Sewer District

**AECOM + STIMSON**

SEE ENLARGEMENT BELOW

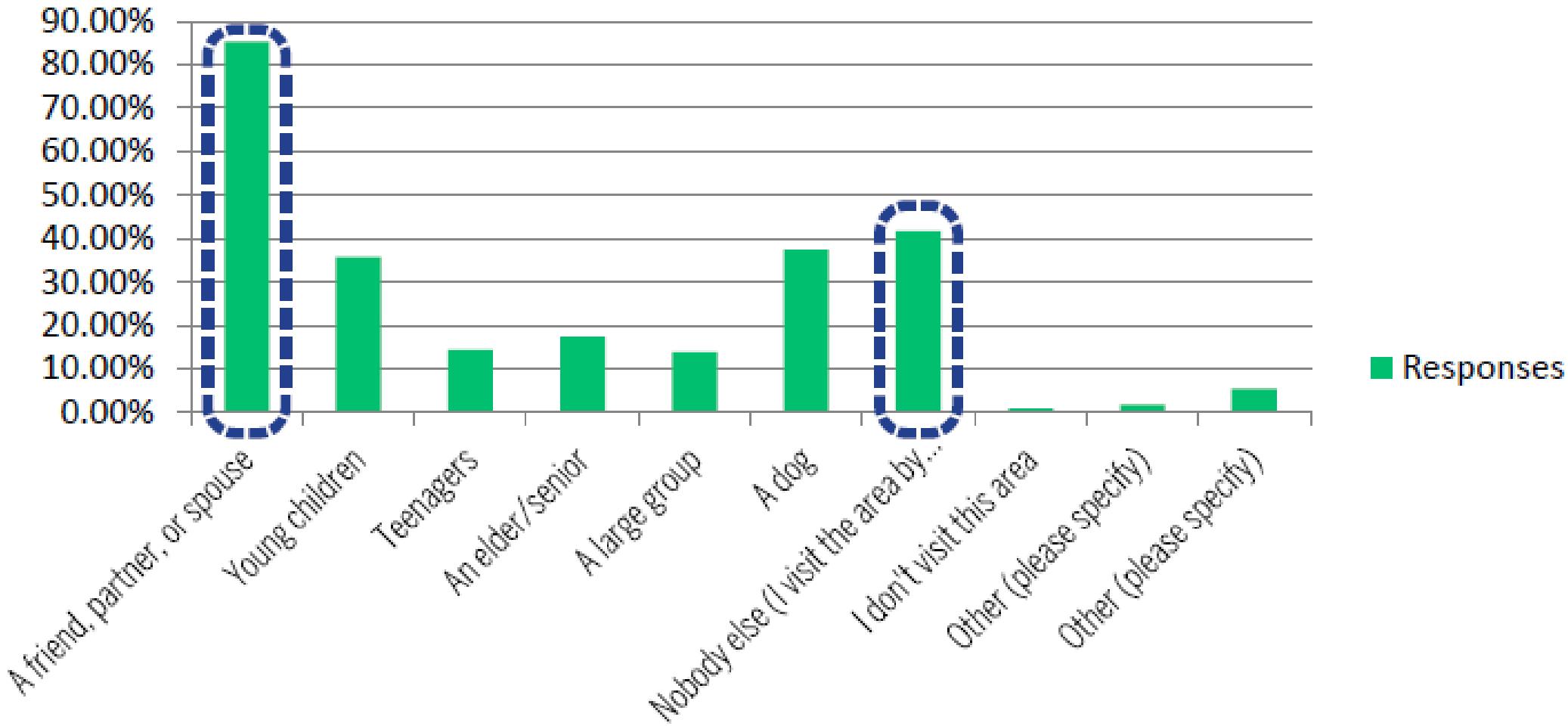


- One public forum
- Three Pop-up Events
- Six Walking Tours
- More than 800 survey responses



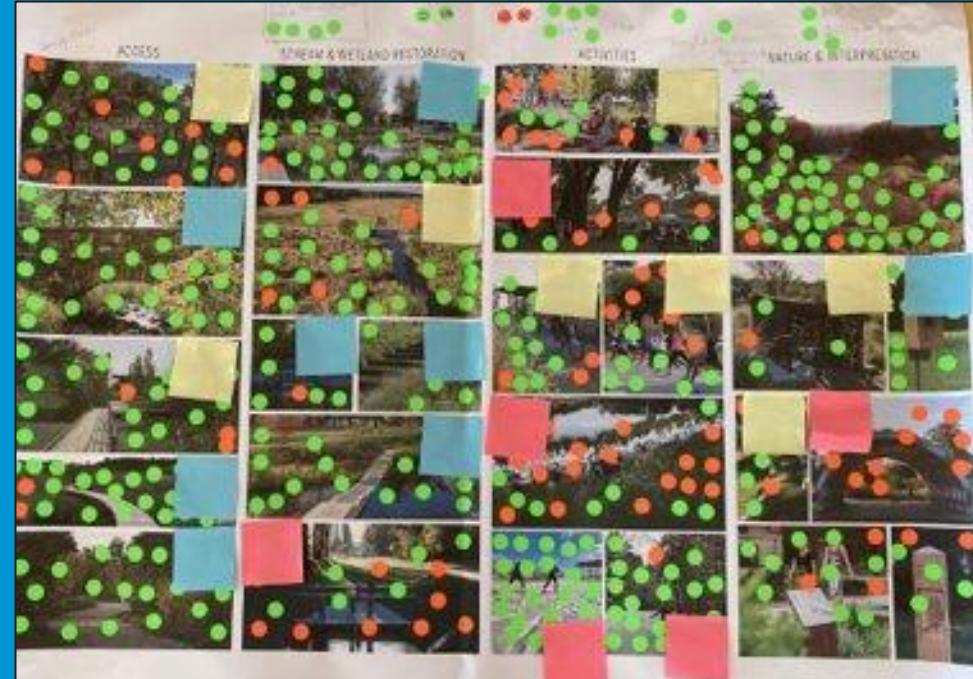
# Survey Results

## I come to Doan Brook/Horseshoe Lake Park with: (select all that apply)



# Next Community Engagement: Public Forum #2

- Wednesday, November 30, 2022
  - Zoom meeting, 6:00-7:30pm, register online
  - Survey results, project updates
  - [www.neorsd.org/doanbrook](http://www.neorsd.org/doanbrook)
- Saturday, December 3, 2022
  - Shaker Heights Public Library, 10:30am-1:00pm
  - Opportunity to provide input to pre-design team and receive project updates



Public Forum #1 Feedback

# Lower Shaker Lake Dam Reconstruction

# Lower Shaker Lake Dam Reconstruction

- Purpose:
  - Reconstruction of dam to meet ODNR Class 1 compliance requirements
- Next step:
  - December 2022 - Release of the request for proposals for pre-design of the dam reconstruction





# CLEVELAND HEIGHTS

## AGENDA - CLEVELAND HEIGHTS CITY COUNCIL MEETING

**November 7, 2022**

**Regular Meeting**

**7:30 p.m.**

**Cleveland Heights City Hall  
Council Chambers  
40 Severance Cir  
Cleveland Heights, Ohio**

- 1) Meeting called to order by Council President**
- 2) Roll Call of Council Members**
- 3) Excuse absent members**
- 4) Approval of the minutes from previous meeting(s):** October 17, 2022, October 24, 2022, and October 31, 2022.
- 5) Communications from the Mayor**
- 6) Report of the Clerk of Council**

Notify Council that two notices have been received from the Ohio Division of Liquor Control advising that applications have been made by the following:

- E and E LLC, 2785 Euclid Heights Blvd., Cleveland Heights, OH 44106 for a transfer of a D5/D6 permit to Inn On Coventry Restaurant Group LLC dba Inn On Coventry, 2785 Euclid Heights Blvd., Cleveland Heights, OH 44106.
- Kathmandu Inc. dba Taste, 2317 Lee Rd, Cleveland Heights, OH 44118 for a transfer of a D5/D6 Liquor Permit to Laraj LLC, 2317 Lee Rd., Cleveland Heights, OH 44118.

- 7) Public Comment - Agenda Items only**

(Note: Persons wishing to speak must register in advance. A 3-minute time limit applies. Council President reserves the right to reduce time limit based on the volume of business on the agenda. Comments unrelated to the agenda may be made after Committee Reports)

## 8) **LEGISLATION**

*Note: The title for each piece of legislation contains a parenthetical reference to the Council Committee within which the subject matter of the legislation falls. Council Committees are abbreviated as follows: (AS)-Administrative Services; (COTW)-Committee of the Whole; (CRR)-Community Relations and Recreation; (F)-Finance; (HB)-Housing and Building; (MSES)-Municipal Services and Environmental Sustainability; (PD)-Planning and Development; (PSH)-Public Safety and Health. See Resolution 97-2022 for a list of Council Committee subject matter areas.*

### **a. First Readings – Consideration of Adoption Requested**

**RESOLUTION NO. 159-2022(CRR): First Reading.** A Resolution authorizing and directing the Mayor to enter into negotiations with the Cleveland Heights-University Heights City School District School District for a mutually beneficial agreement for the use of each other's meeting and recreational facilities; indicating the Mayor's and this Council's commitment to such an agreement; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren, Council President Hart, Council Vice President Cobb, and Council members Cuda, Larson, Moore, and Mattox

Motion to Adopt/Second: \_\_\_\_\_/\_\_\_\_\_

Vote: \_\_\_\_\_  
For \_\_\_\_\_ Against \_\_\_\_\_ No. Reading \_\_\_\_\_

### ***b. First Reading Only***

**ORDINANCE NO. 160-2022(PSH): First Reading.** An Ordinance amending Schedule I "Through Streets" of the Appendix "Traffic Schedules" of Part Three "Traffic Code" of the Codified Ordinances of the City of Cleveland Heights to remove all or portions of Euclid Heights Boulevard, Lee Boulevard, Lee Road, North Taylor Road, and South Taylor Road from the list designating "through streets" in the City of Cleveland Heights.

Introduced by Mayor Seren

**RESOLUTION NO. 161-2022(PSH): *First Reading*.** A Resolution authorizing the Mayor to enter into an agreement with Rubicon Global, LLC, for Software Services for the Department of Public Works, Division of Refuse Collection; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

**RESOLUTION NO. 162-2022(MSES): *First Reading*.** A Resolution authorizing the Mayor to enter into an amendment to an agreement with Valley Freightliner & Western Star, for the acquisition of a Freightliner 114SD Tandem Axle Cab and Chassis for the Department of Public Works; providing compensation therefor; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

**RESOLUTION NO. 163-2022(MSES): *First Reading*.** A Resolution authorizing the Mayor to enter into an agreement with the County of Cuyahoga to perform certain services to help maintain the City's sanitary and storm sewers; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

**ORDINANCE NO. 164-2022(MSES): *First Reading*.** An Ordinance authorizing the Mayor to enter into an agreement with, and requesting the cooperative of, the County of Cuyahoga, Ohio ("COUNTY"), in the matter of the Resurfacing of Warrensville Center Road from Mayfield Road to the South Corporation Line in the City of Cleveland Heights ("MUNICIPALITY"); and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

c. **Second Readings**

**ORDINANCE NO. 150-2022(F): *Second Reading*.** An Ordinance authorizing the transfer of real property located at 2124 Rossmoor Road to Future Heights, Inc., for rehabilitation and resale; declaring the property no longer needed for a public purpose; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt/Second: \_\_\_\_\_/\_\_\_\_\_

Vote: \_\_\_\_\_  
For \_\_\_\_\_ Against \_\_\_\_\_ No. Reading \_\_\_\_\_

**ORDINANCE 151-2022(F): Second Reading.** An Ordinance authorizing the transfer of real property located at 901 Englewood Road to Future Heights, Inc., for rehabilitation and resale; declaring the property no longer needed for a public purpose; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt/Second: \_\_\_\_\_/\_\_\_\_\_

Vote: \_\_\_\_\_  
For \_\_\_\_\_ Against \_\_\_\_\_ No. Reading \_\_\_\_\_

**RESOLUTION NO. 156-2022(MSES): Second Reading.** A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2023 Member Community Infrastructure Grant program for the Cedar Glen Parkway Rehabilitation and Replacement Project; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt/Second: \_\_\_\_\_/\_\_\_\_\_

Vote: \_\_\_\_\_  
For \_\_\_\_\_ Against \_\_\_\_\_ No. Reading \_\_\_\_\_

**RESOLUTION NO. 157-2022(MS): Second Reading.** A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2023 Member Community Infrastructure Grant Program for the design control of the SSOs CH-27 and CH-51 Project; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt/Second: \_\_\_\_\_/\_\_\_\_\_

Vote: \_\_\_\_\_  
For \_\_\_\_\_ Against \_\_\_\_\_ No. Reading \_\_\_\_\_

**ORDINANCE NO. 158-2022(AS): Second Reading.** An Ordinance amending Chapter 767, “Tenant’s Right to Pay to Stay,” of the Codified Ordinances of the

City of Cleveland Heights and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt/Second: \_\_\_\_\_ / \_\_\_\_\_

Vote: \_\_\_\_\_  
For \_\_\_\_\_ Against \_\_\_\_\_ No. Reading \_\_\_\_\_

**d. *Fourth Readings***

**ORDINANCE NO. 148-2022(PD): *Fourth Reading as Amended*.** An Ordinance declaring certain improvements to real property located in the City of Cleveland Heights, Ohio to be a public purpose; declaring such improvements to be exempt from real property taxation for a period of years; making provision for the collection of service payments in lieu of taxes; establishing an urban redevelopment tax increment equivalent fund for the deposit of such service payments; authorizing a compensation agreement with the Cleveland Heights-University Heights City School District; providing related authorizations pursuant to Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43, and declaring an emergency.

Motion to Adopt/Second: \_\_\_\_\_ / \_\_\_\_\_

Vote: \_\_\_\_\_  
For \_\_\_\_\_ Against \_\_\_\_\_ No. Reading \_\_\_\_\_

**9) Committee Reports**

- a.) Housing and Building Committee**
  - Assignments(s): Access by Political Candidates to Multi-Unit Dwellings (Cuda), Civil Option (Hart)
- b.) Municipal Services and Environmental Sustainability Committee**
  - Assignment(s): Sewer Rates
- c.) Planning and Development Committee**
  - Assignment(s): GAP Financing
- d.) Public Safety and Health Committee**

- e.) Administrative Services Committee
  - Assignment(s): Charter Review, Commission/Board Restructuring
- f.) Community Relations and Recreation Committee
- g.) Finance Committee
- h.) Committee of the Whole

**10) Public Comment - General**

(Note: Persons wishing to speak must register in advance. A 3-minute time limit applies. Council President reserves the right to reduce time limit based on the volume of business on the agenda.)

**11) Old Business**

**12) New Business**

**13) Council Member Comments**

(Note: A 3-minute time limit applies. Council President reserves the right to reduce time limit based on the volume of business on the agenda.)

**14) Council President's Report**

**15) Adjournment**

**NEXT MEETING OF COUNCIL: MONDAY, NOVEMBER 21, 2022**



# CLEVELAND HEIGHTS

**Monday, October 17, 2022 Minutes**

## **CITY COUNCIL MEETING**

### **President Hart Presiding**

- Clerk of Council excused\*

**Roll Call:** Present: Mattox, Moore, Russell, Larson, Cuda, Cobb, Hart  
Absent: None

**Also Present: Mayor Seren, Director Hanna**

\*Motion to appoint Vice President Cobb as temporary Clerk by Councilman Mattox; Seconded by Council Larson

Voice Vote:

Ayes: 7  
Nays: 0

## **APPROVAL OF THE MINUTES FROM PREVIOUS MEETING(S):**

- September 6, 2022—APPROVED
- September 19, 2022—APPROVED
- October 3, 2022—APPROVED

## **COMMUNICATIONS FROM THE MAYOR:**

- Parks and Rec's Director, Joe McCrae has left the City of Cleveland Heights. This was a difficult loss for the city. Wants to congratulate him on accepting the position of Chief Administrative Officer of the County Board of Health. Highlighted that Joe McCrae understood this community's shared values of commitment to equity and inclusion.
- With regards to the Cedar-Lee Meadowbrook Development (CLM) he wants to make sure the public and Council is aware of the upcoming decisions regarding financing for this project; School Board has a meeting this week, they will not be voting, this is a work session. They will vote November 1 at their next regular meeting; and the Mayor hopes Council will follow up with

it's concurrence on November 7<sup>th</sup> meeting. Encourages everybody to pay close attention to the School Board as they make their decision.

- One of the Pride benches that the parks and rec staff installed, was recently defaced; wants to speak out publicly against the kind of bigotry and hatred that would lead to somebody destroying a message of unity and inclusion. Police are investigating and we do not stand for that kind of behavior in Cleveland Heights.

### **REPORT OF THE CLERK OF COUNCIL:**

Notify Council that one notice has been received from the Ohio Division of Liquor Control advising that applications have been made by the following:

- Uptown Mart LLC, 1900 Lee Rd., Cleveland Heights, OH 44118 for a transfer of a C1/C2 permit to 1900 Mart Inc., 1900 Lee Rd., Cleveland Heights, OH 44118.

### **Matter of Record**

Referred to: The Mayor, Chief of Police, and the Director of Law

### **PUBLIC COMENT (AGENDA ITEMS and GENERAL (combined):**

- None

### **LEGISLATION:**

#### **First Readings**

##### ***a. First Readings-Consideration of Adoption Requested***

**ORDINANCE NO. 155-2022(F): First Reading.** An Ordinance to amend certain subparagraphs of Ordinance No. 139-2021 (F), relating to appropriations and other expenditures of the City of Cleveland Heights, Ohio for the fiscal year ending December 31, 2022 and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

Motion to Adopt by President Hart, Seconded by Councilor Larson

Voice Vote: Ayes: Mattox, Moore, Russell, Hart, Cobb, Cuda, Larson  
Nays: None

### **Legislation Passed**

##### ***b. First Readings Only***

**RESOLUTION NO. 156-2022(MS): *First Reading*.** A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2023 Member Community Infrastructure Grant program for the Cedar Glen Parkway Rehabilitation and Replacement Project; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

**Referred to MSES Committee**

**RESOLUTION NO. 157-2022(MS): *First Reading*.** A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2023 Member Community Infrastructure Grant Program for the design control of the SSOs CH-27 and CH-51 Project; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren

**Referred to MSES Committee**

**ORDINANCE NO. 158-2022(AS): *First Reading*.** An Ordinance amending Chapter 767, “Tenant’s Right to Pay to Stay,” of the Codified Ordinances of the City of Cleveland Heights and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by President Melody Joy Hart\*

\*Original version brought forward by then Councilman Mike Unger; this version is to extend ordinance per recommendation by Racial Justice Task Force

## **Second Reading**

**ORDINANCE NO. 148-2022(PD): *Second Reading*.** An Ordinance declaring certain improvements to real property located in the City of Cleveland Heights, Ohio to be a public purpose; declaring such improvements to be exempt from real property taxation; making provision for the collection of service payment in lieu of taxes; establishing an urban redevelopment tax increment equivalent fund for the deposit of such service payments; authorizing a compensation agreement with the Cleveland Heights-University Heights School District; providing related authorizations pursuant to Ohio Revised Code Sections 5709.41, 5709.42, and 5709.43, and declaring the necessity that this legislation become immediately effective as an emergency measure.

NO VOTE

**Moved to Third Reading at November 7, 2022 Council Meeting**

**RESOLUTION NO. 152-2022(F): Second Reading.** A Resolution approving the Mayor's appointment of Andrew Unetic as the Director of Finance, commencing October 24, 2022; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt by President Hart; Seconded by Councilor Larson

Roll Call:      Ayes: 6 (Larson, Cuda, Cobb, Hart, Russell, Mattox)  
                    Nays: 1 (Moore)

**Legislation Passed; 6-1**

**RESOLUTION NO. 153-2022(PSH): Second Reading.** A Resolution adopting the 2022-2027 update of the *Cuyahoga County All-Hazards Mitigation Plan for Cuyahoga County* ("AHMP"); and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt by Councilor Larson; Seconded by Councilor Moore

Voice Vote:    Ayes: 7  
                    Nays: 0

**Legislation Passed**

**RESOLUTION NO. 154-2022(MSES): Second Reading:** An Ordinance amending Section 303.08 "Impounding of Vehicles" of the Codified Ordinances of the City of Cleveland Heights so that the Ordinance will be consistent with current State and Local Law; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Motion to Adopt by Councilor Moore; Seconded by Councilman Cuda

Voice Vote:    Ayes: 7  
                    Nays: 0

**Legislation Passed**

## **Fifth Reading**

**ORDINANCE NO. 78-2021 (PSH) Fifth Reading (Amended).** An Ordinance enacting and adopting Chapter 522 "Lead Hazards," of Part Five, General Offenses Code, of the Codified Ordinances of the City of Cleveland Heights; repealing Chapter 1347, "Certificate of Occupancy," of Part Thirteen, Building Code, of the Codified ordinances of the City of Cleveland Heights, and adopting a replacement Chapter 1347, "Certificate of Occupancy," and amending Section 1345.99, "Penalty," of Chapter 1345,

“Enforcement and Penalty,” of Part Thirteen, Building Code, of the Codified Ordinances of the City of Cleveland Heights.

Motion to Adopt by Councilor Larson; Seconded by Councilwoman Russell

Discussion: Councilor Larson would like to point out the amendments; 1. Modifying the language in section 522.05(a)2 by incorporating federal law standards on page 7 of exhibit A to provide that if an agent advises a seller/lessor of their obligations under 522.05(a) the agent is not liable for a failure to disclose to a purchaser/lessee the presence of lead-based paint/hazards that were not disclosed to the agent by the seller/lessor. 2. Section 1347.08(b) clarifies that the lead-safe certificate is transferrable to a new owner within the 2-year period of the certificate.

\*Vice President Cobb is recusing himself from voting for this legislation as his wife is a lead-safety technician and therefore has a financial interest in this legislation.

Roll Call on Amendment: Ayes: Larson, Cuda, Hart, Russell, Moore, Mattox

Nav: None

### Recused: Cobb

Roll Call for Passage: Ayes: Mattox, Moore, Russell, Hart, Cuda, Larson

Nay: None

### Recused: Cobb

### **Legislation Passed; 6-0-1 (recused)**

\*Cuda read a statement into the record; first, he is confident that this administration will work with landlords and tenants to make compliance as affordable and convenient as possible; secondly, he is confident our city will leverage the many available funding resources to make that possible; third, he is confident that we won't begin this program until we have staffing and resources; and fourth, is confident that Council will make any adjustments deemed necessary. Wants to thank the Mayor for his leadership on this issue, and Councilor Larson and the Public Safety and Health committee that questions were answered and revisions made on this legislation before we voted on it, and to thank Assistant Law Director Laure Wagner for all her hard work on this legislation; shoutout to officials in Rochester, NY and Pittsburgh, PA for their aid/expertise, and thankful to the residents of the City of Cleveland Heights who came to the hearing and sent thoughtful emails regarding this issue.

#### **PUBLIC COMMENT (NON-AGENDA ITEMS):**

- None

## **COMMITTEE REPORTS**

- a.) Municipal Services Committee (Councilor Moore)
  - i. Upcoming meeting to be scheduled to discuss the two resolutions heard tonight about NEORSD and SSO's for grant funds.
- b.) Planning and Development Committee (Councilman Mattox)
  - i. Meeting tomorrow at 10am which will include discussion regarding 3 properties in connection with Future Heights, as well as a discussion regarding the Appraisal GAP Legislation
- c.) Public Safety and Health Committee (Councilor Larson)
  - i. Thanks, Council, for approving Lead Safe Legislation tonight; thanks Cuyahoga County Board of Health, Lead Safe Cleveland, our Law Department, and Mayor for supporting this legislation. Now the implementation work begins to educated tenants and landlords, find funding, and staff the City's Housing and Building Department.
- d.) Administrative Services Committee (Vice President Cobb)
  - i. Meeting tomorrow at 11am to continue discussion on Charter Review/process for selection of charter review members'; meeting scheduled for next Monday at 6pm as well (no agenda set yet).
- e.) Community Relations and Recreation Committee (Councilwoman Russell)
  - i. Meeting scheduled for Monday, November 7 at 10am and October 24, at 10am, the Commission on Aging is having a listening session at the Community Center
  - ii. Congrats to Director Joe McCrae for moving on to his new position with the Board of Health
- f.) Finance Committee (President Hart)
  - i. Had a meeting tonight where we reviewed the 2021 audit with the auditors which are now publicly available.
- g.) Housing and Building Committee (Councilman Cuda)
  - i. Next meeting November 7 at 4:30pm or 5pm; several of us attended the Ohio Municipal League Conference this past week and there was a breakout session on housing and a few things came up during that meeting that this Committee will be discussing.
- h.) Committee of the Whole (President Hart)

## **OLD BUSINESS:**

- Cuda: Could we talk about natural gas prices at the next COTW meeting with regard to NOPAC in particular?

**NEW BUSINESS:**

- None

**COUNCIL MEMBER COMMENTS:**

- Councilor Larson: Appreciated the opportunity to attend the OML Conference this week; got good information and was able to network with lots of people; found out that Cuyahoga County had more applications than dollars regarding the Brownfield Demolition Fund; thanks to those who put on the Eco-Fair; was disappointed to see the damage to the Pride bench; and she will miss Director McCrae
- Councilman Cuda: OML Conference was a wonderful opportunity to network; and the content was completely relevant to what we do. And he will miss Joe McCrae.
- Vice President Cobb: Shares the others sentiments regarding Joe McCrae leaving and he leaves some big shoes to fill.
- Councilwoman Russell: OML Conference was wonderful and a great experience to network with many Mayors and Council members. Ground breaking at the first house in Caledonia neighborhood happened today. Stop at Best Gyro to see the amazing Halloween decorations, you will enjoy it!
- Councilor Moore: Excited that the new recycling vendor has begun picking up recycling, including new items like plastic tubs which are now recyclable in Cleveland Heights. Visit the Waste Management website to their Recycling 101 page to get an idea of what is recyclable. Please do not put plastic bags in the recycling bins, it jams the equipment. Halloween festival at Cedar-Lee was a lot of fun. Upcoming events include Doan Brook Family Fishing Workshop on Saturday, October 27, 10am-3pm at Rockefeller Lagoon, and Crowdsourced Conversations No. 4, on Civic Engagement hosted by Future Heights on October 26, at 7pm at Disciples Christian Church. Complements to the Eco-Fair, it was an amazing collection of people in Cleveland Heights and our region, helping people learn more about sustainability and climate change.
- Councilman Mattox: Continue to fill out the ARPA Survey at clevelandheights.gov and there is an ARPA Community Meeting tomorrow 6pm at Caledonia School. Tomorrow at 10am Planning and Development meeting will be discussing GAP Financing legislation.

**COUNCIL PRESIDENT REPORT:**

- Joe McCrae will be missed. Congratulations to StartRight for breaking ground on Nela View. Make sure to get out to vote!

**ADJOURNMENT**

**NEXT MEETING OF COUNCIL: MONDAY, NOVEMBER 7, 2022**



# CLEVELAND HEIGHTS

**Monday, October 24, 2022 Minutes**

## **SPECIAL CITY COUNCIL MEETING**

Start: 6:00 p.m.

End: 6:25 p.m.

### **Vice President Cobb Presiding**

**Roll Call:** Present: Mattox, Moore, Russell, Larson, Cuda, Cobb  
Absent: None  
Excused: President Hart

Motion to enter into executive session *to consider the appointment of a public official* by Councilor Larson.  
Seconded by Councilor Moore

Roll Call Vote:

Ayes: 6  
Nays: 0

Executive Session Start: 6:03 p.m.  
Executive Session End: 6:12 p.m.

### **Appointment of public officials(s):**

Motion to appoint Ken Surratt to Planning Commission by Vice President Cobb  
Seconded by Councilwoman Russell

Comments: Councilman Mattox is excited for his appointment and what he brings to the table and the diversity added. Councilman Cuda says he is highly qualified and Councilor Moore agrees.

Roll Call Vote:

Ayes: 6  
Nays: 0

**Appointed**

Motion to appoint David Kraus, Fred Crans, Kathleen Benghiat, and Eileen Beal to the Commission on Aging by Vice President Cobb  
Seconded by Larson

Roll Call Vote:

Ayes: 6

Nays: 0

Appointed

**NEW BUSINESS:**

- CivicClerk Software Contract Option Discussion
  - Clerk went back to CivicPlus to see if we could get price down; they came back with saying if we went with CivicClerk and CP Media they would waive the implementation fee and add additional 8 hrs of training.
  - Option 1 (just CivicClerk) total year 1 investment would be \$9,300.00 and annual recurring services would be \$5,733.00. Option 2 (CivicClerk and CP Media) year 1 investment and every annual recurring service would be \$12,348.00.
  - 3 concurrent streams at a time, so if there were multiple meetings taking place at the same time, we could stream them concurrently.
  - Youtube is a standalone streaming account, additional CP Media would not affect that.
  - Cobb wants to hear from Steve about whether or not he is on board with CP media
  - Timeline for roll out is 10-14 weeks until going “live.” Training would be before going live and then after as well. Either option would be the same timeline.
  - President Hart joined meeting via GoTo; she would like to hear what Steve has to say.
  - Steve could not join the meeting, so if Council people have questions for him, they should email them to the Clerk to compile and she will send them to him.

**ADJOURNMENT**

**NEXT MEETING OF COUNCIL: MONDAY, NOVEMBER 7, 2022**



# CLEVELAND HEIGHTS

Monday, October 31, 2022 Minutes

## CITY COUNCIL MEETING

Start: 10:01 a.m.

End: 12:03 p.m.

### **President Hart Presiding**

**Roll Call:** Present: Mattox, Moore, Russell (video conference), Larson, Cuda, Cobb, Hart  
Absent: None

**Also Present: Mayor Seren, Director Zamft, Director Hanna, Brian Anderson, Joe Sinnott, and Patrick Costigan**

Motion to enter into executive session *to consider the terms of sale or lease of City-owned real or personal property* by Councilor Moore

Seconded by Councilor Larson

Roll Call Vote:

Ayes: 7

Nays: 0

Executive Session Start: 10:03 a.m.

Executive Session End: 12:03 p.m.

## LEGISLATION

### Third Readings:

**ORDINANCE NO. 148-2022(PD): *Third Reading*.** An Ordinance declaring certain improvements to real property located in the City of Cleveland Heights, Ohio to be a public purpose; declaring such improvements to be exempt from real property taxation; making provision for the collection of service payment in lieu of taxes; establishing an urban redevelopment tax increment equivalent fund for the deposit of such service payments; authorizing a compensation agreement with the Cleveland Heights-University Heights School District; providing related authorizations pursuant to Ohio Revised Code

Sections 5709.41, 5709.42, and 5709.43, and declaring the necessity that this legislation become immediately effective as an emergency measure.

**No vote at this time**

**ADJOURNMENT**

**NEXT MEETING OF COUNCIL: MONDAY, NOVEMBER 7, 2022**

Proposed:11/7/2022

**RESOLUTION NO. 159-2022(CRR) *First Reading***

By Mayor Seren, Council President Hart, Council Vice President Cobb, and Council members Moore, Mattox, Cuda, and Larson

A Resolution authorizing and directing the Mayor to enter into negotiations with the Cleveland Heights-University Heights City School District School District for a mutually beneficial agreement for the use of each other's meeting and recreational facilities; indicating the Mayor's and this Council's commitment to such an agreement; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the Cleveland Heights-University Heights City School District has historically paid a negotiated fee to the City of Cleveland Heights for the use of certain City recreational facilities for School District sporting events; and

WHEREAS, the Cleveland Heights-University Heights City School District Board of Education ("School District") has requested that the City enter into an agreement with the School District for the use of City recreational facilities for School District sporting events without imposing a fee for use; and

WHEREAS, this Council and the Mayor desire to negotiate and approve an agreement for the School District's use of City ice rink(s), playing fields and other recreational facilities, and for the City's use of the School District's auditoriums, meetings rooms, pool, playing fields and recreational facilities, on terms which are defined, fair, and mutually beneficial to the City and School District and the taxpayers of Cleveland Heights; and

WHEREAS, the Mayor has publicly announced his intention to develop a mutually beneficial facilities sharing arrangement with the School District that allows the City and the School District to avoid monetary remuneration as a condition of the leasing of facilities and encourages greater collaboration between the City and the School District for the benefit of the residents of Cleveland Heights.

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

SECTION 1. This Council hereby authorizes and directs the Mayor to immediately commence negotiations with the Cleveland Heights-University Heights School District for a mutually beneficial agreement whereby each entity and its constituents may utilize the playing fields, recreational facilities, and meeting facilities of the other entity for recreational purposes and other programs, on terms which are defined, fair and reasonable.

**RESOLUTION NO. 159-2022(CRR)**

SECTION 2. Council and the Mayor hereby affirm their dedication to seeking a mutually beneficial, bilateral facilities-sharing agreement with the School District that, at minimum, removes rental fees as a condition for the use of either entity's facilities.

SECTION 3. Council and the Mayor further reaffirm their dedication to seeking a mutually beneficial, multilateral facilities-sharing agreement with the School District, the Cleveland Heights-University Heights Public Library, and the City of University Heights that maximizes the benefits of cost sharing for each entity and improves the quality of life for each entity's constituency.

SECTION 4. 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 5. It is necessary that this Resolution become immediately effective as an emergency measure 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 address the School District's proposal on a timely basis. Wherefore, provided it receives the affirmative vote of five 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.

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MELODY JOY HART  
President of Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

RESOLUTION NO. 159-2022(CRR)

Presented to Mayor: \_\_\_\_\_

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

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KAHLIL SEREN

Mayor

Proposed: 11/07/2022

ORDINANCE NO. 160-2022 (PSH), *First Reading*

By Mayor Seren

An Ordinance amending Schedule I “Through Streets” of the Appendix “Traffic Schedules” of Part Three “Traffic Code” of the Codified Ordinances of the City of Cleveland Heights to remove all or portions of Euclid Heights Boulevard, Lee Boulevard, Lee Road, North Taylor Road, and South Taylor Road from the list designating “through streets” in the City of Cleveland Heights.

WHEREAS, Section 4511.21(B)(2) of the Ohio Revised Code and Section 333.03 “Maximum Speed Limits; Assured Clear Distance Ahead” of the Codified Ordinances of the City of Cleveland Heights provide that it is *prima-facie* lawful for the operator of a motor vehicle to drive at a speed not exceeding twenty-five miles per hour in all other portions of the municipality, except on state routes outside business districts, through highways outside business districts, and alleys; and

WHEREAS, Section 4511.01(HH) of the Ohio Revised Code defines a through highway as every street or highway as provided in Section 4511.65 of the Revised Code; and

WHEREAS, Section 301.43 “Through Street or Highway” of the Codified Ordinances of the City of Cleveland Heights defines a through street or highway as every street or highway as provided in Section 313.02 of the Codified Ordinances; and

WHEREAS, Section 4511.65(B) of the Ohio Revised Code and Section 313.02 “Through Streets; Stop and Yield Right-of-Way Signs” of the Codified Ordinances of the City of Cleveland Heights provide that in residence districts the municipality may by ordinance designate a street or highway, or portion thereof, not to be a through highway; and

WHEREAS, Section 4511.01(OO) of the Ohio Revised Code and Section 301.31 “Residence District” of the Codified Ordinances of the City of Cleveland Heights define a residence district as “the territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of three hundred feet or more, the frontage is improved with residences or residences and buildings in use for business;” and

WHEREAS, on September 19, 1949 the City of Cleveland Heights passed Ordinance 65-1949 designating through streets, outlined by Schedule I “Through Streets” of the Appendix “Traffic Schedules” of Part Three “Traffic Code” of the Codified Ordinances of the City of Cleveland Heights; and

WHEREAS, on August 16, 2021 the City of Cleveland Heights passed Resolution 96-2021 adopting and supporting the ideals, principles, and concepts of Vision Zero for the City of Cleveland Heights; and

ORDINANCE NO. 160-2022 (PSH)

WHEREAS, it is necessary to amend Schedule I “Through Streets” of the Codified Ordinances of the City of Cleveland Heights in order to enable the City to reduce the maximum allowable speed on the included streets or portions thereof; and

WHEREAS., it is also necessary to amend Schedule V “Alleys Designated” to include an additional two roads; and

WHEREAS, it would be in the best interest of the City and its residents to amend the Codified Ordinances so that City Ordinances are consistent with the City’s commitment to the ideals, principles, and concepts of Vision Zero as adopted by Resolution 96-2021.

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

SECTION 1. Section (a) of Schedule I “Through Streets” of Appendix “Traffic Schedules” of Part Three “Traffic Code” of the Codified Ordinances of the City of Cleveland Heights shall be and is hereby amended to read as follows (additions bolded and underlined, deletions strikethrough):

(a) The following streets are hereby designated to be through streets:

Cedar Road

Euclid Heights Boulevard **west of Coventry Road**

Fairmount Boulevard

Forest Hills Boulevard

Lee Boulevard

~~Lee Road~~

Mayfield Road

Monticello Boulevard

Noble Road **south of Monticello Boulevard**

North Park Boulevard

North Taylor Road **south of Monticello Boulevard**

South Taylor Road **north of Euclid Heights Boulevard**

Superior Road north of Mayfield Road

Warrensville Center Road

Stop signs shall be erected at the intersection of each street intersecting such through streets.

SECTION 2. Section V “Alleys Designated” of Appendix “Traffic Schedules” of Part Three “Traffic Code” of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to add Wilmar Court and Andrews Court to the list of designated alleys therein.

SECTION 3. Notice of the passage of this Ordinance 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.

ORDINANCE NO. 160-2022 (PSH)

SECTION 4. This Ordinance shall take effect and be in force at the earliest time permitted by law.

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MELODY JOY HART  
President of the Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

Presented to the Mayor: \_\_\_\_\_ Approved: \_\_\_\_\_

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KAHLIL SEREN  
Mayor

Proposed: 11/7/22

RESOLUTION NO. 161-2022(PSH), *First Reading*

By Mayor Seren

A Resolution authorizing the Mayor to enter into an agreement with Rubicon Global, LLC, for Software Services for the Department of Public Works, Division of Refuse Collection; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the Department of Public Works has been participating in a Waste Data Pilot Project with Rubicon Global, LLC to test the ability of Rubicon's technology to improve residential waste and recycling operations ; and

WHEREAS, the City has determined that the purchase of the Rubicon software services will promote efficient in waste collection operations; and ,

WHEREAS, the Rubicon software is available under the Sorcewell Cooperative Purchasing Program, formerly known as the National Joint Powers Alliance, as authorized by Codified Ordinance Section 171.12, and the fees and terms of the proposed three year agreement are reasonable and competitive.

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

SECTION 1. The Mayor be, and he is hereby, authorized to enter into an agreement with Rubicon Global, LLC for software services for the Department of Public Works, Division of Refuse Collection for a term of three (3) years with automatic one-year renewals thereafter unless either party opts out, subject to appropriation of funding after the end of the original three year term. The agreement shall be substantively similar to the proposed agreement on file with the Clerk of Council, shall provide for compensation in the amount of Seventy-three Thousand Three Hundred Forty-four Dollars (\$73,344.00), and shall be approved as to form by the Director of Law.

SECTION 2. 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 3. It is necessary that this Resolution become immediately effective as an emergency measure necessary for the preservation of public peace, health, and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to continue improved operations of the City's solid waste collection system. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this

**RESOLUTION NO. 161-2022(PSH)**

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.

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President of the Council  
MELODY JOY HART

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Clerk of Council  
ADDIE BALESTER

PASSED:

Presented to Mayor: \_\_\_\_\_ Approved by Mayor: \_\_\_\_\_

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KAHLIL SEREN  
Mayor

Proposed: 11/07/2022

RESOLUTION NO. 162-2022(MSES), *First Reading*

By Mayor Seren

A Resolution authorizing the Mayor to enter into an amendment to an agreement with Valley Freightliner & Western Star for the acquisition of a Freightliner 114SD Tandem Axle Cab and Chassis for the Department of Public Works; providing compensation therefor; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, by Resolution No. 148-2021, this Council authorized an agreement with Valley Freightliner Sterling & Western Star (“Valley Freightliner”) for the acquisition of a Freightliner 114SD Tandem Axle Cab and Chassis for the Department of Public Works through the Ohio Department of Transportation Cooperative Purchasing Program (“ODOT Purchasing Program”) as authorized by Codified Ordinance Section 171.10; and

WHEREAS, the ODOT Purchasing Program subsequently entered into an agreement with Valley Freightliner to incorporate manufacturers’ price increases for equipment which had not yet been built; and

WHEREAS, it is necessary to amend the prior Resolution to reflect the price increase.

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

SECTION 1. Resolution No. 148-2021 shall be and hereby is amended to provide for a purchase price for the Freightliner 114SD Tandem Axel Cab and Chassis of One Hundred Six Thousand, Four Hundred Seventy-Five Dollars (\$106,475.00). All terms of Resolution No. 148-2021 not consistent herewith shall remain in full force and effect.

SECTION 2. 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 3. It is necessary that this Resolution become immediately effective as an emergency measure 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 meet vendor deadlines and equip the Department of Public Works with the referenced truck equipment as soon as 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.

RESOLUTION NO. 162-2022(MSES)

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MELODY JOY HART  
President of the Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

Presented to Mayor: \_\_\_\_\_

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

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KAHLIL SEREN  
Mayor

Proposed: 11/07/2022

RESOLUTION NO. 163-2022(MSES), *First Reading*

By Mayor Seren

A Resolution authorizing the Mayor to enter into an agreement with the County of Cuyahoga to perform certain services to help maintain the City's sanitary and storm sewers; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the City owns and operates sanitary and storm sewers and catch basins, which require regular maintenance; and

WHEREAS, Section 171.02(b) of the Cleveland Heights Codified Ordinances authorizes the purchase of services without obtaining competitive bids where the price for services offered by a political subdivision is less than the price that would be obtained by taking bids from private persons; and

WHEREAS, the Mayor has determined that Cuyahoga County offers certain maintenance services for sanitary and storm sewers and catch basins at a price less than would be obtained by taking bids from private persons and that it would be in the City's best interests to retain the County for such services.

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

SECTION 1. The Mayor be, and he is hereby, authorized to execute an agreement with the County of Cuyahoga to provide certain services to maintain the City's sanitary and storm sewers and catch basins, in accordance with the requirements set forth in Section 171.02(b) of the Cleveland Heights Codified Ordinances. The agreement shall be similar to the one on file with the Clerk of Council. The term of the agreement shall expire on December 31, 2023, and the total amount to be paid by the City shall not exceed the sum of Six Hundred Thousand Dollars (\$600,000). The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

SECTION 2. 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.

**RESOLUTION NO. 163-2022(MSES)**

SECTION 3. It is necessary that this Resolution become immediately effective as an emergency measure 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 proceed with the maintenance of the City's sewer and storm systems as soon as 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.

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MELODY JOY HART  
President of Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

Presented to Mayor: \_\_\_\_\_

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

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KAHLIL SEREN  
Mayor

Proposed: 11/07/22

ORDINANCE NO. 164-2022(MSES), *First Reading*

By: Mayor Seren

An Ordinance authorizing the Mayor to enter into an agreement with, and requesting the cooperative of, the County of Cuyahoga, Ohio (“COUNTY”), in the matter of the Resurfacing of Warrensville Center Road from Mayfield Road to the South Corporation Line in the City of Cleveland Heights (“MUNICIPALITY”); and declaring the necessity that this legislation become immediately effective as an emergency measure.

**WHEREAS**, the MUNICIPALITY has recognized the need for and proposes the improvement of a portion of public highway which is described as follows:

The Resurfacing of Warrensville Center Road from Mayfield Road to the South Corporation Limit in the City of Cleveland Heights (the “Project”).

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

**SECTION 1.** In consideration of the covenants and agreements herein contained to be performed by the parties hereto, it is mutually agreed between the parties hereto as follows:

**A. CONSENT**

1. That it is declared to be in the public interest that the consent of said MUNICIPALITY be and such consent is hereby given to the COUNTY to participate in the cost of construction of the Project.

**B. COOPERATION**

1. That the COUNTY and the MUNICIPALITY will cooperate in the Project.
2. That the MUNICIPALITY will prepare construction plans and specifications, including necessary engineering reports, which shall conform to generally accepted engineering practices and principles.
3. That the MUNICIPALITY will arrange for the supervision and administration of the construction contract.
4. That the COUNTY will review the construction plans, estimate, specifications and bid proposal for conformance with section B-2 of this Agreement. County approval of these documents are required prior to the advertisement of the construction contract. The COUNTY will make an inspection of the completed Project.

**ORDINANCE NO. 164-2022(MSES)**

5. That the MUNICIPALITY shall agree to provide the COUNTY with a complete set of as-built plans upon the completion of the Project.

**C. FUNDING**

1. MUNICIPALITY hereby agrees to participate with the COUNTY in the cost of the Project by using an allocation from the County Motor Vehicle License Tax Fund to pay the COUNTY's portion of the project.
2. That the COUNTY shall contribute fifty percent (50%) of the actual cost of construction and construction engineering which is determined to be eligible by the Cuyahoga County Engineer's policies up to a maximum of \$250,000.00.
3. In the event MUNICIPALITY secures additional funding for the Project, County's financial contribution and the supplemental funding cannot exceed the total actual cost of the Project.
4. The anticipated construction cost for this project is \$623,657.23. To determine funding eligibility, the COUNTY shall be notified immediately of any significant changes to the scope of work and/or construction cost.

**D. MAINTENANCE**

That upon completion of said resurfacing, said MUNICIPALITY will thereafter keep said highway open to traffic at all times; and

1. Maintain the resurfacing in accordance with the provisions of the statutes relating thereto and make ample financial provisions for such maintenance; and
2. Maintain the right-of-way and keep it free of obstructions in a manner satisfactory to the COUNTY and hold said right-of-way inviolate for public highway purposes and permit no signs, posters, billboards, roadside stands or other private installations within the right-of-way limits; and
3. That the COUNTY shall continue to maintain the structural elements of any bridge (defined as a structure with a span of twenty feet or greater) located within the limits of the Project in accordance with the applicable sections of the Ohio Revised Code.
4. After construction of the project is complete, the Municipality agrees to follow and maintain post-construction Best Management Practices as outlined in the Municipal Storm Water Permit that is filed with the Ohio Environmental Protection Agency (O.E.P.A.).

**E. TRAFFIC**

1. That upon completion of the Project, MUNICIPALITY will thereafter keep said highway open to traffic at all times; and
2. Place and maintain all traffic control devices conforming to the Ohio Manual of Uniform Traffic Control Devices on the Project in compliance with the provisions of Section 4511.11 and related sections of the Ohio Revised Code; and
3. That the street or highway shall be and hereby is designated a through highway as provided in Section 4511.07(A)(6) Ohio Revised Code; and
4. Stop signs affecting the movement of traffic on said street or highway within the roadway being improved shall be removed, and no stop signs shall be erected on same except at its intersection with another through highway where traffic does not warrant the installation of a traffic control signal but where the warrants for a "Four-way Stop" as provided in the aforesaid Manual are met; and
5. That no rule or regulation shall be enacted restricting the use of the improved road and/or structure by any class of vehicle or vehicle load permitted by the Ohio Revised Code to use a public highway. Any existing rule or regulation so restricting road usage shall be rescinded; and
6. The MUNICIPALITY shall prohibit parking in accordance with Section 4511.66 of the Ohio Revised Code unless otherwise controlled by local ordinance or resolution.

**F. RIGHT-OF-WAY**

1. That all existing street and public right-of-way within the MUNICIPALITY which is necessary for the Project shall be made available therefore.
2. That the MUNICIPALITY will arrange for the acquisition of any additional right-of-way which may be required for the construction of the Project.

**G. UTILITIES**

1. That the MUNICIPALITY will make arrangements with and obtain agreements from privately owned public utility companies whose lines or structures will be affected by the Project, and said companies have agreed to make any and all necessary arrangements in such a manner as to be clear of any construction called for by the plans of Project, and said companies have agreed to make such necessary arrangements immediately after notification by said MUNICIPALITY.
2. That the COUNTY will participate in the cost of alterations of governmentally-owned utility facilities which come within the provisions of Section 8301 (Utility

Reimbursement Eligibility) of the Ohio Department of Transportation's Real Estate Policies and Procedures Manual to the same extent that it participates in the other costs of the project, provided, however, that such participation will not extend to any additions or betterments of existing facilities.

3. That it is hereby agreed that the MUNICIPALITY shall, at its own expense, make all rearrangements of governmentally-owned utilities and/or appurtenances thereto which do not comply with the Provisions of Section 8301 (Utility Reimbursement Eligibility) of the Ohio Department of Transportation's Real Estate Policies and Procedures Manual, whether inside or outside the corporate limits, as may be necessary to conform to the Project.
4. That the construction, reconstruction, and/or arrangement of all utilities shall be done in such a manner as not to interfere unduly with the operation of the contractor constructing the Project, and all backfilling of trenches made necessary by such utility rearrangements shall be performed in accordance with the provision of the Ohio Department of Transportation Construction and Material Specifications.

**H. MISCELLANEOUS**

1. That if the MUNICIPALITY includes the construction of sanitary sewers, waterlines, area sewers (drainage of area surrounding the Project), alternate bid items, or other items in the Project that are in addition to those now existing and not provided for elsewhere in this Agreement, the MUNICIPALITY agrees to pay, or make arrangements for the payment of, the cost of said additional construction, the cost of preliminary and design engineering and construction supervision.
2. That the MUNICIPALITY shall be solely responsible for the certifications or obligations made or agreed to in Sections F-1, F-2, G-1, G-3, and G-4, and hereby agrees that the COUNTY shall be and is hereby released from any and all damages or claims of the MUNICIPALITY arising from or growing out of the certification or obligations made or agreed to in said Sections F-1, F-2, G-1, G-3, and G-4 hereinabove.
3. For matters relating to this Project, the agent for the COUNTY and liaison officer on the matter contained herein shall be the County Engineer of Cuyahoga County, Ohio, and/or such members of his staff as he may designate.
4. MUNICIPALITY agrees to make all pertinent contractual books and records and other documents pertaining to the Project available to the COUNTY and its designated agents for purpose of audit and examination upon reasonable request.
5. By enacting this Ordinance, the MUNICIPALITY agrees to conduct this transaction by electronic means and agrees that all documents requiring County signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The MUNICIPALITY also agrees on behalf of the aforementioned entities and persons to be bound by the provisions of Chapters 304 and

**ORDINANCE NO. 164-2022(MSES)**

1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

**I. AUTHORITY TO SIGN**

1. That the Mayor of said MUNICIPALITY is hereby empowered and directed on behalf of the MUNICIPALITY to enter into agreements with the COUNTY necessary to complete the planning and construction of this improvement.
2. That the Mayor of said MUNICIPALITY is hereby empowered and directed on behalf of the MUNICIPALITY to make application to the County of Cuyahoga, Ohio, for approval to use County Motor Vehicle License Tax Funds for the improvement.

**SECTION 2.** Notice of the passage of this Ordinance 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 of the City of Cleveland Heights.

**SECTION 3.** It is necessary that this Ordinance become immediately effective as an emergency measure necessary as for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency by reason of the need for expediting highway improvement to promote highway safety. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

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MELODY JOY HART  
President of Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

Presented to Mayor: \_\_\_\_\_

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

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KAHLIL SEREN  
Mayor

**CERTIFICATE OF COPY**

**State of Ohio )  
County of Cuyahoga )  
City of Cleveland Heights )**

I, Addie Balester, as Clerk of the City of Cleveland Heights Ohio, do hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the legislative Authority of the said municipality on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 that the publication of such Ordinance has been made certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and certificate of publication thereof are of record in Ordinance Record No. \_\_\_\_\_, Page \_\_\_\_\_.

**IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

**Clerk, City of Cleveland Heights, Ohio**

**MUNICIPAL SEAL**

Proposed: 10/03/2022

ORDINANCE NO. 150-2022(F), *Second Reading*

By Mayor Seren

An Ordinance authorizing the transfer of real property located at 2124 Rossmoor Road to Future Heights, Inc., for rehabilitation and resale; declaring the property no longer needed for a public purpose; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, pursuant to Ordinance No. 33-2009, this Council adopted and implemented the procedures set forth in Chapter 5722 of the Ohio Revised Code for a Land Reutilization Program, known as the Cleveland Heights Land Reutilization Program; and

WHEREAS, the City of Cleveland Heights (“City”) currently owns certain real property located at 2124 Rossmoor Road, Permanent Parcel No. 687-05-095 (“Property”); and

WHEREAS, the City obtained the Property through its Land Reutilization Program; and

WHEREAS, the City has determined that it has no need for the Property and therefore the Property does not serve a public purpose; and

WHEREAS, pursuant to Resolution No. 97-2018, the City entered into a Development Services Agreement with Future Heights, Inc., a non-profit corporation (“Future Heights”), to perform services as a community development corporation for the City, which Agreement was subsequently extended pursuant to Resolution No. 24-2021; and

WHEREAS, pursuant to the City’s agreement with Future Heights, transfer of the property would be in the best interests of the City and its residents.

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

SECTION 1. This Council hereby determines that the City-owned real property located at 2124 Rossmoor Road, Permanent Parcel No. 687-05-095, is not needed for a public purpose.

SECTION 2. Pursuant to the authority of City Council set forth in Section 110.04 of the Codified Ordinances of the City of Cleveland Heights, this Council hereby authorizes the Mayor to transfer the property to Future Heights, Inc., upon receipt of necessary approvals, forms, terms, and conditions deemed appropriate by the Mayor.

SECTION 3. Documents implementing the above transaction shall be approved as to form by and subject to the final approval of the Director of Law

ORDINANCE NO. 150-2022(F)

SECTION 4. Notice of the passage of this Ordinance 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 5. It is necessary that this Ordinance become immediately effective as an emergency measure 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 transfer the property to begin the rehabilitation work at the earliest time permitted by law. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance 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.

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MELODY JOY HART  
President of the Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

Presented to the Mayor: \_\_\_\_\_ Approved: \_\_\_\_\_

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KAHLIL SEREN  
Mayor

Proposed: 10/03/2022

ORDINANCE NO. 151-2022(F), *Second Reading*

By Mayor Seren

An Ordinance authorizing the transfer of real property located at 901 Englewood Road to Future Heights, Inc., for rehabilitation and resale; declaring the property no longer needed for a public purpose; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, pursuant to Ordinance No. 33-2009, this Council adopted and implemented the procedures set forth in Chapter 5722 of the Ohio Revised Code for a Land Reutilization Program, known as the Cleveland Heights Land Reutilization Program; and

WHEREAS, the City of Cleveland Heights (“City”) currently owns certain real property located at 901 Englewood Road, Permanent Parcel No. 684-29-120 (“Property”); and

WHEREAS, the City obtained the Property through its Land Reutilization Program; and

WHEREAS, the City has determined that it has no need for the Property and therefore the Property does not serve a public purpose; and

WHEREAS, pursuant to Resolution No. 97-2018, the City entered into a Development Services Agreement with Future Heights, Inc., a non-profit corporation (“Future Heights”), to perform services as a community development corporation for the City, which Agreement was subsequently extended pursuant to Resolution No. 24-2021; and

WHEREAS, pursuant to the City’s agreement with Future Heights, transfer of the property would be in the best interests of the City and its residents.

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

SECTION 1. This Council hereby determines that the City-owned real property located at 901 Englewood Road, Permanent Parcel No. 684-29-120, is not needed for a public purpose.

SECTION 2. Pursuant to the authority of City Council set forth in Section 110.04 of the Codified Ordinances of the City of Cleveland Heights, this Council hereby authorizes the Mayor to transfer the property to Future Heights, Inc., upon receipt of necessary approvals, forms, terms, and conditions deemed appropriate by the Mayor.

SECTION 3. Documents implementing the above transaction shall be approved as to form by and subject to the final approval of the Director of Law

ORDINANCE NO. 152-2022(F)

SECTION 4. Notice of the passage of this Ordinance 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 5. It is necessary that this Ordinance become immediately effective as an emergency measure 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 transfer the property to begin the rehabilitation work at the earliest time permitted by law. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance 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.

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MELODY JOY HART  
President of the Council

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ADDIE BALESTER  
Clerk of Council

PASSED:

Presented to the Mayor: \_\_\_\_\_ Approved: \_\_\_\_\_

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KAHLIL SEREN  
Mayor

Proposed:10/17/2022

RESOLUTION NO. 156-2022(MS), *Second Reading*

By Mayor Seren

A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2023 Member Community Infrastructure Grant Program for the Cedar Glen Parkway Rehabilitation and Replacement Project; and declaring an emergency.

WHEREAS, the Northeast Ohio Regional Sewer District (“NEORSD”) is interested in assisting member communities with water quality issues associated with sewer infrastructure that adversely impact human health; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), NEORSD established a Member Community Infrastructure Program to provide water resource project funding opportunities to member communities or other eligible political subdivisions for sewer infrastructure projects in NEORSD’s service area; and

WHEREAS, the grant funds will provide partial funding to permit the City to replace and reline a seriously deteriorated century-old sewer pipe which carries wastewater for a significant portion of the southwestern part of Cleveland Heights, and the collapse of which would cause significant traffic and safety concerns; and

WHEREAS, NEORSD has determined, and this Council concurs, that the project will address water quality issues which are associated with sewer infrastructure and which adversely impact human health and the environment.

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

SECTION 1. The Mayor is hereby authorized to enter into an agreement with the Northeast Ohio Regional Sewer District (“NEORSD”) to accept funds under the 2023 Member Community Infrastructure Grant Program in the amount of Six Hundred Nineteen Thousand, Three Hundred Dollars (\$619,300.00) for the Cedar Glen Rehabilitation and Replacement Project and to execute any and all related documents or agreements with NEORSD. The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

**RESOLUTION NO. 156-2022(MS)**

SECTION 2. The City further agrees to pay One Hundred Percent (100%) of the cost over and above the maximum amount provided by NEORSD.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of 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 timely enter into the above-mentioned grant agreement to begin the project described herein at the earliest time possible. Wherefore, provided it receives the affirmative vote of five 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.

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MELODY JOY HART  
President of Council

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ADDIE BALESTAR  
Clerk of Council

PASSED:

Presented to Mayor: \_\_\_\_\_

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

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KAHLIL SEREN  
Mayor

Proposed:10/17/2022

RESOLUTION NO. 157-2022(MS), *Second Reading*

By Mayor Seren

A Resolution authorizing the Mayor to enter into a grant agreement with the Northeast Ohio Regional Sewer District to accept funds under the 2023 Member Community Infrastructure Grant Program for the design control of the SSOs CH-27 and CH-51 Project; and declaring an emergency.

WHEREAS, the Northeast Ohio Regional Sewer District (“NEORSD”) is interested in assisting member communities with water quality issues associated with sewer infrastructure that adversely impact human health; and

WHEREAS, Ohio law authorizes regional water and sewer districts to enter into grant agreements with political subdivisions for water resource projects; and

WHEREAS, pursuant to Ohio Revised Code Chapter 6119, generally, and Ohio Revised Code Section 6119.06(F), NEORSD established a Member Community Infrastructure Program to provide water resource project funding opportunities to member communities or other eligible political subdivisions for sewer infrastructure projects in NEORSD’s service area; and

WHEREAS, the grant funds would allow the City through this project to manage a Design-Only MCIP Project, which generally consists of field investigation and flow monitoring/model update with the intent to reduce sanitary sewer overflows by the replacement of existing community infrastructure; and

WHEREAS, NEORSD has determined, and this Council concurs, that the project will address water quality issues which are associated with sewer infrastructure and which adversely impact human health and the environment.

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

SECTION 1. The Mayor is hereby authorized to enter into an agreement with the Northeast Ohio Regional Sewer District (“NEORSD”) to accept funds under the 2023 Member Community Infrastructure Grant Program in the amount of Four Hundred Ninety-eight Thousand Seven Hundred Dollars (\$498,700.00) for the design control of the SSOs CH-27 and CH-51 Project and any and all related documents or agreements with NEORSD. The agreement and any related documents shall be approved as to form and subject to the final approval of the Director of Law.

**RESOLUTION NO. 157-2022(MS)**

SECTION 2. The City further agrees to pay One Hundred Percent (100%) of the cost over and above the maximum amount provided by NEORSD.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of 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 timely enter into the above-mentioned grant agreement to begin the project described herein at the earliest time possible. Wherefore, provided it receives the affirmative vote of five 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.

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MELODY JOY HART  
President of Council

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ADDIE BALESTAR  
Clerk of Council

PASSED:

Presented to Mayor: \_\_\_\_\_

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

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KAHLIL SEREN  
Mayor

Proposed: 10/17/2022

ORDINANCE NO. 158-2022(AS), *Second Reading*

By: President Melody Joy Hart

An Ordinance amending Chapter 767, “Tenant’s Right to Pay to Stay,” of the Codified Ordinances of the City of Cleveland Heights and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, by Ordinance No. 79-2021, this Council adopted an Ordinance providing an affirmative defense for tenants in eviction actions based upon non-payment of rent of the right to tender the entire past-due rent, late fees and court costs; and

WHEREAS, the provisions of Ordinance No. 79-2021 are due to expire on December 31, 2022; and

WHEREAS, the Ordinance was enacted due to the unprecedented economic impacts of the pandemic; and

WHEREAS, the effects of the pandemic continue to cause disruption in the employment and housing markets, particularly for rental housing; and

WHEREAS, this Council believes that the renewal and permanent adoption of the provisions of Ordinance No. 79-2021 will provide stability in the rental housing market in the City and be of benefit to the City and its residents.

BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, State of Ohio, that:

SECTION 1. The following provisions of Ordinance No. 79-2021, presently codified on a temporary basis as Chapter 767 of the Codified Ordinances, shall be and hereby are enacted on a permanent basis with said provisions to read as follows:

## **Chapter 767 Tenant’s Right to Pay to Stay**

### **767.01 Definition**

**767.02      Tenant’s affirmative defense after tendering rent prior to the filing of an eviction action (Complaint for Forcible Entry and Detainer)**

**767.03      Tenant’s affirmative defense after tendering rent prior to an eviction judgment (Judgment for Restitution)**

**767.04      Rent receipt required**

**767.05      Other Causes for Eviction**

**767.06      Reasonable Fees**

**767.07      Severability**

**767.01      Definition**

For the purposes of this Chapter, "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

For the purposes of this Chapter, "Tender" means an offer of payment.

**767.02      Tenant's right to pay to stay prior to the filing prior to the filing of an eviction action for non-payment of rent (Complaint for Forcible Entry and Detainer)**

(a) At any time prior to the filing of an action under Ohio Revised Code 1923 for nonpayment of rent by a landlord, a tenant shall have the right to pay the landlord all past due rent with reasonable late fees to avoid the filing of such action for the restitution of the lands or tenements.

If the tenant tenders all past due rent and reasonable late fees to the landlord, the landlord shall accept the tendered payment and allow the tenant to maintain the tenancy.

(b) If the tenant tenders all past due rent with reasonable late fees to the landlord prior to the filing of an action under Ohio Revised Code 1923 and the landlord refuses the tender, the tenant's tender of all past due rent with reasonable late fees shall be an affirmative defense to any action filed by the landlord against the tenant for nonpayment of rent.

**767.03      Tenant's right to pay to stay prior to an eviction judgment (Judgment for Restitution)**

(a) After the filing of an action under Ohio Revised Code 1923 for nonpayment of rent but prior to a judgment, the tenant shall have the right to pay the landlord all past due rent, reasonable late fees and court costs so that the tenant may maintain the tenancy. If the tenant tenders all past due rent amounts, including late fees and court costs, the landlord must accept the payment. Upon receipt of the payment, the landlord shall dismiss the action against the tenant.

ORDINANCE NO. 158-2022(AS)

(b) If the tenant tenders all past due rent with reasonable late fees and court costs to the landlord prior to a judgment and the landlord refuses the tender, the tenant's tender of all past due rent, reasonable late fees and court costs shall be an affirmative defense to the eviction action filed by the landlord against the tenant for nonpayment of rent.

**767.04      Rent receipt required**

The landlord shall provide the tenant with a signed receipt for the security deposit and all rental payments except for payments made by personal check of the tenant, at the time the security deposit or rental payments are made.

**767.05      Reasonable Late Fees**

No landlord may charge a tenant late fees that are not reasonable late fees. If a rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, to be considered "reasonable late fees" the total amount of that late payment fee for any month may not exceed the larger of: (i) twenty-five dollars (\$25.00); or (ii) five percent (5%) of the monthly contract rent.

**767.06      Other Causes for Eviction**

This Chapter in no way limits the ability of a landlord to initiate an eviction action for reasons other than solely for non-payment of rent.

**767.07      Severability**

If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. Cleveland Heights City Council hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable

**SECTION 2.** Notice of the passage of this Ordinance 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 3.** It is necessary that this Ordinance become immediately effective as an emergency measure necessary for the preservation of public peace, health, and safety of the inhabitants of the City of Cleveland Heights, such emergency being the ongoing and continuous need to preserve the faith and credit of the City. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Ordinance shall take

ORDINANCE NO. 158-2022(AS)

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.

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MELODY JOY HART  
President of the Council

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ADDIE BALESTAR  
Clerk of Council

PASSED:

Presented to Mayor: \_\_\_\_\_

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

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KAHLIL SEREN  
Mayor

Proposed: 10/03/2022

ORDINANCE NO. 148-2022(PD), *Fourth Reading*  
*as Amended 11/07/2022.*

By Mayor Seren

An Ordinance declaring certain improvements to real property located in the City of Cleveland Heights, Ohio to be a public purpose; declaring such improvements to be exempt from real property taxation for a period of years; making provision for the collection of service payments in lieu of taxes; establishing an urban redevelopment tax increment equivalent fund for the deposit of such service payments; authorizing a compensation agreement with the Cleveland Heights-University Heights City School District; providing related authorizations pursuant to Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43, and declaring an emergency.

**WHEREAS**, the City of Cleveland Heights (the “City”) owns certain parcels of real property generally known as the Cedar-Lee and Meadowbrook parcels consisting of approximately 5.124 acres located between Cedar Road and Meadowbrook Road, as identified and depicted in **Exhibit A** hereto (collectively referred to herein as the “TIF Area,” with the parcels comprising the real property within the TIF Area, as improved, referred to herein as the “Parcels”) 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 TIF Area; and

**WHEREAS**, Ohio Revised Code (“R.C.”) Section 5709.41 provides that this Council may, under certain circumstances, declare Improvements (as defined in R.C. Section 5709.41) to the Parcels be a public purpose, thereby exempting those Improvements from real property taxation for a period of up to thirty (30) years; and

**WHEREAS**, pursuant to R.C. Section 5709.41, said exemption may not exceed 75% of such Improvements for up to ten (10) years without the approval of the board of education of the city, local or exempted village school district within the territory in which the Parcels are located; and

**WHEREAS**, consistent with City’s Master Plan, as adopted by the City on March 20, 2017, as amended and supplemented, including the City’s current redevelopment plan for the TIF Area, and prior legislation adopted by this Council, including Resolution No. 154-2021 adopted December 6, 2021, the City has approved and entered into a Development Agreement with F & C Development, Inc. (together with its affiliates, the “Developer”) pursuant to which the Developer will lease the Parcels from the City and improve the Parcels by building thereon a mixed-use development which will include construction of (a) one or more buildings of varying heights including 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/or restaurant space, (c) public gathering and green spaces, and (d) all private and public sidewalks, as well as driveways, access ways, street and parking lot lighting and utility connections and sanitary, stormwater drainage and other infrastructure improvements on the Project Site, all as further described in the Development Agreement (all of the foregoing, together with the public parking garage located on the Project Site, as described in the Development Agreement and to be improved and operated consistent therewith, being referred to herein collectively as the “Development”); and

ORDINANCE NO. 148-2022(PD)

**WHEREAS**, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide that the owner of the Development (initially, the Developer) be required to make service payments in lieu of real property taxes (“Service Payments,” as further defined below) with respect to the Improvements to the Parcels pursuant to R.C. Section 5709.42; and

**WHEREAS**, this Council has determined that it is in the City's best interests for the City to enter into a compensation agreement (the “Compensation Agreement”) with the Board of Education of the Cleveland Heights-University Heights City School District (the “School District”), which Compensation Agreement provides for the payment of compensation by the City to the School District; and

**WHEREAS**, pursuant to the Compensation Agreement, the Board of Education of the School District has waived any notice periods prescribed in R.C. Section 5709.41 and 5709.83, approved a 100% exemption for the Improvements to the Parcels under R.C. Section 5709.41 for thirty (30) years and waived any other rights to compensation related to the grant of that exemption; and

**WHEREAS**, R.C. Section 5709.85(A) requires the legislative authority of any municipal corporation granting an exemption from taxation under R.C. Section 5709.41 to create a tax incentive review council (“TIRC”), which TIRC is required to perform an annual review of exemptions from taxation granted pursuant to R.C. Section 5709.41, and the City has previously created a TIRC; and

**WHEREAS**, as a result of the Development, certain surface parking spaces used by staff and students of the School District will be eliminated, and the City desires to allow staff and students of the School District to utilize certain additional parking spaces owned by the City in the vicinity of the Parcels in accordance with the terms of a School District Additional Parking Agreement; and

**WHEREAS**, the Development Agreement provides for certain Added Property to be acquired for the Development, and that certain costs associated with the acquisition of such Added Property be included as part of the cost of the Development pursuant to the terms of an Added Property plan (the “Added Property Plan”) to be included as part of the Development Agreement; and

**WHEREAS**, an emergency exists in the usual daily operations of the City in that it is immediately necessary to approve tax exemptions for the Improvements for the preservation of the public health, peace, property and safety, that preservation being related to the need for the Development to move forward and for construction to commence at the earliest possible date;

**BE IT ORDAINED** by the Council of the City of Cleveland Heights, that:

SECTION 1. The improvements (other than those improvements, if any, to be used for residential purposes as such term is used in R.C. Section 5709.41(B)) to the Parcels on which the Developer will construct, lease, manage or otherwise operate the Development are hereby declared to be in furtherance of and consistent with the urban redevelopment plan, actions and purposes of the City with respect to the TIF Area, and a public purpose for purposes of R.C. Section 5709.41. One hundred percent (100%) of the increase in the assessed value of each of the Parcels from and

## ORDINANCE NO. 148-2022(PD)

after the date of passage of this Ordinance (which increase in assessed value is an “Improvement” as defined in R.C. Section 5709.41) is hereby declared to be a public purpose, and all such Improvements shall be exempt from real property taxation for a period of thirty (30) years commencing with tax year 2025 (tax collection year 2026).

**SECTION 2.** As provided in R.C. Section 5709.42, the owner or owners of the Development are hereby required to make annual service payments for a period of thirty (30) years in lieu of taxes to the County Fiscal Officer on or before the final dates for payment of real property taxes. Each such payment (including interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable if the Improvements were not exempt from taxation (with the payments in lieu of taxes, including any penalties, interest and rollback payments, collectively referred to as “PILOTS”). The County Fiscal Officer shall remit all PILOTS to the City. In addition to the payment of PILOTS described herein, in accordance with the Compensation Agreement, in connection with any TIF Debt (as defined in the Compensation Agreement), the owner(s) of the Development may also be required to make minimum service payments (the “Minimum Service Payments”) including any such Minimum Service Payments described in the Compensation Agreement.

This Council hereby authorizes the Mayor or designee (the “Mayor”) or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments as are necessary and desirable for the collection and receipt of those PILOTS from the County Fiscal Officer or collect the Minimum Service Payments from the Developer and to make such arrangements as are necessary and proper for payment of the portion of PILOTS and/or Minimum Service Payments dedicated to TIF Debt to be paid, if appropriate, to the trustee for any TIF Debt and for the payment therefrom of all required compensation to the School District. Any late payments of PILOTS shall be subject to penalty and bear interest at the then current rate established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time.

No Owner of any portion of the Development shall, under any circumstances, be required in any tax year to both pay PILOTS with respect to an Improvement and reimburse local taxing authorities for the amount of real property taxes that would have been payable to local taxing authorities had that Improvement not been exempted from taxation pursuant to this Ordinance.

**SECTION 3.** In connection with the issuance of the TIF Debt or otherwise, the Mayor shall arrange for all required payments to the School District as described in the Compensation Agreement.

**SECTION 4.** This Council hereby establishes pursuant to and in accordance with the provisions of R.C. Section 5709.43, the Cedar-Lee Meadowbrook Urban Redevelopment Tax Increment Equivalent Fund (the “Fund”), into which shall be deposited the PILOTS distributed to the City with respect to the Improvements on the Parcels by or on behalf of the County Fiscal Officer as provided in Section 5709.42 of the Revised Code. One hundred percent (100%) of the moneys collected shall be deposited in the Fund and shall be retained by the City and used for any or all of the following purposes:

- (i) Payment of all costs associated with the construction of the Development, including costs incurred by the City, the State of Ohio or other governmental entity, or the

ORDINANCE NO. 148-2022(PD)

Developer and its contractors and including debt service and related costs or obligations or loans issued by the City, the State of Ohio or other governmental entity or the Developer;

(ii) Construction, operation and maintenance of public improvements and publicly-owned facilities on the Parcels, including, but not limited to, streets, storm and sanitary sewers, water treatment facilities and water transmission lines, sidewalks, curbs, street trees and furniture, transitway improvements, off-street parking facilities, street lighting and signalization, pedestrian walkways, and public parks and plazas, whether owned by the City or other governmental entity by agreement with the City, or by the Developer consistent with the Development Agreement, and associated land acquisition and demolition, planning and engineering costs;

(iii) Land and building acquisition, demolition, site preparation, and relocation expenses related to the Development;

(iv) Compensating the School District pursuant to the Compensation Agreement; and

(v) Any other expenditures made with respect to the Parcels in accordance with the Development Agreement or other agreements entered into in connection with development of the Parcels provided such expenditures are otherwise permitted by law.

The Fund shall remain in existence so long as such PILOTS are collected, after which said Fund may be dissolved in accordance with said Section 5709.43 and transferred to the General Fund or any other fund as permitted by applicable law.

SECTION 5. The Compensation Agreement between the City and the School District, substantially in the form attached to this Ordinance as Exhibit B, is hereby approved and authorized, with changes or amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City as determined by the Director of Law and which are approved by the Mayor. The Mayor, for and in the name of the City, is hereby authorized to execute that Compensation Agreement and any amendments thereto. The approval of changes or amendments by the Mayor, and the character of the changes or amendments as not being inconsistent with this Ordinance and not being materially adverse to the City, shall be evidenced conclusively by the execution thereof by the Mayor with the concurrence of the Director of Law. This Council further hereby authorizes and directs the Mayor to make such arrangements as are necessary and proper for payments to be made to the School District pursuant to the Compensation Agreement.

SECTION 6. The School District Additional Parking Agreement between the City and the School District, substantially in the form attached to this Ordinance as Exhibit C, is hereby approved and authorized, with changes or amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City as determined by the Director of Law and which are approved by the Mayor. The Mayor, for and in the name of the City, is hereby authorized to execute that School District Additional Parking Agreement and any amendments thereto. The approval of changes or amendments by the Mayor, and the character of the changes or amendments as not being inconsistent with this Ordinance and not being materially adverse to the City, shall be evidenced conclusively by the execution thereof by the Mayor with the concurrence of the Director of Law.

ORDINANCE NO. 148-2022(PD)

SECTION 7. The First Amendment to Development Agreement adding the Added Property Plan as an exhibit to the Development Agreement (the “First Amendment”), substantially in the form attached to this Ordinance as Exhibit D, is hereby approved and authorized, with changes or amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City as determined by the Director of Law and which are approved by the Mayor. The Mayor, for and in the name of the City, is hereby authorized to execute that First Amendment, with any such changes or amendments. The approval of changes or amendments by the Mayor, and the character of the changes or amendments as not being inconsistent with this Ordinance and not being materially adverse to the City, shall be evidenced conclusively by the execution thereof by the Mayor with the concurrence of the Director of Law.

SECTION 8. The Mayor is authorized and directed to sign any other documents, instruments or certificates as are necessary or appropriate to consummate or implement the actions described herein, or contemplated by this Ordinance, including an agreement or agreements with the Developer to provide for the payment of PILOTS and Minimum Service Payments described in this Ordinance and in the Compensation Agreement.

SECTION 9. Pursuant to R.C. Section 5709.41, the Mayor is hereby directed to deliver a copy of this Ordinance to the Director of Development Services of the State within fifteen days after its passage. On or before March 31 of each year that the exemption set forth in Section 3 hereof remains in effect, the Mayor or designee shall prepare and submit to the Director of Development Services of the State the status report required under R.C. Section 5709.41(E).

SECTION 10. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements.

SECTION 11. Notice of the passage of this Ordinance 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 12. This Ordinance 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 for the Development to move forward and for construction to commence at the earliest possible date. 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.

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President of the Council  
MELODY JOY HART

ORDINANCE NO. 148-2022(PD)

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Clerk of Council  
ADDIE BALESTER

PASSED:

Presented to Mayor: \_\_\_\_\_ Approved by Mayor: \_\_\_\_\_

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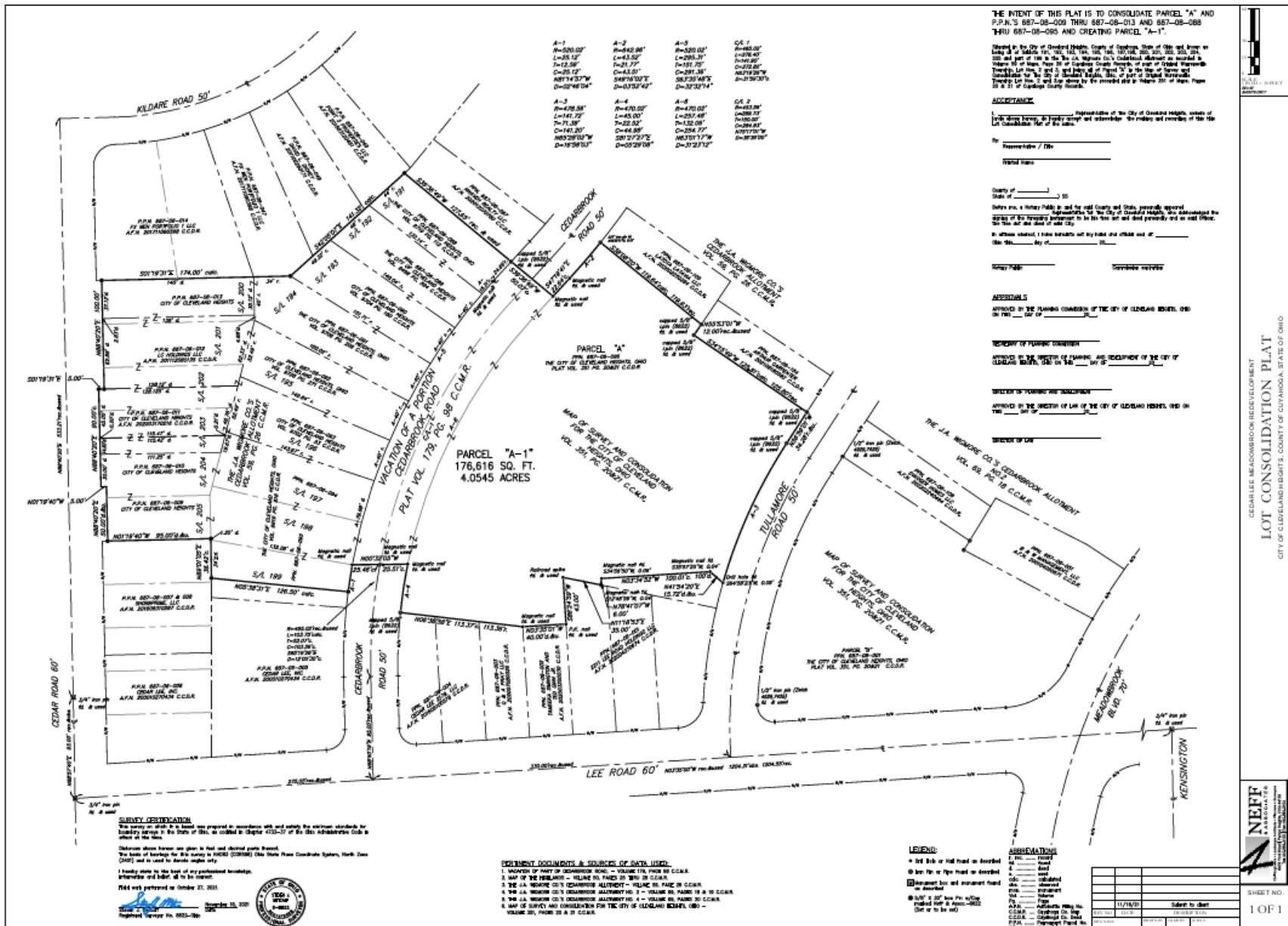
KAHLIL SEREN  
Mayor

**EXHIBIT A**

**IDENTIFICATION AND DEPICTION OF PARCELS INCLUDED IN TIF AREA**

(Identified by Parcel Numbers, each as Depicted on the Following Page)

Parcel Number 687-06-009  
Parcel Number 687-06-010  
Parcel Number 687-06-011  
Parcel Number 687-06-012  
Parcel Number 687-06-013  
Parcel Number 687-06-088  
Parcel Number 687-06-089  
Parcel Number 687-06-090  
Parcel Number 687-06-091  
Parcel Number 687-06-092  
Parcel Number 687-06-093  
Parcel Number 687-06-094  
Parcel Number 687-06-095  
Parcel Number 687-06-096  
Parcel Number 687-08-001



## COMPENSATION AGREEMENT

This Compensation Agreement (this "Agreement"), is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF CLEVELAND HEIGHTS, OHIO (the "City"), a municipal corporation organized and existing under the laws of the State of Ohio, and the BOARD OF EDUCATION OF THE CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS CITY SCHOOL DISTRICT (the "School District"), a city school district organized and existing under the laws of the State of Ohio and joined by F & C DEVELOPMENT, INC., an Indiana Corporation ("FCD") as to Section 2(D)(2) herein (on behalf of the Project Improvement owners).

### WITNESSETH:

WHEREAS, the City owns certain real property, and may acquire additional real property generally known as the "Cedar-Lee-Meadowbrook Property" (collectively herein, the "CLM Property" or "Property"), including a parcel located on the east side of Lee Road between Meadowbrook and Tullamore Roads and additional real property (12 – 16 existing parcels) located to the east of Lee Road between Tullamore and Cedar Roads (including a portion of Cedarbrook Road previously vacated by the City), as more particularly depicted and/or identified in Exhibit A attached hereto; and

WHEREAS, pursuant to (i) a development agreement relating to the CLM Property with FCD (the "Development Agreement") and (ii) one or more Ordinances to be introduced in Cleveland Heights City Council (collectively, with any amendments, the "TIF Ordinance"), the City proposes to:

- establish a tax increment financing area with respect to the CLM Property,
- exempt from real property taxation certain improvements (herein "TIF Improvements") to the CLM Property pursuant to Section 5709.41 of the Ohio Revised Code (together with related statutory provisions, the "TIF Statute"),
- lease the CLM Property (exclusive of the municipal public parking garage located thereon and constructed pursuant to a prior plan for the redevelopment of the CLM Property) to an entity created and controlled by FCD (together with any sublessee of all or substantially all of the CLM Property, "Leasehold Owner") for development of the Project Improvements (defined below),
- require the Leasehold Owner to make Service Payments In Lieu of Taxes in an amount equal to the amount of real property taxes that would have been payable if the TIF Improvements had not been exempted from taxation under the TIF Ordinance (those payments in lieu of taxes, together with any related penalties, interest and rollback payments, are collectively referred to herein as "PILOTs" or "Service Payments"), and
- require such PILOTs to be used to pay debt service on revenue bonds expected to be issued by the City (or another governmental authority designated by the City), any related credit enhancement or administrative costs, and any other financing costs payable therefrom, and any renewals or refundings thereof (collectively, the

“TIF Debt”), which may be issued or entered into to pay a portion of the cost of acquisition and construction of the Project Improvements; and

WHEREAS, by the TIF Ordinance, the City intends to exempt the TIF Improvements to all or a portion of the parcels included in the CLM Property (those parcels, collectively, are referred to herein as the “TIF Area”), with the parcels comprising the real property within the TIF Area, as improved, referred to hereinafter as the “Parcels” or “TIF Parcels”; and

WHEREAS, the City has provided information to the School District with respect to a proposed mixed-use development of the TIF Parcels which will include construction of one or more four-to-five-story buildings, including approximately 200 - 225 market-rate apartments, approximately 5,000 to 9,000 square feet of first floor commercial, retail and restaurant space, public gathering and green spaces, and any necessary infrastructure improvements (all of the foregoing being referred to herein collectively as the “Project Improvements”); and

WHEREAS, the City and the School District will derive substantial and significant benefits from the Project Improvements; and

WHEREAS, the City, in the TIF Ordinance, intends to declare the Project Improvements (other than those Project Improvements to be used for residential purposes as such term is used in the TIF Statute) to be in furtherance of urban redevelopment and for a “public purpose”, to declare the TIF Improvements (the “improvements” under and as defined in the TIF Statute) to the TIF Parcels resulting from those Project Improvements to be a “public purpose” under the TIF Statute, and to exempt 100% of those TIF Improvements from real property taxation for a period not to exceed thirty (30) years in accordance with the TIF Statute; and

WHEREAS, on [                  ], 2022, the Board of Education of the School District adopted a resolution (the “School District Resolution”) approving this Agreement and the exemption of the TIF Improvements under the TIF Ordinance (the “TIF Exemption”) and waiving any other or further rights to notice of the TIF Exemption and, except as provided in this Agreement, compensation in respect of the TIF Exemption or the approval thereof; and

WHEREAS, to facilitate the construction of the Project Improvements and to compensate the School District for a portion of the revenue that the School District would have received had the Project Improvements been made and the TIF Improvements not been exempted from taxation, the City and the School District have determined to enter into this Agreement on the terms hereinafter provided;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, and to induce the City and FCD to proceed with the proposed development of the CLM Property and the Leasehold Owner to proceed with the construction of the Project Improvements, the parties hereto agree as follows:

Section 1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

“Additional School District Millage” means, for any Exemption Year, any Total School District Millage in excess of the Base School District Millage.

“Base Value” means the assessed value (35% of market value under current law) of the Parcels to the extent that such value is not subject to the TIF Exemption and therefore remains subject to real property taxation during the period of the TIF Exemption, as determined by the Cuyahoga County Fiscal Officer consistent with the TIF Ordinance.

“Base School District Millage” means for any Exemption Year, the lesser of Total School District Millage and 99.444261 mills.

“Exempted Value” means the assessed value (35% of market value under current law) of the Parcels within the TIF Area in excess of the Base Value thereof, which is to be exempted from real estate taxation under the TIF Ordinance and the TIF Statute.

“Exemption Year” means, for any Parcel, any calendar/tax year in which TIF Improvements would be taxable but for the exemption from taxation pursuant to the TIF Ordinance.

“Excess PILOTs” means, for any year, an amount equal to the positive difference, if any, between (i) the aggregate amount of PILOTs attributable to the Exempted Value for an Exemption Year, less the amount of such PILOTs attributable to the Additional School District Millage, and (ii) the Projected PILOTs Threshold.

“Projected PILOTs” means the projected PILOTs based on the projected market value of the TIF Improvements, according to pro forma projections presented to both the City and the School District prior to the issuance of the TIF Debt.

“Projected PILOTs Threshold” means, for purposes of determining School Payments under Section 2(A) hereof, the initial Projected PILOTs based upon the Projected Valuation of the TIF Parcels and the applicable effective millage (for all overlapping subdivisions) for tax year 2021. The Projected PILOTs Threshold, based on available information as of May 4, 2022, is estimated to be \$1,252,706.

“Projected Valuation” means, for the Parcels within the TIF Area, the aggregate valuation of all of the TIF Parcels, as estimated and projected in the market value projections utilized for the Projected PILOTs, as described in Section 2(C) hereof.

“Total School District Millage” means, for any given Tax Year, the School District’s effective real property tax rate for Commercial Property applicable to the Parcels in that Tax Year, as determined for that Tax Year under the laws of the State of Ohio (currently pursuant to Ohio Revised Code Section 319.301).

Section 2. City Payments to School District. Unless otherwise agreed to in writing by the City and the School District, with respect to TIF Improvements within the TIF Area, for each tax collection year following an Exemption Year for such TIF Improvements, the City agrees to pay to the School District, from the PILOTs, if any, the

payments determined under subsection (A) of this Section 2 (referred to herein as the "School Payments"):

(A) School Payments. The School Payments shall include the amounts calculated under the following clauses for each tax collection year following an Exemption Year:

- (1) For any Exemption Year, an annual payment equal to 33.883459% of the tax revenue that the School District would have received with respect to that Exemption Year on the Exempted Value but for the TIF Exemption, based on the Base School District Millage (the "Basic School Payments").
- (2) For any Exemption Year in which there are Excess PILOTs, an annual payment equal to 50.00% of the Excess PILOTs (the "Excess PILOT School Payments").
- (3) In addition to the Basic School Payments and Additional School Payments required by subsections (A)(1) and (A)(2) hereof, an annual payment equal to 100% of the tax revenue that the School District would have received with respect to that Exemption Year on the Exempted Value but for the TIF Exemption, based on the Additional School District Millage (the "Additional School Millage Payments", and together with the Basic School Payments and the Excess PILOT School Payments, the "School Payments").

See Exhibit B for examples.

(B) Timing of Payments. The City shall cause all School Payments for any Exemption Year to be paid within thirty-five (35) days after the end of the applicable tax collection year to the extent that PILOTs are received by the City from the Treasurer of Cuyahoga County, Ohio (the "Treasurer") and available for such School Payments. Such School Payments shall be made to the School District by (or on behalf of) the City solely from the PILOTs it receives from the Treasurer. The City may provide that such School Payments be paid directly by the Treasurer, or by a corporate bond trustee or lender engaged in connection with the issuance of the TIF Debt, to the School District. Owing to the subordination of School Payments pursuant to Section 2(D) hereof, the City generally expects that all School Payments for any Exemption Year will, except in unusual circumstances, most likely be paid in a lump sum to the School District on or about February 1 following the end of the applicable tax collection year.

(C) Bond Issuance Test. Unless the School District consents as hereinafter described, no TIF Debt shall be issued by the City, the Cleveland-Cuyahoga County Port Authority or any such other governmental authority as may be designated by the City unless, at the time of authorization of the TIF Debt, the Projected PILOTs, which shall assume no growth in value, will result in a debt service coverage ratio of not less than 1.25:1 for all of the TIF Debt (except to the extent any TIF Debt payments are irrevocably funded at the time of issuance), including principal and interest, the replenishment of any required reserve funds and any administrative expenses of the City (or any other such

governmental authority as may be designated by the City) with respect to the TIF Debt, including but not limited to the fees of the City, the issuer of the TIF Debt and any trustee for the TIF Debt (collectively, "Debt Service") (the "Minimum DSCR Requirement"). If the School District consents in writing, TIF Debt may be issued by the City, the Cleveland-Cuyahoga County Port Authority or any other such governmental authority as may be designated by the City even if the Minimum DSCR Requirement is not satisfied. Such consent by the School District is in the sole and absolute discretion of the School District. It is the intention of the parties hereto that there will always be sufficient PILOTs during any given calendar year to pay both the Debt Service described in Section 2(D)(1)(a) below and all School Payments as required by this Agreement.

**(D) Subordination of School Payments; Minimum Service Payment; Deficiencies.**

(1) The School District acknowledges and agrees that the right of the School District to receive School Payments is subordinate to the payment of the Debt Service on the TIF Debt and that the PILOTs will be applied in the following order:

- (a) First, to pay Debt Service on the TIF Debt.
- (b) Second, to pay to the School District the School Payments currently due under Section 2(A) hereof.
- (c) Third, for all other uses as authorized by law and as may be agreed upon by the City and the Developer.

(2) In consideration of the foregoing agreement of the School District to subordinate the School Payments to Debt Service, the City agrees that, in connection with any TIF Debt, the owners of the Project Improvements on the Parcels within the TIF Area (initially, the Leasehold Owner) will be required to pay so-called minimum service payments in an amount not less than the amount of PILOTs that would be payable had the market value of the Parcels in the TIF Area been equal to the Projected Valuation; provided that the payment of Minimum Service Payments by the owners of the Project Improvements on the Parcels within the TIF Area will not entitle the School District to School Payments in amounts greater than the amounts calculated as set forth in Section 2(A) hereof. Pursuant to Section 2(C) hereof, prior to the issuance of TIF Debt, the City shall notify, or cause to be notified, the School Board as to the Projected Valuation, the Projected PILOTs and the Projected PILOTs Threshold.

(3) In the event that the amounts paid to the School District for any tax collection year are not sufficient to pay the School Payments due for such year in accordance with this Agreement, any such School Payments not paid when due shall become a deficiency hereunder (each, a "Deficiency"). Notwithstanding anything to the contrary in this Agreement, in the event that one or more Deficiencies shall exist, in any tax collection year following an Exemption Year in which there are any Excess PILOTs, the Excess PILOTs not needed to pay School Payments under Section 2(A)(2) above shall be used first to pay any Deficiencies due to the School District under this Section 2(D)(3)

(beginning with the oldest then-remaining Deficiency) and then, after payment of all such Deficiency amounts, the remainder shall be applied according to Section 2(D)(1) hereof.

(E) Income Tax Sharing. The City shall cause fifty percent (50%) of documented new income tax revenue of the City attributable to "new employees" (as defined in Section 5709.82, Revised Code) employed in the original construction of the Project Improvements to be paid to the School District as additional compensation for foregone real property tax revenues ("Income Tax Sharing Payment"). The City and the School District shall establish a mutually acceptable procedure for payment of the Income Tax Sharing Payment following execution of this Agreement.

(F) Termination of Agreement. After the Director of Finance has determined that (a) all of the payments and reimbursements described in the TIF Ordinance, including those then due and those coming due in the future, have been made or provided for, (b) the TIF Debt has been paid in full or otherwise discharged, and (c) all of the School Payments and Income Tax Sharing Payments then due under this Section 2 have been made or provided for, then the exemption from taxation pursuant to the TIF Ordinance and the PILOTs shall end, and this Agreement shall terminate.

Section 3. Review of Records. The School District may from time to time, with reasonable advance notice, review the records of the City relating to the receipt of PILOTs and income tax revenue subject to the Income Tax Sharing Payments. The City and School District shall work together and communicate as to the calculation of the payments required under Section 2, including exchanging information as to the valuation of the Parcels and applicable effective tax rates for all School District levies. Further, the City shall, upon request of the School District in writing, notify the School District as to the receipt of PILOTs and whether such PILOTs are sufficient to pay both the TIF Debt Service described in Section 2(D)(1)(a) and all School Payments as required by this Agreement.

Section 4. Reconciliation. The City and School District shall annually meet to review, calculate and reconcile payments to the School District and City.

Section 5. School District Consents and Waivers. In consideration of the compensation to be provided to it under this Agreement, the School District hereby:

(A) approves each TIF Exemption that may be granted under the TIF Ordinance as to all Parcels within the TIF Area for the number of years, commencing in the year or years specified, and for the percentage or percentages specified in the TIF Ordinance (collectively, the "TIF Exemptions");

(B) waives any notice or other requirements set forth in Sections 5709.41, 5709.82, 5709.83 and 5715.27, Revised Code, with respect to the TIF Exemptions;

(C) waives any School District rights pursuant to Section 5715.27, Revised Code; and

(D) waives any defects or irregularities relating to the TIF Exemptions of the TIF Improvements, and agrees not to challenge, directly or indirectly, the validity of the TIF Exemption of any TIF Improvement.

Section 6. Application of Ohio Revised Code Section 5709.82. The School District acknowledges and agrees that this Agreement provides for the only compensation to be received by the School District from the City in connection with real property tax exemptions granted pursuant to the TIF Ordinance, that there will be no income tax sharing in connection with those exemptions, other than as described in Section 2(E) of this Agreement, and that the compensation provided for herein is in lieu of any other compensation that may be provided for in Section 5709.82, Revised Code.

Section 7. Amendment. This Agreement may be amended or modified by the parties only in writing, signed by both parties to the Agreement.

Section 8. Entire Agreement. This Agreement is executed pursuant to Sections 5709.41, 5709.82, 5709.83 and 5715.27(D) of the Ohio Revised Code, and sets forth the entire agreement and understanding between the parties as to the subject matter hereof, including without limitation all forms of compensation to be paid by the City to the School District pursuant to those sections, and merges and supersedes all prior discussions, agreements, and undertakings of every kind and nature between the parties with respect to the subject matter of this Agreement. It is understood by the parties hereto that if all or a portion of the Parcels are ever deemed to be exempt from real property taxes under any other section of the Revised Code, and if as a result, the City does not receive any PILOTs, the City's payment to the School District will terminate.

Section 9. Notices. All payments, certificates and notices which are required to or may be given pursuant to the provisions of this Agreement shall be sent by the United States ordinary mail, postage prepaid, and shall be deemed to have been given or delivered when so mailed to the following addresses:

If to the City: City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, OH 44118  
Attention: Director of Finance  
Copy: Director of Law

If to the School District: Board of Education of the  
Cleveland Heights-University Heights  
City School District  
2155 Miramar Boulevard  
University Heights, OH 44118  
Attention: Scott Gainer, CFO/Treasurer

With a copy to: David Seed, Esq.  
Brindza, McIntyre & Seed LLP  
1111 Superior Avenue, Suite 1025

Cleveland, OH 44114

Any party may change its address for receiving notices and reports by giving written notice of such change to the other parties.

**Section 10. Change in Development.**

(A) The City shall notify the School District if the Project Improvements to be constructed change substantially after the date of this Agreement, and if requested by the City or the School District, those parties agree to meet to discuss the implications of any such change.

(B) The City shall request the School District to reaffirm, amend or enter into a new Compensation Agreement in the event of (i) a deviation by FCD from the Final Development Plan (as defined in the Development Agreement) concerning the Project Improvements in any material fashion, (ii) the replacement or substitution of FCD (other than a related entity) as the Leasehold Owner and Developer, or (iii) the failure to approve the TIF Ordinance for the herein described Project Improvements on or prior to December 31, 2023. The purpose of this provision is to protect the intent of the parties in that the School District's approval of the TIF Exemption and this Agreement is based on the current description of the Project Improvements on the Property, including the intended developer and timing of those Project Improvements, as presented to the School District. The obligations of the City under this Section 10(B) shall terminate definitively upon the issuance of TIF Debt.

**Section 11. Severability of Provisions.** The invalidity of any provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if any invalid portions were omitted.

**Section 12. Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this Agreement by signing any such counterpart.

**Section 13. Extent of Covenants; Binding Effect; No Personal Liability.** All covenants, stipulations, obligations and agreements of the parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. Each provision of the Agreement is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under law to take the actions as may be necessary to perform all or any part of the duty required by a given provision of this Agreement. Each duty of the City and its bodies, officers and employees, undertaken pursuant to the Agreement, is established as a duty with the City and of each such officer, employee or body having authority to perform that duty, specifically enjoined by law resulting from an office, trust or station within the meaning of Section 2731.01, Revised Code, providing for enforcement by writ of mandamus. No such covenant, stipulation, obligation or agreement shall be deemed a covenant, stipulation, obligation

or agreement of any present or future member, officer, agent, or employee of any of the parties in their individual capacity.

Section 14. No Other Real Property Tax Exemptions. The City shall not authorize a real property tax exemption for the CLM Property identified in Exhibit A other than the TIF Exemption, including as provided in Ohio law under Sections 3735.65 to 3735.70, 5709.40 and 5709.62, Revised Code, without the prior consent of the School District.

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CITY OF CLEVELAND HEIGHTS, OHIO

CLEVELAND HEIGHTS-UNIVERSITY  
HEIGHTS CITY SCHOOL DISTRICT  
BOARD OF EDUCATION

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

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

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

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

Approved as to Form and Correctness:

Joined as to Section 2(D)(2) herein, on  
behalf of the Project Improvement  
owners)

F & C DEVELOPMENT, INC.

By: \_\_\_\_\_  
City Law Director

By: \_\_\_\_\_  
Chief Executive Officer

### FISCAL OFFICER'S CERTIFICATE

The undersigned, [Acting/Interim] Director of Finance of the City of Cleveland Heights under the foregoing Agreement, certifies hereby that any moneys required to meet the obligations of the City during the year 2022 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2022

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[Acting/Interim] Director of Finance  
City of Cleveland Heights, Ohio

### FISCAL OFFICER'S CERTIFICATE

The undersigned, CFO/Treasurer of the Cleveland Heights-University Heights City School District under the foregoing Agreement, certifies hereby that the moneys required to meet any obligations of the School District during the year 2022 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the District or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2022

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Treasurer, Board of Education,  
Cleveland Heights-University Heights  
City School District, Ohio

**EXHIBIT A TO THE COMPENSATION AGREEMENT**

**TIF AREA PARCELS**

(Identified by Parcel Number)

Parcel Number 687-06-009  
Parcel Number 687-06-010  
Parcel Number 687-06-011  
Parcel Number 687-06-012  
Parcel Number 687-06-013  
Parcel Number 687-06-088  
Parcel Number 687-06-089  
Parcel Number 687-06-090  
Parcel Number 687-06-091  
Parcel Number 687-06-092  
Parcel Number 687-06-093  
Parcel Number 687-06-094  
Parcel Number 687-06-095  
Parcel Number 687-06-096  
Parcel Number 687-08-001

## **EXHIBIT B TO THE COMPENSATION AGREEMENT**

### **Example 1 (Overall Millage same – actual Exempted Value higher)**

#### Assumptions:

Projected Incremental Valuation = \$25,438,163 (May 2022)  
Projected PILOT Threshold = \$1,252,706.15 (based on 140.700428 effective mills)  
Exempted Value = \$30,000,000 or \$10,500,000 Assessed Value  
Total School District Millage = 99.444261 effective mills (9.9444261%)  
Total Overlapping Millage = 140.700428 effective mills (14.0700428%)

#### Estimated School Payments:

Section 2(A)(1)  
Base School District Millage = 99.444261 effective mills  
Basic School Payments = \$353,799.13 ( $\$10,500,000 \times 9.9444261\% \times 33.883459\%$ )

Section 2(A)(3)  
Additional School District Millage = Zero (99.444261 – 99.444261) mills  
Additional School Millage Payments = \$0.00

Section 2(A)(2)  
Total PILOTs = \$1,477,354.49 ( $\$10,500,000 \times 14.0700428\%$ )  
Excess PILOTs = \$226,648.34 ( $\$1,477,354.49 - \$0.00 - \$1,252,706.15$ )  
Excess PILOT School Payments = \$113,324.17 ( $\$226,648.34 \times 50\%$ )  
Annual School Payments = \$466,123.30 ( $\$353,799.13 + \$0.00 + \$113,324.17$ )

### **Example 2 (Same as Example 1 except with reduced School District Millage)**

#### Assumptions:

Projected Incremental Valuation = \$25,438,163 (May 2022)  
Projected PILOT Threshold = \$1,252,706.15 (based on 140.700428 effective mills)  
Exempted Value = \$30,000,000 or \$10,500,000 Assessed Value  
Total School District Millage = 88.000000 effective mills (8.8%)  
Total Overlapping Millage = 130.000000 effective mills (13.0%)

#### Estimated School Payments:

Section 2(A)(1)  
Base School District Millage = 88.000000 effective mills  
Basic School Payments = \$313,083.16 ( $\$10,500,000 \times 8.8\% \times 33.883459\%$ )

Section 2(A)(3)  
Additional School District Millage = Zero mills  
Additional School Millage Payments = \$0.00

Section 2(A)(2)  
Total PILOTs = \$1,365,000.00 ( $\$10,500,000 \times 13.0\%$ )  
Excess PILOTs = \$112,293.85 ( $\$1,365,000.00 - \$0.00 - \$1,252,706.15$ )  
Excess PILOT School Payments = \$56,146.93 ( $\$112,293.85 \times 50\%$ )  
Annual School Payments = \$369,230.09 ( $\$313,083.16 + \$0.00 + \$56,146.93$ )

### **Example 3 (Lower Valuations with reduced School District Millage)**

#### Assumptions:

Projected Incremental Valuation = \$24,000,000 (\$8,400,000 Assessed Value)

Projected PILOT Threshold = \$1,181,883.60 (based on 140.700428 effective mills)

Exempted Value = \$25,000,000 or \$8,750,000 Assessed Value

Total School District Millage = 88.000000 effective mills (8.8%)

Total Overlapping Millage = 130.000000 effective mills (13.0%)

#### Estimated School Payments:

##### Section 2(A)(1)

Base School District Millage = 88.000000 effective mills

Basic School Payments = \$260,902.63 (\$8,750,000 x 8.8% x 33.883459%)

##### Section 2(A)(3)

Additional School District Millage = Zero mills

Additional School Millage Payments = \$0.00

##### Section 2(A)(2)

Total PILOTs = \$1,137,000.00 (\$8,750,000 x 13.0%)

Excess PILOTs = \$0.00 (\$1,137,000.00 - \$0.00 - \$1,181,883.60)

Excess PILOT School Payments = \$0.00

Annual School Payments = \$260,902.63 (\$260,902.63 + \$0.00 + \$0.00)

### **Example 4 (Same as Example 1 except with Additional School District Millage)**

#### Assumptions:

Projected Incremental Valuation = \$25,438,163 (May 2022)

Projected PILOT Threshold = \$1,252,706.15 (based on 140.700428 effective mills)

Exempted Value = \$30,000,000 or \$10,500,000 Assessed Value

Total School District Millage = 110.000000 effective mills (11%)

Total Overlapping Millage = 150.000000 effective mills (15.0%)

#### Estimated School Payments:

##### Section 2(A)(1)

Base School District Millage = 99.444261 effective mills

Basic School Payments = \$353,793.26 (\$10,500,000 x 9.944261% x 33.883459%)

##### Section 2(A)(3)

Additional School District Millage = 10.555739 mills

Additional School Millage Payments = \$110,835.26 (\$10,500,000 x 1.0555739% x 100%)

##### Section 2(A)(2)

Total PILOTs = \$1,575,000.00 (\$10,500,000 x 15.0%)

Excess PILOTs = \$211,458.59 (\$1,575,000.00 - \$110,835.26 - \$1,252,706.15)

Excess PILOT School Payments = \$105,729.30 (\$211,458.59 x 50%)

Annual School Payments = \$570,357.82 (\$353,793.26 + \$110,835.26 + \$105,729.30)

### **Example 5 (Increased Valuations with Additional School District Millage)**

#### Assumptions:

Projected Incremental Valuation = \$34,000,000 (\$11,900,000 Assessed Value)

Projected PILOT Threshold = \$1,674,335.09 (based on 140.700428 effective mills)

Exempted Value = \$35,000,000 or \$12,250,000 Assessed Value

Total School District Millage = 110.000000 effective mills (11%)

Total Overlapping Millage = 150.000000 effective mills (15.0%)

#### Estimated School Payments:

##### Section 2(A)(1)

Base School District Millage = 99.444261 effective mills

Basic School Payments = \$412,765.65 (\$12,250,000 x 9.9444261% x 33.883459%)

##### Section 2(A)(3)

Additional School District Millage = 10.555739 mills

Additional School Millage Payments = \$129,307.80 (\$12,250,000 x 1.0555739% x 100%)

##### Section 2(A)(2)

Total PILOTs = \$1,837,500 (\$12,250,000 x 15.0%)

Excess PILOTs = \$33,857.11 (\$1,837,500.00 - \$129,307.80 - \$1,674,335.09)

Excess PILOT School Payments = \$16,928.56 (\$33,857.11 X 50%)

Annual School Payments = \$559,002.

## **EXHIBIT C**

### **FORM OF SCHOOL DISTRICT ADDITIONAL PARKING AGREEMENT**

#### **SCHOOL DISTRICT ADDITIONAL PARKING AGREEMENT**

THIS SCHOOL DISTRICT ADDITIONAL PARKING AGREEMENT (this “**Agreement**”) has been executed as of \_\_\_\_\_, \_\_\_\_\_ (the “**Effective Date**”), by and between the CITY OF CLEVELAND HEIGHTS, OHIO, an Ohio municipal corporation, having an address at 40 Severance Circle, Cleveland Heights, Ohio 44118 (the “**City**”) and the BOARD OF EDUCATION OF THE CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS CITY SCHOOL DISTRICT (the “**School District**”), a city school district organized and existing under the laws of the State of Ohio.

#### **RECITALS**

A. The City has entered into a Development Agreement dated December 9, 2021 (as supplemented and amended, the “**Development Agreement**”) with F&C Development, Inc. (the “**Developer**”) pursuant to which the Developer or a designated affiliate expects to build a mixed-used development (the **Project Improvements**) on certain parcels of land commonly known as the Cedar-Lee-Meadowbrook parcels (the “**Project Site**”).

B. In connection with redevelopment of the Project Site, certain surface parking spaces used by staff and students of the School District will be eliminated, and the City desires to allow staff and students of the School District to utilize certain additional parking spaces controlled by the City in the vicinity of the Project Site in accordance with the terms this Agreement.

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 – USE OF CERTAIN CITY PARKING BY SCHOOL DISTRICT**

Section 1. Permit Parking Spaces for School District Use. Beginning with the date Municipal Lot 5 (as depicted on Exhibit A) closes for construction of the Project Improvements and for the remaining duration of the Cedar-Lee-Meadowbrook Urban Redevelopment Tax Increment Finance District, the City agrees to make available to the School District a total of 50 parking passes for use in Municipal Parking Lot 34 (as depicted on Exhibit B). These permits shall be designated for Cleveland Heights High School (the “**High School**”) students and staff for use during school hours (7:30am to 4:30pm) on days when school is in session. The permits shall be sold by the School District to staff and students with all collected funds being paid to the City. The permits shall be issued for each school semester at a rate equal to the City’s quarterly senior citizen parking permit fee (currently \$34.50), as such rate may adjusted in the future. Along with the collected funds for the permits, the School District shall provide permit holder information to the City.

Section 2. Special Event Parking. Beginning with the date Municipal Lot 5 closes for construction of the Project Improvements, and for the remaining duration of the Cedar-Lee-Meadowbrook Urban Redevelopment Tax Increment Finance District, the City agrees to provide the School District access to parking spaces in Municipal Parking Lot 34 for use by attendees of special events at Cleveland Heights High School (the "High School") at the same cost, if any, that such parking spaces are made available to the general public. These parking spaces are currently available to the public, but the City agrees to provide wayfinding signage designating Municipal Parking Lot 34 as special event parking for the High School during such special events. Additionally, the City agrees to review the current lighting of Municipal Parking Lot 34 and ensure adequate lighting is in place.

Section 3. Additional Parking. The City further agrees to work with the School District to identify and implement additional on-street parking options along Washington Boulevard adjacent to the High School and on other side streets in close proximity to the High School.

Section 4. Claims; Indemnity. The City shall not be liable for any damage or injury to School District staff or students utilizing the additional parking spaces described in this Agreement and the School District agrees to hold the City harmless for any staff or student 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. The City shall not be responsible for any theft, loss or damage to any vehicle or property left in any vehicle.

## ARTICLE II – MISCELLANEOUS

Section 1. Term. The Term of this Agreement shall expire upon the expiration or termination of the Cedar-Lee-Meadowbrook Urban Redevelopment Tax Increment Finance District.

Section 2. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Ohio.

Section 3. 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 4. 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 or the application thereof to any other person and the same shall remain in full force and effect.

Section 5. Amendment. This Agreement may be amended or modified by the parties only in writing, signed by both parties to the Agreement.

Section 6. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this Agreement by signing any such counterpart.

Section 7. Extent of Covenants; Binding Effect; No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. Each provision of the Agreement is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under law to take the actions as may be necessary to perform all or any part of the duty required by a given provision of this Agreement. Each duty of the City and its bodies, officers and employees, undertaken pursuant to the Agreement, is established as a duty with the City and of each such officer, employee or body having authority to perform that duty, specifically enjoined by law resulting from an office, trust or station within the meaning of Section 2731.01, Revised Code, providing for enforcement by writ of mandamus. No such covenant, stipulation, obligation or agreement shall be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties in their individual capacity.

Section 8. Assignment. The City and the School District shall not assign their respective rights or interests under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, delayed and conditioned.

(Remainder of Page Intentionally Left Blank)

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IN WITNESS WHEREOF, the City and the School District have executed this Agreement on the day and year first above written.

Cleveland Heights-University Heights City City of Cleveland Heights, Ohio  
School District Board Education

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

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

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

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

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

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

(Signature Page to School District Additional Parking Agreement)

### FISCAL OFFICER'S CERTIFICATE

The undersigned, [Acting/Interim] Director of Finance of the City of Cleveland Heights under the foregoing Agreement, certifies hereby that any moneys required to meet the obligations of the City during the year 2022 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2022

[Acting/Interim] Director of Finance  
City of Cleveland Heights, Ohio

(Fiscal Officer's Certificate to School District Additional Parking Agreement)

5683101.1

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“First Amendment”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”), by and among the **CITY OF CLEVELAND HEIGHTS** (the “City”), a municipal corporation and political subdivision duly organized and existing under the laws of the State of Ohio, and **F & C DEVELOPMENT, INC.** (the “Developer”), an Indiana corporation.

### R E C I T A L S:

WHEREAS, the City and the Developer entered into that certain Development Agreement dated December 9, 2021 (the “Development Agreement”); and

WHEREAS, since the date of the Development Agreement, the City has acquired additional parcels adjacent to the original Project Site (as defined in the Development Agreement) that are to be included into the Project Site as Added Property (as defined in the Development Agreement) pursuant to an Added Property plan, as contemplated by the Development Agreement; and

WHEREAS, the City and the Developer desire to amend the Development Agreement to include the Added Property plan as set forth herein;

NOW, THEREFORE, for good and valuable consideration, including, without limitation, the mutual covenants set forth herein and in the Development Agreement, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

1. Capitalized terms used herein and not defined herein have the meaning ascribed to them in the Development Agreement.

2. The Added Property Plan attached hereto as Exhibit A shall be included as part of the Development Agreement and attached thereto as Exhibit L, and its terms shall be considered a part of the Development Agreement on the same terms as if such Added Property Plan had been set forth in its entirety on the date the Development Agreement was originally executed.

3. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement. The signature page of any entity, or copies or facsimiles thereof, may be appended to any counterparts of this First Amendment, and, when so appended, shall constitute an original.

IN WITNESS WHEREOF, the City and Developer have each caused this First Amendment to be executed as of the Effective Date at the beginning of this First Amendment.

**CITY OF CLEVELAND HEIGHTS**

By: \_\_\_\_\_  
City Manager

The legal form and correctness of this instrument is approved:

\_\_\_\_\_  
Director of Law

**F & C DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT A TO THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

### ADDED PROPERTY PLAN

THIS ADDED PROPERTY PLAN (this “**Plan**”) has been agreed by the City of Cleveland Heights, Ohio (the “City”) and F&C Development, Inc. (the “Developer”, and, together with the City, the “Parties”) as of November 7, 2022.

#### RECITALS

A. The City and the Developer entered into a Development Agreement dated December 9, 2021 (as supplemented and amended, the “**Development Agreement**”) pursuant to which the Developer or a designated affiliate expects to build a mixed-used development (the **Project Improvements**) on certain parcels of land commonly known as the Cedar-Lee-Meadowbrook parcels in the City (the “**Project Site**”).

B. The Development Agreement provides that the City and Developer will coordinate on efforts to include any Added Property into the Project Site, in a manner consistent with an Added Property plan. Developer and City also agreed in the Development Agreement to include up to \$725,000.00 of the City’s cost associated with acquisition of any Added Property as part of the Project Costs to be financed within the TIF Financing described in Section 8 of the Development Agreement.

C. The Parties further agreed in the Development Agreement that the Added Property plan would be included in the Development Agreement when appropriate.

D. The City has, since the execution of the Development Agreement, acquired two Added Properties located on Cedar Road at the north end of the Project Site, at a cost in excess of \$725,000.00.

The Parties agree that the Added Property plan to be included as part of the Development Agreement is as provided herein.

#### ARTICLE I – ACKNOWLEDGEMENT OF ACQUISITION OF PROPERTIES

Section 1. 13239-13232 Cedar Road, Permanent Parcel 687-06-011. The Parties acknowledge that the City acquired this property (“Parcel 11”) on or about March 17, 2022 at a cost of Two Hundred and Eighty Thousand and 00/100 Dollars (\$280,000.00) plus closing costs.

Section 2. 13234-13238 Cedar Road, Permanent Parcel 687-06-012. The Parties acknowledge that the City acquired this property (“Parcel 12”) on or about October 5, 2022 at a cost of Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00) plus closing costs.

#### ARTICLE II – INCORPORATION INTO PROJECT SITE

Section 1. Incorporation of Added Properties into Project Site. Developer has included Parcel 11 and Parcel 12 (collectively, the “Added Properties”) into the plans for

development of the Project Site, which were submitted to and approved by the City's Board of Zoning Appeals, Planning Commission, and Architectural Board of Review.

Section 2. Lot Consolidation. The Added Properties were included in a lot consolidation plan for the Project Site that was approved by the Planning Commission on August 10, 2022.

### **ARTICLE III – INCLUSION OF ACQUISITION COSTS IN PROJECT COSTS TO BE FINANCED**

Section 1. Acquisition Cost. Developer acknowledges that the City's costs to acquire the parcels specified in Article I (collectively, the "Added Properties") were in excess of \$725,000.00 and that Developer has been presented with evidence of such acquisition costs that is sufficient for its purposes.

Section 2. Reimbursement to City. At the Closing (as defined in Section 4 of the Development Agreement), Developer shall remit or cause to be remitted to the City the sum of Seven Hundred Twenty Five Thousand and 00/100 (\$725,000.00) Dollars by wire transfer in accordance with the instructions included in the closing memorandum or flow of funds prepared for such Closing.

Section 3. Inclusion of Acquisition Costs/Reimbursement in TIF Financing. Developer's payment of reimbursement to the City as provided herein shall constitute an Improvement Cost paid by Developer within the meaning of Section 8(A) of the Development Agreement.

IN WITNESS WHEREOF, the City and Developer have approved this Plan on the day and year first above written.

F&C Development, Inc.

City of Cleveland Heights, Ohio

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

By: \_\_\_\_\_  
Kahlil Seren, Mayor

*Reference: Cleveland Heights City Council Resolution 154-2021, adopted December 6, 2021*