

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT ("Second Amendment") is made and entered into as of the 9th day of January, 2019 ("Effective Date"), by and among the CITY OF CLEVELAND HEIGHTS (the "City"), a municipal corporation and political subdivision duly organized and existing under the laws of the State of Ohio, and F & C DEVELOPMENT, INC. (the "Developer"), an Indiana corporation.

RECITALS:

WHEREAS, the City and the Developer entered into that certain Development Agreement with the effective date of April 6, 2018 (the "Original Development Agreement") and a First Amendment to Development Agreement with the effective date of December 7, 2018 (the "First Amendment"; and collectively with the Original Development Agreement, the "Development Agreement"); and

WHEREAS, since the effective date of the Original Development Agreement, the City and the Developer have been working together to effectuate the terms and provisions of the Development Agreement; and

WHEREAS, in satisfaction of Section 4(B)(xv) and (xvi) of the Development Agreement, (a) the City Council proposes to adopt an ordinance (the "TIF Ordinance") providing for, among other things, the TIF Exemption (as defined in the Development Agreement), and such TIF Ordinance will replace the previously adopted Ordinance No. 16-2018, (b) the City, the Developer and the School District (as defined in the Development Agreement) have entered into a Compensation Agreement dated March 20, 2018 (as amended from time to time, 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;

WHEREAS, as a result of working together since the effective date of the Original Development Agreement, the City and the Developer identified (a) an opportunity to purchase a parcel of additional property adjacent to the Project Site (as defined in the Development Agreement) and (b) the need for the Developer and the City to each make an additional contribution to the Project (as defined in the Development Agreement) in order for Developer to secure construction financing for the Project;

WHEREAS, as part of the transfer of such additional property from the Developer to the City it has become apparent that certain provisions of the terms upon which the additional contribution by the City to the Project will be made require revision in order to continue to implement the intent and purpose of the Development Agreement; and

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

WHEREAS, execution of this Second Amendment was authorized by Ordinance No. 114 - 2019 passed by the Cleveland Heights City Council on December 2, 2019.

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

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

2. Recital B(i) of the Development Agreement is hereby deleted and the following inserted in its place:

(i) Developer proposes to build in a single phase a mixed-use development that shall include (a) approximately 261 market-rate apartments, (b) approximately 11,400 square feet of first floor restaurant, retail and commercial space, (c) a public parking garage containing approximately 550 parking spaces, (d) public gathering and green spaces, and (e) all sidewalks, driveways, access ways and utility connections necessary for the improvements described in (a) through (d) above (collectively, the "Improvements" or the "Project").

3. The date "June 30, 2019" wherever set forth in Section 4(A)(i), Section 4(C), and Section 5(C) of the Development Agreement is hereby deleted and the date "March 31, 2020" is hereby inserted in each of its places.

4. Section 8(C)(ii) of the Development Agreement is hereby deleted and the following inserted in its place:

(ii) Subject to adjustment as provided in Section 8(C)(vi) below, the City has agreed to contribute a total of \$1,850,000 to address the Shortfall, in the form of (a) the Added Property Purchase Price and (b) a cash contribution in the amount of \$1,850,000 less the Added Property Purchase Price (the "City Contribution").

5. Section 8(C)(iv) of the Development Agreement is hereby deleted and the following inserted in its place:

(iv) The City shall deliver cash on the date of the Closing as follows: (a) the Added Property Purchase Price, and (b) the City Contribution, either (a) to the Escrow Agent, or (b) to the Trustee for deposit into the Project Fund, provided that, upon the closing date for the TIF Financing, the City Contribution held by the Escrow Agent shall be transferred to the Trustee for deposit in to the Project Fund.

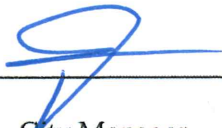
6. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement. The signature page of any entity, or copies or facsimiles thereof, may be appended to any counterparts of this Second Amendment, and, when so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

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

Signed in the Presence of:

CITY OF CLEVELAND HEIGHTS

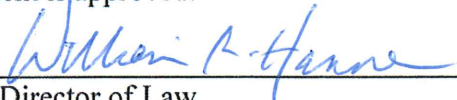
Print
Name: _____

By: 

City Manager

Print
Name: _____

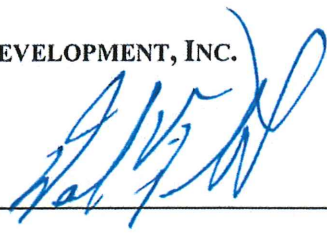
The legal form and correctness of this instrument is approved:



Director of Law

F & C DEVELOPMENT, INC.

Print
Name: _____

By: 
Print
Name: David Flaherty
Its: President

Print
Name: _____

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 the process of collection to the credit of an appropriate fund free from any previous encumbrances.



Director of Finance

Date: 1/9/20