FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("First Amendment") is made and entered into as of the 14th day of March, 2023 ("Effective Date"), by and among the **CITY OF CLEVELAND HEIGHTS, OHIO** (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, joined by David M. Flaherty, an Indiana resident ("Flaherty") for the sole and exclusive purpose of joining in the obligations of the Developer hereunder with respect to the payment of the City Added Property Cost Payments under and as defined in the "Added Property Plan" attached as "Exhibit A" hereto and incorporated herein by this reference.

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 in the Project Site as Added Property (as defined in the Development Agreement) pursuant to an Added Property plan; and

WHEREAS, the City and the Developer desire to amend the Development Agreement to include the Added Property Plan and modify certain provisions of the Development Agreement that relate to the Added Property Plan, all 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 are hereby acknowledged, the City and the Developer, joined by Flaherty for the purpose and to the extent stated herein, 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 in the Development Agreement on the date it was originally executed.

3. Section 2(D) of the Development Agreement is hereby deleted and the following inserted in its place:

> (D) ***Added Property***. The City and Developer have coordinated on efforts to include the Added Property into the Project Site consistent with the Added Property Plan attached hereto as Exhibit L (the "Added Property Plan") which is incorporated herein. Developer and Flaherty (as defined in the Added Property Plan), hereby agree, as a joint and several obligation of each, to

reimburse the City for a portion of the City's costs associated with the Added Property in accordance with the terms of the Added Property Plan.

4. Flaherty shall join in the execution and delivery of this First Amendment for the sole and exclusive purpose of joining in the obligations of the Developer hereunder to pay in full, at or prior to the due dates thereof, each and all of the City Added Property Cost Payments. By its execution and delivery of the Joinder included below, Flaherty unconditionally acknowledges and agrees that: (i) by virtue of his other obligations with respect to the Development, including the obligation to execute and deliver a completion guaranty with respect thereto, he will receive full and sufficient consideration for the obligations joined herein, (ii) he is joining in the obligations of the Developer with respect to the payment of the City Added Property Cost Payments as a principal and not as guarantor, and all such obligations are a joint and several obligation of Flaherty and the Developer, and (iii) the City may proceed first and directly against him with respect to his obligations with respect to the City Added Property Cost Payments, without regard to the obligations of the Developer or any other person or entity with respect thereto. Nothing herein is intended to or shall make Flaherty a party to any obligation under the Development Agreement except the obligation to pay, when due, each and all of the City Added Property Cost Payments.

5. Section 18(A) of the Development Agreement is hereby deleted and the following inserted in its place:

> (A) ***Assignment***. Developer shall not assign its rights or interests under this Agreement without the prior written consent of the Mayor, which shall not be unreasonably withheld, delayed or conditioned; except that Developer's assignment to an affiliate of Developer (with prior written notice to the City of any such assignment to an affiliate that is not acknowledged by the City in the Ground Lease), 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 (i) no such assignments by Developer to an affiliate or lender shall relieve Developer of its obligations or liability to the City under this Agreement, (ii) no such assignments by Developer to an affiliate or lender shall relieve Developer or Flaherty of their joint and several obligations to the City under the Added Property Plan, and (iii) no such affiliate or lender to which such assignments are made shall be required to assume the joint and several obligations of Developer or Flaherty under Section 2(b), 2(c) or 3 of the Added Property Plan.

6. Section 18(Q) of the Development Agreement is amended to include a reference to "Exhibit L – Added Property Plan".

7. 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: _____
Mayor

The legal form and correctness of this instrument is approved:

_____
Director of Law

F & C DEVELOPMENT, INC.

By: _____
David M. Flaherty, CEO

JOINDER

The foregoing First Amendment to Development Agreement, and the Development Agreement referred to therein, is hereby joined, as of the Effective Date of that First Amendment, by David M. Flaherty, an Indiana resident, for the purpose and to the extent stated therein.

_____
David M. Flaherty

[Signature Page – First Amendment to the Development Agreement]

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: _____
Mayor

The legal form and correctness of this instrument is approved:

_____
Director of Law

F & C DEVELOPMENT, INC.

By: _____
David M. Flaherty, President

JOINDER

The foregoing First Amendment to Development Agreement, and the Development Agreement referred to therein, is hereby joined, as of the Effective Date of that First Amendment, by David M. Flaherty, an Indiana resident, for the purpose and to the extent stated therein.

_____
David M. Flaherty

[Signature Page – First Amendment to the Development Agreement]

EXHIBIT A

ADDED PROPERTY PLAN

THIS ADDED PROPERTY PLAN (this "**Plan**") has been agreed by the City of Cleveland Heights, Ohio (the "City"), F&C Development, Inc. (the "Developer") and David M. Flaherty, an Indiana resident ("Flaherty", and, together with the Developer, the "Obligors") as of March __, 2023. The City and the Obligors are collectively referred to herein as the "Parties".

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 costs associated with acquisition of any Added Property (the "**City Added Property Cost Payments**") as part of the Project Costs to be financed within, and paid at the closing of, 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 (and now consolidated with other Project Site properties), at a cost in excess of $725,000.00.

E. At the request of the Developer (and with consideration given to the increased costs of the Project Improvements since the date of the Development Agreement), the City has agreed to defer a portion of the City Added Property Cost Payments as described herein and, in consideration of that deferral: (i) the Developer has agreed to increase the amount of the City Added Property Cost Payments to $816,000.00 (payable as described herein), and (ii) Flaherty has agreed to join in this Plan, and in an amendment to the Development Agreement, for the sole and exclusive purpose of joining with the Developer, as a joint and several obligation of each, in the obligation to pay the City Added Property Cost Payments, in full, when due.

In consideration of the premises, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties agrees 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 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 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 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 Project Site (inclusive of the Added Properties) is depicted and described on that certain recorded plat in Instrument #202212160105 of the Cuyahoga County Records.

ARTICLE III – PAYMENT OF CITY'S REIMBURSABLE ADDED PROPERTY COST

Section 1. Acquisition Cost. Obligors acknowledge 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 Obligors have been presented with evidence of such acquisition costs that is sufficient for their purposes.

Section 2. Payments to City. Obligors, as a joint and several obligation of each, shall pay to the City the City Added Property Cost Payments in three installments in accordance with the following schedule:

(a) At the Closing (as defined in Section 4 of the Development Agreement), Obligors shall remit or cause to be remitted to the City the sum of One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00) by wire transfer in accordance with the instructions included in the closing memorandum or flow of funds prepared for such Closing, and such initial City Added Property Cost Payment may be paid from the proceeds of the TIF Financing, subject to approval by the City's bond counsel;

(b) On or before January 2, 2026, Obligors shall remit or cause to be remitted to the City the sum of Three Hundred Thirty-Three Thousand and 00/100 Dollars ($333,000.00) by wire transfer in accordance with instructions provided by the City; and

(c) On or before January 4, 2027, Obligors shall remit or cause to be remitted to the City the sum of Three Hundred Thirty-Three Thousand and 00/100 Dollars ($333,000.00) by wire transfer in accordance with instructions provided by the City.

Section 3. Prepayment; Acceleration; Default Interest. Obligors may prepay any of the amounts specified in Section 2 on any date prior to the due date specified without any premium or penalty. If Obligors fail to remit or cause to be remitted the amounts specified in Section 2, in addition to any other remedies available to the City under the Development Agreement, the City may, subject to the notice and grace period provided for in Section 13(A)(iii) of the Development Agreement, declare all unpaid amounts described in Section 2 to be immediately due and payable, and all overdue amounts shall bear interest from the date such amounts are due and payable, whether by declaration or otherwise, until the date such amounts are paid in full at a default rate of interest equal to ten percent (10%) per annum.

Section 4. Joint and Several Obligation; No Assignment. The obligation to make the payments described in Section 2 and Section 3 above shall be a joint and several obligation of the Obligors, and such obligation shall survive any termination of the Development Agreement. Notwithstanding any assignment of Developer's rights under the Development Agreement to an affiliate of Developer or to Developer's lenders pursuant to Section 18(A) of the Development Agreement or otherwise, the obligation to make the payments described in Sections 2(b), 2(c) and 3 above is a personal obligation of the Obligors, shall not be assigned and shall remain a joint and several obligation of each of the Obligors.

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

F&C Development, Inc.

By:_____
David M. Flaherty, CEO

David M. Flaherty, an Indiana resident

City of Cleveland Heights, Ohio

By:_____
Kahlil Seren, Mayor

Approved as to Form:

By:_____
William Hanna, Director of Law

Reference: Ordinance 019-2023 passed February 13, 2023

Section 3. Prepayment; Acceleration; Default Interest. Obligors may prepay any of the amounts specified in Section 2 on any date prior to the due date specified without any premium or penalty. If Obligors fail to remit or cause to be remitted the amounts specified in Section 2, in addition to any other remedies available to the City under the Development Agreement, the City may, subject to the notice and grace period provided for in Section 13(A)(iii) of the Development Agreement, declare all unpaid amounts described in Section 2 to be immediately due and payable, and all overdue amounts shall bear interest from the date such amounts are due and payable, whether by declaration or otherwise, until the date such amounts are paid in full at a default rate of interest equal to ten percent (10%) per annum.

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

F&C Development, Inc.

By: _____
David M. Flaherty, CEO

City of Cleveland Heights, Ohio

By: _____
Kahlil Seren, Mayor

David M. Flaherty, an Indiana resident

Approved as to Form:

By: _____
William Hanna, Director of Law

Reference: Ordinance 019-2023 passed February 13, 2023