
DEVELOPMENT AGREEMENT

by and between

CITY OF CLEVELAND HEIGHTS, OHIO

and

F & C DEVELOPMENT, INC.

Project Name: Top of the Hill Development

Date: February 21, 2018

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DEVELOPMENT AGREEMENT

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

RECITALS:

A. The City owns a parcel of land commonly known as the Top of the Hill parcel, consisting of approximately 4.0 acres located at the intersection of Cedar Road and Euclid Heights Boulevard, as shown on Exhibit A (Site Plan) hereto (the "Project Site").

B. Developer proposes to develop the Project Site generally as follows:

(i) Developer proposes to build in a single phase a mixed-use development that shall include (a) 200 luxury market-rate apartments, (b) 15,000 square feet of first floor restaurant, retail and commercial space, (c) a public parking garage containing 525 parking spaces, (d) public gathering and green spaces, (e) 20 for-sale townhomes, (f) a nationally-branded hotel or boutique hotel, (g) all sidewalks, driveways, access ways and utility connections, and will potentially include (h) "Class A" office space (collectively, the "Improvements"), all as further outlined below and as depicted and described on Exhibit B (Revised Developer Proposal dated August 29, 2016, amended to include the Conceptual Drawing dated September 18, 2017 Depicting Improvements) hereto (all of the foregoing being referred to herein collectively as the "Project");

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

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

(iv) Developer may acquire certain property in the vicinity of the Project Site (collectively, the "Added Property"), which, if acquired by Developer, will be incorporated into the Project Site.

C. Developer and the City propose to collaboratively create a signature destination district on the Project Site that serves as a gateway to the City and a link between the City and the adjacent University Circle area of Cleveland. The City and Developer agree that the development of the Project Site shall be completed in a manner which, at a minimum:

(i) Creates a dense, vibrant, pedestrian-friendly commercial district that dovetails with the architecture and aesthetics of the surrounding neighborhood;

(ii) Provides a visual and symbolic entrance to the City;

- (iii) Complements existing neighborhood businesses and serves as a destination for the region;
- (iv) Catalyzes additional development;
- (v) Creates positive economic and fiscal benefits for the neighborhood and the City;
- (vi) Improves existing parking and traffic conditions;
- (vii) Incorporates greenspace and uses sustainable best practices;
- (viii) Effectively incorporates community feedback into the design; and
- (ix) Encourages the inclusion of minority-owned and female-owned business enterprises in the construction of the development.

D. Developer currently anticipates that the costs associated with designing and constructing all of the Improvements will be approximately \$75,000,000.00, as shown on Exhibit C (Preliminary Budget - Improvements) hereto.

E. Developer has represented to the City that it intends to use various sources of funds to finance the costs associated with the Improvements, as set forth on Exhibit D (Sources and Uses of Funds) hereto, including a Developer contribution (which includes a construction loan) of \$50,000,000.00 (the "Developer Contribution"). The actual costs incurred by Developer in designing and constructing all of the Improvements, including Developer's debt service on the various financings related to the Project, including the Parking Garage referred to herein, are referred to herein collectively as the "Improvement Costs."

F. Developer presently intends to substantially complete the Project within 24 months after the Closing (as defined in Section 4 hereof).

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

H. In furtherance of the public purposes of the City, and to facilitate the Project, Developer has requested that the Cleveland Heights City Council (the "City Council") adopt an ordinance (the "TIF Ordinance") to create a project-based tax increment financing area for the Project Site pursuant to Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the "TIF Statutes"), and to exempt one hundred percent (100%) of the increase in assessed value of each parcel of real property included in the Project Site (being the "Improvement" thereto as defined in Section 5709.40(A) of the Ohio Revised Code) for a period of thirty (30) years (the "TIF Exemption"), commencing, with respect to each parcel within the Project Site, the first tax year in which an Improvement first appears on the tax list and duplicate of real and public utility property for such parcel with respect to a new building or other vertical structure, and to provide for the payment of Improvement Costs from service payments in lieu of taxes generated by the Improvement to the parcels within the Project Site ("Service Payments")

and minimum service payment obligations imposed by the City at the request of Developer pursuant to Section 5709.91 of the Ohio Revised Code ("Minimum Service Payments"), subject to the approval of the Cleveland Heights-University Heights City School District (the "School District") unless the TIF Ordinance specifies that service payments in lieu of taxes shall be paid to the School District in the amount of the taxes that would have been payable to the School District if the Improvement to the parcels within the Project Site had not been exempted from taxation.

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

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

K. The City has determined that granting Developer the option to purchase the Project Site, for \$10.00, at any time after the fortieth (40th) anniversary of the Effective Date, is justified because the Improvements will yield an estimated 200 new residents living in the Cedar-Fairmount district of the City, and will add to the vibrancy and livability of the Cedar-Fairmount District, and it will provide 525 parking spaces to the District.

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

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

N. Execution of this Agreement was authorized by Ordinance No. _____, passed by City Council on _____, 2018.

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

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

1. INCORPORATION OF RECITALS.

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

2. DESCRIPTION OF THE IMPROVEMENTS.

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

(A) ***Apartments.*** The Project shall include 200 market-rate, luxury apartments with full amenity packages in one or two buildings that are approximately five stories (collectively, the "Apartments"). Some of the Apartments may be converted to condominiums. Apartments are expected to be first-class in all respects and shall be constructed to be considered top of the market.

(B) ***Retail and Restaurant Space.*** The Project shall include 15,000 square feet of new retail, restaurants and entertainment concepts that do not currently exist in the City (collectively, the "Retail and Restaurant Space"). The anticipated retail categories include the concepts described in the Merchandising Plan attached as Exhibit F, and Developer agrees that it shall not lease any retail or commercial space in the Project that (i) is inconsistent with the Merchandising Plan, or (ii) results in a relocation of existing businesses within the City unless, in either case, the City Manager consents to such lease, which consent shall not be unreasonably withheld, delayed or conditioned.

(C) ***Parking Garage.*** The Project shall include a parking garage with 525 parking spaces (the "Parking Garage"). Developer shall make 225 parking spaces in the Parking Garage available to the public on a monthly and/or hourly basis, subject to parking fees customary for the area. Developer may enter into one or more subleases or rental agreements with third parties for parking spaces in the Parking Garage as needed to support the viability of the Apartments. The Parking Garage will either be owned and operated by Developer or by the Cleveland-Cuyahoga County Port Authority (the "Port Authority"), and managed by Developer, in accordance with Section 3(E) hereof and/or Section 8(A) hereof.

(D) ***Office Space.*** The Project will potentially include "Class A" office space (the "Office Space").

(E) ***Hotel.*** The Project is currently expected to include a nationally-branded hotel or boutique hotel with 120 rooms (the "Hotel") to be operated by a qualified, experienced third-party hotel management company.

(F) ***Townhomes.*** The Project will include 20 for-sale townhomes consisting of multi-story residences (the "Townhomes") with approximately 1,500 square feet of living space in each townhome.

3. LEASE OF PROJECT SITE.

(A) *Execution of Lease.* At Closing (as defined in Section 4(A)(i)), the City shall lease the Project Site to Developer, for a term of ninety-nine (99) years, at rent of \$10.00/year, by executing the Lease in substantially the form of Exhibit E. Under the Lease, Developer shall be solely responsible for all operating costs, insurance premiums, real estate taxes and assessments, and all other costs associated with the Project Site and the Improvements during the term of the Lease.

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

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

(D) *Financing of the Project.* If necessary or appropriate for any portion of the financing of the Project, at the request of Developer, Developer and the City shall negotiate diligently and in good faith to structure the Lease as a financeable ground lease. In the event Developer elects to finance the Project in part with a loan from the U.S. Department of Housing and Urban Development ("HUD"), the City agrees to cooperate with Developer to enable such financing, including the following:

- (i) Improvements are to be owned by Developer;
- (ii) The term of the Lease must be ten (10) years longer than such HUD loan;
- (iii) Casualty and condemnation proceeds shall be disbursed in accordance with the HUD loan documents; and
- (iv) The HUD Lease Addendum attached hereto as Exhibit G shall be incorporated into the Lease.

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

4. CLOSING ON LEASE OF PROJECT SITE.

(A) *Closing; Conditions to Closing.*

(i) **Closing.** Provided the Conditions (as defined in Section 4(B) below) have been satisfied, the City shall (i) execute the Lease, (ii) transfer exclusive possession of the Project Site to Developer, and (iii) take such other actions or execute such other documents as contemplated hereunder, reasonably appropriate to consummate the transactions contemplated hereunder, or required to evidence satisfaction of the conditions or required by Developer's title company to insure Developer's leasehold interest in the Property (the "Closing") on or before June 30, 2019, so as to enable Developer to commence construction activities; subject, however, to any and all easements, covenants, restrictions and other matters of record existing on the Effective Date affecting the Project Site. If all of the Conditions have not been met by June 30, 2019, the date of the Closing may be extended by the City for up to six (6) months at the request of Developer, as set forth in Section 4(C) below, and any such request shall not be unreasonably denied as long as Developer is working diligently to satisfy the Conditions. Subject to the provisions in the last paragraph of Section 9(A), Developer will use good faith efforts to complete its due diligence in accordance with Section 9 on or prior to the date set forth above such that, at the Closing, Developer will be in a position to lease the Project Site for the term of the Lease without any environmental, title, financing or other contingencies of any kind.

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

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

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

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

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

(v) Developer shall have provided evidence to the City that it has entered into a hotel management agreement with a qualified, experienced third-party hotel management company to manage the Hotel;

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

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

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

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

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

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

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

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

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

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

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

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

(C) **Failure to Meet Conditions.** In the event either party determines that the Conditions have not been met by June 30, 2019, and the City has not agreed to an extension of such date in accordance with the last sentence of this Section 4(C), each party shall have the right to terminate this Agreement by written notice to the other at any time after such date (but prior to the date on which both parties agree that all Conditions have been met), and upon such notice this Agreement shall terminate and except as provided in Section 8(B), neither party shall thereafter have any rights or obligations under this Agreement. Notwithstanding the foregoing, the City may extend the foregoing termination date by up to six (6) months at the request of Developer, and such request shall not be unreasonably denied as long as Developer is working diligently to satisfy the Conditions.

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

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

(B) **Preliminary and Final Plan.** Developer shall be solely responsible for the planning, design, construction, administration, oversight and completion of the Project. At such time as Developer deems appropriate, it shall begin preparing a preliminary development plan for the Project Site. Developer shall submit such preliminary development plan to the City's Director of Economic Development ("EDD Director"), and to the City's Director of Planning and Development ("PD Director"), for review and comment. Any objections by the City's EDD Director or PD Director shall be submitted in writing to Developer within fifteen (15) business days of receipt of said drawings. The presentation of the preliminary development plan to the Planning Commission, the development and approval of Planned Development Overlay District Development Standards ("Development Standards"), the adoption of a Planned Development Overlay District (a "PDO District"), final approval of a development plan for the Project Site, Development Standards and a PDO District by both the Planning Commission and City Council shall all proceed in accordance with the steps outlined in the City of Cleveland Heights Zoning Code. None of those approvals are guaranteed by this Agreement. Nothing in this Agreement shall require Developer to include in the preliminary development plan or the Final Plan (as defined below) any specific component of the Improvements described in Section 2 if Developer reasonably determines that completing such component is not economically feasible. The basis for the Developer's determination that completing a component of the Improvements is not

economically feasible shall be set forth in a report submitted to the EDD Director and the PD Director prior to approval of the Final Plan, the PDO District and the Development Standards.

As part of this process, Developer shall submit a traffic impact (including, but not limited to, vehicular, pedestrian and bicycle) study and parking studies to the City's Department of Public Safety (the "Public Safety Department") and hereby agrees to cooperate and coordinate with the City to use commercially reasonable efforts to mitigate traffic and parking problems identified in such studies to the satisfaction of the Public Safety Department. If requested by the City, Developer agrees to have a district-wide parking study completed (in which case the City will pay the incremental cost of expanding such study to a district-wide study). The development plan for the Project Site, as approved by Developer, the Planning Commission and the City Council, as the same may thereafter be modified during construction following the process outlined in the City of Cleveland Heights Zoning Code, is referred to herein as the "Final Plan."

(C) ***Right to Terminate Agreement for Failure to Approve Final Plan.*** The parties agree to work diligently and cooperatively with each other for City approval of the Final Plan, the PDO District and the Development Standards. If for any reason the parties, after exercising reasonable efforts, are unable to obtain approval of the City and other governmental authorities as needed for the Final Plan, the PDO District and the Development Standards by June 30, 2019, and that date has not been extended by the City in accordance with Section 4(C), each party shall have the right to terminate this Agreement by giving written notice thereof to the other party no later than sixty (60) days thereafter (but prior to the date on which the Final Plan, the PDO District and the Development Standards are approved), whereupon neither party shall thereafter have any further rights or obligations hereunder except as described in Section 8(B). For purposes of this Section 5(C) and Section 4(B)(iii), the term "approval" means final legislation or administrative action without further appeal or referendum adopted in accordance with the Charter and Ordinances of the City and with standards of other applicable governmental authorities that approves all aspects of the Final Plan, PDO District and Development Standards.

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

6. OBTAINING & APPROVING CONSTRUCTION BIDS.

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

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

(C) **Budget.** Promptly after the approval of the Final Plan contemplated under Section 5(B), Developer shall provide the City with an updated construction budget for the Project specifying all projected costs and expenses of every kind and nature to be incurred in connection with the Project, including all costs of labor, materials, equipment and fixtures needed for completion of the Project and all other costs, fees and expenses relating to construction of the Improvements (as the same may thereafter be updated from time to time during construction, the "Budget").

7. CONSTRUCTION.

(A) **Construction.** Once the parties have approved the Final Plan and the Closing has occurred, Developer shall proceed with construction of the Project. Developer shall thereafter complete construction of the Project in substantial accordance with the Final Plan, provided that Developer may make changes to the Final Plan in accordance with the process set forth in the City's planning and zoning ordinances. Except for assistance to be provided by the City to Developer under this Agreement, Developer shall be solely responsible for constructing and paying for the Project. Developer represents and warrants to the City that the sources of funding set forth on Exhibit D hereto are expected to be adequate to enable Developer to complete the Project in accordance with the current scope of the Project; subject to cost increases resulting from matters approved in the Final Plan.

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

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

Developer will not deviate from the Final Plan, PDO District Overlay and Development Standards in any material fashion without obtaining approval of a revised Final Plan, PDO District Overlay and Development Standards by the Planning Commission and City Council to

the extent required by and in accordance with the process set forth in the City of Cleveland Heights planning and zoning ordinances.

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

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

(D) **Completion Guaranty.** At the Closing, Developer shall cause Developer and David M. Flaherty ("Guarantors") to deliver to the City a Completion Guaranty (the "Completion Guaranty") for the Project, which Completion Guaranty shall be in the same form as required by Developer's construction lender. If Developer's construction lender does not require a completion guaranty, the Completion Guaranty delivered to the City shall be in a form reasonably acceptable to the City.

(E) **Applicable Laws.** Developer shall obtain and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements relating to development of the Project. By executing this Agreement, the City makes no representations or other assurances to Developer that Developer will be able to obtain whatever variances, permits and other approvals from the City's Department of Planning and Development, the City's Department of Public Safety, the City's Architectural Board of Review or City Council that may be required in connection with the Project.

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

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

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

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

(I) **Sales Tax Exemption.** Upon the request of Developer, and as provided in Section 3(E) hereof, the City shall cooperate with Developer, contractors and subcontractors working on the Improvements to facilitate Developer's obtaining the necessary sales tax exemption certificate(s) under Section 5739.02 of the Ohio Revised Code from the Port Authority for the purchase of materials to be used in the construction of the Improvements.

(J) **LEED Compliance.** Developer shall design and construct, at its expense, the Project to receive a LEED Silver Certification from the United States Green Building Council. Developer shall apply for and receive LEED Silver Certification for the Project.

8. FINANCING; FEES AND EXPENSES OF CITY.

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

The City acknowledges that Developer may seek to finance the costs of the Parking Garage through the issuance by the Port Authority of bonds the interest on which is exempt from federal income taxation (a "Tax-Exempt Bond Financing"). In such case, that portion of the Project Site on which the Parking Garage is located (including any air rights parcel that is created for such purpose) will be leased by the City directly to, or subleased by Developer to, the Port Authority, upon terms that will provide the Port Authority with sufficient ownership rights in the Parking Garage to provide the Tax-Exempt Bond Financing, provided that the Port Authority will engage Developer to construct the Parking Garage as its construction manager and to operate the Parking Garage as its manager once the Parking Garage is built. If the Parking Garage is owned by the Port Authority for purposes of Tax-Exempt Bond Financing, the Port Authority may seek an exemption from real estate taxation for the Parking Garage to which the

TIF Exemption will be subordinate. The use of a Tax-Exempt Bond Financing for the Parking Garage will not preclude the Port Authority from issuing taxable bonds for the payment of other Improvement Costs.

The City acknowledges that in addition to the TIF Financing, including any Tax-Exempt Bond Financing for the Parking Garage, Developer expects to create a multi-tiered plan of finance for the Project and that Developer shall have the right to grant a security interest, mortgage or other encumbrance (in any event, an "Encumbrance") to secure debt related thereto ("Developer Financing") in Developer's leasehold interest in the Project Site and all of Developer's right, title and interest in the Improvements and any fixtures, equipment and personal property located therein or thereon. Except as described in Section 3 of this Agreement and this Section 8, no such Encumbrance shall extend to, affect or be a lien upon the estate and interest of the City in the Project Site or any part thereof.

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

(B) **Fees and Expenses.** Developer agrees to reimburse the City for all out-of-pocket costs incurred by the City in connection with the preparation and negotiation of the Memorandum of Understanding fully executed on July 18, 2017 (the "MOU"), this Agreement and any other documentation contemplated hereby upon the execution of the Lease of the Project Site to Developer (the "Costs"); provided the Costs are consistent with the estimates provided by the City to Developer which is attached hereto as Exhibit J. Developer acknowledges that the estimate of the Costs are based upon certain assumptions, and that such estimate may need to be adjusted by mutual agreement of the City and Developer to the extent circumstances change as the Project progresses. In the event this Agreement terminates for any reason prior to execution of the Lease, Developer shall be obligated to reimburse the City for the Costs, but the amount of such reimbursement shall not exceed \$50,000.

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

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

(A) **Due Diligence.** Developer or its designee shall have a period of time commencing on the Effective Date and continuing for 180 days (the "Inspection Period") to conduct inspections, studies and investigations of the Project Site and the Project. Developer and its agents, representatives and contractors has been granted full access to the land comprising the Project Site pursuant to an Access Agreement dated as of September 13, 2017 (the "Access Agreement") for purposes of conducting such physical and environmental inspections, tests and

surveys, including without limitation a Phase I environmental survey, soil borings, geotechnical testing, surveys and title searches (collectively, the "Inspections") of the Project Site as Developer deems necessary or appropriate, in Developer's sole discretion, to determine the feasibility, costs and physical and other impediments to development of the Project. Developer and City hereby agree the Access Agreement shall remain in full force and effect through the first to occur of the Closing or the termination of this Agreement.

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

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

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

In the event that Developer is dissatisfied with the results of the Inspections for any reason whatsoever, or determines, based upon the Market Studies, that the Project, or any portion thereof, as described in this Agreement is not economically feasible for the Project Site, Developer may give written notice to the City to such effect and thereafter shall have no obligation or liability with respect to the Project other than the reimbursement of the Costs not to exceed \$50,000 to the City. Alternatively, Developer may propose changes to the nature and scope of the proposed Project. If such changes are rejected by the City, Developer may likewise give written notice to the City and thereafter shall have no obligation or liability with respect to the Project other than the reimbursement of the Costs to the City not to exceed \$50,000.

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

Developer agrees that it shall meet personally with the Cedar Fairmount Special Improvement District (the "SID") to review for potential incorporation into the Project the design elements set forth in the SID's November 2009 Cedar-Fairmount Transportation &

Streetscape Plan. Developer shall use reasonable efforts to enter into an agreement to participate in the SID that is acceptable to both Developer and the SID, provided that such agreement does not materially increase Developer's costs or obligations.

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

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

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

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

10. TAXES AND IMPOSITIONS; REAL PROPERTY TAX EXEMPTION.

(A) **Taxes and Impositions.** Commencing on the Closing and thereafter during the term of the Lease, Developer shall pay all real property taxes and assessments (prorated on a lien basis) with respect to the Project Site directly to the taxing authority before the same become overdue. The City will cooperate with Developer to cause all bills and statements for taxes and assessments to be delivered directly to Developer and shall promptly deliver to Developer any such bills and statements which the City receives. Except as otherwise provided in this Agreement or the terms of the proposed TIF financing described in Section 8(A) of this Agreement, Developer shall be permitted to contest any real property taxes or assessments with respect to the Project in accordance with applicable law and procedures. Developer may apply for and receive any and all other incentives available and applicable to the Project from any and all federal, state and local governmental authorities and the City will cooperate with Developer to apply for such incentives.

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

(B) **TIF Exemption.** The City agrees to take all such actions as are necessary to establish the TIF Exemption under the TIF Statutes; provided that the parties acknowledge that the establishment of the TIF Exemption under the TIF Statutes will require the passage of by the City Council of the TIF Ordinance. The parties acknowledge that the TIF Exemption shall

not occur unless and until the City Council has passed the TIF Ordinance (provided that the passage of the TIF Ordinance is not guaranteed by this Agreement) and the State of Ohio Department of Taxation has issued a final determination with respect to the Project Site in accordance with Section 5715.27 of the Ohio Revised Code. The City will cooperate with Developer in filing an application with the State of Ohio Tax Commissioner if required.

11. **INSURANCE; INDEMNITY.**

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

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

(C) ***General Indemnity.*** Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, and except to the extent caused by the negligence or willful misconduct of the Indemnified Parties (as defined below) or any one or combination thereof, Developer agrees to defend, indemnify and hold the City, its employees, agents, contractors and subcontractors (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability and damages for

personal injury or property damage (excluding diminution in value or claims of eminent domain) asserted against the Indemnified Parties as a result of or arising directly from the acts of Developer or its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at its request in connection with the Project (collectively referred to as "Claims"). Developer shall undertake, at its sole expense and through counsel reasonably satisfactory to the City's Law Director, the defense of the City in any Claims covered by the foregoing indemnification.

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

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

(F) ***Claims.*** In case any Claim or demand is at any time made, or action or proceeding is brought against or otherwise involving an Indemnified Party in respect of which indemnity may be sought hereunder, the Indemnified Party seeking indemnity promptly shall give notice of that action or proceeding to Developer, who upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Indemnified Party to give that notice shall not relieve Developer from any obligation under this section unless, and only to the extent, that a failure to give notice materially prejudices the defense of the action or proceeding by Developer. An Indemnified Party may employ separate counsel and participate in the defense of an indemnified Claim, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless (a) the employment of such counsel has been specifically authorized by Developer in writing, (b) Developer has failed to assume the defense and to employ counsel, or (c) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and Developer and such Indemnified Party has been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to Developer, in which case, if the Indemnified Party notifies Developer in writing that it elects to employ separate counsel at Developer's expense, Developer shall not have the right to assume the defense of such action on behalf of such Indemnified Party and Developer shall be responsible for payment of the fees and expenses of such separate counsel. An Indemnified Party seeking indemnity agrees

to fully cooperate with Developer, to the extent such cooperation does not prejudice the position of such Indemnified Party, and lend Developer such assistance as Developer shall reasonably request in defense of any claim, demand, action or proceeding. Developer shall not, nor shall any Indemnified Party, be liable for any settlement made without its consent.

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

12. CASUALTY.

In the event of damage to the Improvements by fire or other casualty, the casualty provisions set forth in the Lease shall govern.

13. DEFAULT; REMEDIES.

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

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

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

(iii) The failure of Developer to perform or observe any of its obligations, duties, or responsibilities under this Agreement (including without limitation the failure to timely complete the Improvements), and failure by Developer to correct such failure within thirty (30) days after receipt of written notice thereof from the City; provided, however, that if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, an event of default shall not be deemed to have occurred if Developer commences to cure the default within such thirty day period and thereafter diligently completes such cure; or

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

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

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

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

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

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

(C) **Lender's Rights to Notice and Opportunity to Cure.** Developer's lender's rights to notice and opportunity to cure a default under Section 9(B) of the Lease shall apply to this Agreement such that all of the obligations of the City and all of the rights of a lender with

respect to an event of default by Developer under the Lease shall apply to an event of default by Developer under this Agreement as if such Section 9(B) of the Lease was restated herein in its entirety with the references to "Lease" changed to "Agreement".

14. NOTICES.

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

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

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

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

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

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

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

15. REPRESENTATIONS, WARRANTIES AND COVENANTS.

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

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

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

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

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

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

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

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

16. REPORTING REQUIREMENTS; COMMUNICATIONS; PRESS RELEASES.

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

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

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

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

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

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

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

17. **DISPUTE RESOLUTION.**

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

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

18. **GENERAL PROVISIONS.**

(A) **Assignment.** Developer shall not assign its rights or interests under this Agreement without the prior written consent of the City Manager, which shall not be unreasonably withheld, delayed and conditioned; except that Developer's assignment to an affiliate of Developer (with prior written notice to the City), and Developer's collateral assignment of its rights under this Agreement to its lenders for the Project, and full and unfettered assignability by such lender, without the consent of the City, upon an exercise by such lender of its rights under its loan documents, shall be permitted; provided however that no such assignments by Developer to an affiliate or lender shall relieve Developer of its obligations or liability to the City under this Agreement.

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

specific provisions of other agreements are in conflict with the specific provisions of such other agreements, the provisions of such other agreements shall control.

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

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

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

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

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

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

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

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

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

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

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

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

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

(P) **Agency.** Notwithstanding anything herein to the contrary, where Developer is identified herein as acting as the agent of the City, such designation shall not impose any additional duties, liabilities or obligations upon Developer outside or in addition to those specifically and expressly set forth in this Agreement.

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

- Exhibit A - Site Plan
- Exhibit B - Revised Developer Proposal dated August 29, 2016, amended to include the Conceptual Drawing dated September 18, 2017 Depicting Improvements
- Exhibit C - Preliminary Budget – Improvements
- Exhibit D - Source and Uses of Funds
- Exhibit E - Form of Ground Lease
- Exhibit F - Merchandising Plan
- Exhibit G - HUD Lease Addendum
- Exhibit H - Preliminary Schedule/Timeline
- Exhibit I - Plan for Communication and Coordination between Developer and City
- Exhibit J - Estimate of City Costs

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF CLEVELAND HEIGHTS, OHIO

F & C DEVELOPMENT, INC.

By: *Susana Hernandez Olivas*
Vice City Manager

By: _____


Name: _____

Title: _____

Date: 21 Feb 2018

Date: _____

Approved as to Form:

By: *J. Jones, Julian, Jr.* 
City Law Director

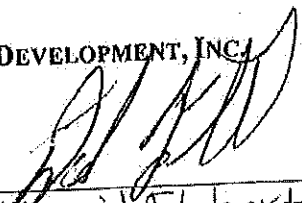
Authorized by Resolution/Ordinance No. 7-2018
passed by Cleveland Heights City Council
on February 20, 2018

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

CITY OF CLEVELAND HEIGHTS, OHIO

F & C DEVELOPMENT, INC.

By: _____,
_____, City Manager

By: 
Name: David Flaherty
Title: CEO
Date: 4/6/18

Date: _____

Approved as to Form:

By: _____
City Law Director

CITY'S FISCAL OFFICER CERTIFICATE

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

Laurie Sabin

Laurie Sabin, Director of Finance

Date: 2/21/18

EXHIBIT A
TO DEVELOPMENT AGREEMENT
SITE PLAN

[SEE ATTACHED]



- 1 HOTEL
- 2 MIXED-USE BUILDING WITH GROUND FLOOR RETAIL
- 3 APARTMENT BUILDING
- 4 APARTMENT BUILDING AND TOWNHOUSES
- 5 PARKING DECK



FLAHERTY & COLLINS
PROPERTIES

TOP OF THE HILL

SITE PLAN

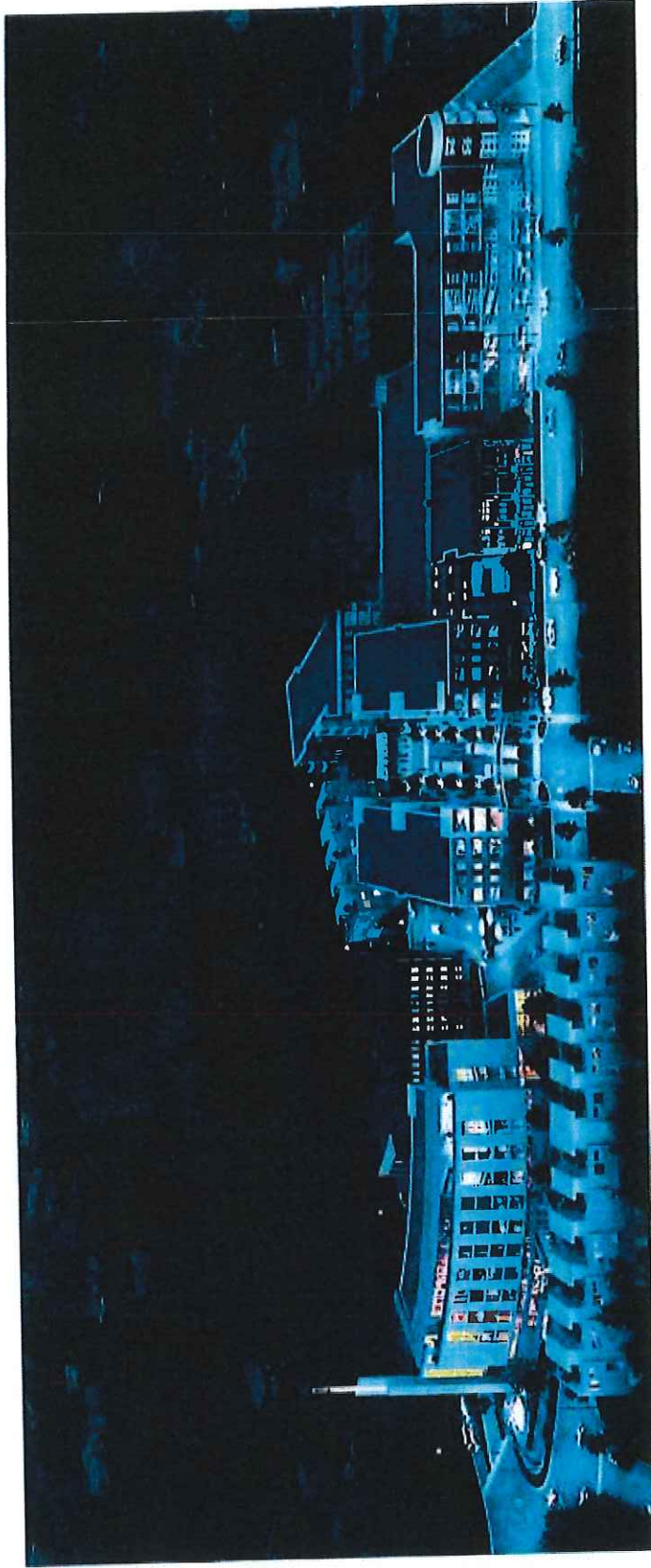


epstein uhlen architects
9/18/2017 18.00.01
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EXHIBIT B

**REVISED DEVELOPER PROPOSAL DATED AUGUST 29, 2016, AMENDED TO
INCLUDE THE CONCEPTUAL DRAWING DATED SEPTEMBER 18, 2017
DEPICTING IMPROVEMENTS**

[SEE ATTACHED]



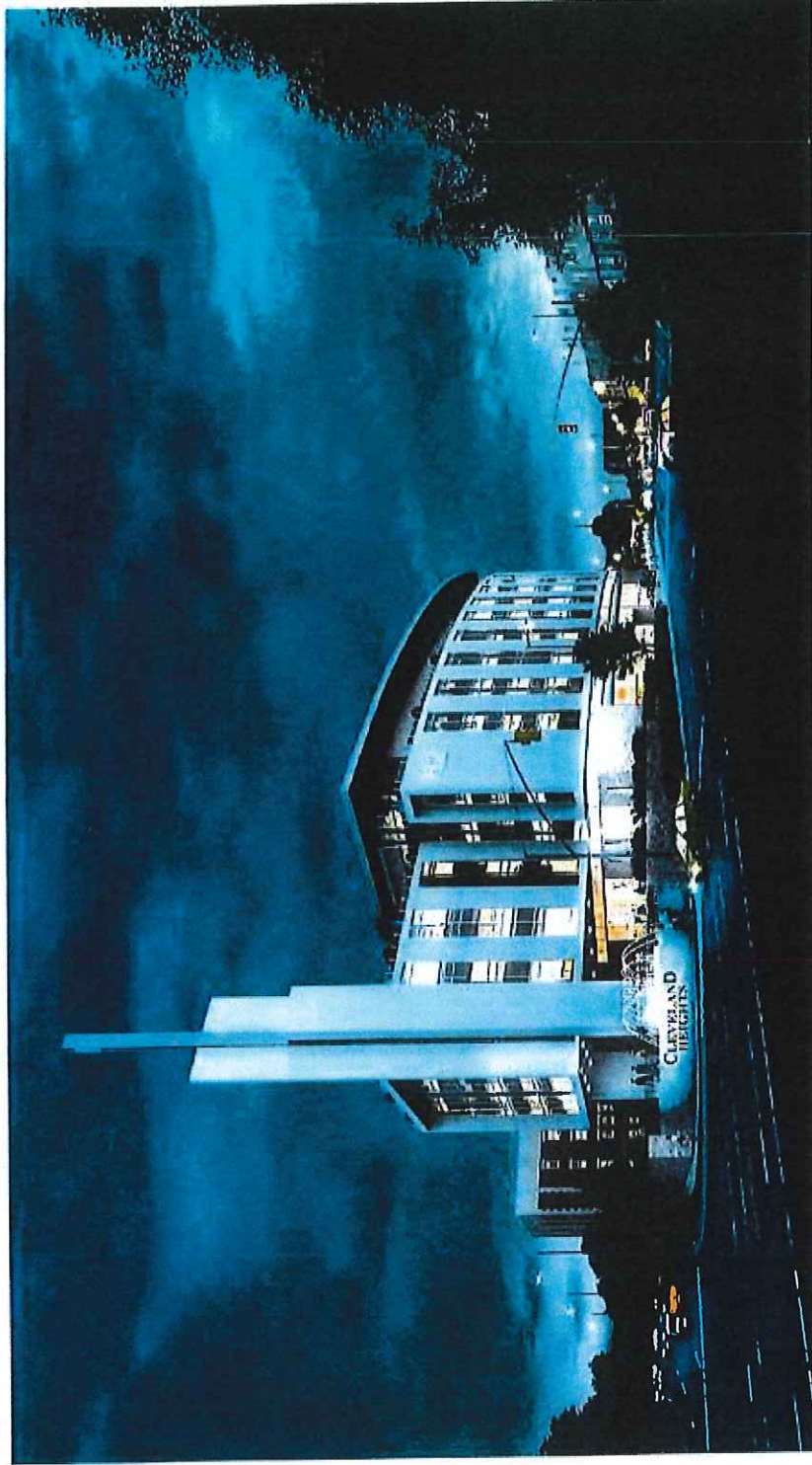
FLAHERTY & COLLINS
PROPERTIES



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BEACON ON THE HILL

AERIAL



FLAHERTY & COLLINS
PROPERTIES

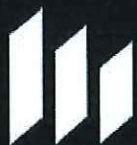


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BEACON ON THE HILL

CLEVELAND HEIGHTS ENTRY





FLAHERTY & COLLINS
PROPERTIES

Maintenance FAQ



For More Information Contact:
Deron Kintner, General Counsel
dkintner@flco.com
317.816.9300

www.flco.com





The Flaherty & Collins Properties (F&C) Management Team has extensive experience in Property Management, including maintaining of sites and updating properties:

- 239 Total Properties Managed
- 40,027 Total Units Managed

Currently, F&C manages over 100 properties and over 15,000 units in 12 states. An AMO® designated company, F&C follows the Institute of Real Estate Management (IREM®), NAA and local apartment association and industry guidelines and best practices. AMO® is a designation awarded by IREM for excellence in property management, achieving the highest level of performance, experience, customer service and financial stability.

Flaherty & Collins Properties adheres to several Standard Operating Procedures (SOPs) for property management, and several specifically concerning maintenance. In the sections below, you will find links to several documents that detail these policies and procedures:

- Maintenance SOP
- Daily inspection sheets: Performed by leasing office staff; maintenance checklists are turned in daily.
 - Property Inspection
 - Daily Opening Checklist
- Preventive Maintenance Plan
 - Each area of concentration has a designated month and is reviewed every 90 days to schedule and order necessary supplies. See maintenance section of SOP linked above.
 - Preventive Maintenance Plan
- Work Order Summary Review
 - Included in Monthly Owner's Report
 - This helps to identify most common work order(s) and where our maintenance team is spending the most time
 - Many times, areas in which we can change the design with small modifications, or plan out in our five (5) year Capital Improvement Plan.
- Occupied Unit Inspections
 - Occur once a month
 - Check all smoke detectors, furnace filters, fire extinguishers, all life safety, safe and sanitary conditions.



- Monthly Site Review
 - Audit monthly
 - This includes file audit, unit inspection, renewal audit, contract audit, preventative maintenance plan review, market condition review, physical inspection of all common areas and grounds.
- Capital Needs Assessment Form
 - Completed on an annual basis

Value Enhancements

Flaherty & Collins Properties works to understand all the dynamics of the specific markets and target demographics of a site. This includes obtaining knowledge of competition with in the market and sub market in the following key areas:

- Rent
- Amenities
- Any recent upgrades
- Reasons traffic rents at competitor

Additionally, F&C "shops" competition and compiles a report to provide this information and track regularly, providing to owners and potential owners (when needed).

- Example Shop: Willowbrook Lake Shop

Common Area Spaces

Common area spaces are normally updated every five (5) years, with unit upgrades every seven (7) years.

On renewal, many times F&C give upgrade options, such as new fixtures, flooring, countertops, etc. This helps keep the unit modern and more cost efficient to owners.

The following page is an example of a renewal menu and unit upgrade for a property in Ohio, Shadow Creek. Below are links to documents detailing these items.

- Floor Plan Upgrades (example on following page)
- Rent Comparison
- Upgrade Menu

Many times, these enhancement items can be reimbursable from reserve funds.

Additional information, discussion and explanation can be provided upon request.



Unit Upgrade Spreadsheet Example

Apartments

Unit Upgrade Summary

Floorplan Name	The Sandpiper, The Starling, The Downy, The Meadowlark		
Unit Type	1 Bedroom/1 Bathroom and 2 Bedroom/2 Bath, and Loft		
Square Footage	809-1296		
Total Investment per unit	3,271.66-1x1	\$3,320.13-2x2	
Proposed Monthly Rent Increase / Floorplan	\$125		
ROI (years)	26 months/ 2 years 2 months-1x1	27 months/2 years 3 months-2x2	
Projected income if all 252 units upgraded	\$31,500 monthly	\$378,000 yearly	
Total investment	\$830,565.54		

Flooring	Manufacturer Model #	Brand	Location	Product Color	Total Expense
Product Name					
LVT Planks	N/A	Shaw	Kitchen/Living Area/Dining	TBD	1,474.94
Total					1,474.94

Appliances	Manufacturer Model #	Brand	Location	Product Color	Pre-tax Cost
Product Name					
Refrigerator	GIE18GCHSA	GE	Kitchen	Stainless like	661.00
Electric Range	JB25SGJSA	GE	Kitchen	Stainless like	499.00
Dishwasher	GSD3340KSA	GE	Kitchen	Stainless like	342.00
Total					1,502.00

Lighting	Manufacturer Model #	Brand	Location	Product Color	Pre-tax Cost	Column1
Product Name						
Pendant Light (2)	#24-79568	Monument	Kitchen	Brushed Nickel	43.63	93.26
Vanity Fixture (3 bulb)	Wilmar Part-91-3862	Sonoma	Bathroom	Brushed Nickel	40.82	81.64
Total					84.45	150.52

Doors and Hardware	Manufacturer Model #	Brand	Location	Product Color	Pre-tax Cost Ea	Quantity	Pre-tax Total
Product Name							
Cabinet Knobs	Wilmar #86-6427	National Brand Alternative	Kitchen Cabinets	Brushed Nickel	7.63	6 (packs)	45.78



Shadow
Creek is
now
offering
upgraded
units!

Upgraded
Units Include:

- ◆ Wood Style
Flooring in
Living and


SHADOW CREEK
LUXURY APARTMENTS





FLAHERTY & COLLINS
PROPERTIES

www.flco.com

317.816.9300

8900 Keystone Crossing, Suite 1200
Indianapolis, IN 46240

Flaherty & Collins Properties & Liberty Development Retail Strategy

We believe Cleveland Heights is poised for a significant infusion of new commercial activity creating a regional destination at the Top of the Hill. Our goal is to enhance the Cedar-Fairmount district so that it is both memorable and highly accessible — providing a strong sense of "you are here". Top of the Hill will be a known in the region as the new component to already strong neighborhood by offering experiences and spaces to further connect people to place. That here and that place is Cleveland Heights.

Together, we see the streetscape level of Top of the Hill as a large community "patio". When you think of a great patio space, you typically think of: great food, drink, music, entertainment and aesthetics. A place where people want to gather.

We expect the energy that results from adding this type of retail to the existing businesses in Cedar-Fairmount will be mutually beneficial and result in both prospering and thriving. We would also expect a catalytic effect in that additional businesses will want to locate nearby, even beyond the Top of the Hill site, to benefit from the proximity to these new attractions.

Our current conceptual plan, contemplates approximately 30,000 sf of retail. One potential breakdown of that space could be as follows:

Chef-inspired Restaurant	5,000sf
Craft Beer Tasting Room & Res.	5,000 sf
Coal Fire Pizza	2,500 sf
Fast Casual	2,000 sf
Ice Cream	2,000 sf
Coffee	2,000 sf
Salon/Spa	2,500sf
Yoga	2,500 sf
Orange Theory	3,000 sf
Bank	3,500 sf
Total	30,000 sf

We would pursue the best in class in each category. Great organic concepts that understand the marketplace. We do this differentiating Top of the Hill from other locations in the area via a tenant mix that is new to the community but reflects the best characteristics of Cleveland Heights. We are pursuing retailers and restaurateurs who have built their brands in the region around a local identity, community involvement and who assign a premium to cultivating that sense of place. We are happy to provide you a detailed list of some existing businesses or types of business for each category that we believe would be a good fit.

More importantly, our focus in the local market will be to build smart deals to bring these sought after businesses to Cleveland Heights. Projects like Van Aken Boulevard in Shaker Heights and Pinecrest in Orange will be coming online concurrently and competing for some of these same tenants. Our team will focus solely on Top of the Hill and make the time and financial investments to build a destination retail neighborhood that has stability and vibrancy for years to come.

The key is to create a great mix of experience chefs, along with newly emerging concepts (similar to Luna, Barrio, GiGis that are already in Cleveland Heights) that become the "go to place" for not only Cleveland Heights, but beyond. We are capable of connecting with and attracting an anchor chef-inspired restaurant(s) that are nationally recognized and locally known, including:

1. Zack Bruell
2. Michael Symon
3. Jonathon Sawyer
4. Doug Katz
5. Rocco Whalen
6. Brad Friedlander

These chefs have a number of successful restaurants throughout Cleveland, and there is no reason Top of the Hill should not be added to that list. We recognize that attracting talent of this caliber will come with a significant investment, and we are willing to do as necessary to get great concepts and strong performers, while also providing stability not only for their specific space, but for the entire destination.

In addition, we have already reached out to discuss the opportunity with a caliber of business owner who would accentuate the fundamental retail objectives, including:

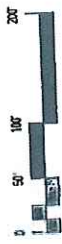
1. Dan Deagan (Deagan's Kitchen and Bar, Humble Wine Bar)
2. Eric Williams (Momocho, El C, Happy Dog, Jack Flaps)
3. Gordon Geiger (Geiger's Clothing and Sporting Goods)
4. George Vlosich (GV Art & Design).

As a potential alternative approach, we also believe the site could serve the community as a whole with a fresh market grocery concept. This concept would include a 20,000 sf anchor grocery, with room for an additional 20,000 sf of retail as described above. Examples could include: Fresh Thyme, Fresh Market, Trader Joes and Lucky's.

We have significant experience with including urban grocery stores in our projects, including a Whole Foods Market, and would be happy to explore this concept further if desired by the City. We recognize that Dave's Supermarket is nearby and would not look to bring in a grocer that was direct competition with Dave's.

Lastly, we believe the Top of the Hill development and the community as a whole, all benefit from regularly occurring public benefits that showcase Cedar-Fairmount. Cleveland

Heights has a long history of success with community events that showcase the character of the city. We will work the City and the neighborhood to host as many as these events as possible throughout the year.



- 1 HOTEL
- 2 MIXED-USE BUILDING WITH GROUND FLOOR RETAIL
- 3 APARTMENT BUILDING
- 4 APARTMENT BUILDING AND TOWNHOUSES
- 5 PARKING DECK



FLAHERTY & COLLINS
PROPERTIES

TOP OF THE HILL

SITE PLAN



eppstein uhen : **evahill**
9/10/2017 1520301
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EXHIBIT C

PRELIMINARY BUDGET - IMPROVEMENTS

[SEE ATTACHED]

IMPROVEMENTS BUDGET

Parking Garage	\$11,550,000
Sitework	\$4,500,000
Hotel	\$18,000,000
Multi-Family Hard Cost	\$26,000,000
Commercial Hard Costs	\$1,000,000
Total Hard Construction Cost	\$61,050,000

EXHIBIT D
SOURCES AND USES OF FUNDS

[SEE ATTACHED]

<u>SOURCES & USES</u>		
	USES OF FUNDS	Total
	To Purchase Land	\$1
	Parking Garage	\$11,550,000
	Sitework	\$4,500,000
	Hotel	\$18,000,000
	Multi-Family Hard Cost	\$26,000,000
	Commercial Hard Costs	\$1,000,000
	Total Hard Construction Cost	\$61,050,000
	Architectural & Engineering	
	Architectural and Engineering Fees	\$2,442,000
	Architectural Services Fees	\$150,000
	Construction Period Costs	
	Real Estate Attorney	\$150,000
	Construction Loan Legal	\$200,000
	Construction Loan - Lender	\$200,000
	City Fees	\$500,000
	Title and Recording	\$50,000
	Construction Interest	\$2,576,418
	Financing Fee - F&C	\$125,000
	Financing Fee - Mezzanine	\$50,000
	Financing Fee - Construction	\$500,000
	Furnishings and Equipment	\$750,000
	Other Period Costs	
	Taxes	\$100,000
	Lease-up Incentive	\$60,000
	Commercial Leasing Commissions	\$150,000
	Capitalized Lease-up Marketing	\$15,000
	Working Capital / Travel	\$300,000
	City Connection/Impact Fees/Permits	\$600,000
	Tenant Improvements	\$150,000
	Market Study	\$5,000
	Appraisal	\$15,000
	Insurance	\$300,000
	Land Broker Fee	\$0
	Organizational (e.g. Partnership)	\$10,000
	Construction Management	\$610,500
	Development Contingency	\$3,052,500
	Total Development Cost	\$74,111,419
	Developer Overhead	\$3,576,750
	TOTAL USES	\$77,688,169
	SOURCES OF FUNDS	Total
	Developer Contribution	\$52,815,297
	Project Economic Gap	\$24,872,872
	TOTAL SOURCES	\$77,688,169

EXHIBIT E
FORM OF GROUND LEASE

[SEE ATTACHED]

GROUND LEASE

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

RECITALS:

A. The City and the Developer are parties to a Development Agreement dated [_____, 2018] (the "Development Agreement"), which provides for the development of the property commonly known as the "Top of the Hill" parcel, consisting of approximately 4.0 acres located at the intersection of Cedar Road and Euclid Heights Boulevard, in the City of Cleveland Heights, Ohio, as described in Exhibit A attached to this Lease (the "Project Site"). The Project Site is currently owned by the City.

B. Pursuant to the Development Agreement, (i) the City agreed that upon fulfillment of certain conditions specified in the Development Agreement it will lease the Project Site to Developer, and (ii) the Developer has agreed, subject to the terms of the Development Agreement, to build a mixed-use development on the Project Site that will include (a) 200 luxury market-rate apartments, (b) 15,000 square feet of first floor restaurant, retail and commercial space, (c) a public parking garage containing 525 parking spaces ("Parking Garage"), (d) public gathering and green spaces, (e) 20 for-sale townhomes, (f) a nationally-branded hotel or boutique hotel and (g) all sidewalks, driveways, access ways and utility connections and will potentially include "Class A" office space (collectively, the "Project"), all as further outlined in the Development Agreement and as depicted and described on Exhibit B to the Development Agreement (Revised Developer Proposal dated August 29, 2016, including Conceptual Drawing Depicting Improvements). [Revise to match final Improvements approved per the Development Agreement]

C. The City and Developer now desire to execute this Lease to memorialize the City's lease of the Project Site to Developer, and Developer's construction and operation of the Project, as contemplated by the Development Agreement.

D. Execution of this Lease was authorized by [Ordinance No. _____, passed by City Council on _____, 2018], which also authorized the execution of the Development Agreement.

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

1. GRANT.

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

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

2. CONSTRUCTION; OWNERSHIP OF PROJECT SITE AND IMPROVEMENTS.

(A) Construction of Improvements. Developer shall construct the Improvements in accordance with the requirements set forth in the Development Agreement. As used herein, the term "Improvements" shall mean the Project, together with all other alterations, additions, modifications and improvements made now or in the future to the Project Site.

(B) Ownership of Project Site and Improvements. Throughout the Term, the Developer shall be deemed to be the owner of Improvements, and except as set forth herein, the City shall remain the owner of the Project Site (subject in either event to Section 17 hereof with respect to sales of portions of the Project Site and Improvements to third parties).

3. TERM.

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

(B) Grant and Exercise of Right of First Offer. Developer shall provide written notice to the City if Developer intends to sell some or all of the Improvements, other than the townhomes and hotel, identifying those Improvements Developer desires to sell and any material terms of the sale determined by Developer at that time, specifically including the purchase price at which said Improvements will be offered. The City and Developer shall negotiate in good faith for sixty (60) days for the City to buy such Improvements. In the event the City (or a related body or entity) and Developer have not executed a purchase agreement for such Improvements within such sixty (60) day period, Developer shall be free to sell the Improvements to any third party, subject to the requirements in Section 13 hereof relating to the assignment of the portion of the Lease attributable to such Improvements, and further provided that (i) the sales price of such Improvements to such third party is equal to or greater than 80% of the lowest sales price offered to the City during such negotiations, and (ii) Developer consummates such sale within 12 months after the expiration of such sixty (60) day period. If the conditions in (i) or (ii) of the immediately preceding sentence are not met, then provided that this Lease hasn't otherwise expired or been terminated pursuant to the terms and conditions hereof, the right of first offer to purchase such Improvements granted hereby shall be reinstated for the remainder of the term of this Lease with respect to the applicable Improvements. The foregoing right of first offer shall be personal to Developer and shall not run with the land and upon sale by Developer of any Improvements in accordance with the terms and conditions contained herein, City shall have no further right of first offer with respect to the Improvements so sold.

(C) Purchase Option.

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

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

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

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

(iv) If the City fails or refuses to convey title to the Project Site to Developer in accordance with, and by the time required by, this Lease, then Developer shall have the right to enforce specific performance of the City's obligations to convey the Project Site to Developer by writ of mandamus (in which event the City waives the defense of adequate remedy at law). Until such time as the City shall convey the Project Site with the title as required by this Lease, Developer may extend the term of this Lease on all of the terms and conditions as provided in this Lease.

4. PERMITTED USE.

Developer shall initially use the Project Site for the construction, use, maintenance, replacement and operation of the Project (including any and all ancillary or related uses) and for no other purposes without the consent of the City Manager which shall not be unreasonably

withheld, delayed or conditioned. After the completion of the construction of the Project, Developer may use the Project Site for all lawful purposes so long as Developer complies with the Approved Process to the extent applicable and applicable law and without consent of the City Manager (unless such consent is required by the Approved Process). Developer shall operate the Project Site and Improvements during the Term in a first-class manner. Developer shall obtain and maintain all necessary licenses and permits and shall operate and maintain the Project Site and Improvements in compliance with all Legal Requirements, as defined below. Throughout this Agreement, the term "Legal Requirements" shall mean all applicable federal, state and local laws, codes, ordinances and other governmental requirements, including without limitation all environmental laws, all open meeting laws and all public records laws. Throughout the Term, Developer shall make no fewer than 225 parking spaces of transient (non-monthly) parking spaces in the Parking Garage available at all times for use by the general public (the "Public Parking Spaces") at rates described in Section 7(C).

5. RENT.

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

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

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

6. REAL ESTATE TAXES.

Developer shall pay all real estate taxes and assessments levied against the Project Site and Improvements that become due and payable during the Term (or payments in lieu thereof). Upon each such payment, Developer shall furnish the City with appropriate evidence of payment. Developer is permitted to contest the validity or amount of taxes or assessments. If Developer institutes proceedings to so contest the validity or amount of such taxes or assessments and such proceedings are not prohibited by applicable law or contractual agreement, the City, at no cost to the City, shall cooperate with Developer to a reasonable extent and to the extent that the participation of the owner of the lessor's interest under this Lease is required, but Developer may not defer payment of such taxes during such contest unless permitted by law. Developer shall be entitled to any and all amounts recovered which relate to tax payments previously made by Developer.

7. OPERATION OF THE PROJECT

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

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

(C) Parking Rates. Throughout the Term, Developer shall establish commercially reasonable parking rates for the Public Parking Spaces that are consistent/compatible with parking rates in the Cedar-Fairmount District, taking into account location, age, amenities and other commercially reasonable factors.

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

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

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

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

8. ALTERATIONS; SIGNS; NO LIENS.

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

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

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

9. PERMITTED LEASEHOLD MORTGAGES.

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

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

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

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

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

(E) City's Transfer of its Interest in the Project Site and Improvements. If during the Term of this Lease the City sells or otherwise transfers its interest in the Project Site to a third party, such sale or transfer shall be subject to this Lease and to the rights of each Permitted Mortgagee hereunder. Developer agrees to attorn to any such transferee provided such transferee agrees to be bound by, and perform all of its obligations under, this Lease.

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

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

(H) HUD Financing. Notwithstanding anything contained in this Lease to the contrary, if and so long as Developer's leasehold interest in and to the Project Site is subject to a security instrument insured, reinsured or held by HUD or given to HUD in connection with a resale, or the Project Site and Improvements are acquired and held by HUD because of a default under the security instrument, HUD shall be deemed a Permitted Mortgagee and the additional terms and conditions contained in Exhibit C attached hereto shall apply (with the terms and conditions contained in Exhibit C controlling over any conflicting terms contained in the Lease).

10. INSURANCE; INDEMNITY.

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

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

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

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

(iv) workers compensation insurance as required by law;

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

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

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

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

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

(E) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Developer or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Developer. Developer shall defend, indemnify and hold the City, its

employees and agents ("Indemnified Parties") harmless from and against all costs (including without limitation reasonable legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Developer, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Developer in connection with Developer's activities at or with respect to the Project Site or in connection with any breach by Developer under this Lease.

11. CASUALTY; EMINENT DOMAIN.

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

(B) Condemnation.

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

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

have the sole responsibility for restoring the affected Improvements to complete architectural unit(s), or otherwise as market conditions may dictate or require, and the Project Site so that it continues to function as an integrated project.

(iii) Any award or compensation paid on account of any taking or sale described in this Section 11(B) shall, as to the Improvements, belong to Developer, and shall, as to the Project Site (the land value), be divided between the City and Developer based upon their respective interests in the Project Site.

12. DEFAULT: REMEDIES.

(A) Default. Each of the following shall constitute an event of default (an "Event of Default") by Developer under this Lease;

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

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

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

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

(B) Remedies. Upon the occurrence of an Event of Default that continues beyond the applicable notice and cure period provided for under paragraph 12(A) above, the City shall be entitled, subject to the rights of any Permitted Mortgagee as provided in this Lease, to (i) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such Event of Default, all at the expense of Developer, including without limitation paying any costs due and owing by Developer for which the Developer shall promptly reimburse the City within thirty (30) days after demand therefor, and (ii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative, provided that in no event shall the City be entitled to exercise the remedy of termination and the City hereby waives its right to terminate the Lease as a remedy for an Event of Default except to the extent an Event of Default occurs due to Developer abandoning the Project. Developer shall be liable for all direct, actual costs and damages, including without limitation reasonable legal fees, suffered or incurred by the City as a result of the occurrence of an Event of Default of Developer under this Lease or the City's enforcement or termination of this Lease. Developer shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved. Notwithstanding anything contained herein to the contrary, in the event that Developer has abandoned the Improvements and/or the Project Site, then City may terminate this Lease by written notice to Developer, and City shall thereafter have the right to reenter or repossess the Project Site, either by summary proceedings, surrender or otherwise, and dispossess and remove therefrom Developer, and, at City's option, title to all Improvements owned by Developer shall revert to City; provided, however, that City shall not have the right to terminate this Lease until City has provided written notice of the alleged abandonment to Developer and its lender and has provide Developer and its lender thirty (30) days to cure such abandonment.

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

13. ASSIGNMENT AND SUBLETTING; SEPARATION OF GROUND LEASE.

(A) Developer acknowledges that the City is entering into this transaction because of the City's confidence that Developer has the financial backing, business experience and community support that are necessary to carry out the construction and operation of the Project in accordance with the provisions of this Lease. Developer acknowledges that the City shall not be expected to consent to a proposed assignment by Developer of its interests under this Lease prior to the expiration of the tenth (10th) anniversary of the Effective Date (the period between the Effective Date and the tenth (10th) anniversary of the Effective Date is hereafter referred to as the "Hold Period") to any person or entity in whom the City does not have similar confidence. Any attempt by Developer to assign or otherwise transfer its interests under this Lease to a third

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

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

14. ESTOPPEL CERTIFICATES.

Within fifteen (15) days after written request from the other party (or, with respect to certificates from the City, within such longer period of time (not to exceed thirty (30) days) as may be reasonably needed in order to obtain all required governmental authorizations and signatures), each party shall execute and deliver to the requesting party an estoppel certificate (i) certifying that this Lease is unmodified and in full force and effect (or if there have been

modifications, that the same is in full force and effect as modified and stating the modifications), (ii) stating, to the best of such party's knowledge, whether or not the requesting party is in default under this Lease, and, if so, specifying the nature of such default, and (iii) covering such other matters pertaining to this Lease as the requesting party may reasonably request.

15. SURRENDER; HOLDOVER.

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

(B) Holdover. If Developer fails to surrender possession of the Project Site and Improvements to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term), terminable by the City upon thirty (30) days' notice by giving written notice thereof to Developer. Developer shall be liable for all direct, actual costs and damages suffered or incurred by the City as a result of Developer's holding over after the initial thirty (30) days of holdover.

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

16. NOTICES.

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

To the City:

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

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

To the Developer: F&C Development, Inc.
One Indiana Square, Suite 3000
Indianapolis, IN 46240
Attention: Deron Kintner

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

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

17. TRANSFER OF PORTIONS OF THE PROJECT SITE.

(A) Grant of Option. The Development Agreement contemplates that the townhouses on the Project Site to be developed will be sold to end users upon completion (each, a "For-Sale Parcel" and collectively, the "For-Sale Parcels"). The specific location of the For-Sale Parcels has or will be identified on or prior to the date hereof. In connection therewith, and in consideration of the covenants and conditions contained in this Lease, City hereby grants to Developer the exclusive right and option (the "Option") to purchase each of the For-Sale Parcels upon the terms and conditions set forth in this Section 17. For purposes of the Option, the term For-Sale Parcels shall not include property that is not owned by the City but acquired by the Developer.

(B) Exercise of Option. Developer may exercise the Option with respect to any For-Sale Parcel at any time following substantial completion of, or sale to a third party of, the Improvements to be constructed on the For-Sale Parcel by giving written notice thereof to City in the manner set forth herein. In the event that Developer does not exercise the Option with respect to any For-Sale Parcel, said For-Sale Parcel shall remain subject to the terms and conditions contained in this Lease.

(C) Exercise Fee. In connection with Developer's sale of a For-Sale Parcel, City shall be entitled to an "Exercise Fee" on a per-lot basis. The Exercise Fee shall be agreed upon by the parties prior to any transfer of a For-Sale Parcel, shall take into consideration relevant market conditions and shall be payable to City on the closing of such sale.

(D) Terms of Purchase and Sale of For-Sale Parcel.

(i) Conveyance of any For-Sale Parcel from the City shall be by Limited Warranty Deed and shall be subject to (i) Record Matters; (ii) taxes and assessments, both general and special, which are a lien but not yet due and payable; (iii) zoning and building ordinances, regulations and restrictions; and (iv) any matter which would be disclosed by an accurate survey as of the Effective Date.

(ii) All documentation necessary to effect the transfer shall be prepared by Developer but shall be subject to City's approval, in City's reasonable discretion. Closing shall take place through escrow, utilizing a nationally-recognized title insurance company reasonably satisfactory to City.

(iii) All costs and expenses of any transfer of one or more For-Sale Parcels shall be borne by Developer, including without limitation, any due diligence expenses, title search/title commitment fees, title policy premiums, cost of any Developer financing, surveying fees, costs of platting the subject property and any necessary lot splits/consolidations, transfer taxes and conveyance fees, escrow fees and recording fees.

(iv) At Developer's request, City shall "direct deed" the For-Sale Parcel to the end user, subject to all of the conditions contained herein.

(E) Cooperation by City.

(i) To the extent that any of the For-Sale Parcels are to be converted to the condominium form of ownership, City shall cooperate with such process, at no cost to City, in order to allow the ultimate sale of the For-Sale Parcel condominiums. In such event, the underlying land shall remain subject to the terms and conditions contained in this Lease.

(ii) City shall grant such access and other easements as are reasonably necessary in order to provide reasonable vehicular and pedestrian access to and from the For-Sale Parcels following their conveyance to the end users.

18. INTELLECTUAL PROPERTY.

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

(B) Conveyance Upon Default. Should an Event of Default under this Lease shall occur and City exercises its right to terminate this Lease pursuant to Section 12 hereof, Developer hereby agrees to take any and all actions reasonably necessary to grant, convey and transfer all of Developer's rights in and to the Intellectual Property to City to the extent the Intellectual Property is transferable. Upon the occurrence of an Event of Default which gives the City the right to terminate this Lease, Developer by these presents does hereby make, constitute and appoint City its true and lawful attorney with respect to the granting, conveying and transfer set forth in the first sentence of this Section 18(B), giving and granting unto City full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done with respect to the Intellectual Property with respect to the transactions contemplated in the first sentence of this Section 18(B), as fully, to all intents and purposes, as the Developer might or could do, with full power of substitution and revocation, hereby ratifying and confirming all that said attorney in fact or its substitute shall lawfully do or cause to be done by virtue hereof.

19. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

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

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

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

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

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

- Exhibit A – Legal Description
- Exhibit B – Form of Memorandum of Lease
- Exhibit C – HUD Addendum
- Exhibit D – Merchandising Plan

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO GROUND LEASE]

This Lease is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

CITY OF CLEVELAND HEIGHTS, OHIO

[F & C DEVELOPMENT, INC.]

By: _____,
_____, City Manager

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____
City of Law Director

CITY'S FISCAL OFFICER CERTIFICATE

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

Laurie Sabin, Director of Finance

Date: _____

STATE OF OHIO

COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, City Manager of the City of Cleveland Heights, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, the _____ of [F&C DEVELOPMENT, INC., an Indiana corporation,] licensed to do business in the State of Ohio, on behalf of the corporation.

Notary Public

My commission expires: _____

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

4826-2117-5633.3

EXHIBIT A
LEGAL DESCRIPTION

[Exhibit A to Form of Ground Lease]
A-1

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

(Ground Lease – Top of the Hill)

This Memorandum of Lease is executed by and between the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, having an address of 40 Severance Circle, Cleveland Heights, Ohio 44118 (the "City"), and **F & C DEVELOPMENT, INC.**, an Indiana corporation, licensed to do business in the State of Ohio, having an address of One Indiana Square, Suite 3000, Indianapolis, Indiana 46204 (the "Developer").

1. The City and Developer entered into a certain Ground Lease ("Lease") dated _____, _____ pursuant to which the City has leased to Developer certain real estate (the "Project Site"), being the real property commonly known as the Top of the Hill parcel, consisting of approximately 4.0 acres located at the intersection of Cedar Road and Euclid Heights Boulevard, in the City of Cleveland Heights, Ohio. The legal description of the Project Site is attached hereto as Exhibit A.
2. The initial term of the Lease commenced on _____, 20____ and will expire _____ () years following the Commencement Date of this Lease.
3. The Lease contains an option to purchase in favor of Developer.
4. This Memorandum of Lease is executed solely for recording purposes, and nothing herein shall be deemed as modifying any of the terms or conditions of the Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Exhibit B to Form of Ground Lease]

B-1

[SIGNATURE PAGE TO MEMORANDUM OF LEASE]

Executed by the parties on the dates of their respective signatures.

CITY OF CLEVELAND HEIGHTS, OHIO

F & C DEVELOPMENT, INC.

By: _____
_____, City Manager

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____
City of Law Director

CITY'S FISCAL OFFICER CERTIFICATE

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

Laurie Sabin, Director of Finance

Date: _____

[Exhibit B to Form of Ground Lease]

B-3

STATE OF OHIO

COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, City Manager of the City of Cleveland Heights, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, _____ of F&C DEVELOPMENT, INC., an Indiana corporation, licensed to do business in the State of Ohio, on behalf of the corporation.

Notary Public

My commission expires: _____

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

[Exhibit B to Form of Ground Lease]
B-4

EXHIBIT A TO MEMORANDUM OF LEASE
[LEGAL DESCRIPTION]

[Exhibit B to Form of Ground Lease]
B-5

EXHIBIT C

- a) Developer is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a security instrument on this leasehold estate and the Improvements. Developer is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with Program Obligations¹ for obtaining such an insured loan.
- b) In the event that HUD acquires title to this leasehold estate or otherwise acquires title to the Developer's interest herein, HUD shall have the option to purchase good and marketable fee simple title to the Project Site and the City's interest, if any, in the Improvements, free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within twelve (12) months after HUD so acquires such leasehold estate or the Developer's interest. The purchase price shall be the sum of _____ Dollars (\$ _____), payable in cash, by check drawn on the U.S. Treasury, by electronic funds transfer or by wire transfer, provided all rents are paid to date of transfer of title. HUD shall, within said twelve months, give written notice to the City of its election to exercise said option to purchase. The City shall, within thirty (30) days after HUD gives such notice, execute and deliver to HUD a warranty deed of conveyance to HUD as grantee conveying the said fee and interest and containing a covenant against the grantor's acts, but excepting therefrom acts of the Developer and those claiming by, through or under the Developer. Nothing in this option shall require the City to pay any taxes or assessments that were due and payable by the Developer.
- c) If approved by HUD, the Developer may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the Improvements without the need for approval or consent by any other person or entity.
- d) (i) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by lender and HUD.
- (ii) The City shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Developer to lender. The City may at its own expense, however, take out separate insurance which is

¹ "Program Obligations" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Developer to lender.

- e) (i) If all or any part of the Project Site or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Developer's interest in the leasehold estate or damage to the Improvements or to Developer's interest in the leasehold estate shall be paid to lender or otherwise disposed of as may be provided in the security instrument. Any portion of the award attributable solely to the underlying fee estate (exclusive of any Improvements) shall be paid to the City. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the City bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Lease Addendum.
- (ii) In the event of a negotiated sale of all or a portion of the Project Site or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation, but the approval of HUD and lender shall be required as to the amount and division of the payments to be received.
- f) The City may terminate the ground lease prior to the expiration day of the full term of this ground lease ("**Expiration Date**") after a Developer default under this ground lease ("**Ground Lease Event of Default**"), but only under the following circumstances and procedures. If any Ground Lease Event of Default shall occur, then and in any such event, the City shall at any time thereafter during the continuance of such Ground Lease Event of Default and prior to any cure, give written notice of such default(s) ("**Notice of Default**") to the Developer, lender and HUD, specifying the Ground Lease Event of Default and the methods of cure, or declaring that a Ground Lease Event of Default is incurable. If the Ground Lease Event of Default is a failure to pay money, the City shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Ground Lease Event of Default. Within sixty (60) days from the date of giving the Notice of Default to the Developer, the Developer must cure a monetary default by paying the City all amounts specified in the Notice of Default and must cure any specified Ground Lease Event of Default that is capable of being cured within such period. During the period of 180 days commencing upon the date Notice of Default was given to lender and HUD, lender or HUD may: (a) cure any Ground Lease Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce lender's or HUD's rights with respect to the leasehold or the Developer Improvements. If the Developer, lender or HUD reasonably undertake to cure any Ground Lease Event of Default during the applicable cure period and diligently pursues such cure, the City shall grant such further reasonable time as is necessary to complete such cure. If HUD or lender commences foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the foreclosure or other action and for 90 days after the ownership of the Developer's rights under the lease is established in or assigned to HUD or such lender or a purchaser at any foreclosure sale pursuant to such foreclosure or other action. The transfer of the Developer's rights under the lease to lender, HUD or purchaser, pursuant to such foreclosure or other action shall be deemed a

[Exhibit C to Form of Ground Lease]

termination of any incurable Ground Lease Event of Default and such terminated Ground Lease Event of Default shall not give the City any right to terminate the lease. Such purchaser may cure a curable Ground Lease Event of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing Ground Lease Event of Default has been achieved as aforesaid, then and in that event, this lease shall terminate, and, on such date, the term of this lease shall expire and terminate and all rights of the Developer under the lease shall cease and the Improvements, subject to the security instrument and the rights of lender thereunder, shall be and become the property of the City. All costs and expenses incurred by or on behalf of the City (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by the Developer under this ground lease shall constitute additional rent hereunder. The City shall have no right to terminate this ground lease except as provided in this paragraph (f).

- g) Upon termination of this ground lease pursuant to paragraph (f) above, the City shall immediately seek to obtain possession of the Property and Improvements. Upon acquiring such possession, the City shall notify HUD and lender in writing. Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as Developer, a new ground lease on the Property and on the Improvements. Such new ground lease shall have a term equal to the unexpired portion of the term of this ground lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this ground lease, including without limitation, the option to purchase set forth under paragraph (b) above, except that lender's or HUD's liability for ground rent shall not extend beyond their occupancy under such ground lease. The City shall tender such new ground lease to lender or HUD within thirty (30) days after a request for such ground lease and shall deliver possession of the Property and Improvements immediately upon execution of the new ground lease. Upon executing a new ground lease, lender or HUD shall pay to the City any unpaid ground rent due or that would have become due under this ground lease to the date of the execution of the new ground lease, including any taxes which were liens on the Property or the Improvements and which were paid by the City, less any net rentals or other income which the City may have received on account of the Property and Improvements since the date of default under this ground lease.
- h) The City agrees that within ten (10) days after receipt of written request from the Developer, it will join in any and all applications for permits, licenses or other authorizations required by any Governmental Authority² in connection with any work which the Developer may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property or of any Improvements and if, at the expiration of such ten (10) day period, the City shall not have joined in any such application, or grants for easements, the Developer shall have

² "Governmental Authority" means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the mortgaged property, including the use, operation or improvements of the mortgaged property.

the right to execute such application and grants in the name of the City, and for that purpose, the City hereby irrevocably appoints the Developer as its attorney-in-fact to execute such papers on behalf of the City, only to the extent that a public body as City may do so within the exercise of its municipal powers and responsibilities.

- i) Nothing in this ground lease shall require the Developer to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the City or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the Developer under this ground lease.
- j) All notices, demands and requests which are required to be given by the City, the Developer, lender or HUD in connection with this Ground Lease shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to lender or HUD shall be addressed as follows:

If to Lender:

If to HUD:

If to Developer:

F&C Development, Inc.
One Indiana Square, Suite 3000
Indianapolis, IN 46240
Attention: _____

If to City:

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

- k) This ground lease shall not be modified without the written consent of HUD and lender.
- l) The provisions of this Lease Addendum benefit lender and HUD and are specifically declared to be enforceable against the parties to this lease and all other persons by lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of this ground lease, the provisions of this Lease Addendum shall prevail and control.

[Exhibit C to Form of Ground Lease]

EXHIBIT D
MERCHANDISING PLAN

[See Exhibit F of Development Agreement]

[Exhibit D to Form of Ground Lease]
D-1

EXHIBIT F

MERCHANDISING PLAN

In keeping with goals of the Developer's Proposal, specifically that the City is seeking for the Project to be a dense, vibrant, pedestrian friendly commercial district that dovetails with the architecture and aesthetics of the surrounding neighborhood, the Developer expects to propose a fully integrated, regional mixed-use experience consisting of new retail, restaurant and entertainment concepts that do not currently exist in the region. The anticipated retail categories include, but are not limited to, the following: apparel, home stores, chef-driven restaurants, a music/theatre/cultural component and service providers such as a salon and spa. The Developer will agree that no retail or restaurant concepts will be relocated from anywhere within the City without prior consent of the City Manager which shall not be unreasonably withheld, delayed or conditioned.

EXHIBIT G

HUD LEASE ADDENDUM

Lease Addendum

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 06/30/2017)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

INSTRUCTIONS FOR LEASEHOLD PROJECTS

These instructions and the following Lease Addendum have been prepared for use in connection with mortgage insurance for projects given pursuant to the National Housing Act, as amended, found at 12 U.S.C. § 1701, *et seq.* ("Act"), where the mortgaged property is subject to a ground lease. The ground lease term and other provisions must comply with the section of the Act under which the note is endorsed for insurance. The ground lease provisions must not conflict with any Program Obligations¹ promulgated by the U.S. Department of Housing and

¹ **"Program Obligations"** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

Urban Development ("HUD") with respect to such mortgage insurance. All ground rent amounts must have prior written approval by HUD.

These instructions and the following Lease Addendum are based on the presumption that the lease will be a ground lease and all buildings, improvements and fixtures now or hereafter erected will be owned in fee simple by the tenant and be deemed real estate under local law. The term "**Property**" shall be defined in the ground lease as the legally described land except the buildings and improvements now or hereafter located thereon. If the foregoing presumption is not correct the HUD closing attorney must be contacted for further instructions. These instructions and provisions of the following Lease Addendum must be set forth in the body of the ground lease, or the Lease Addendum must be attached to the ground lease and incorporated therein by reference.

LEASE ADDENDUM

Notwithstanding any other provisions of this ground lease, if and so long as this leasehold is subject to a security instrument insured, reinsured, or held by HUD or given to HUD in connection with a resale, or the Property is acquired and held by HUD because of a default under the security instrument, the following provisions of this Lease Addendum shall be in effect:

- a) The tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a security instrument on this leasehold estate and the Improvements². The tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with Program Obligations for obtaining such an insured loan.
- b) In the event that HUD acquires title to this leasehold estate or otherwise acquires title to the tenant's interest herein, HUD shall have the option to purchase good and marketable fee simple title to the Property and the landlord's interest, if any, in the Improvements, free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within twelve (12) months after HUD so acquires such leasehold estate or the tenant's interest. The purchase price shall be the sum of _____ Dollars (\$ _____), payable in cash, by check drawn on the U.S. Treasury, by electronic

² "Improvements" means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the land, including any future replacements and additions.

funds transfer or by wire transfer, provided all rents are paid to date of transfer of title. HUD shall, within said twelve months, give written notice to the landlord of its election to exercise said option to purchase. The landlord shall, within thirty (30) days after HUD gives such notice, execute and deliver to HUD a warranty deed of conveyance to HUD as grantee conveying the said fee and interest and containing a covenant against the grantor's acts, but excepting therefrom acts of the tenant and those claiming by, through or under the tenant. Nothing in this option shall require the landlord to pay any taxes or assessments that were due and payable by the tenant.

- c) If approved by HUD, the tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the Improvements without the need for approval or consent by any other person or entity.
- d)
 - (i) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by lender and HUD.
 - (ii) The landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the tenant to lender. The landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the tenant to lender.
- e)
 - (i) If all or any part of the Property or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the tenant's interest in the leasehold estate or damage to the Improvements or to tenant's interest in the leasehold estate shall be paid to lender or otherwise disposed of as may be provided in the security instrument. Any portion of the award attributable solely to the underlying fee estate (exclusive of any Improvements) shall be paid to the landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Lease Addendum.
 - (ii) In the event of a negotiated sale of all or a portion of the Property or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation, but the approval of HUD and lender shall be required as to the amount and division of the payments to be received.
- f) The landlord may terminate the ground lease prior to the expiration day of the full term of this ground lease ("**Expiration Date**") after a tenant default under this ground lease ("**Ground Lease Event of Default**"), but only under the following circumstances and procedures. If any Ground Lease Event of Default shall occur, then and in any such event, the landlord shall at any time thereafter during the continuance of such Ground Lease Event of Default and prior to any cure, give written notice of such default(s) ("**Notice of Default**") to the tenant, lender and HUD, specifying the Ground Lease Event of Default and the methods of cure, or declaring that a Ground Lease Event of Default is

incurable. If the Ground Lease Event of Default is a failure to pay money, the landlord shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Ground Lease Event of Default. Within sixty (60) days from the date of giving the Notice of Default to the tenant, the tenant must cure a monetary default by paying the landlord all amounts specified in the Notice of Default and must cure any specified Ground Lease Event of Default that is capable of being cured within such period. During the period of 180 days commencing upon the date Notice of Default was given to lender and HUD, lender or HUD may: (a) cure any Ground Lease Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce lender's or HUD's rights with respect to the leasehold or the tenant Improvements. If the tenant, lender or HUD reasonably undertake to cure any Ground Lease Event of Default during the applicable cure period and diligently pursues such cure, the landlord shall grant such further reasonable time as is necessary to complete such cure. If HUD or lender commences foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the foreclosure or other action and for 90 days after the ownership of the tenant's rights under the lease is established in or assigned to HUD or such lender or a purchaser at any foreclosure sale pursuant to such foreclosure or other action. The transfer of the tenant's rights under the lease to lender, HUD or purchaser, pursuant to such foreclosure or other action shall be deemed a termination of any incurable Ground Lease Event of Default and such terminated Ground Lease Event of Default shall not give the landlord any right to terminate the lease. Such purchaser may cure a curable Ground Lease Event of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing Ground Lease Event of Default has been achieved as aforesaid, then and in that event, this lease shall terminate, and, on such date, the term of this lease shall expire and terminate and all rights of the tenant under the lease shall cease and the Improvements, subject to the security instrument and the rights of lender thereunder, shall be and become the property of the landlord. All costs and expenses incurred by or on behalf of the landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by the tenant under this ground lease shall constitute additional rent hereunder. The landlord shall have no right to terminate this ground lease except as provided in this paragraph (f).

- g) Upon termination of this ground lease pursuant to paragraph (f) above, the landlord shall immediately seek to obtain possession of the Property and Improvements. Upon acquiring such possession, the landlord shall notify HUD and lender in writing. Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as tenant, a new ground lease on the Property and on the Improvements. Such new ground lease shall have a term equal to the unexpired portion of the term of this ground lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this ground lease, including without limitation, the option to purchase set forth under paragraph (b) above, except that lender's or HUD's liability for ground rent shall not extend beyond their occupancy under such ground lease. The landlord shall tender such new ground lease to lender or HUD within thirty (30) days after a request for such ground

lease and shall deliver possession of the Property and Improvements immediately upon execution of the new ground lease. Upon executing a new ground lease, lender or HUD shall pay to the landlord any unpaid ground rent due or that would have become due under this ground lease to the date of the execution of the new ground lease, including any taxes which were liens on the Property or the Improvements and which were paid by the landlord, less any net rentals or other income which the landlord may have received on account of the Property and Improvements since the date of default under this ground lease.

- h) The landlord agrees that within ten (10) days after receipt of written request from the tenant, it will join in any and all applications for permits, licenses or other authorizations required by any Governmental Authority³ in connection with any work which the tenant may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property or of any Improvements and if, at the expiration of such ten (10) day period, the landlord shall not have joined in any such application, or grants for easements, the tenant shall have the right to execute such application and grants in the name of the landlord, and for that purpose, the landlord hereby irrevocably appoints the tenant as its attorney-in-fact to execute such papers on behalf of the landlord, only to the extent that a public body as landlord may do so within the exercise of its municipal powers and responsibilities.
- i) Nothing in this ground lease shall require the tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the tenant under this ground lease.
- j) All notices, demands and requests which are required to be given by the landlord, the tenant, lender or HUD in connection with this Ground Lease shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to lender or HUD shall be addressed as follows:

If to Lender:

³ "Governmental Authority" means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the mortgaged property, including the use, operation or improvements of the mortgaged property.

If to HUD:

If to Tenant:

If to Landlord:

- k) This ground lease shall not be modified without the written consent of HUD and lender.
- l) The provisions of this Lease Addendum benefit lender and HUD and are specifically declared to be enforceable against the parties to this lease and all other persons by lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of this ground lease, the provisions of this Lease Addendum shall prevail and control.

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions.

EXHIBIT H
PRELIMINARY SCHEDULE/TIMELINE

[SEE ATTACHED]

Project Schedule

Fourth Quarter 2017 – Development Agreement

First Quarter 2018 – Approvals and Due Diligence

Third Quarter 2018 – Design & Permitting Complete

Third Quarter 2018 - Closing

Fourth Quarter 2018- Construction Commences

Fourth Quarter 2019 – Garage, First Residential Units, First Townhomes and Commercial Shell Delivered

Third Quarter 2020 – Project Complete

EXHIBIT I
PLAN FOR COMMUNICATION AND
COORDINATION BETWEEN DEVELOPER AND THE CITY

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

I. Pre-Construction Planning Period:

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

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

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

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

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

II. Construction Period:

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

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

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

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

EXHIBIT J
ESTIMATE OF CITY COSTS

[SEE ATTACHED]

City of Cleveland Heights

9/20/2017

Top of the Hill Project Expenses - Accrued and Estimated

Phase I	City Due Diligence & RFQ Preparation:	
Silverlode Consulting		\$43,338.75
Phase II	Assistance with Development Partner Selection:	
Silverlode Consulting		\$32,263.75
Phase III	Legal Assistance with Structuring Transaction & First Draft of MOU:	
Tucker Ellis		\$18,995.00
Phase IV	Negotiation of MOU with Flaherty & Collins:	
Tucker Ellis		
5/10/17 - 5/31/17		\$3,945.00
Estimate to complete MOU in June, 2017		\$4,000.00
OTHER Costs Incurred:		
Consulting		\$1,218.75
Legal		\$25,185.00
Phase V	Estimated Costs	
Development Agreement / Diligence Period:		
Legal fees		\$35,000.00
Phase VI	Estimated Costs	
TIF Negotiations, Analysis, Legislation, Implementation, Port Financing, Lease:		
Legal		\$35,000.00
Consulting		\$25,000.00
Total (Payable at closing of TIF/construction cost financing):		<u>\$223,946.25</u>