

Proposed: 10/03/2022

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

By Mayor Seren

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

WHEREAS, the City of Cleveland Heights (the “City”) owns certain parcels of real property generally known as the Cedar-Lee and Meadowbrook parcels consisting of approximately 5.124 acres located between Cedar Road and Meadowbrook Road, as identified and depicted in **Exhibit A** hereto (collectively referred to herein as the “TIF Area,” with the parcels comprising the real property within the TIF Area, as improved, referred to herein as the “Parcels”) and, consistent with the City’s prior and current plans for urban redevelopment, the City has, from time to time, requested proposals for the redevelopment of all or portions of the TIF Area; and

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

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

WHEREAS, consistent with City’s Master Plan, as adopted by the City on March 20, 2017, as amended and supplemented, including the City’s current redevelopment plan for the TIF Area, and prior legislation adopted by this Council, including Resolution No. 154-2021 adopted December 6, 2021, the City has approved and entered into a Development Agreement with F & C Development, Inc. (together with its affiliates, the “Developer”) pursuant to which the Developer will lease the Parcels from the City and improve the Parcels by building thereon a mixed-use development which will include construction of (a) one or more buildings of varying heights including approximately 200-225 market-rate apartments, (b) approximately 5,000-9,000 square feet of first floor non-residential space such as commercial, retail and/or restaurant space, (c) public gathering and green spaces, and (d) all private and public sidewalks, as well as driveways, access ways, street and parking lot lighting and utility connections and sanitary, stormwater drainage and other infrastructure improvements on the Project Site, all as further described in the Development Agreement (all of the foregoing, together with the public parking garage located on the Project Site, as described in the Development Agreement and to be improved and operated consistent therewith, being referred to herein collectively as the “Development”); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

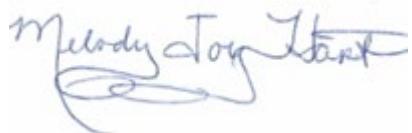
SECTION 8. The Mayor is authorized and directed to sign any other documents, instruments or certificates as are necessary or appropriate to consummate or implement the actions described herein, or contemplated by this Ordinance, including an agreement or agreements with the Developer to provide for the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

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

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

SECTION 11. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 12. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for the Development to move forward and for construction to commence at the earliest possible date. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.



President of the Council
MELODY JOY HART

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Clerk of Council
ADDIE BALESTER

PASSED: 11/21/2022

Presented to Mayor: 11/22/2022 Approved by Mayor: 11/25/2022



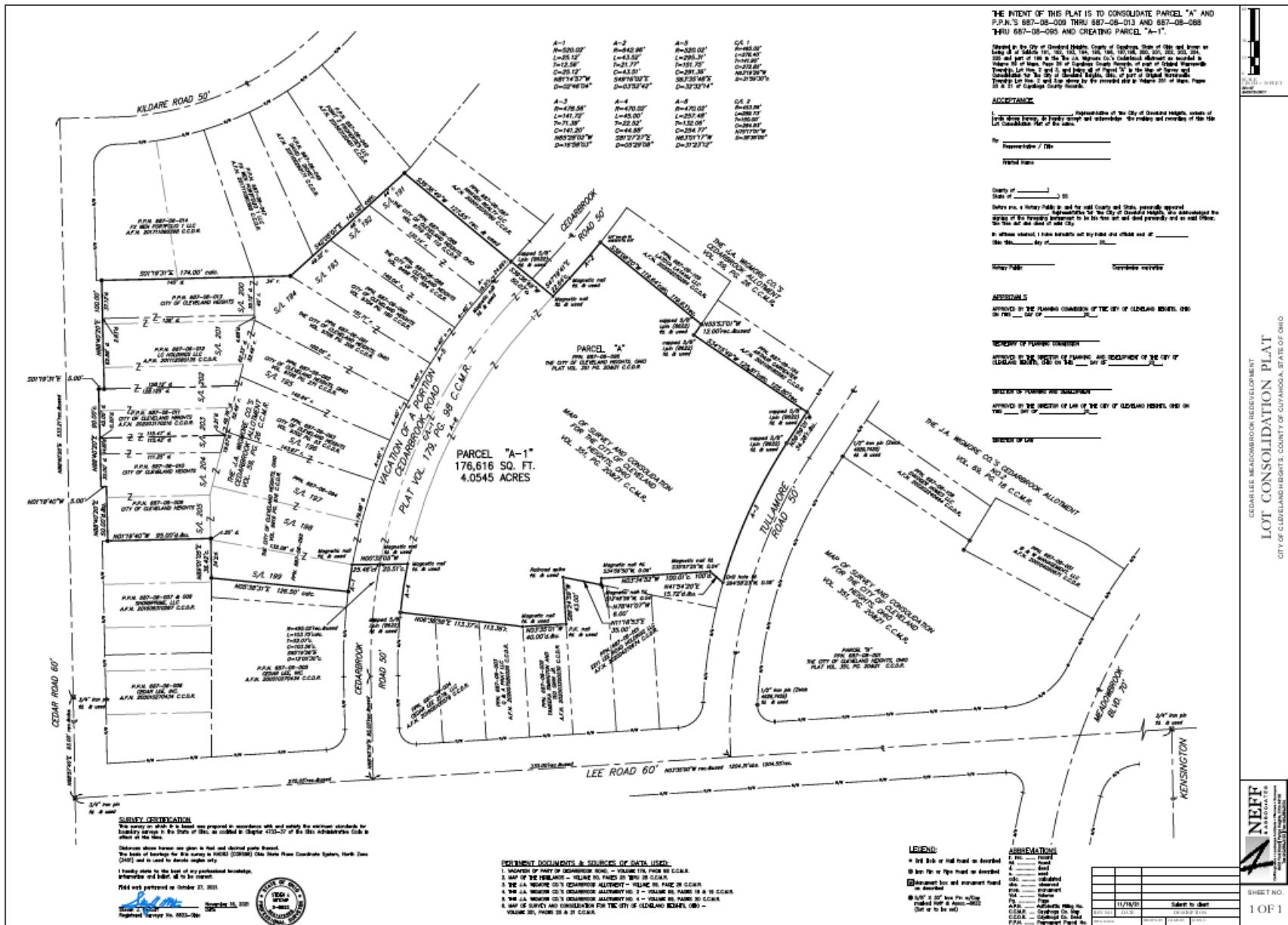
KAHLIL SEREN
Mayor

EXHIBIT A

IDENTIFICATION AND DEPICTION OF PARCELS INCLUDED IN TIF AREA

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

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



COMPENSATION AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See Exhibit B for examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cleveland, OH 44114

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

Section 10. Change in Development.

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

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

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

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

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

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

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

[Balance of page intentionally left blank]

CITY OF CLEVELAND HEIGHTS, OHIO

CLEVELAND HEIGHTS-UNIVERSITY
HEIGHTS CITY SCHOOL DISTRICT
BOARD OF EDUCATION

By: _____
Mayor

By: _____
President

By: _____
Superintendent

By: _____
Treasurer

Approved as to Form and Correctness:

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

F & C DEVELOPMENT, INC.

By: _____
City Law Director

By: _____
Chief Executive Officer

FISCAL OFFICER'S CERTIFICATE

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

Dated: _____, 2022

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

FISCAL OFFICER'S CERTIFICATE

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

Dated: _____, 2022

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

EXHIBIT A TO THE COMPENSATION AGREEMENT

TIF AREA PARCELS

(Identified by Parcel Number)

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

EXHIBIT B TO THE COMPENSATION AGREEMENT

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

Assumptions:

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

Estimated School Payments:

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

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

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

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

Assumptions:

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

Estimated School Payments:

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

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

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

Example 3 (Lower Valuations with reduced School District Millage)

Assumptions:

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

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

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

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

Total Overlapping Millage = 130.000000 effective mills (13.0%)

Estimated School Payments:

Section 2(A)(1)

Base School District Millage = 88.000000 effective mills

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

Section 2(A)(3)

Additional School District Millage = Zero mills

Additional School Millage Payments = \$0.00

Section 2(A)(2)

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

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

Excess PILOT School Payments = \$0.00

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

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

Assumptions:

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

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

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

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

Total Overlapping Millage = 150.000000 effective mills (15.0%)

Estimated School Payments:

Section 2(A)(1)

Base School District Millage = 99.444261 effective mills

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

Section 2(A)(3)

Additional School District Millage = 10.555739 mills

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

Section 2(A)(2)

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

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

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

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

Example 5 (Increased Valuations with Additional School District Millage)

Assumptions:

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

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

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

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

Total Overlapping Millage = 150.000000 effective mills (15.0%)

Estimated School Payments:

Section 2(A)(1)

Base School District Millage = 99.444261 effective mills

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

Section 2(A)(3)

Additional School District Millage = 10.555739 mills

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

Section 2(A)(2)

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

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

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

Annual School Payments = \$559,002.

EXHIBIT C

FORM OF SCHOOL DISTRICT ADDITIONAL PARKING AGREEMENT

SCHOOL DISTRICT ADDITIONAL PARKING AGREEMENT

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

RECITALS

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

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

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

ARTICLE I – USE OF CERTAIN CITY PARKING BY SCHOOL DISTRICT

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

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

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

Section 4. Claims; Indemnity. The City shall not be liable for any damage or injury to School District staff or students utilizing the additional parking spaces described in this Agreement and the School District agrees to hold the City harmless for any staff or student claim for damages during the term of this Agreement, except to the extent such damage or injury is the result of the gross negligence of the City or any of the City's agents. The City shall not be responsible for any theft, loss or damage to any vehicle or property left in any vehicle.

ARTICLE II – MISCELLANEOUS

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

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

Section 3. Headings. Sections and paragraph headings in this Agreement are for convenience or reference only, and shall not affect the interpretation or construction of the provisions hereof.

Section 4. Severability. Invalidation of any of the provisions contained in this Agreement or the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

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

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

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

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

(Remainder of Page Intentionally Left Blank)

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

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

By: _____
President

By: _____
Its: _____

By: _____
Superintendent

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

By: _____
Treasurer

Date: _____

(Signature Page to School District Additional Parking Agreement)

FISCAL OFFICER'S CERTIFICATE

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

Dated: _____, 2022

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

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

5683101.1

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

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

R E C I T A L S:

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

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

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

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

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

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

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

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

CITY OF CLEVELAND HEIGHTS

By: _____
City Manager

The legal form and correctness of this instrument is approved:

Director of Law

F & C DEVELOPMENT, INC.

By: _____
Print Name: _____
Its: _____

EXHIBIT A TO THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

ADDED PROPERTY PLAN

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

RECITALS

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

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

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

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

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

ARTICLE I – ACKNOWLEDGEMENT OF ACQUISITION OF PROPERTIES

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

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

ARTICLE II – INCORPORATION INTO PROJECT SITE

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

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

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

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

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

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

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

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

F&C Development, Inc.

City of Cleveland Heights, Ohio

By: _____
Name: _____
Title: _____

By: _____
Kahlil Seren, Mayor

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