



CLEVELAND HEIGHTS

Planning and Development Committee

March 6, 2024

10:30 AM

City Hall – Council Chambers

Community Development Block Grant (CAC), Economic Development, Community Development, Physical Planning, Public Construction, Zoning Code

Council members

Chair: Davida Russell | Vice Chair: Craig Cobb | Member: Tony Cuda

Agenda

- 1) **Call to Order/Roll Call**
- 2) **Brainstorming Session**
 - a. *Technical Advisory Group (TAG)*
- 3) **CDC's 2024 Goals**
- 4) **Legislation Referred to Committee**
 - a. **ORDINANCE NO. 029-2024(PD): First Reading.** An Ordinance declaring improvements to certain parcels within the City of Cleveland Heights to be a public purpose, exempting the improvements to such parcels from real property taxation for a period of 30 years; requiring the owners of such parcels to make service payments in lieu of taxes; establishing an Urban Redevelopment Tax Increment Equivalent Fund for the deposit of such payments; and approving a school compensation agreement with the Cleveland Heights-University Heights City School District; all pursuant to Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43; and declaring the necessity that this legislation become immediately effective as an emergency measure.

Introduced by Mayor Seren
- 5) **Other**
- 6) **Adjourn**

Brainstorming Session – Technical Advisory Group

I. Introduction of Attendees

II. Chairperson's Overview

1. Technical Advisory Group (TAG)

What is a Technical Advisory Group: (TAG) Is a specialized group or team comprised of subject matter experts and professionals who can provide technical experience, guidance and advice in the development, implementation and evaluation of a specific plan or project. The group will typically be comprised individuals with diverse backgrounds and expertise relevant to the objectives of a plan or project.

TAG's Mission: To leverage technological innovations and expertise in helping guide sustainable and equitable urban development, fostering community engagement enhance. Infrastructure and. promoting economic vitality for the vibrant and inclusive future of the city of Cleveland Heights

Chairperson's Vision for TAG: To foster sustainable, Inclusive, and innovative urban development through expert guidance, data- driven insights, and collaborative partnerships, ensuring that the city's growth is resilient, equitable, and responsive to the needs of its resident and stakeholders.

Role of TAG: The group would assist the committee in making informed decisions, ensuring that projects align with best practices, regulations, and community needs.

2. **Hopes and Expectations for TAG**

Goal: To provide the P&D Chair and Committee with comprehensive expertise on urban planning, infrastructure development, and sustainability practices to support the enhancement of Cleveland Heights livability, economic growth and environmental stewardship.

Long term visioning and objectives: Assist the Committee in the development of a long-term vision and strategy plan for the growth and development of Cleveland Heights, considering factors such as population growth, economic development, housing, affordability, and quality of life. Help the Committee to monitor the implementation of planning and development initiatives and evaluate their effectiveness in achieving established goals and objectives, suggesting adjustments as needed to ensure continuous Improvement!

Targeted End Products: With support from TAG and the contribution of the Group to the Planning & Development Committee's and the City's long term planning efforts, generate quantifiable improvements in the economic and development performance of Cleveland Heights, in part by identifying emerging trends, anticipating Future needs and recommending Strategies for sustainable growth and development.

Overall, the technical advisory group. Shall serve as a valuable resource for the planning and Development Committee, helping to ensure that decisions are informed by sound technical experts, data driven analysis and community input.

III. Some Hoped for Value Adds from TAG

What P&D will look for from TAG

1. **Group Resource:** Specialized knowledge and skill in their respective fields to analyze and assess proposed development projects. Insights into technical aspects such as site design, infrastructure requirements, environmental impact assessments, and zoning regulations.
2. **Problem Solving:** (TAG) can assist the Planning & Development Committee in resolving complex technical challenges that arise during the planning process by leveraging their expertise, they can identify potential issues early on and propose viable solutions to address them.
3. **Policy Development:** The (TAG) can contribute to the formulation of Urban planning policies and regulations by providing technical input and recommendations based on their expertise and experience. This ensures that policies are well-informed, practical and aligned with the city's long-term development goals.
4. **Public engagement:** The (Tag) group may also participate in public Engagement activities such as workshops, forums, and community meetings to provide technical explanations, answers questions, and address concerns raised by stakeholders regarding proposed development projects. TAG members should also be representatives of and advocates for the Committee in the Heights community.

IV. Organizational Alignment

The way we work together and organize may well be fluid, but we will always strive to be clear. (TAG) May also work closely together with the Planning and Development Chair with TAG providing specialized technical input and recommendations to add to the decisions and actions of the planning and development committee. This collaboration helps ensure that any plan is well-informed, technically sound, and effectively implemented to achieve its intended outcomes.

V. Open Discussion/Q&A



Date: 03/04/2024

To: City Council

From: Bill Hanna, Director of Law
Brian Anderson, Asst. Dir. Of Economic Development
Addie Balester, Clerk of Council

Subject: Ordinance No. 029-2024 – TIF Legislation – Taylor Tudor

Purpose Statement: To declare improvements to the “Taylor-Tudor” parcels within the City of Cleveland Heights to be a public purpose and to exempt 100% of the value of the improvements to those parcels from real property taxes for 30 years pursuant to Ohio’s Tax Increment Financing (TIF) laws, and to authorize a Compensation Agreement with the CH-UH School District, as provided in the Development Agreement authorized by Resolution 193-2023, pursuant to which the property owner (WXZ CPV LLC, the “Developer”) will be required to make service payments in lieu of taxes (PILOTS) based upon the value of the improvements, which will be distributed among the Developer, the School District and the City as provided in the agreement – generally, 70% to the Developer, 24% to the School District and 6% to the City. The TIF is under RC Section 5709.41, which allows PILOTS to be used to finance both public and private improvements.

Is this legislation recurring: Yes: _____ No: X

Is emergency language necessary: Yes: X No: _____

If yes, why? Because the Developer needs to be able to secure its financing at the earliest possible time to comply with deadlines under the Ohio Historic Tax Credits program and its construction plans, which are critical to redeveloping the property and revitalizing the neighborhood.

Is passage on first reading necessary: Yes: _____ No: X

If yes, why? This legislation should be approved at the first meeting following the School District’s authorization of the Compensation Agreement, which is expected to occur on March 7.

If funding is required, is it already budgeted for? Yes: X No: _____

If not already budgeted for, where will funding come from?

Proposed: 03/04/2024

ORDINANCE NO. 029-2024(PD),
First Reading

By Mayor Seren

An Ordinance declaring improvements to certain parcels within the City of Cleveland Heights to be a public purpose, exempting the improvements to such parcels from real property taxation for a period of 30 years; requiring the owners of such parcels to make service payments in lieu of taxes; establishing an Urban Redevelopment Tax Increment Equivalent Fund for the deposit of such payments; and approving a school compensation agreement with the Cleveland Heights-University Heights City School District; all pursuant to Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, the City of Cleveland Heights (the “City”) is the owner of Permanent Parcel Numbers 684-27-001, 684-26-011, and 684-26-012, located in the City of Cleveland Heights, the “Property”) as further described on Exhibit A attached hereto, and intends to convey title to the Property to WXZ CPV LLC (the “Developer”); and

WHEREAS, the Developer has, pursuant to the Development Agreement dated as of _____, 2024 between the Developer and City (the “Development Agreement”), attached hereto as Exhibit B, agreed to redevelop the Property by renovating the existing buildings into a mixed-used commercial-residential development project (the “Project”), as further set forth in the Development Agreement; and

WHEREAS, Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43 authorize this Council to declare all of the Improvements, defined by Ohio Revised Code Section 5709.41 as the increase in the assessed value of the Property that would first appear on the tax list and duplicate of for the Property after the effective date of this Ordinance were it not for the exemption granted by this Ordinance, resulting from the Developer undertaking the Project exempt from real property taxation for a period of years, to provide for the making of service payments in lieu of taxes by the owner of the Property as an obligation running with the land and to establish an urban redevelopment tax increment equivalent fund into which such service payments shall be deposited; and

WHEREAS, the City has determined that it is necessary and appropriate, and in the City’s best interest to provide for service payments in lieu of taxes with respect to the Property pursuant to Ohio Revised Code Section 5709.42 (the “Service Payments”) to be utilized as set forth in this Ordinance and pursuant to Ohio Revised Code Section 5709.43; and

ORDINANCE NO. 029-2024(PD)

WHEREAS, the Property is located within the boundaries of the Cleveland Heights-University Heights City School District (the "School District"); and the School District; and

WHEREAS, this Council has determined that it is in the best interests of the City for the City to enter into a compensation agreement with the School District and Developer whereby a portion of the Service Payments will be paid as compensation to the School District ("School Compensation Agreement"); and

WHEREAS, the School District has adopted a resolution waiving the notice required under Sections 5709.41, 5709.83 and 5715.27 of the Ohio Revised Code, and has approved a compensation agreement with the City and Developer substantially in the form set forth on Exhibit C, attached hereto and incorporated herein by reference ("School Compensation Agreement").

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

SECTION 1. This Council finds and determines that the Improvements resulting from the Project to be undertaken by the Developer, are declared to be a public purpose for purposes of Section 5709.41 of the Ohio Revised Code.

SECTION 2. Pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.41, this Council hereby finds and determines that 100% of the increase in the assessed value of the Property that would first appear on the tax list and duplicate of the Property after the effective date of this Ordinance (the "Improvements" as defined in Ohio Revised Code Section 5709.40) is a public purpose, and 100% of said Improvements are hereby declared to be a public purpose, for a period not to exceed 30 years, and exempt from taxation commencing, for each parcel, with the first tax year that begins after the effective date of this Ordinance and in which an improvement resulting from the construction of a structure on that parcel first appears and ending on the date the Improvements have been exempted from taxation for a period of 30 years (the "Exemption Period"); provided, however, that certain compensatory payments shall be paid to the School District as set forth in this Ordinance.

SECTION 3. As provided in Ohio Revised Code Section 5709.42, the owner or owners of the Property are hereby required to, and shall make, semi-annual Service Payments to the Cuyahoga County Fiscal Officer (the "County Fiscal Officer") on or before the final dates for payment of real property taxes due and payable with respect to the Improvements. The Service Payments, when distributed to the City by the County Fiscal Officer, shall be deposited in the Urban Redevelopment Tax Increment Equivalent Fund (the "Fund") established in Section 4 hereof. This Council hereby authorizes the Mayor, the Director of Finance and City Law Director, and other appropriate officers of the City, to provide such information and certifications and to execute and deliver or accept delivery of such instruments as are necessary and

incidental to collection of those Service Payments, and to make such arrangements as are necessary and proper for payment of those Service Payments.

SECTION 4. This Council hereby establishes, pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.43, the Fund, into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvements, by or on behalf of the County Fiscal Officer as provided in Section 5709.42 of the Ohio Revised Code, and hereby provides that the moneys deposited in the Fund shall be paid by the City to the School District, Developer and City in accordance with the terms of the Development Agreement, the School Compensation Agreement and Ohio law.

The Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, after which time the Fund shall be dissolved in accordance with Section 5709.43 of the Ohio Revised Code and any moneys remaining therein shall be paid to the City.

SECTION 5. The School District shall receive a portion of the Service Payments, paid by the City from the Fund, in accordance with the School Compensation Agreement.

SECTION 6. Pursuant to Ohio Revised Code Section 5709.41(E), the Clerk of Council is hereby directed to deliver a copy of this Ordinance to the Director of the Ohio Department of Development within fifteen (15) days after its passage. On or before March 31st of each year that the exemption set forth in Section 2 hereof remains in effect, the Mayor or other authorized officer of this City shall prepare and submit to the Director of the Development Services Agency of the State of Ohio the status report required under Section 5709.40(I) of the Ohio Revised Code.

SECTION 7. In accordance with Ohio Revised Code Section 5709.832, this Council hereby determines that the Developer, its successors or assigns in interest to the property tax exemption authorized herein, shall not deny employment to any individual based solely on race, religion, sex, disability, color, national origin, or ancestry, and the Developer shall abide by Section 14(F) of the Development Agreement.

SECTION 8. This Council hereby designates the City's tax incentive review council ("TIRC") previously established by this Council as the TIRC that shall annually review the exemptions provided pursuant to this Ordinance as required by Ohio Revised Code Section 5709.85.

SECTION 9. This Council determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

ORDINANCE NO. 029-2024(PD)

SECTION 10. 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 11. It is necessary that this Ordinance become immediately effective as an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City and its inhabitants, the emergency being the need to facilitate the redevelopment of the Taylor-Tudor Property at the earliest possible time. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

TONY CUDA
President of Council

ADDIE BALESTER
Clerk of Council

PASSED:

Presented to Mayor: _____

Approved: _____

KAHLIL SEREN
Mayor

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land

described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012

EXHIBIT B

DEVELOPMENT AGREEMENT

DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT

This Development and Tax Increment Financing Agreement (this “Agreement”) is made and entered into as of _____, 2024 (the “Effective Date”) by and between THE CITY OF CLEVELAND HEIGHTS, OHIO (the “City”), an Ohio municipal corporation and political subdivision organized under the laws of the State of Ohio and its Charter, and WXZ CPV LLC, an Ohio limited liability company, its affiliates, successors and assigns (collectively, the “Developer”).

RECITALS:

- A. The Cleveland Heights Land Reutilization Corporation (“CHLRC”) and the Cleveland Heights Land Reutilization Program (“CHLRP”) are the current title owners of certain real property identified in the Cuyahoga County Records as Permanent Parcel Numbers 684-27-001, 684-26-011, and 684-26-012, and more commonly known as 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118, as further described in **Exhibit “A”** attached hereto and incorporated herein by reference, together with all easements, privileges and rights appurtenant thereto (CHLRC owns Parcel 684-27-001 and CHLRP owns 684-26-011, and 684-26-012) (the “Property”); and
- B. The City controls the Cleveland Heights Land Reutilization Corporation and the Cleveland Heights Land Reutilization Program; and
- C. Developer and City entered into negotiations for the development of the Property pursuant to Res. No. 54-2022, passed by Council on May 2, 2022 and approved by the Mayor May 10, 2022; and
- D. As of the Effective Date, the City and the Developer have also entered into a certain Real Estate Purchase Agreement, a copy of which is attached hereto as **Exhibit B**, whereby the City will sell the Property to the Developer for the sum of \$1.00 (the “Purchase Agreement”), and said sale will close within fifteen (15) days of the satisfaction of standard contingencies and any special conditions to closing set forth in the Purchase Agreement, including, but not limited to, the City becoming the title owner to the Property prior to the closing of said sale; and
- E. Following the purchase of the Property, the Developer intends to redevelop the Property into a mixed-use development, generally consistent with the drawings set forth hereto as **Exhibit C**, attached hereto and incorporated herein by reference (the “Development”), including the following components of the Development, subject to reasonable future design refinements:
 - (i) Developer will construct eight (8) live/work units and approximately 11,302 GSF of commercial space on the first floors of the three buildings; two (2) two-bedroom apartments, two (2) studio apartments, and forty (40) one-bedroom apartments on the second and third floors of the three buildings.
 - (ii) Developer will commence construction of the Development no later than September 1, 2024 and complete construction within three (3) years.
 - (iii) Developer will prepare all plans, drawings, surveys, etc. necessary for the Development and obtain all necessary approvals and permits to undertake the Development.

- F. To facilitate the Development and the broader revitalization plan outlined in Developer's Cain Park Village Proposal, attached hereto as **Exhibit D**, the City intends to provide certain assistance to the Developer to assist specifically with the Development, which consists of the following:
- (i) The City will assist the Developer in requesting and applying for environmental remediation grants. Furthermore, if any grant Developer seeks to obtain requires a municipal lead applicant, the City will serve as the lead applicant for purposes of the grant application; and
 - (ii) The City will use a portion of the Service Payments, as defined below, for public infrastructure improvements and economic development activities that benefit the Property.
 - (iii) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will install new street trees, planters, street lights, and street signs along portions of South Taylor Road and Superior Park Drive as outlined in the District Landscape, Lighting, and Wayfinding Plan attached hereto as **Exhibit E**, which may be done using the City's portion of the Service Payments; and
 - (iv) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will implement the traffic-calming measures and alterations to the lanes and traffic patterns along South Taylor Road as outlined in Developer's Cain Park Village Proposal, attached hereto as **Exhibit D**, and portions of the *Taylor Road Corridor Study*¹ published jointly by NOACA and the City of Cleveland Heights in February, 2021, which may be done using the City's portion of the Service Payments if other funds cannot be obtained from other sources by the City; and
 - (v) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will reasonably cooperate with Developer and provide support to Developer's efforts to obtain assistance to support the Property and surrounding area beyond that described within this recital; and
 - (vi) The City will provide such other assistance as set forth in this Agreement; and
- G. Developer received approval from the City's Architectural Board of Review on August 2, 2022 (see **Exhibit F**, attached) and the Developer received approval from the City's Planning Commission on August 10, 2022 (see **Exhibit G**, attached).
- H. In addition to the assistance to be provided by the City to the Developer set forth in Recital E, above, the City will adopt an Ordinance in the form attached hereto as **Exhibit H** (the "TIF Ordinance"), wherein it will declare that the increase in value of the Property resulting from the Development (the "Improvement") shall be a public purpose, and 100% of the Improvement shall be exempt from real property taxation for 30 years pursuant to Section 5709.41 of the Ohio Revised Code (the "TIF Exemption"); and
- I. The TIF Ordinance requires the Developer and all future owners of the Property (each individually an "Owner" and collectively the "Owners") to make annual service payments in lieu of real property taxes equal to the amount of real property taxes that would have been payable had the Improvement not been exempt from real property taxation under the TIF Ordinance, together with any penalties and interest at the then-current rate established under Sections 323.121 and 5703.47 of the Ohio

¹ To access the *Taylor Road Corridor Study*, visit: https://www.flipsnack.com/conesky/taylor-report_final_2021.html

Revised Code and other payments with respect to each Improvement that are received by the Cuyahoga County Fiscal Officer (the "County Fiscal Officer") in connection with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions, as the same may be amended from time to time (collectively, the "Service Payments").

- J. The TIF Ordinance also authorizes the Service Payments to be used to make certain payments to the Cleveland Heights-University Heights City School District ("School District") pursuant to a certain school compensation agreement entered into by and between the City, the Developer and the School District and further defined below.
- K. The TIF Ordinance also authorizes the Service Payments to be used by the City as part of its urban redevelopment activities, including but not limited to public infrastructure improvements and economic development activities made by the City that benefit the Property and to reimburse the Developer for any and all costs associated with the Development pursuant to Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code, as the same are more fully defined in the TIF Ordinance and this Agreement.
- L. The City and Developer desire to enter into this Development Agreement to provide for the Development, to further provide for the obligations of the Developer to undertake and construct the Development, and for the obligations of the City to provide certain assistance to the Developer in furtherance of the Development, all as more fully set forth above and herein.

Now, therefore, in consideration of the promises and covenants contained in this Agreement, and to induce the Developer to proceed with the construction of the Development and to create jobs and to revitalize the Cain Park Village commercial district specifically, and the City, generally, the Developer and the City agree as follows:

Section 1. Incorporation of Recitals.

The recitals to this Agreement are incorporated herein by reference and made a part of this Agreement.

Section 2. Sale of the Property.

A. Sale of the Property. As of the Effective Date, the City and Developer have executed the Purchase Agreement, a copy of which is attached hereto as **Exhibit B**. Pursuant to the Purchase Agreement, the City shall sell the Property to the Developer in its as-is condition at the time of the closing of the sale, and the Developer shall purchase the Property from the City, for the sum of \$1.00. The sale of the Property to the Developer shall close within fifteen (15) days of the satisfaction of standard contingencies and any special conditions to closing set forth in the Purchase Agreement, including, but not limited to, the City becoming the title owner to the Property prior to the closing of said sale. Title to the Property will be transferred by the City via quit-claim deed (the "Deed") in the form provided in the Purchase Agreement.

Section 3. Construction of Development.

A. Construction of the Development. Upon acquisition of the Property, the Developer shall undertake the construction of the Development on the Property generally consistent with the drawings set forth on **Exhibit C**, attached hereto and incorporated herein by reference, and consisting of eight (8) live/work units and approximately 11,302 GSF of commercial space on the first floors of the three buildings; two (2) two-bedroom apartments, two (2) studio apartments, and forty (40) one-bedroom apartments on the second and third floors of the three buildings. The Developer shall prepare all plans, drawings, surveys, etc. necessary

for the Development, shall use commercially reasonable means and methods to construct and complete the Development, shall ensure the same is constructed in a workmanlike manner, shall hire contractors and subcontractors that are qualified and licensed to undertake such work, and shall acquire all requisite permits and approvals prior to the commencement of the construction from the City or other applicable authority to the extent such additional permits and approvals are necessary.

The Developer shall commence construction of the Development no later than September 1, 2024 and shall complete construction no later than three (3) years following commencement of construction. For purposes of this paragraph, commence construction shall mean that the Developer has hired the general contractor, all permits and approvals necessary for the commencement of construction have been obtained by the Developer, and the actual construction towards the renovation of the Property has commenced. For purposes of this paragraph, construction shall include site work, interior demolition, and environmental remediation activities. For purposes of this paragraph, complete shall mean that the forty-four (44) apartment units, are substantially complete and that Developer has applied in good faith for final certificates of occupancy from the City's Building Department and that Developer has finished the eight (8) live/work units and ±11,302 square feet of commercial space to a "white box" level, meaning that the unfinished space is ready for tenant improvements.

At Closing, the Developer shall provide the City with a Promissory Note in an amount equal to \$1,100,000 in the form attached hereto as **Exhibit I** (the "Note"), as well as a mortgage securing said Note and Developer's obligations in this Section in the form attached hereto as **Exhibit J** (the "Mortgage"). The Note and Mortgage shall be subordinate to any mortgage for any construction loan, predevelopment/acquisition loan, bridge loan, or any other loan necessary for the Developer to undertake and complete the Project. The City shall cooperate with Developer and Developer's lenders and financiers to accommodate commercially reasonable requests for intercreditor agreements, subordination, non-disturbance and attornment agreements, or other agreements necessary for any to-be-obtained construction loan, predevelopment/acquisition loan, bridge loan, or any other loan necessary for the Developer to undertake and complete the Project as each may be extended, modified, assigned, replaced or renewed from time to time (including any extensions, modifications, assignments, replacements and renewals thereof). The Note and Mortgage shall each be satisfied in full upon Developer commencing construction as set forth in this Section by September 1, 2024 and completing construction as set forth in this Section within three (3) years after commencement of construction. The Note will bear interest at the rate of 7%, will mature on September 1, 2027, subject to any extension or any applicable cure period, and no payments of principal or interest will be due on said Note until maturity. Subject to Developer's cure rights provided under Section 13, failure to commence construction as set forth in this Section by September 1, 2024 and complete construction as set forth in this Section within three (3) years after commencement of construction shall constitute a default under the Note and Mortgage.

In the event the Developer does not commence construction as set forth in this Section by September 1, 2024 or does not complete construction as set forth in this Section within three (3) years after commencement of construction, then, subject to any applicable cure period, the City may: (i) declare an event of default foreclose upon the Mortgage on the Property, and (ii) terminate this Agreement immediately, and terminate the exemption granted under the TIF Ordinance.

In the event that any building construction plan review or re-review by the City's building department, or any review, re-review, hold and approval by the National Park Service or State Historic Preservation Office, exceeds the time permitted for the same by Ohio law, the commencement date and completion dates set forth in this Section 3 shall be extended an equal number of days.

B. Planning and Zoning Approvals; Utilities. The Development shall be constructed in accordance with all planning, zoning and building codes and ordinances of the City and any other applicable

governmental authority, as well as the architectural/design criteria approved by the City's Architectural Board of Review, State Historic Preservation Office ("SHPO"), and the National Park Service ("NPS"). To the extent required by the City's planning and zoning codes, Developer shall apply for and obtain any further approvals and permits not obtained by Developer as of the execution of this Agreement, and shall abide by the terms and conditions of the same. As the Developer currently believes the Development is fully entitled, in the event the City determines that a further entitlement is required, the Developer shall be provided a reasonable extension to Developer's start of construction and completion dates in consideration of the additional time and work necessary to attain any further or future required entitlements. Further, if any further approvals and permits are necessary, the Developer shall apply for and obtain any and all building permits and occupancy permits required to be issued by the City's Building Department. If any further approvals and permits are necessary, the Developer shall also apply for and obtain connections to the City-owned water and sanitary sewer utilities serving the Property and shall maintain connections to the same.

If any further approvals and permits are necessary, the City agrees to cooperate with the planning and construction of the Development, including, but not limited to, timely scheduling of all necessary meetings and/or presentations; timely scheduling of all required inspections; timely review of all documents, specifications, plans, schematic drawings, and other files submitted by the Developer or any third-party consultant or professional acting as an agent of the Developer and thus submitting on the Developer's behalf to the City or any third-party consultant or professional acting as an agent of City; timely issuance of all required permits and other approvals for the Development, including, but not limited to use, temporary signage, permanent signage, parking permits, temporary right-of-way closure(s), temporary right-of-way encroachment(s), site plan, building, water and sanitary sewer, provided that the same are properly applied for by the Developer, meet the applicable requirements, and are within the purview of the City. The City shall not be required to waive any fees associated with any of the aforementioned approvals or permits pertaining to the Development.

C. Duty to Disclose and Inform. Developer shall disclose to the City, within ten (10) days of receipt, any award of any grant or other financial incentive or assistance from the State of Ohio, JobsOhio, the Cuyahoga County Land Bank, or any other governmental entity. Furthermore, Developer shall keep the City reasonably informed of the receipt and expenditure of any such funds that Developer has a duty to disclose pursuant to this Section, and shall, within a reasonable time after receiving a written request from the City, provide the City with a written summary of the award, receipt and expenditure of any and all such funds as of the date of the City's written request.

Section 4. On-Street Permitted Parking Zone.

In the interests of achieving the benefits of historic preservation; the establishment of an active, vibrant street experience; and the promotion of commerce and job creation, the Developer commits to creating commercial space on the ground floors of the Taylor Tudor Plaza buildings. In an effort to ensure that the commercial space is desirable by the broadest and most diverse spectrum of potential tenants, Developer intends to establish an On-Street Permitted Parking Zone in front of the Taylor Tudor Plaza buildings along the West side of South Taylor Road, see Permitted Parking Zone Plan, attached hereto as **Exhibit K**. The City shall facilitate the establishment of the On-Street Permitted Parking Zone in a reasonably timely manner prior to the Project obtaining its initial certificate of occupancy.

Section 5. Infrastructure and Right-of-Way Considerations; Duty to Repair

In undertaking the Development, the Developer shall use, and the Developer shall cause its contractors, subcontractors, agents, representatives and employees to use, reasonable care and caution to not damage any public roads, sidewalks, curbs or other infrastructure serving the Property. In the event the Developer,

or its contractors, subcontractors, agents, representatives or employees, do cause any damage to the public roads, sidewalks curbs or other infrastructure serving the Property, the Developer shall, at Developer's sole cost and expense, make any and all necessary repairs to the roads, sidewalks and curbs surrounding and/or serving the Property that will be necessitated as a result of damage from the Developer or the Developer's contractors, subcontractors, agents, representatives or employees. The City shall coordinate and cooperate with Developer regarding scheduling of work impacting any public roads, sidewalks, curbs or other infrastructure so as to minimize the impact of any such work on the construction and operation of the Development.

Section 6. City Assistance for the Development.

In addition to the TIF Exemption and the use of Service Payments to assist the Developer with the Costs of the Development, as set forth in Section 10, below (and as defined in that Section), the City shall provide the following assistance to the Developer:

- (i) The City shall assist the Developer in requesting and applying for grants or grant awards towards the environmental assessment and remediation of the Property (including other eligible costs), provided, however, that the City is only required to use commercially reasonable efforts in doing so, and any failure to obtain any requested or applied for grants shall not be a breach of this Agreement. If required by the terms of the grant(s) being sought, the City shall serve as 'lead applicant' and the developer as 'co-applicant.' Should any grant require a subgrant agreement for any grant funds to pass through the City to the Developer, the City and the Developer shall execute a subgrant agreement for the purpose of facilitating the pass-through of said grant funds to the Developer. Otherwise, the City and Developer shall reasonably cooperate with one another to obtain and expend said grant funds on the Development.
- (ii) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will install new street trees, planters, street lights, and street signs along portions of South Taylor Road and Superior Park Drive as outlined in the District Landscape, Lighting, and Wayfinding Plan attached hereto as **Exhibit E**, which may be done using the City's portion of the Service Payments. The lack or incompleteness of performing any work set forth in this paragraph by the City shall not constitute a breach of this Agreement.
- (iii) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will implement the traffic-calming measures and alterations to the lanes and traffic patterns along South Taylor Road as outlined in Developer's Cain Park Village Proposal, attached hereto as **Exhibit D**, and portions of the *Taylor Road Corridor Study*² published jointly by NOACA and the City of Cleveland Heights in February, 2021, which may be done using the City's portion of the Service Payments if other funds cannot be obtained from other sources by the City. The lack or incompleteness of performing any work set forth in this paragraph by the City shall not constitute a breach of this Agreement.
- (iv) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will reasonably cooperate with Developer and provide support to Developer's efforts to obtain assistance to support the Property and surrounding area beyond that set forth in this Section.

² To access the *Taylor Road Corridor Study*, visit: https://www.flipsnack.com/conesky/taylor-report_final_2021.html

Section 7. TIF Exemption.

A. The City has adopted, or shall adopt, pursuant to Section 5709.41 of the Ohio Revised Code, the TIF Ordinance, and through the TIF Ordinance, has granted, or shall grant, among other things, with respect to the Improvement, a 100% exemption from real property taxation, commencing on the first day of the first tax year following the adoption of the TIF Ordinance in which the Improvement attributable to the construction of the Development would have first appeared on the tax list and duplicate of real and public utility property had the exemption not been provided under the TIF Ordinance, and ending 30 years after such date.

B. In accordance with Sections 5715.27 and 5709.911 of the Ohio Revised Code, the City shall file or cause to be filed a completed application for an exemption from real property taxation (Ohio Department of Taxation DTE Form 24 or its successor form) with the Cuyahoga County Fiscal Officer for the Improvement to the Property. The City and the Developer agree to cooperate with each other for this purpose, and to cooperate with the Cuyahoga County Fiscal Officer, the Ohio Department of Taxation, and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Ordinance and this Agreement. The Developer agrees to provide the City, upon request from the City, an executed Ohio Department of Taxation DTE Form 24P or its successor form consenting to the City's filing of the DTE Form 24 or its successor form.

Section 8. Service Payments.

As provided in Section 5709.42 of the Ohio Revised Code, the Owners are required under this Agreement and under the TIF Ordinance to make annual service payments in lieu of taxes to the Cuyahoga County Fiscal Officer on or before the final dates for payment of real property taxes. Each such payment (including any 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 against the Improvement if it were not exempt from real property taxation. Any late payments shall be subject to penalty and bear interest at the then-current rates established under Sections 323.121 and 5703.47 of the Ohio Revised Code, as may be amended from time to time, or any successor provisions, as the same may be amended from time to time. No Owner shall, under any circumstances, be required with respect to any tax year both to pay Service Payments with respect to an Improvement and to reimburse local taxing authorities for the amount of real property taxes that would have been payable had the Improvement not been exempted from taxation pursuant to the TIF Ordinance.

Section 9. Municipal Urban Redevelopment Tax Increment Equivalent Fund.

Under the TIF Ordinance, the City has established the municipal urban redevelopment tax increment equivalent fund under Section 5709.43 of the Ohio Revised Code ("TIF Fund"). The TIF Fund shall be maintained in the custody of the City. The TIF Fund shall receive all Service Payments distributed by the Cuyahoga County Fiscal Officer to the City pursuant to Section 5709.43 of the Ohio Revised Code.

The TIF Fund shall remain in existence so long as Service Payments are collected and used for the purposes described in this Agreement and the TIF Ordinance. Then, the TIF Fund shall be dissolved in accordance with Section 5709.43 of the Ohio Revised Code. Further, except as otherwise provided in this Agreement or the TIF Ordinance, moneys deposited in the TIF Funds shall be used as described in Section 10 of this Agreement.

Section 10. Use of Service Payments Deposited Into the TIF Fund.

Under the TIF Ordinance, and in accordance with Section 5709.43 of the Ohio Revised Code, the Service Payments collected in the TIF Fund shall be paid by the City to the Developer, the City and the School District, as set forth below in this Section, subject to the terms and conditions of this Agreement, provided that all such payments to Developer shall be used solely to pay or reimburse the Costs of the Development as defined herein, including the principal and interest on the advancement of such costs by Developer or any loan or other financing acquired by Developer in connection with the Development, and further provided that such payments to the Developer shall not exceed the amount actually expended by the Developer to construct the Development.

Service Payments in the TIF Fund shall be allocated as follows, and shall be paid to the School District and City semi-annually upon the deposit of the Service Payments into the TIF Fund, and to the Developer in accordance with the timing set forth below:

- (i) Subject to the availability of Service Payments in the TIF Fund, 24% of the first \$265,000.00 of such Service Payments annually deposited shall be paid to the School District as compensation for a portion of the revenue it would have received if the increase in value to the Property as a result of the Development (the “Improvements”) were not exempted from taxation, as will be set forth more fully in a compensation agreement between the Developer, City and School District (“Compensation Agreement”), attached hereto as **Exhibit L**;
- (ii) Subject to the availability of Service Payments in the TIF Fund, 6% of the first \$265,000.00 of such Service Payments annually deposited shall be paid to the City, which shall use the Service Payments in the TIF Fund to undertake urban redevelopment activities, including but not limited to public infrastructure improvements and economic development activities, that benefit the Property;
- (iii) Subject to the availability of Service Payments in the TIF Fund, 70% of the first \$265,000.00 of in such Service Payments annually deposited shall be paid to the Developer to reimburse the Developer for the costs of designing and constructing the Development (the “Costs of the Development”). The Costs of the Development shall include any and all costs Developer incurred in order to construct the Development, including but not limited to:
 - (a) Payment of all costs associated with the design and construction of the Development, including review, permitting and inspection fees incurred in order to design and construct the Development, and professional fees; management, construction management and supervisory fees related to the undertaking of the Development.
 - (b) Construction, operation and maintenance of public improvements and publicly owned facilities on the Property, 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, wayfinding signage, pedestrian walkways, and public parks and plazas, whether owned by the City or other governmental entity by agreement with the city, and associated land acquisition and demolition, planning and engineering costs;

(c) Land and building acquisition, demolition, site assessment, remediation, preparation and other preparatory or logistic expenses related to the Development;

(d) Any other expenditures made with respect to the Property in accordance with this Development Agreement or other agreements entered into in connection with the development of the Property provided such expenditures are otherwise permitted by law; and

(e) Interest on the unpaid portion of the Costs of Development set forth in subsections (a) to (d), above, or any part thereof, which will accrue at the Interest Rate from the date the expense is incurred by the Developer. Any interest on any Developer Cost that remains unpaid on the day following each Payment Date, as the same is defined below, will itself accrue interest in the same manner as the Costs of Development. As used in this Agreement, "Interest Rate" means a rate equal to 7.0% per annum, calculated on the basis of a 360-day year consisting of twelve 30-day months.

- (iv) Subject to the availability of Service Payments deposited in the TIF Fund in any year in excess of \$265,000, the payment to the School District of 100% of the Service Payments attributable to any new millage approved after the date of the Agreement.
- (v) Any remaining Service Payments deposited in the TIF Fund in any year remaining after the payments set forth in items (i) to (iii) above are paid (ie all Service Payments in excess of \$265,000.00) shall be split equally and paid one-half to the School District and one-half to the City for the purposes set forth in (i) and (ii), above.
- (vi) In the event the Costs of the Development are paid in full using the Service Payments prior to the termination of the exemption provided for in the TIF Ordinance, the remaining Service Payments shall be allocated and paid to the School District and City as follows: the School District shall receive an amount from the Service Payments for the year in which the Service Payments are made equal to the amount of real property taxes the School District would have received but for the exemption granted by the TIF Ordinance, and the City shall receive the balance of the Service Payments paid in that year.

The City and Developer understand and agree that the actual Costs of the Development may exceed the amount of Service Payments collected during the term of the exemption, but expressly desire to limit the amount of reimbursement of the Costs of the Development to be reimbursed by the Service Payments to no more than the total of the actual Service Payments collected by the City and paid to Developer pursuant to this Section 10. Should the Developer opt to use the Service Payments allocable to it to finance any of the Costs of Development or to reimburse itself for the advancement of such costs, the City shall cooperate with the Developer in procuring any such financing, including executing any agreements or other documents associated with such financing, including (without limitation) the assignment of the right to receive the Service Payments, and the entry of direct-payment arrangements for the City to make debt service payments directly out of the TIF Fund to a trustee or lender. In addition to the debt service payments, the Developer may use the Service Payments allocable to it to pay the costs of any financing.

Upon Developer substantially completing the Development, Developer shall provide a certified statement to the City setting forth and providing reasonable evidence concerning the Costs of the

Development substantially in the form attached hereto as **Exhibit M** (each a “Certified Statement,” and collectively, the “Certified Statements”).

By December 31st of each calendar year that Service Payments are deposited into the TIF Fund, the City shall pay to School District, City and Developer the amounts set forth in this Section 10. The City is only obligated to make such payments to the extent that funds are actually available in the TIF Fund. In no event shall the City be liable to Developer in any manner for any unpaid or reduced payments, or unpaid Costs of the Development, that are unpaid or reduced as a result of insufficient funds in the TIF Fund.

Section 11. Priority of Lien.

The provisions of Section 5709.91 of the Ohio Revised Code, which specify that Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Section 323.11 of the Ohio Revised Code, including, but not limited to, the priority of the lien and the collection of Service Payments, apply to this Agreement and to the Property.

Section 12. Representations of the Parties.

The Developer hereby represents that it has full power and authority to enter into this Agreement and carry out its terms, that the persons whose names appear on this Agreement are duly authorized and empowered to make and execute this Agreement on behalf of the Developer, and that this Agreement is supported by consideration. The City hereby represents that this Agreement is authorized by Ordinance No. 193-2023, adopted _____, 2024, that the City has full power and authority to enter into this Agreement, to carry out its terms and to perform its obligations under this Agreement and under the TIF Ordinance, that the persons whose names appear on this Agreement are duly authorized and empowered to make and execute this Agreement on behalf of the City, that this Agreement is supported by consideration, that the City will not amend, modify, or repeal the TIF Ordinance in any way that would affect the amount of Service Payments payable to the City except as approved by the Developer or required by law, and that the City will not transfer, encumber, spend, or use any Service Payments other than as provided in the TIF Ordinance and in this Agreement.

Section 13. Breach and Remedy.

In addition to the specific remedy provided for in Section 3, above, except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by either party to this Agreement, or any successor to such party, such party (or successor) shall, within ninety (90) days of receipt of written notice from the other, proceed to cure or remedy such default or breach. In case such action is not taken within such ninety (90) day period, or if such cure or remedy cannot be reasonably completed within such ninety (90) day period but is not begun during such period and cured or remedied within a reasonable time, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

Section 14. Miscellaneous.

A. Agreement Binding on Parties; No Personal Liability. All covenants, obligations, and agreements of the City and the Developer contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, official, officer, agent, or employee of the City in other than their official capacity or of any individual person who is a partner, shareholder, director, member, manager, employee, officer, or agent of the Developer other than in their

capacity as a partner, shareholder, director, member, manager, employee, officer, or agent, and neither the members of City Council nor any City official executing this Agreement, or any individual person executing this Agreement on behalf of the Developer, shall be liable personally by reason of the covenants, obligations, or agreements of the City or the Developer contained in this Agreement. The City is a political subdivision of the State of Ohio and is entitled to all of the immunities and defenses provided by law.

B. Entire Agreement. This Agreement and the agreements attached hereto represent the entire and integrated agreement between the parties for the subject matter hereof and supersedes all prior negotiations, representations, or agreements in such regard, either written or oral.

C. Amendments and Modification. This Agreement may be amended only by a written document signed by both City and Developer.

D. Successor and Assigns. This Agreement shall be binding upon, and inure to the benefit of, all successors and assigns; provided, however, that neither party may assign its interest in this Agreement without the written consent of the other party.

E. Notices. Any notice, request, consent, approval or demand (collectively, a "Notice") given or made under this Agreement shall be in writing and shall be given in the following manner: (a) by personal delivery of such Notice; (b) by mailing of such Notice by certified mail, return receipt requested; or (c) by nationally recognized commercial overnight delivery of such Notice for next business day delivery. All Notices shall be delivered to the addresses set forth in this Section. Notice served by certified mail shall be effective on the fifth business day after the date of mailing. Notice served by commercial overnight delivery shall be effective on the next business day following deposit with the overnight delivery company.

If to Developer: WXZ CPV LLC
22720 Fairview Center Drive, Ste.150
Fairview Park, OH 44126
Attn: Matthew Wymer

with a copy to: Kohrman Jackson & Krantz LLP
1375 E. Ninth St.
29th Floor
Cleveland, OH 44114
Attn: Rich A. Morehouse, Esq.

If to City: City of Cleveland Heights
40 Severance Circle
Cleveland Heights, OH 44118
Attn: Mayor

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

Roetzel & Andress, LPA
222 S. Main St.
Suite 400
Akron, OH 44308

Attn: Jason D. Dodson, Esq.

Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

F. 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, the City's Department of Public Works, the City's Planning Commission, Architectural Board of Review or any other City board or commission, that may be required in connection with the Project. Developer agrees that it will comply with all applicable federal, state and local laws with regard to housing opportunities and fair employment practices and will not discriminate on the basis of the protected classes identified in Section 749.01 of the Cleveland Heights Codified Ordinances (including age, race, color, religion, sex, familial status, national origin, disability, sexual orientation, or gender identity or expression) in connection with the Development or any related activities pursuant to this Development Agreement.

G. Dispute Resolution. In event of any dispute between the parties concerning this Agreement: (i) the designated representatives of each party will first negotiate in good faith to resolve the dispute; (ii) if the parties are unable to resolve the dispute within sixty (60) days, the parties will have the right to initiate voluntary, non-binding mediation conducted by mutually agreed-upon mediator; and (iii) if the parties are unable to resolve the dispute within sixty (60) days after initiating mediation, any party will have the right to submit the dispute to litigation (or, if the parties so elect, binding arbitration). Any party will retain the right to seek injunctive relief in a court of competent jurisdiction if necessary to protect its rights in its confidential information. Each party will bear its own fees and expenses in resolving any dispute.

H. Choice of Law and Forum Selection. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. Any civil action relating to or arising from this Agreement shall be filed in the Cuyahoga County Court of Common Pleas.

I. Severability. If any provisions, covenants, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

J. No Continuing Waiver. The waiver by any part of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

K. Force Majeure. Neither Party will be considered in default in its obligations, if the delay in performance is due to causes beyond its reasonable control and without its fault or negligence. Such causes include, without limitation, acts of God or of the public enemy, acts of terrorism, acts of the federal or state government, acts or delays of the other party, fires, floods or other casualty, weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of those causes. It is the intent of the Parties that in the event of the occurrence of any force majeure event, the time or times for performance will be extended based on the delay caused by such force majeure event.

L. Exhibits. All of the exhibits attached to this Agreement are expressly incorporated herein and made a part hereof. If the Parties, after the execution of this Agreement, mutually agree to amend or

modify any of the exhibits attached hereto, then the applicable exhibit attached hereto shall be removed and replaced by the mutually approved amended or modified version of such exhibit.

M. Execution and Counterparts. This Agreement may be executed by the parties hereto in one or more counterparts or duplicate signature pages, each of which when so executed and delivered will be an original, with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Electronic or facsimile signatures shall be treated as original signatures to this Agreement.

N. City Fees and Expenses. Developer agrees to reimburse the City \$25,000.00 towards the City's attorney fees incurred in connection with the preparation of this Agreement, the Purchase Agreement and any other agreement or documents contemplated hereby or giving rise to this Agreement. The City shall invoice the Developer for the same through one or more invoices, and the Developer shall pay the same at the earlier of closing or sixty (60) days of receipt of said invoice(s).

[Signature Page(s) to Follow]

As evidence of their intent to be bound by this Agreement, the authorized representatives of each of the City and the Developer have executed this Agreement for and on behalf of the City and the Developer as of the date first set forth above.

CITY OF CLEVELAND HEIGHTS,
CUYAHOGA COUNTY, OHIO,
as City

By: _____

Name: _____

Title: _____

Approved as to legal form.

William R. Hanna, Law Director

Dated: _____

WXZ CPV LLC
as Developer

By: _____

Name: _____

Title: _____

List of Exhibits

Exhibit A – Legal Description of the Property

Exhibit B – Real Estate Purchase Agreement

Exhibit C – Drawings Depicting Development

Exhibit D – Cain Park Village Proposal

Exhibit E – Landscape, Lighting, and Wayfinding Plan

Exhibit F – August 2, 2022 Architectural Board of Review Actions

Exhibit G – Planning Commission Conditional Use Permit

Exhibit H – TIF Ordinance

Exhibit I – Promissory Note

Exhibit J – Mortgage

Exhibit K – Depiction of Permitted Parking Zone

Exhibit L – Compensation Agreement

Exhibit M – Certified Statement

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012

EXHIBIT B

REAL ESTATE PURCHASE AGREEMENT

See attached.

Exhibit B
REAL ESTATE PURCHASE AGREEMENT

(1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118)

This Real Estate Purchase Agreement (“**Agreement**”) is entered on _____, 2023 (“Effective Date”) between THE CITY OF CLEVELAND HEIGHTS, OHIO (“**Seller**”), a municipal corporation and political subdivision organized under the laws of the State of Ohio and its Charter, whose address is 40 Severance Circle, Cleveland Heights, Ohio 44118 and WXZ CPV LLC (“**Buyer**”), an Ohio limited liability company, whose address is 22720 Fairview Center Drive, Suite 150, Fairview Park, Ohio 44126.

ARTICLE 1. SALE OF THE PROPERTY; PURCHASE PRICE; CLOSING DATE

1.01 **Sale of the Property.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, certain real property identified in the Cuyahoga County Records as Permanent Parcel Numbers 684-27-001, 684-26-011, and 684-26-012, and more commonly known as 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118, as further described in **Exhibit “A”** attached hereto and incorporated herein by reference, together with all easements, privileges and rights appurtenant thereto (the “**Property**”).

1.02 **Purchase Price.** The purchase price for the Property shall be the sum of **ONE AND NO/100 DOLLAR (\$1.00)** (the “Purchase Price”), payable by Buyer to Seller on the Closing Date. The parties have agreed upon the purchase price of \$1.00 because they anticipate that the City will receive a mutually agreed-upon portion of tax increment financing service payments generated from the Property pursuant to a Development Agreement between the parties, as the same is defined in Section 2.02(D), below.

1.03 **Closing Date.** Closing shall occur within fifteen (15) days of the satisfaction of the certain Conditions of Escrow set forth in Sections 2.02(A), (C) and (D), and (F) below (the “**Closing Date**”).

ARTICLE 2. ESCROW

2.01 **Opening of Escrow.** An escrow account shall be opened, pursuant to this Agreement at Chicago Title Insurance Company, Attention: Dave Mader located at 1111 Superior Avenue, Suite 600, Cleveland, Ohio 44114 and phone number at 216-598-5924, and e-mail at: dave.mader@ctt.com (the “**Title Company**” or “**Escrow Agent**”), prior to the Closing Date.

2.02 **Conditions of Escrow.** The close of such escrow, the Seller’s obligation to sell the Property, and the Buyer’s obligation to purchase the Property pursuant to this Agreement are conditioned on:

A. **Marketable Title.** The conveyance to Buyer of good and marketable title to the Property, as evidenced by title insurance issued by the Title Company, subject only to restrictions, easements or conditions as may be approved in writing by Buyer. Immediately following execution of this Agreement, Buyer shall order a commitment for title insurance from the Title Company. Within fourteen (14) days of receipt of the commitment for title insurance, Buyer shall notify Seller in writing of any restrictions, easements or conditions shown therein, if any, which are objectionable to Buyer. If so notified, the items that are objectionable to Buyer shall be considered “**title defects**” and shall be removed by Seller on or before the expiration of the Inspection Period, as defined below. If the title defects cannot be removed by Seller or Seller elects not to cure the title defects on or before the expiration of the Inspection Period, or any extensions of the Inspection Period as may be agreed to by the Buyer for the correction of these title defects and Buyer elects not to waive the title defects, this Agreement shall be null and void and all funds

Exhibit B

and documents previously delivered to the parties or deposited into escrow shall be returned to the respective parties who delivered or deposited such funds or documents, and there shall be no further liability between the parties. If Buyer does not notify Seller of any title defects within said fourteen (14) day period set forth above, then such lack of notice shall be construed as Seller having no objections to any title defects and the conditions of this subsection 2.02(A) shall be deemed satisfied.

B. Delivery of Possession of Property. Delivery of exclusive possession of the Property on the Closing Date.

C. Site Inspection Prior to Closing. Buyer's obligation to purchase the Property is contingent upon inspection of the Property, including, but not limited to, a Phase II Environmental Site Assessment, by a qualified professional(s) of Buyer's choice. If Buyer is not satisfied with such inspection(s) then Buyer will notify Seller within sixty (60) days of the Effective Date of this Agreement that Buyer is voiding this Agreement (the "Inspection Period"). If Buyer does not void this Agreement within such sixty (60) days from the Effective Date, then this condition shall be deemed satisfied.

REGARDLESS OF WHETHER BUYER CONDUCTS ANY SUCH INSPECTIONS, BUYER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY PURSUANT TO THIS AGREEMENT IS AND WILL BE MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE BY SELLER, INCLUDING WITHOUT LIMITATION THE CONDITION OR VALUE OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE. BY EXECUTING THIS AGREEMENT, BUYER EXPRESSLY ACKNOWLEDGES AND AGREES TO THE FOREGOING PROVISIONS OF THIS PARAGRAPH, WHICH ARE MATERIAL, NEGOTIATED TERMS OF THIS AGREEMENT WITHOUT WHICH SELLER WOULD NOT ENTER INTO THIS AGREEMENT WITH BUYER.

Notwithstanding the foregoing or anything to the contrary contained herein, in the event Buyer's site inspections, including Buyer's Phase II Environmental Site Assessment, reveals any recognized environmental conditions or other hazardous conditions which require remediation at the Property, Seller shall assist Buyer in such remediation efforts by facilitating and supporting Buyer's efforts to seek and obtain remediation grants (e.g., the Ohio Brownfield Remediation Program) and/or any other sources of funding to be used for remediation of such conditions.

D. Development Agreement The parties shall negotiate and execute, on or before the Closing Date, a development agreement ("**Development Agreement**") providing for the terms and conditions of the redevelopment of the Property by the Buyer; the terms and conditions of assistance and/or incentives provided by the Seller to induce the Buyer's redevelopment of the Property; and a description of future phases of redevelopment of the real property adjacent to, across the street from, or nearby the Property. Such Development Agreement shall be approved by Seller's Council prior to execution of the same.

E. Quit Claim Deed. Seller shall convey title to Buyer by a statutory form quit claim deed delivered to the Escrow Agent prior to closing. A copy of the deed is attached hereto as **Exhibit "B"**.

F. Title Transfer to the City. The Cleveland Heights Land Reutilization Corporation and the Cleveland Heights Land Reutilization Program are the current title owners of the Property (Cleveland Heights Land Reutilization Corporation owns Parcel 684-27-001 and Cleveland Heights Land Reutilization Program owns 684-26-011, and 684-26-012). Prior to Closing, the City shall become the title owner to the Property.

Exhibit B

2.03 Failure of Conditions. Should any of the conditions specified in Section 2.02 (A) through (D) of this Agreement fail to occur at or before the Closing Date, Buyer shall have the power, exercisable by the giving of written notice to the Escrow Agent and to the Seller, to cancel such escrow, terminate this Agreement, and recover any amounts paid by it to Seller or to the Escrow Agent on account of the purchase price of the Property. The exercise of such power by Buyer shall not, however, constitute a waiver by it of any other rights it may have against Seller for breach of this Agreement. The Escrow Agent shall be, and is hereby, irrevocably instructed by Seller on such failure of conditions and receipt of such notice from Buyer to refund immediately to Buyer all moneys and instruments deposited by it in escrow pursuant to this Agreement.

2.04 Prorations. There shall be no proration between Seller and Buyer of the real property taxes and assessments levied or assessed against the Property as shown on the latest available tax bills, and Seller shall assume all taxes and assessments. Utilities shall not be prorated between Seller and Buyer, and Seller shall assume all utility costs and charges.

2.05 Brokers' Commissions. Both parties represent that neither have used the services of a broker or real estate agent and therefore no commission or fee is due to any such person. If either party used the services of a broker or real estate agent, that party shall be solely responsible for such costs.

2.06 Closing Expenses. The expenses of closing described in this Article shall be paid in the following manner:

- A. The full cost of securing the title insurance shall be paid by Buyer.
- B. Any costs of transfer and recording of title shall be paid by Buyer.
- C. Seller shall pay for recording any mortgage releases.
- D. Buyer shall pay for the cost of a preliminary title report and the title commitment for title insurance.
- E. Buyer shall pay the Escrow Agent's fee.
- F. Buyer shall pay the cost to prepare and file the deed.
- G. Buyer shall pay the cost of any conveyance fees or transfer taxes, if any.
- H. Each party shall bear any attorney's fees, appraisal fees or other expenses that each party has incurred which are not otherwise addressed herein.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER

3.01 Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:

- A. At closing, the Property is vacant.
- B. At closing, there is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof, by federal or state governmental authorities nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any federal or state governmental authority.
- C. As of the Closing Date, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, or any part thereof.

Exhibit B

- D. At closing, there shall be no mechanics' liens or other liens on the Property.

ARTICLE 4. BREACH

4.01 Breach by Seller. Should Seller default on the full and timely performance of any obligations under the terms of this Agreement for any reason other than Buyer's default, Buyer may:

- A. Enforce specific performance of this Agreement;
- B. Request that any money paid to Seller shall be forthwith returned to Buyer; or
- C. Bring suit for damages against Seller.

4.02 Breach by Buyer. Should Buyer fail to consummate the purchase of the Property, the conditions to Buyer's obligations set forth in Paragraph 2.02 of this Agreement having been satisfied and Buyer being in default, and Seller not being in default hereunder, Seller may retain possession of the Property. The Seller may also terminate any Development Agreement governing the subject Property between Seller and Buyer. The Seller hereby waives any other legal right or remedy.

ARTICLE 5. MISCELLANEOUS

5.01 Binding Agreement. This Agreement shall be binding on the successors and the assigns of the parties.

5.02 Survival of Covenants. Any of the representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing of the transaction contemplated hereby shall survive the closing and shall not be merged therein.

5.03 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the following addresses.

If to the Seller: City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118
Attn: Mayor

with a copy to: Roetzel & Andress
1375 East 9th Street, 10th Floor
Cleveland, Ohio 44114
Attn: William R. Hanna, Esq.

If to Buyer: WXZ CPV LLC
c/o WXZ Development LLC
22720 Fairview Center Drive, Suite 150
Fairview Park, Ohio 44126
Attn: Matthew Wymer
Email: mwymer@wxzinc.com

With a copy to: Kohrman Jackson & Krantz LLP
1375 East 9th Street, 29th Floor
Cleveland, OH 44114
Attn: Rich A. Morehouse, Esq.

Exhibit B

5.04 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Ohio.

5.05 Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.06 Prior Agreements. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter.

5.07 Time. Time is of the essence in this Agreement.

5.08 Insurance. Seller shall maintain property damage and liability insurance on the Property until the Closing Date.

5.09 Counterparts. This Agreement shall be executed in one or more counterparts, including copies, PDF or other electronic means, all of which, when assembled, shall constitute an complete original agreement.

[Signature Page Follows.]

Exhibit B

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunder set their hands this ____ day of _____, 2023.

BUYER:
WXZ CPV LLC

By: _____
Title: _____

SELLER:
CITY OF CLEVELAND HEIGHTS

By: _____
Title: _____

Approved as to legal form.

William R. Hanna, Law Director

Dated: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land

described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012

EXHIBIT B

QUIT-CLAIM DEED

(Pursuant to Ohio Revised Code Section 5302.11)

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF CLEVELAND HEIGHTS, an Ohio municipal corporation and political subdivision organized under the laws of the State of Ohio and its Charter, whose tax mailing address is 40 Severance Circle, Cleveland Heights, Ohio 44118, as Grantor, for valuable consideration paid, the receipt and sufficiency of which is hereby acknowledged, does hereby transfer, convey, grant and quitclaim unto WXZ CPV LLC, an Ohio limited liability company, the Grantee, whose tax mailing address is c/o WXZ Development LLC, 22720 Fairview Center Drive, Suite 150, Fairview Park, Ohio 44126, Grantors entire interest in the following described real property (the “**Property**”):

Legal Description Attached hereto as **Exhibit A**

Property Address: 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118

Permanent Parcel Nos.: 684-27-001
 684-26-011
 684-26-012

Prior Deed References: Instrument No. 201801220500 (as to PPN 684-27-001)
 Instrument No. 202111120067 (as to PPN 684-26-011 and 684-26-012)

Except a) any mortgage assumed by Grantee, b) such restrictions, conditions, easements (however created) and encroachments as do not materially adversely affect the use or value of the real property transferred herein, c) zoning ordinances, if any, and d) taxes and assessments, both general and special, not yet due and payable.

_____, 2023.

City of Cleveland Heights

Khalil Seren, Mayor

ACKNOWLEDGMENT

STATE OF OHIO

)

COUNTY OF SUMMIT

)

)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Khalil Seren, the Mayor of the City of Cleveland Heights, a municipal corporation, on behalf of the City.

NOTARY PUBLIC

My Commission Expires:

This Instrument Prepared By:
Kohrman Jackson & Krantz LLP
1375 East 9th Street, 29th Floor
Cleveland, Ohio 44114
Attn: James J. Scherer
Email: jjks@kjk.com

Exhibit A
to Quitclaim Deed

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land

described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012

EXHIBIT C

DRAWINGS DEPICTING DEVELOPMENT

For 1900-1910 S. Taylor Road, see: https://www.dropbox.com/scl/fi/0mjc3af0rxnboeet8j36t/2022-10-12_22110_1900-1910.pdf?rlkey=nrn116sjlwpqx9b5psfj12xrk&dl=0

For 1912-1926 S. Taylor Road, see: https://www.dropbox.com/scl/fi/uz65uyyq38kozdxismisy/2022-10-12_22110_1912-1926.pdf?rlkey=c9mlc48267yo5qw8andgeea3w&dl=0

For 1932-1946 S. Taylor Road, see: https://www.dropbox.com/scl/fi/op4gxkfemf5h4b68rcnj9/2022-10-12_22110_1932-1946.pdf?rlkey=0n4zm1and1up69aw5q3foxtco&dl=0

EXHIBIT D

CAIN PARK VILLAGE PROPOSAL

See: <https://www.clevelandheights.gov/DocumentCenter/View/10906/WXZ-Taylor-Tudor-RFP-RFQ-Submission-121021?bidId=>

EXHIBIT E

LANDSCAPE, LIGHTING, AND WAYFINDING PLAN

See attached.

Exhibit E
Preliminary Draft
Landscape, Lighting, and Wayfinding Plan

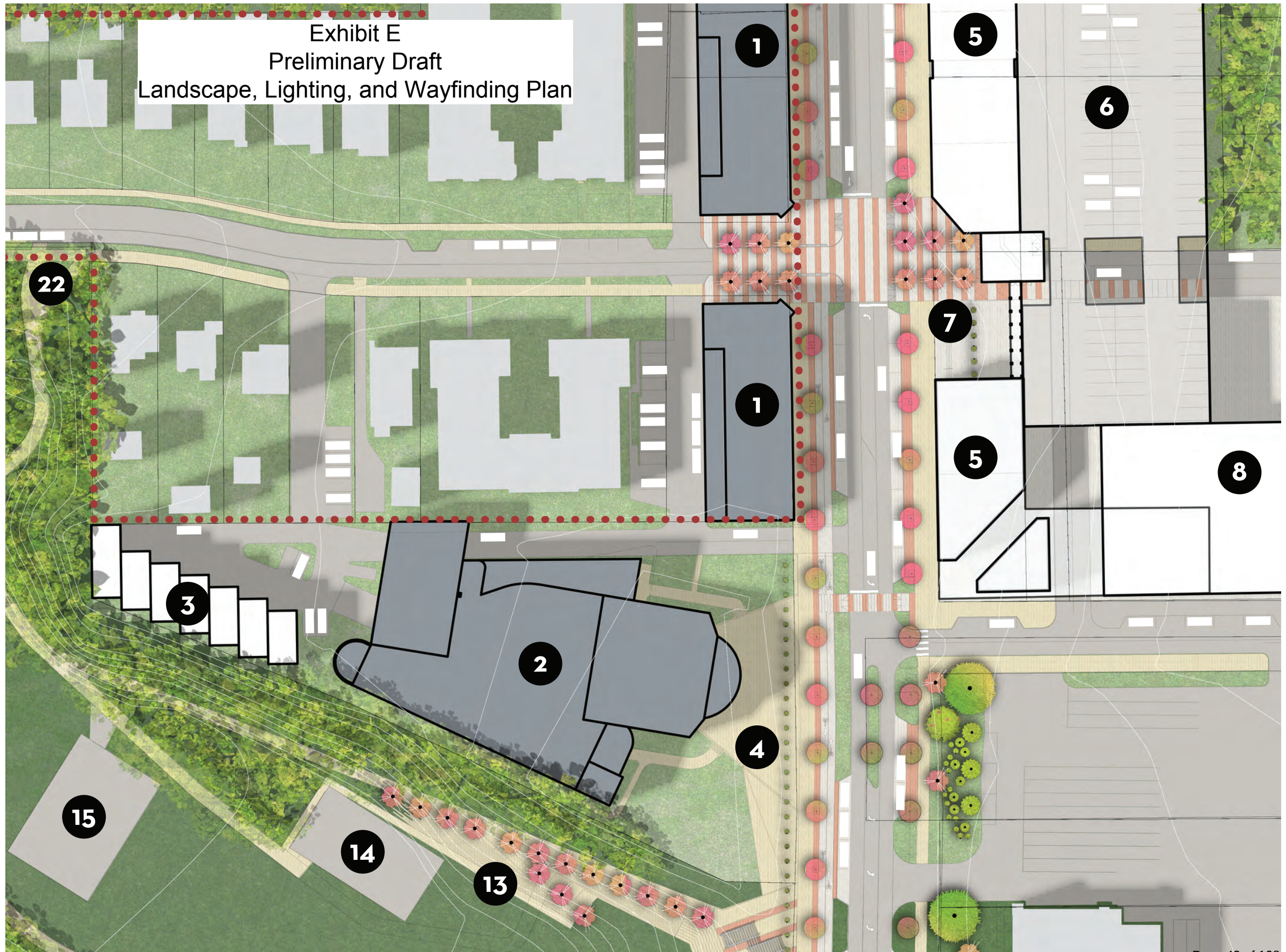


EXHIBIT F

AUGUST 2, 2022 ARCHITECTURAL BOARD OF REVIEW ACTIONS

See attached.

AUGUST 2ND, 2022

ARCHITECTURAL BOARD OF REVIEW ACTIONS

ABR 2022-153: St. Paul's Episcopal Church, 2741 Fairmount, request to install antenna. Action: Approved as noted – Antenna to be painted black and mounted through mortar. Cabinets painted to match stone wall, shifted westward on platform, and structural connections placed through mortar. Newly constructed door to be painted to match stone wall.

ABR 2022-154: Marc Berry, 1006 Quarry, request to install deck. Action: Approved as noted – approved as submitted, or approved as a platform without railings according to Ohio Building Code standards.

ABR 2022-155: Danyell Madsen, 1370 Inglewood, request to demolish addition. Action: Approved

ABR 2022-156: Irene & David Strachan, 2603 Fairmount, request to install fence. Action: Approved as noted – modify fence according to notes written on landscape plan dated 6-23-2022

ABR 2022-157: Mary Pat & Greg Jolivette, 2791 Scarborough, request to construct garage. Action: Approved

ABR 2022-158: Lori & Peter Anderson, 2910 Scarborough, request to construct garage. Action: Approved

ABR 2022-159: S&K Block Properties, 1671 Coventry, request to construct garage. Action: Approved

ABR 2022-160: Amy & Brian Dolzine, 2811 Fairmount, request to construct addition. Action: Approved as noted – 8" shake siding required.

ABR 2022-161: Sue & Steve Dyke, 2558 Guilford, request to construct addition. Action: Approved as noted – Black asphalt shingles in lieu of previously approved copper.

ABR 2022-162: Yehudit Main, 3524 Blanche, request to alter porch. Action: Approved as noted – rear deck approved, resubmit front porch.

ABR 2022-163: WXZ Development, 1900-1944 South Taylor, request to restore the structures. Action: Approved

EXHIBIT G

PLANNING COMMISSION CONDITIONAL USE PERMIT

See attached.

**CLEVELAND
HEIGHTS**
**PLANNING COMMISSION
CONDITIONAL USE PERMIT**

**PROJECT NO. 22-20
WXZ Development
Live-Work Units
1908-1946 S. Taylor Rd.**

A Conditional Use Permit is hereby issued to WXZ Development, Inc. for the live-work units located in the Taylor-Tudor buildings, Multiple-Use District, as regulated by Zoning Code Chapters 1111, 1115, 1131, 1151, 1153, 1161, 11165 & 1166 approved by the Planning Commission on Wednesday, August 10, 2022.

This permit is issued under the authority of Sections 1111.06 and 1115.08 of the Zoning Code and is subject to compliance by the applicant with all pertinent provisions of the Zoning Code and with any other applicable ordinances of the City, with the conditions that:

1. Receipt of all other required local approvals and permits;
2. This use shall not be injurious to the use and enjoyment of other properties in the immediate vicinity or create a nuisance for adjacent properties;
3. The Applicant shall work with staff to resolve any complaints from neighbors, such as access to existing parking conditions; and
4. All required construction and installation of the use shall be completed within 36 months of Planning Commission approval.

Should the holder of this permit at any time fail to comply with said provisions and limitations, and such failure continues beyond the time fixed by the Zoning Administrator or Commissioner of Building in a written notice to remedy such failure, then this permit may be deemed terminated.

This permit is not transferable without the written consent of the Planning Commission.



Eric Zamft, Secretary for the Planning Commission

August 25, 2022
date

THIS PERMIT REPRESENTS ZONING APPROVAL ONLY. OTHER CITY APPROVALS MAY BE REQUIRED INCLUDING, BUT NOT LIMITED TO, BUILDING, FIRE, AND /OR STORMWATER PERMITS.

EXHIBIT H
TIF ORDINANCE

See attached.

EXHIBIT I
PROMISSORY NOTE

See attached.

PROMISSORY NOTE

\$1,100,000.00

Issue Date: _____

FOR VALUE RECEIVED, **WXZ CPV LLC**, an Ohio limited liability company (the “Borrower”) promises to pay to the order of the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation (the “Payee”) at its offices located at 40 Severance Cir., Cleveland Heights, OH 44118, or at such other place as the Payee may designate, One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) (the “Loan”). This Note is secured by the property described in a Mortgage granted by the Borrower in favor of the Payee and dated of even date herewith (the “Mortgage”), and by such other collateral as previously may have been or may in the future be granted to the Payee to secure this Note. Capitalized words and terms not otherwise defined in this Note shall have the meaning assigned to them in a certain Development Agreement entered into by Borrower and Payee as of even date with the issuance of this Note (the “Development Agreement”).

1. Payment Terms and Maturity Date. Borrower shall pay to Payee the principal amount of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00), plus interest at the rate of seven percent (7%) from the date of issuance of this Note, upon the maturity date of September 1, 2027, subject to extension as set forth herein. Provided that the Borrower complies with Section 3(A) of the Development Agreement and commences construction of the Development no later than September 1, 2024, and completes construction of the Development no later than three (3) years following commencement of construction, then this Note shall be forgiven and satisfied in full and Borrower shall owe no sums of principal or interest to Payee. Otherwise, failure by Borrower to commence construction of the Development no later than September 1, 2024, and complete construction of the Development no later than three (3) years following commencement of construction, shall constitute an Event of Default under Section 2 of this Note.

The maturity date of this Note, as well as the date to commence and complete construction of the Development may be extended per the terms of Section 3(A) of the Development Agreement.

2. Events of Default. An “Event of Default” shall exist if any of the following occurs and is continuing:

- (a) the Borrower fails to commence construction of the Development no later than September 1, 2024, and complete construction of the Development no later than three (3) years following commencement of construction, subject to extension as set forth in Section 1 of this Note; or
- (b) make any principal payment hereunder or any other payment required hereunder when and as the same becomes due; or
- (b) an “Event of Default” occurs under the Mortgage.

Upon the occurrence of an Event of Default: (i) the outstanding principal balance together interest and any additional amounts payable hereunder or under the Mortgage shall be immediately due and payable without demand or notice of any kind; and (ii) the Payee may exercise from time to time any of the rights and remedies available under the Mortgage or under applicable law.

3. General Provisions.

(a) Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be given in the manner prescribed in the Mortgage.

(b) Delay Not Prejudicial to Payee. No delay or omission on the Payee's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Payee's action or inaction impair any such right or power.

(c) Payee's Remedies Cumulative. The Payee's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Payee may have under the Mortgage, at law, or in equity, and such remedies may be exercised concurrently, independently, or successively, in any order whatsoever.

(d) No Oral Modification. No modification, amendment or waiver of, or consent to any departure by the Borrower from, any provision of this Note will be effective unless made in a writing signed by the Payee.

(e) Payee's Costs and Expenses. The Borrower agrees to pay on demand, to the extent permitted by law, all reasonable costs and expenses incurred by the Payee in the enforcement of its rights in this Note and in any security therefore, including without limitation reasonable out-of-pocket fees and expenses of the Payee's counsel.

(f) Partial Invalidity; Severability. If any provision of this Note is found to be invalid, illegal or unenforceable in any respect by a court, all the other provisions of this Note will remain in full force and effect.

(g) Waivers. The Borrower and all other makers and indorsers of this Note hereby forever waive presentment, protest, notice of dishonor and notice of non-payment, and demand, with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein. The Borrower also waives all defenses based on suretyship or impairment of collateral.

(h) Successors and Assigns Bound. This Note shall bind the Borrower and its successors and assigns, and the benefits hereof shall inure to the benefit of the Payee and its successors and assigns.

Exhibit I

(i) Governing Law; Jurisdiction. This Note has been delivered to and accepted by the Payee and will be deemed to be made in Cuyahoga County, Ohio. **THIS NOTE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PAYEE AND THE BORROWER DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO.**

(j) No Course of Dealing. No course of dealing on the part of the Payee, and no delay or failure on the part of the Payee to exercise any right shall operate as a waiver of such right or otherwise prejudice the Payee's rights, powers and remedies.

(k) Payments. The Borrower shall pay principal and all other amounts payable hereunder, or under the Mortgage, without any deduction whatsoever, including any deduction for any setoff or counterclaim.

(l) Cancellation of Prior Notes. The Borrower, and the Payee, by acknowledging the amendment and restatement of this Note, mutually agree that any prior version of this Note issued by the Borrower prior to the Amendment and Restatement Date as set forth above shall be cancelled, null and void, and of no effect whatsoever.

The Borrower acknowledges that it has read and understood all the provisions of this Note, and has been advised by counsel as necessary or appropriate. The Borrower further acknowledges that it has received a copy of this Note.

(Balance of Page Intentionally Left Blank)

Exhibit I

The Borrower has executed this Note in Cuyahoga County, Ohio and has executed and delivered this Note as of the day and year first set forth above.

WXZ CPV LLC

By: _____

Name: _____

Title: _____

DRAFT

EXHIBIT J
MORTGAGE

See attached.

OPEN-END MORTGAGE AND SECURITY AGREEMENT

between

WXZ CPV LLC,
as Mortgagor and Debtor

and

THE CITY OF CLEVELAND HEIGHTS, OHIO,
as Mortgagee and Secured Party

Exhibit J

OPEN-END MORTGAGE AND SECURITY AGREEMENT

Maximum Indebtedness Not to Exceed \$1,100,000.00

THIS OPEN-END MORTGAGE AND SECURITY AGREEMENT (the “Mortgage”), dated as of _____, 2024, is executed and delivered by WXZ CPV LLC, an Ohio limited liability company (the “Mortgagor”), as Mortgagor and Debtor, whose address is 22720 Fairview Center Drive, Ste. 150, Fairview Park, OH 44126, to THE CITY OF CLEVELAND HEIGHTS, OHIO, an Ohio municipal corporation (the “Mortgagee”), as Mortgagee and Secured Party, with its offices located at 40 Severance Circle, Cleveland Heights, OH 44118 under the circumstances summarized in the following recitals and granting clauses (the capitalized terms not defined in the recitals and granting clauses are being used therein as defined in Article I hereof):

RECITALS:

A. The Mortgagor and the Mortgagee entered into Development and Tax Increment Financing Agreement made and entered into as of _____, 2024 by and between Mortgagor and Mortgagee (the “Development Agreement”).

B. Pursuant to the Development Agreement, the Mortgagee agreed to sell the Property defined in the Development Agreement to Mortgagor with an agreed value of One Million One Hundred Thousand Dollars (\$1,100,000.00) (the “Agreed Value”) for One Dollar (\$1.00) to Mortgagor (the “Sale”).

C. The Mortgagor intends to provide the Note to Mortgagee in the amount of the Agreed Value and Mortgagor intends to own and redevelop the Property defined in the Development Agreement pursuant to the terms of the Development Agreement.

D. Pursuant to Section 3 of the Development Agreement, the Mortgagor is required to commence or complete the construction of the Development as defined in the Development Agreement, and, if Mortgagor fails to do so then Mortgagor is obligated to repay to the Mortgagee the Agreed Value of the property.

C. To secure Mortgagor’s obligation to perform its obligations under Section 3 of the Development Agreement, the Property shall be encumbered by this Mortgage.

NOW THEREFORE, WITNESSETH, that as an inducement to and in consideration of the Sale to the Mortgagor by the Mortgagee and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the purpose of securing (i) the Developer’s obligations pursuant to Section 3 of the Development Agreement (ii) the performance and observance of each covenant and agreement of the Mortgagor contained in this Mortgage, the Mortgagor does hereby grant, bargain, sell, convey, mortgage, assign, pledge, set over with mortgage covenants, and further grants a lien and a security interest in and transfer unto the

Exhibit J

Mortgagee, the Mortgagee's successors and assigns, the following property (the "Mortgaged Property"):

- (a) the real property (the "Property") described in Exhibit A, as the same may be amended, and attached hereto, subject only to Permitted Encumbrances, and including all buildings, structures and improvements, and all facilities, fixtures and installations which are structural components of any such building, structure or improvement now or hereafter located thereon and owned by the Mortgagor, including without limitation all engines, boilers, furnaces, heat pumps, air conditioners, water heaters, incinerators, all fixtures used for the purposes of supplying or distributing heating, cooling, ventilating, electricity, gas, water, air and light, and all refrigeration, sprinkling, pumping, plumbing, vacuum cleaning and power systems, and all elevators and escalators and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, automatic dooropening apparatus, bath tubs, water conditioners, humidifiers, dehumidifiers, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, lighting fixtures, awnings, storm windows, shutters, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, antennas, trees, shrubs, and plants of every kind and description, now growing or hereafter planted upon the Property;
- (b) all rentals, revenues, payments, repayments, income, charges and moneys derived by the Mortgagor from the lease, sale, or other disposition of the Property and the proceeds from any insurance or condemnation award pertaining thereto;
- (c) all easements, rights of way or use, licenses, privileges, real property franchises, servitudes, tenements, hereditaments and all appurtenances now or hereafter belonging to or anywise appertaining to the Property including, without limitation, all right, title and interest in any street, open or proposed;
- (d) all accessions and additions to, substitutions for and replacements of any of the foregoing;
- (e) all of Mortgagor's rights, title and interest under any reciprocal easement agreements, covenants, restrictions, service agreements and other agreements now or hereafter affecting the Property, and all amendments or modifications thereof, and all of the Mortgagor's right, title and interest to any and all representations, warranties and indemnities inuring to the benefit of the Mortgagor and made by predecessors-in-interest to the Mortgagor in respect of the Property, including any of the same relating to environmental matters;
- (f) all of Mortgagor's right, title and interest in and to all certificates of occupancy, zoning variances, building, use or other permits, approvals, authorizations, licenses and consents obtained from any governmental authority in connection with the development, use, operation or management of the Property; and

Exhibit J

- (g) all interests, estates or other claims, whether at law or in equity, which the Mortgagor now has or may hereafter acquire in the foregoing.

TO HAVE AND TO HOLD ALL the Mortgaged Property and all the privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Mortgagee and the Mortgagee's successors and assigns forever, but subject to the conditions hereinafter set forth; and for the enforcement of the payment of amounts due under the Development Agreement, when payable, according to the true intent and meaning thereof and to secure the performance of and compliance with the covenants, terms and conditions of the Development Agreement and of this Mortgage, it being intended that the lien and security interest of this Mortgage shall take effect from the date hereof, provided, however, that if the Mortgagor, or the Mortgagor's successors or assigns, shall well and truly pay, or cause to be paid, all amounts payable under the Development Agreement at the times and in the manner mentioned in the Development Agreement according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Mortgage to be kept, performed and observed by the Mortgagor, then this Mortgage and the rights hereby granted shall cease and be void and the Mortgagee shall release this Mortgage; otherwise, this Mortgage shall remain in full force and effect in law and equity forever.

The Mortgagee shall sell to the Mortgagor or otherwise provide for the benefit of the Mortgagor the Property upon the terms and conditions set forth in the Development Agreement, and the Mortgagor and the Mortgagee agree that with respect to this Mortgage:

- (a) it shall secure Mortgagor's obligations according to the terms of the Development Agreement to commence construction by September 1, 2024 or does not complete construction within three (3) years after commencement of construction;
- (b) this Mortgage shall be recorded in the Cuyahoga County Fiscal Office for record.

AND, IT IS HEREBY COVENANTED that this Mortgage is given, and the Mortgaged Property is to be held, in the manner and to the extent, and applied subject to the further terms, herein set forth:

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Exhibit J

ARTICLE I
DEFINITIONS

Section 1.1. Use of the Defined Terms. In addition to the words and terms elsewhere defined in this Mortgage or the Development Agreement, the words and terms set forth in Section 1.2 hereof shall have the meanings therein set forth unless the context or use indicates a different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

Section 1.2. Definitions. As used herein:

“Additional Permitted Encumbrances” means the Additional Permitted Encumbrances described on Exhibit B attached hereto.

“Commercial Code” means Chapters 1301 through 1309, inclusive, Ohio Revised Code, as from time to time amended, restated, modified or supplemented.

“Development Agreement” means that certain Development and Tax Increment Financing Agreement entered into by and between the Mortgagor and Mortgagee and dated _____, 2024.

“Event of Default” means any of the events described as an Event of Default in Section 3.2 hereof.

“Interest Rate for Advances” means the interest rate equal to 0.00% per annum.

“Independent Counsel” means an attorney or a firm of attorneys selected by the Mortgagor, acceptable to the Mortgagee and duly admitted to practice law before the highest court of the State.

“Mortgage” means this Open-End Mortgage and Security Agreement, as amended or supplemented from time to time.

“Mortgaged Property” means the Mortgaged Property defined and described in paragraphs (a) through (g) of the granting clauses of this Mortgage.

“Notice Address” means:

as to the Mortgagor:

WXZ CPV LLC
2720 Fairview Center Drive, Ste.150
Fairview Park, OH 44126
Attn: Matthew Wymer

Exhibit J

as to the Mortgagee:

City of Cleveland Heights
40 Severance Circle
Cleveland Heights, OH 44118
Attn: Mayor

or such additional or different address, notice of which is given to the other party.

“Permitted Encumbrances” means such term as defined in Section 2.4 of this Mortgage.

“Property” means the real property more particularly described on Exhibit A hereto.

“State” means the State of Ohio.

“UCC Financing Statements” means financing statements providing notice of the Mortgagee’s security interest in the Mortgaged Property.

Section 1.3. Certain Words and References. Any reference herein to the Mortgagee shall include those succeeding to the Mortgagee’s functions, duties or responsibilities pursuant to or by operation of law or pursuant to the provisions of the Indenture or lawfully performing such functions. Any reference to a section or provision of the Constitution of the State or to a section, provision, chapter or title of the Ohio Revised Code shall include such section, provision, chapter or title as from time to time amended or supplemented.

Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(End of Article I)

Exhibit J

ARTICLE II

PRESERVATION OF SECURITY

Section 2.1. Representations, Warranties and Covenants. The Mortgagor represents, warrants and covenants that:

- (a) The Mortgagor is (i) lawfully seized with good and marketable title to the Property and the Mortgaged Property and has good and sufficient title to all improvements and personal property included in the Mortgaged Property, subject only to Permitted Encumbrances, (ii) has full right and authority to sell, convey, mortgage and pledge the Mortgaged Property, (iii) will warrant and defend to the Mortgagee such title to the Mortgaged Property and the lien, pledge and security interest of the Mortgagee therein and thereon against all claims and demands whatsoever, except as associated with Permitted Encumbrances, and will, except as otherwise herein expressly provided, maintain the priority of the lien of, and the security interest granted by, this Mortgage upon the Mortgaged Property until the Mortgagor shall be entitled to defeasance as provided herein, and (iv) will not initiate or acquiesce in any changes in the zoning classification of the Property or any part thereof which would materially adversely impair the value of the Mortgaged Property.
- (b) The lien, pledge and security interest of this Mortgage is a good and valid lien, pledge and security interest on all the Mortgaged Property, subject only to Permitted Encumbrances.
- (c) No mortgage, financing statement or security agreement purporting to cover any of the Mortgaged Property has heretofore been signed or granted by the Mortgagor or names the Mortgagor as “debtor,” except in conjunction with Permitted Encumbrances, and no such financing statement or security agreement is now on file or recorded in any public office, except in conjunction with Permitted Encumbrances.
- (d) The Mortgagor will permit the Mortgagee and its agents and representatives, upon prior written notice and at reasonable times during normal business hours, to inspect the Mortgaged Property and any property or records with respect thereto and to make copies thereof and to enter upon the premises of the Property for such purpose.
- (e) The Mortgagor shall, at the Mortgagor’s own expense, from time to time as requested by the Mortgagee take such actions and execute and deliver to the Mortgagee all such instruments, supplements, further assurances and security or other agreements as may be required or requested by the Mortgagee in order to perfect and continue the Mortgagee’s lien, pledge and security interest in the Mortgaged Property hereunder. Upon the occurrence of an Event of Default, the Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagor’s agent

Exhibit J

and attorney-in-fact to sign all such instruments, supplements, further assurances and security and other agreements.

Section 2.2. Recordation and Filing. The Mortgagor, at the Mortgagor's expense, shall cause this Mortgage and any UCC Financing Statements, including all necessary amendments, supplements and continuation statements, to be recorded, registered and filed and to be kept recorded, registered and filed in such manner and in such places as may be required to establish, perfect, preserve and protect the lien, pledge and security interest of this Mortgage as a good and valid perfected first best priority lien and security interest on all property, fixtures, and interests therein included in the Mortgaged Property, subject to the Permitted Encumbrances (together with, without limitation, any such property, fixtures and interests acquired after the execution hereof). The Mortgagor hereby irrevocably authorizes the Mortgagee, at the Mortgagor's expense, to file all such UCC Financing Statements, continuation statements and other documents for recording, registering and filing. If reasonably requested by the Mortgagee, the Mortgagor, shall furnish to the Mortgagee an opinion of Independent Counsel specifying the action required and to be taken by the Mortgagor to comply with this Section since the date of this Mortgage or the date of the most recent such opinion or stating that no such action is necessary, as applicable.

Section 2.3. After-Acquired Property. All property of every kind acquired by the Mortgagor after the date hereof, which by the terms hereof is intended to be subject to the lien, pledge and security interest of this Mortgage shall immediately upon the acquisition thereof by the Mortgagor, and without further action by the Mortgagor, subject to the rights of the holder of any Permitted Encumbrance, become subject to the lien, pledge and security interest of this Mortgage as fully as though now owned by the Mortgagor and specifically described herein. Nonetheless, the Mortgagor shall take such actions and execute, acknowledge and deliver such additional instruments as the Mortgagee shall require to further evidence or confirm the subjection of any such property to the lien, pledge and security interest of this Mortgage.

Section 2.4. Disposition of Property; and Liens and Encumbrances. Except as otherwise expressly permitted by this Section, the Mortgagor shall not directly or indirectly sell, convey, assign or transfer or otherwise dispose of the Mortgaged Property in whole, or any part or the interest therein having a value in excess of \$100,000.00, without the prior written consent of the Mortgagee or satisfaction of this Mortgage in full.

The Mortgagor shall not directly or indirectly, without the consent of the Mortgagee, create or permit to remain, and will promptly discharge, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or any part thereof or the interest of the Mortgagor or the Mortgagee therein or any revenues, income or profit or other sums arising from the Mortgaged Property or any part thereof, (including, without limitation, any lien, encumbrance or charge arising by operation of law) other than the following encumbrances (the "Permitted Encumbrances"):

- (a) liens for taxes, assessments, and governmental charges, which are not at the time required to be paid pursuant to Section 5.1 hereof;

Exhibit J

- (b) liens of mechanics, materialmen and suppliers or vendors or rights thereto to the extent permitted by Section 5.2 hereof; and
- (c) this Mortgage and each of the Additional Permitted Encumbrances listed on Exhibit B hereto and any Additional Permitted Encumbrances for mortgages described in Section 2.11.

Section 2.5. Security Agreement and Financing Statement. This Mortgage constitutes a security agreement as to all or any part of the Mortgaged Property which is of a nature that a security interest therein can be perfected under the Commercial Code. This Mortgage also constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code of the State, as amended or recodified from time to time, with respect to any and all property included in the Mortgaged Property which is or may become fixtures. For this purpose, the respective addresses of the Mortgagor, as debtor, and the Mortgagee, as secured party, are as set forth in the preambles of this Mortgage.

Section 2.6. Actions Under Section 1311.14, Ohio Revised Code. The Mortgagor hereby authorizes and empowers the Mortgagee, at the Mortgagee's option, to do all things authorized or required to be done by the Mortgagee, as a secured party under Section 1311.14, Ohio Revised Code, as from time to time amended or supplemented or under any other present or future law of the State relating to the creation or attachment of mechanics', materialmen's or other similar liens.

Section 2.7. No Claims Against the Mortgagee. Nothing contained in this Mortgage shall constitute any request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or be construed to give the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would provide the basis for any claim either against the Mortgagee, or that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien, pledge and security interest of this Mortgage.

Section 2.8. The Mortgagee's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien, pledge or security interest or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, the Mortgagee may, from time to time and without notice, (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or conveyed at any time at the Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligations herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

Section 2.9. Intentionally omitted.

Exhibit J

Section 2.10. Advances by the Mortgagee. If the Mortgagor fails, within a reasonable time after written notice from the Mortgagee, to (i) pay the taxes, assessments and other governmental or utility charges except to the extent contested by the Mortgagor by appropriate proceedings, in good faith and for which appropriate reserves have been allocated, (ii) to pay any mechanics' or other liens or bond over them within 60 days after written notice by the Mortgagee, (iii) to maintain and keep in force casualty property covering the Mortgaged Property, (iv) to maintain the Mortgaged Property, (v) to pay for the defense of claims against the Mortgagee, or (vi) to take any action described in Section 3.3 hereof, the Mortgagee may, but shall not be obligated to, advance funds to pay any such required charges or items. Any funds so advanced shall be paid by the Mortgagor to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof in addition to all other payments to be made by the Mortgagor pursuant to the Development Agreement, and shall be subject to and secured by this Mortgage as additional indebtedness.

Section 2.11. Subordination to Any Development Loan or Construction Loan. Mortgagee acknowledges that this Mortgage and the lien of this Mortgage is subject, and shall automatically subordinate in all respects, to any mortgage securing a to-be-obtained predevelopment, bridge loan, construction loan, or development loan necessary for Mortgagor to undertake and complete the Project as each may be extended, modified, assigned, replaced or renewed from time to time (including any extensions, modifications, assignments, replacements and renewals thereof). Any such mortgage shall be an Additional Permitted Encumbrance under Section 2.4. The City hereby agrees that it will execute and deliver a mortgage subordination agreement mutually agreeable to Mortgagee and the lender of any such predevelopment, bridge loan, construction loan, or development loan and the same will be recorded in the Recording Division of the Cuyahoga County Fiscal Office. Any such predevelopment, bridge loan, construction loan, or development loan is intended to be a third-party beneficiary of this Section 2.11. During the period that any indebtedness is outstanding under the note(s) for such predevelopment, bridge loan, construction loan or development loan, Mortgagee shall not without 90 days' prior written notice to all other mortgagees/secured parties, (i) commence foreclosure proceedings with respect to the Property under this Mortgage or exercise any other rights or remedies it may have under this Mortgage, or (ii) join with any other creditor in commencing any bankruptcy reorganization arrangement, insolvency or liquidation proceedings with respect to the Mortgagor. Mortgagee waives no rights or remedies it may have under the Development Agreement or this Mortgage, but merely agrees not to enforce those rights or remedies until such time as there is no outstanding indebtedness under the construction loan or development loan.

(End of Article II)

ARTICLE III

EVENTS OF DEFAULT AND REMEDIES

Section 3.1. Right to Perform Covenants. If the Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, the Mortgagee, without demand upon the Mortgagor and without waiving or releasing any obligation or default, may, but shall be under no obligation to, upon at least 30 business days' written notice to the Mortgagor (unless a shorter period is elsewhere provided), make such payment or perform such act for the account and at the expense of the Mortgagor and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the reasonable opinion of the Mortgagee, may be necessary or appropriate for the protection of the Mortgaged Property. Under emergency conditions as determined in the sole discretion of the Mortgagee, no notice shall be required. All payments so made by the Mortgagee and all costs, fees and expenses, shall be subject to and secured by this Mortgage as additional indebtedness. If any action brought to collect such indebtedness or to foreclose or otherwise pursue the remedies of the Mortgagee under this Mortgage, the Mortgagee shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision entered in such action.

Section 3.2. Events of Default. Any one or more of the following events shall be an "Event of Default" under this Mortgage:

- (a) Failure by the Mortgagor to perform or cause to be performed any covenant, agreement or obligation to be performed by the Mortgagor under this Mortgage or the Development Agreement within 90 days after receipt of written notice by the Mortgagee to the Mortgagor of such failure, provided that if such failure cannot reasonably be cured within 90 days, failure of the Mortgagor to commence the cure within such 90 day period and thereafter pursue such cure until completed in good faith and with due diligence, and an Event of Default shall not be deemed to exist during such period;
- (b) The Mortgaged Property shall be placed under control or custody of any court which shall not be removed within 90 days; or
- (c) An attachment or levy or restraining order shall be issued for any portion of the Mortgaged Property which shall not be removed within 90 days.

Section 3.3 Remedies. If an Event of Default shall have occurred and be continuing, the Mortgagee, at any time during such continuation, at the Mortgagee's election, may exercise any or all or any combination of the remedies conferred upon or reserved to the Mortgagee under this Mortgage, or now or hereafter existing at law, or in equity or by statute. Subject to the foregoing, any or all of the following remedies may be exercised:

- (a) declare the outstanding amount of the Agreed Value secured hereby to be immediately due and payable;

Exhibit J

- (c) foreclose the lien, pledge and security interest of this Mortgage as against all or any of the Mortgaged Property;
- (d) appoint a receiver for the rents and profits of the Mortgaged Property, as a matter of right without consideration of the value of the Mortgaged Property as security for the amounts secured by this Mortgage or the solvency of any person or persons liable for the payment of such amounts; the rents and profits of the premises being hereby assigned to the Mortgagee as security for the performance of the obligations of the Mortgagor hereunder;
- (e) take possession of the Mortgaged Property, collecting all rents accruing therefrom, renting the Mortgaged Property, and after deducting the reasonable charges therefor, applying the proceeds to the repayment of the outstanding amount of the Agreed Value, and continuing to do so until all such payments have been made; and
- (f) exercise any rights, remedies and powers the Mortgagee may have at law or in equity, including, without limitation, as a secured party under the Commercial Code or other similar laws in effect, including, without limitation, the option of proceeding as to both personal property and fixtures in accordance with any rights of the Mortgagee with respect to any real property described herein.

Any moneys received by the Mortgagee pursuant to the exercise of remedies provided in this Mortgage shall be applied as provided in Section 3.5 hereof.

Section 3.4 Waiver of Appraisalment, Valuation, Redemption, and Marshalling of Assets. The Mortgagor does hereby waive the benefit of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force and agrees not to set up, claim or seek to take advantage of any such law in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the final and absolute sale of the Mortgaged Property or any part thereof or interest therein, or the final and absolute putting into possession, immediately after such sale, of the purchaser or purchasers thereof. The Mortgagor also waives all rights of marshalling of assets in the event of any foreclosure or sale of the Mortgaged Property or any part thereof or any interest therein and agrees that any court having jurisdiction to foreclose the lien, pledge and security interest of this Mortgage or sell the Mortgaged Property may foreclose the lien, pledge and security interest of this Mortgage and sell the Mortgaged Property as an entirety, or in such parcels or portions as may be ordered by the court.

Section 3.5. Application of Proceeds. Any moneys, including, without limitation the proceeds of any sale, by foreclosure or otherwise, of the Mortgaged Property or any part thereof or any interest therein received by the Mortgagee, pursuant to the exercise of any remedies provided in this Mortgage or by law, in equity, or by statute shall, subject to any superior rights of senior lenders as described in Section 2.11, be applied as follows:

Exhibit J

- First: to the payment of all costs incurred in the collection thereof, including, without limitation, reasonable attorneys' fees and expenses, except as may have been limited by law or by judicial order or decision entered in any action for the collection thereof;
- Second: to the discharge of any lien which the Mortgagee may consider necessary or desirable to discharge;
- Third: to the repayment of any outstanding amount of the Agreed Value secured by this Mortgage owing to the Mortgagee; and
- Fourth: unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal, any balance to or at the direction of the Mortgagor.

Section 3.6. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, the Mortgagee shall, as a matter of right and to the extent permitted by applicable law and without regard to the adequacy of the Mortgaged Property as security, be entitled to the appointment of a receiver for all or any part of the Mortgaged Property, whether such receivership is incidental to a proposed sale of the Mortgaged Property or otherwise, and the Mortgagor hereby consents to the appointment of such a receiver and covenants not to oppose any such appointment.

Section 3.7. Possession, Management and Income; Assignment. If an Event of Default shall have occurred and be continuing, the Mortgagee, to the extent permitted under the applicable law, *ex parte* and without notice may enter upon the Property and take possession of the Mortgaged Property or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove the Mortgagor and all other persons and any and all property therefrom and may hold, operate and manage the same and receive all revenues, income or profits accruing with respect thereto or any part thereof. The Mortgagee shall not have liability for any such taking of possession, entry, removal, holding, operation or management.

Section 3.8. Remedies Cumulative. If any Event of Default shall have occurred, the Mortgagee, in addition to each right, power and remedy of the Mortgagee provided in this Mortgage, may undertake appropriate judicial proceedings or may proceed with any other right or remedy existing at law or in equity or by statute or otherwise, independent of or in aid of the rights, powers and remedies conferred in this Mortgage, as the Mortgagee may deem best for the protection and enforcement of the Mortgagee's rights under this Mortgage. Each right, power and remedy of the Mortgagee provided for in this Mortgage now or hereafter existing at law or in equity or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise or partial exercise by the Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Mortgagee of any or all such other rights, powers or remedies.

Section 3.9. Provisions Subject to Applicable Law. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any

Exhibit J

applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under any applicable law.

Section 3.10. No Waiver by the Mortgagee. No failure by the Mortgagee to insist upon the strict performance of any term hereof, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

Section 3.11. Discontinuance of Proceedings and Restoration of Status Quo. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by sale, foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

Section 3.12. No Liability. The Mortgagee shall not have any liability for any loss, damage, injury, cost or expense resulting from any act or omission to act by the Mortgagee, or any of its officers, directors, employees or agents, which has been taken or omitted in good faith.

(End of Article III)

Exhibit J

ARTICLE IV

AMENDMENTS, SETOFF, TAXATION

Section 4.1. Amendments, Changes and Modifications. Except as otherwise provided in this Mortgage, this Mortgage may not be amended, supplemented or terminated without the prior written consent of the Mortgagor and the Mortgagee. This Mortgage and the Development Agreement contain all of the representations, warranties and agreements of the parties hereto with respect to the subject matter hereof, and all prior understandings, representations and warranties (whether oral or written) with respect to such matters are superseded.

Section 4.2. Waiver of Setoff. All sums payable by the Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Mortgagor hereunder shall in no way be released, discharged or otherwise affected, except as expressly provided herein, by reason of (i) any damage to, or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof, or transfer in lieu thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Mortgagor or any action taken with respect to this Mortgage by any trustee or receiver of the Mortgagor, or by any court in such proceeding; (v) any claim which the Mortgagor has or might have against the Mortgagee; (vi) any default or failure on the part of the Mortgagee to perform or comply with any of the terms hereof or of any other agreements pertaining to the lien, pledge or security interest on the Mortgaged Property with the Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not the Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, the Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby.

Section 4.3. Brundage Clause. In the event of the passage or enactment of any law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the manner of collecting taxes so as to adversely affect the Mortgagee shall send written notice of such passage or enactment, to the Mortgagor, and the Mortgagor shall elect to either assume, in a manner reasonably satisfactory to the Mortgagee, the obligation to pay any taxes or other financial burdens imposed upon the Mortgagee or pay the indebtedness secured by the Mortgage in full, in which event the Mortgagee shall record a release of this Mortgage.

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Section 4.4. Notices. Any notice, request, consent, approval or demand (collectively, a “Notice”) given or made under this Mortgage shall be in writing and shall be given in the following manner: (a) by personal delivery of such Notice; (b) by mailing of such Notice by certified mail, return receipt requested; or (c) by nationally recognized commercial overnight delivery of such Notice for next business day delivery. All Notices shall be delivered to the Notice Address for any party hereto. Notice served by certified mail shall be effective on the fifth business day after the date of mailing. Notice served by commercial overnight delivery shall be effective on the next business day following deposit with the overnight delivery company.

(End of Article IV)

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Exhibit J

ARTICLE V

TAXES, MECHANICS 'LIENS, INSURANCE, EMINENT DOMAIN, DEMOLITION

Section 5.1. Payment of Taxes and Other Governmental Charges. The Mortgagor shall pay or cause to be paid all taxes, assessments, whether general or special, and other governmental and/or utility charges and assessments.

Section 5.2. Mechanics 'and Other Liens. The Mortgagor shall take such steps as shall be necessary, or shall cause all necessary steps to be taken, so that no mechanics', materialmen's, suppliers', vendors 'or similar liens or rights thereto shall exist against the Mortgaged Property. The Mortgagor shall provide to the Mortgagee, upon request, reasonably satisfactory evidence of the payment and discharge of any such liens, charges and encumbrances.

Section 5.3. Insurance. The Mortgagor shall keep the Mortgaged Property continuously insured, or shall cause the Property to be kept continuously insured, insuring against casualty or loss in a commercially reasonable amount and manner so as to adequately preserve Mortgagee's interest in the Mortgaged Property. Any proceeds of property insurance providing such coverage shall be paid to Mortgagor, except to the extent necessary to repay the outstanding amount of the Agreed Value. Any proceeds of policies providing public liability insurance coverage shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

Section 5.4. Eminent Domain. If title to or the temporary use of the Mortgaged Property, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Mortgagor will promptly give written notice thereof to the Mortgagee describing the nature and extent of such taking. Any proceeds received from any award made in such eminent domain proceedings shall, if received prior to the release and discharge of this Mortgage, be first used to satisfy any sums due and owing under this Mortgage prior to the use of said funds for any other purpose.

(End of Article V)

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ARTICLE VI

MISCELLANEOUS

Section 6.1. Additional Security. Without notice to or consent of the Mortgagor and without impairment of the lien and rights created by this Mortgage, the Mortgagee may accept from the Mortgagor or from any other persons additional security for the indebtedness secured by this Mortgage. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, first, to such additional security, or first, to the security created by this Mortgage, in either case without affecting the lien hereof and the rights conferred hereunder.

Section 6.2. Release of Mortgaged Property and Easements. In addition to the partial release of this Mortgage as provided for in Section 2.8, above, at the request of the Mortgagor, the Mortgagee may, at any time and from time to time, consent to, join in or permit a release of any part of the Mortgaged Property or the granting of any easements, licenses, party wall rights and rights of lateral support with respect to the Property. None of the foregoing shall impair in any manner the validity, or except as specifically provided therein the priority, of this Mortgage.

Section 6.3. Release and Discharge. Upon satisfaction by Mortgagor of its Obligations under the Transaction Documents, Mortgagee will release the security of this Mortgage to the Mortgagor. The Mortgage shall be null and void and of no future force and effect. Mortgagor will pay any and all costs for recording such release. Upon the written request and at the expense of the Mortgagor, the Mortgagee will execute and deliver such proper instruments of release and discharge as may reasonably be requested to evidence such defeasance, release and discharge.

Section 6.4. Inspection. The Mortgagee and its representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage.

Section 6.5. Expenses. The Mortgagor will, to the extent permitted by law, immediately upon demand pay or reimburse the Mortgagee for, or require that the Mortgagee be paid or reimbursed for, all reasonable attorneys' fees, costs and expenses incurred by the Mortgagee in any proceedings affecting or relating to this Mortgage, including, but not limited to, the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof, and any such amounts paid by the Mortgagee shall, except as may be limited by law or judicial order or decision, be added to the indebtedness secured hereby and secured by the lien and security interest of this Mortgage and shall bear interest at the Interest Rate for Advances.

Section 6.6. Books, Records and Accounts. The Mortgagor will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts reflecting all items of income and expense in connection with its operations relating to the Mortgaged Property. The Mortgagee and its designees shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the

Exhibit J

Mortgagor or other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as the Mortgagee shall desire.

Section 6.7. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien and security interest thereof do not merge in fee simple title to Mortgagor's interest in the Mortgaged Property, it is hereby understood and agreed that should the Mortgagee acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien and security interest thereof shall not merge in the fee simple title, so that this Mortgage may be foreclosed as if owned by a stranger to that title and interest.

Section 6.8. General Provisions. This Mortgage shall be deemed to be made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State and shall inure to the benefit of and be binding upon the Mortgagor, the Mortgagee and their respective permitted successors and assigns. If any term or provision of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected thereby. The captions or headings herein shall be solely for convenience.

Section 6.9. Counterparts; Governing Law. This Mortgage shall be governed by the laws of the State of Ohio. This Mortgage may be executed in one or more counterparts, each of which shall constitute an original.

(End of Article VI)

EXHIBIT A

PROPERTY

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012

EXHIBIT B

ADDITIONAL PERMITTED ENCUMBRANCES

EXHIBIT K

DEPICTION OF PERMITTED PARKING ZONE

See attached.

Exhibit K

Permitted Parking Zone

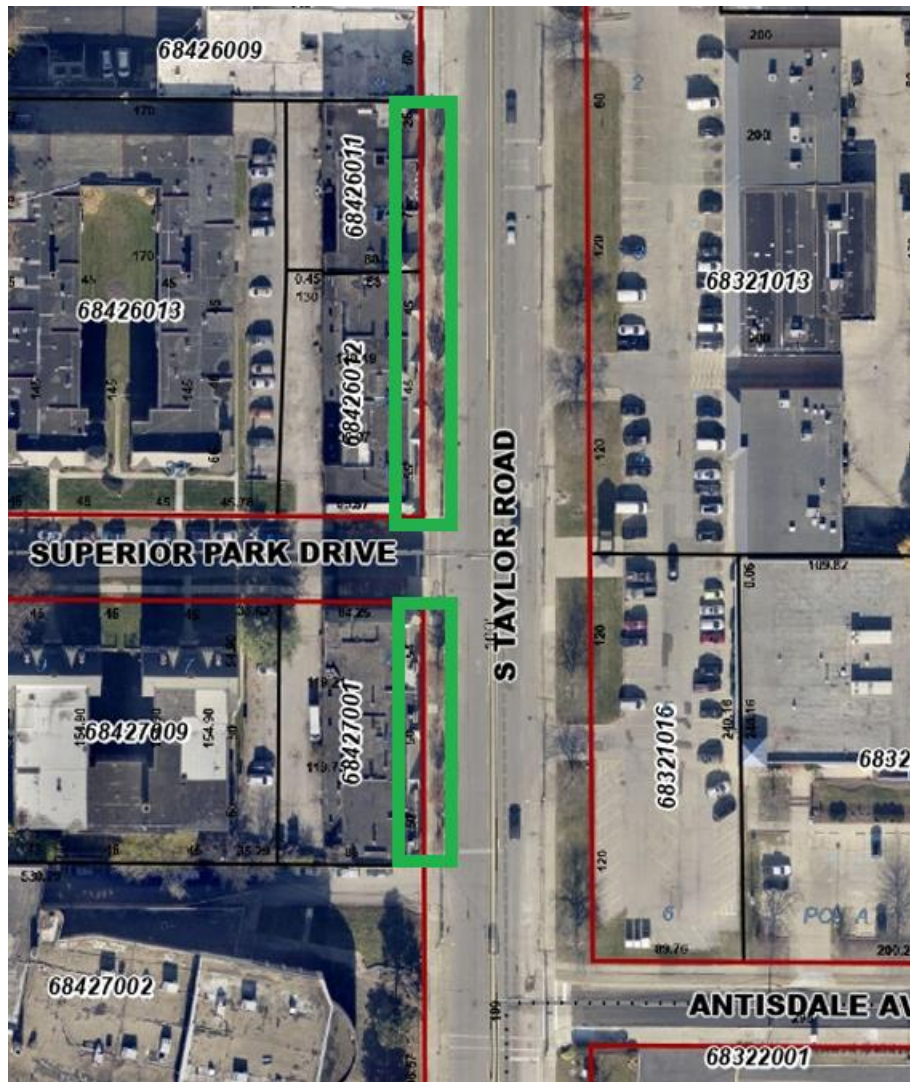


EXHIBIT L

COMPENSATION AGREEMENT

COMPENSATION AGREEMENT

This Compensation Agreement (this “Agreement”), is made and entered into on this ____ day of _____, 2024, 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 by WXZ CPV LLC, an Ohio limited liability company, its affiliates, successors and assigns (collectively, the “Developer”).

RECITALS:

- A. The Cleveland Heights Land Reutilization Corporation (“CHLRC”) and the Cleveland Heights Land Reutilization Program (“CHLRP”) are the current title owners of certain real property identified in the Cuyahoga County Records as Permanent Parcel Numbers 684-27-001, 684-26-011, and 684-26-012, and more commonly known as 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118, as further described in Exhibit “A” attached hereto and incorporated herein by reference, together with all easements, privileges and rights appurtenant thereto (CHLRC owns Parcel 684-27-001 and CHLRP owns 684-26-011, and 684-26-012) (the “Property”).
- B. The City controls the Cleveland Heights Land Reutilization Corporation and the Cleveland Heights Land Reutilization Program.
- C. Developer and City entered into negotiations for the development of the Property pursuant to Res. No. 54-2022, passed by Council on May 2, 2022, and approved by the Mayor May 10, 2022.
- D. As of the Effective Date, the City and the Developer have also entered into a certain Real Estate Purchase Agreement, a copy of which is attached as Exhibit B to the Development Agreement, whereby the City will sell the Property to the Developer for the sum of \$1.00 (the “Purchase Agreement”), and said sale will close within fifteen (15) days of the satisfaction of standard contingencies and any special conditions to closing set forth in the Purchase Agreement, including, but not limited to, the City becoming the title owner to the Property prior to the closing of said sale.
- E. Following the purchase of the Property, the Developer intends to redevelop the Property into a mixed-use development, generally consistent with the drawings set forth as Exhibit C to the Development Agreement, and incorporated herein by reference (the “Development” or “Project Improvements”), including the following components of the Development, subject to reasonable future design refinements:
 - (i) Developer will construct eight (8) live/work units and approximately 11,302 GSF of commercial space on the first floors of the three buildings; two (2) two-

bedroom apartments, two (2) studio apartments, and forty (40) one-bedroom apartments on the second and third floors of the three buildings.

(ii) Developer will commence construction of the Development no later than May 1, 2024 and complete construction within three (3) years.

(iii) Developer will prepare all plans, drawings, surveys, etc. necessary for the Development and obtain all necessary approvals and permits to undertake the Development.

F. To facilitate the Development and the broader revitalization plan outlined in Developer's Cain Park Village Proposal, attached as Exhibit D to the Development Agreement, the City intends to provide certain assistance to the Developer to assist specifically with the Development, which consists of the following:

(i) The City will assist the Developer in requesting and applying for environmental remediation grants. Furthermore, if any grant Developer seeks to obtain requires a municipal lead applicant, the City will serve as the lead applicant for purposes of the grant application; and;

(ii) The City will use a portion of the Service Payments, as defined below, for public infrastructure improvements and economic development activities that benefit the Property.

(iii) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will install new street trees, planters, street lights, and street signs along portions of South Taylor Road and Superior Park Drive as outlined in the District Landscape, Lighting, and Wayfinding Plan attached as Exhibit E to the Development Agreement, which may be done using the City's portion of the Service Payments; and

(iv) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will implement the traffic-calming measures and alterations to the lanes and traffic patterns along South Taylor Road as outlined in Developer's Cain Park Village Proposal, attached as Exhibit D to the Development Agreement, and portions of the Taylor Road Corridor Study¹ published jointly by NOACA and the City of Cleveland Heights in February, 2021, which may be done using the City's portion of the Service Payments if other funds cannot be obtained from other sources by the City; and;

(v) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will reasonably cooperate with Developer and provide support to Developer's efforts to obtain assistance to

¹ To access the *Taylor Road Corridor Study*, visit: https://www.flipsnack.com/conesky/taylor-report_final_2021.html

support the Property and surrounding area beyond that described within this recital; and

- (vi) The City will provide such other assistance as set forth in this Agreement.
- G. Developer received approval from the City's Architectural Board of Review on August 2, 2022 (see Exhibit F to the Development Agreement) and the Developer received approval from the City's Planning Commission on August 10, 2022 (see Exhibit G to the Development Agreement).
- H. The City will adopt an Ordinance (the "TIF Ordinance"), wherein it will declare that the increase in value of the Property resulting from the Development (the "Improvements") shall be a public purpose, and 100% of the Improvement shall be exempt from real property taxation for 30 years pursuant to Section 5709.41 of the Ohio Revised Code (the "TIF Exemption").
- I. The TIF Ordinance requires the Developer and all future owners of the Property (each individually an "Owner" and collectively the "Owners") to make annual service payments in lieu of real property taxes equal to the amount of real property taxes that would have been payable had the Improvement not been exempt from real property taxation under the TIF Ordinance, together with any penalties and interest at the then-current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code and other payments with respect to each Improvement that are received by the Cuyahoga County Fiscal Officer (the "County Fiscal Officer") in connection with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions, as the same may be amended from time to time (collectively, the "Service Payments").
- J. The TIF Ordinance also authorizes the Service Payments to be used to make certain payments to the School District pursuant to this Agreement.
- K. The TIF Ordinance also authorizes the Service Payments to be used by the City as part of its urban redevelopment activities, including but not limited to public infrastructure improvements and economic development activities made by the City that benefit the Property and to reimburse the Developer for any and all costs associated with the Development pursuant to Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code, as the same are more fully defined in the TIF Ordinance and this Agreement.
- L. The City has provided information to the School District with respect to the Development.
- M. The City and the School District will derive substantial and significant benefits from the Project Improvements.

- N. On [____], 2024, the Board of Education of the School District adopted a resolution (the "School District Resolution") approving this Agreement and the exemption of the 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.
- O. To facilitate the construction of the Improvements and to compensate the School District for a portion of the revenue that the School District would have received had the Improvements been made and the Improvements not been exempted from taxation, the City, Developer, 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 Developer to proceed with the Development, the parties hereto agree as follows:

Section 1. Incorporation of Recitals.

The recitals to this Agreement are incorporated herein by reference and made a part of this Agreement.

Section 2. City Payments to School District. Unless otherwise agreed to in writing by the City and the School District, with respect to Improvements within the Property, for each tax collection year following an Exemption Year for such Improvements, the City agrees to pay to the School District, from the Service Payments, 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) Subject to the availability of Service Payments in the TIF Fund, the first twenty four percent (24%) of up to \$265,000.00 of Service Payments annually deposited shall be paid to the School District as compensation for a portion of the revenue it would have received if the increase in value to the Property as a result of the Development (the "Improvements") were not exempted from taxation. For purposes of illustration, if \$265,000 of Service Payments are deposited into the TIF Fund, the City shall pay the School District \$63,600 as provided in Section (B), and prior to any payments to the City and Developer in Section 10 of the Development Agreement.
- (2) Subject to the availability of Service Payments deposited in the TIF Fund in any year in excess of \$265,000, the payment to the School District of 100% of the Service Payments attributable to any new millage approved after the date of the Agreement.

- (3) Any Service Payments deposited in the TIF Fund in any year in excess of \$265,000.00, and after payment to the School District of taxes attributable to new millage in Section 2(A)(2) above, shall be split equally and paid one-half to the School District and one-half to the City.

(B) Timing of Payments. The City shall cause all School Payments for any Exemption Year to be paid on or before December 31 of the applicable tax collection year to the extent that Service Payments 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 Service Payments it receives from the Treasurer. For purposes of illustration, if the Improvements are exempt for tax year 2027, the School Payments shall be paid by the City to the School District on or before December 31, 2028.

(C) 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.

(D) 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) all of the School Payments and Income Tax Sharing Payments then due under this Section 2 have been made or provided for, and (c) all payments out of the Service Payments to be made to the Developer and City under the Development Agreement have been made, then the exemption from taxation pursuant to the TIF Ordinance and the Service Payments 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 Service Payments 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 Service Payments and the amount of the School Payments owed to the School District based upon the amount of Service Payments received.

Section 4. Reconciliation. The City and School District shall annually meet to review, calculate and reconcile payments to the School District, Developer 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(C) 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 Service Payments, 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 City:	City of Cleveland Heights
	40 Severance Circle
	Cleveland Heights, OH 44118
	Attn: Mayor

Exhibit L

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

Roetzel & Andress, LPA
222 S. Main St.
Suite 400
Akron, OH 44308
Attn: Jason D. Dodson, Esq.

If to Developer: WXZ CPV LLC
22720 Fairview Center Drive, Ste.150
Fairview Park, OH 44126
Attn: Matthew Wymer

with a copy to: Kohrman Jackson & Krantz LLP
1375 E. Ninth St.
29th Floor
Cleveland, OH 44114
Attn: Rich A. Morehouse, Esq.

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 620
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 from the Project Improvements as contemplated and set forth in the Development Agreement in any

material fashion, (ii) the replacement or substitution of Developer (other than a related entity), or (iii) the failure to approve the TIF Ordinance for the herein described Improvements on or prior to December 31, 2024. 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.

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 Property identified in Exhibit A other than the TIF Exemption, including as provided in Ohio law under Sections 3735.65 to 3735.70, 5709.40 and 5709.62, Revised Code, without the prior consent of the School District.

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Exhibit L

CITY OF CLEVELAND HEIGHTS, OHIO

BOARD OF EDUCATION OF THE
CLEVELAND HEIGHTS-UNIVERSITY
HEIGHTS CITY SCHOOL DISTRICT

By: _____
Kahlil Seren, Mayor

By: _____
Jodi Sourini, President

By: _____
Elizabeth Kirby, Superintendent

By: _____
Scott Gainer, Treasurer

Approved as to Form and Correctness:

WXZ CPV LLC

By: _____
William Hanna, City Law Director

By: _____
Matthew Wymer, Managing Member

FISCAL OFFICER'S CERTIFICATE

The undersigned, 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 2024 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: _____, 2024

Director of Finance
City of Cleveland Heights, Ohio

DRAFT

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 2024 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: _____, 2024

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

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012

EXHIBIT M

CERTIFIED STATEMENT

WXZ CPV LLC (the “Developer”) hereby certifies that the Development, as such term is defined in the Development and Tax Increment Financing Agreement (“Development Agreement”) entered into by and between the Developer and the City of Cleveland Heights, Ohio dated as of [____], 2024 has been completed at 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118 (the “Property”) in compliance with terms of the Development Agreement.

Note: Capitalized terms used but not defined in this Certified Statement have the meaning assigned to them in the Development Agreement to which this Certified Statement is attached and of which it forms a part.

THE DEVELOPER HEREBY CERTIFIES:

1. As of _____, the Developer has completed the Development in accordance with the terms of the Development Agreement. Such date is hereby established as the completion date for the Development under the Development Agreement.
2. The Development has been completed in all material respects in accordance with Exhibit C to the Development Agreement.
3. The Developer has complied, and will continue to comply with, all applicable statutes, regulations and ordinances in connection with the Property and construction of the Development.
4. The Developer holds fee ownership in the Property on which the Development was completed.
5. Attached hereto as Schedule 1 is an itemization of the Costs of the Development, which are supported by the further documentation and evidence provided with this Certificate.

[Balance of Page Intentionally Left Blank]

NOTICE: DO NOT SIGN THIS COMPLETION CERTIFICATE UNLESS YOU AGREE TO EACH OF THE ABOVE STATEMENTS.

WXZ CPV LLC

By: _____

Name: _____

Title: _____

EXHIBIT C

SCHOOL COMPENSATION AGREEMENT

COMPENSATION AGREEMENT

This Compensation Agreement (this “Agreement”), is made and entered into on this ____ day of _____, 2024, 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 by WXZ CPV LLC, an Ohio limited liability company, its affiliates, successors and assigns (collectively, the “Developer”).

RECITALS:

- A. The Cleveland Heights Land Reutilization Corporation (“CHLRC”) and the Cleveland Heights Land Reutilization Program (“CHLRP”) are the current title owners of certain real property identified in the Cuyahoga County Records as Permanent Parcel Numbers 684-27-001, 684-26-011, and 684-26-012, and more commonly known as 1900-1910, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio 44118, as further described in Exhibit “A” attached hereto and incorporated herein by reference, together with all easements, privileges and rights appurtenant thereto (CHLRC owns Parcel 684-27-001 and CHLRP owns 684-26-011, and 684-26-012) (the “Property”).
- B. The City controls the Cleveland Heights Land Reutilization Corporation and the Cleveland Heights Land Reutilization Program.
- C. Developer and City entered into negotiations for the development of the Property pursuant to Res. No. 54-2022, passed by Council on May 2, 2022, and approved by the Mayor May 10, 2022.
- D. As of the Effective Date, the City and the Developer have also entered into a certain Real Estate Purchase Agreement, a copy of which is attached as Exhibit B to the Development Agreement, whereby the City will sell the Property to the Developer for the sum of \$1.00 (the “Purchase Agreement”), and said sale will close within fifteen (15) days of the satisfaction of standard contingencies and any special conditions to closing set forth in the Purchase Agreement, including, but not limited to, the City becoming the title owner to the Property prior to the closing of said sale.
- E. Following the purchase of the Property, the Developer intends to redevelop the Property into a mixed-use development, generally consistent with the drawings set forth as Exhibit C to the Development Agreement, and incorporated herein by reference (the “Development” or “Project Improvements”), including the following components of the Development, subject to reasonable future design refinements:
 - (i) Developer will construct eight (8) live/work units and approximately 11,302 GSF of commercial space on the first floors of the three buildings; two (2) two-

bedroom apartments, two (2) studio apartments, and forty (40) one-bedroom apartments on the second and third floors of the three buildings.

(ii) Developer will commence construction of the Development no later than May 1, 2024 and complete construction within three (3) years.

(iii) Developer will prepare all plans, drawings, surveys, etc. necessary for the Development and obtain all necessary approvals and permits to undertake the Development.

F. To facilitate the Development and the broader revitalization plan outlined in Developer's Cain Park Village Proposal, attached as Exhibit D to the Development Agreement, the City intends to provide certain assistance to the Developer to assist specifically with the Development, which consists of the following:

(i) The City will assist the Developer in requesting and applying for environmental remediation grants. Furthermore, if any grant Developer seeks to obtain requires a municipal lead applicant, the City will serve as the lead applicant for purposes of the grant application; and;

(ii) The City will use a portion of the Service Payments, as defined below, for public infrastructure improvements and economic development activities that benefit the Property.

(iii) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will install new street trees, planters, street lights, and street signs along portions of South Taylor Road and Superior Park Drive as outlined in the District Landscape, Lighting, and Wayfinding Plan attached as Exhibit E to the Development Agreement, which may be done using the City's portion of the Service Payments; and

(iv) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will implement the traffic-calming measures and alterations to the lanes and traffic patterns along South Taylor Road as outlined in Developer's Cain Park Village Proposal, attached as Exhibit D to the Development Agreement, and portions of the Taylor Road Corridor Study¹ published jointly by NOACA and the City of Cleveland Heights in February, 2021, which may be done using the City's portion of the Service Payments if other funds cannot be obtained from other sources by the City; and;

(v) To the extent financially and operationally feasible for the City, which shall be determined in the City's sole discretion, the City will reasonably cooperate with Developer and provide support to Developer's efforts to obtain assistance to

¹ To access the *Taylor Road Corridor Study*, visit: https://www.flipsnack.com/conesky/taylor-report_final_2021.html

support the Property and surrounding area beyond that described within this recital; and

- (vi) The City will provide such other assistance as set forth in this Agreement.
- G. Developer received approval from the City's Architectural Board of Review on August 2, 2022 (see Exhibit F to the Development Agreement) and the Developer received approval from the City's Planning Commission on August 10, 2022 (see Exhibit G to the Development Agreement).
- H. The City will adopt an Ordinance (the "TIF Ordinance"), wherein it will declare that the increase in value of the Property resulting from the Development (the "Improvements") shall be a public purpose, and 100% of the Improvement shall be exempt from real property taxation for 30 years pursuant to Section 5709.41 of the Ohio Revised Code (the "TIF Exemption").
- I. The TIF Ordinance requires the Developer and all future owners of the Property (each individually an "Owner" and collectively the "Owners") to make annual service payments in lieu of real property taxes equal to the amount of real property taxes that would have been payable had the Improvement not been exempt from real property taxation under the TIF Ordinance, together with any penalties and interest at the then-current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code and other payments with respect to each Improvement that are received by the Cuyahoga County Fiscal Officer (the "County Fiscal Officer") in connection with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions, as the same may be amended from time to time (collectively, the "Service Payments").
- J. The TIF Ordinance also authorizes the Service Payments to be used to make certain payments to the School District pursuant to this Agreement.
- K. The TIF Ordinance also authorizes the Service Payments to be used by the City as part of its urban redevelopment activities, including but not limited to public infrastructure improvements and economic development activities made by the City that benefit the Property and to reimburse the Developer for any and all costs associated with the Development pursuant to Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code, as the same are more fully defined in the TIF Ordinance and this Agreement.
- L. The City has provided information to the School District with respect to the Development.
- M. The City and the School District will derive substantial and significant benefits from the Project Improvements.

- N. On [____], 2024, the Board of Education of the School District adopted a resolution (the "School District Resolution") approving this Agreement and the exemption of the 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.
- O. To facilitate the construction of the Improvements and to compensate the School District for a portion of the revenue that the School District would have received had the Improvements been made and the Improvements not been exempted from taxation, the City, Developer, 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 Developer to proceed with the Development, the parties hereto agree as follows:

Section 1. Incorporation of Recitals.

The recitals to this Agreement are incorporated herein by reference and made a part of this Agreement.

Section 2. City Payments to School District. Unless otherwise agreed to in writing by the City and the School District, with respect to Improvements within the Property, for each tax collection year following an Exemption Year for such Improvements, the City agrees to pay to the School District, from the Service Payments, 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) Subject to the availability of Service Payments in the TIF Fund, the first twenty four percent (24%) of up to \$265,000.00 of Service Payments annually deposited shall be paid to the School District as compensation for a portion of the revenue it would have received if the increase in value to the Property as a result of the Development (the "Improvements") were not exempted from taxation. For purposes of illustration, if \$265,000 of Service Payments are deposited into the TIF Fund, the City shall pay the School District \$63,600 as provided in Section (B), and prior to any payments to the City and Developer in Section 10 of the Development Agreement.
- (2) Subject to the availability of Service Payments deposited in the TIF Fund in any year in excess of \$265,000, the Payment to the School District of 100% of taxes attributable to any new millage approved after the date of the Agreement.

- (3) Any Service Payments deposited in the TIF Fund in any year in excess of \$265,000.00, and after payment to the School District of taxes attributable to new millage in Section 2(A)(2) above, shall be split equally and paid one-half to the School District and one-half to the City.

(B) Timing of Payments. The City shall cause all School Payments for any Exemption Year to be paid on or before December 31 of the applicable tax collection year to the extent that Service Payments 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 Service Payments it receives from the Treasurer. For purposes of illustration, if the Improvements are exempt for tax year 2027, the School Payments shall be paid by the City to the School District on or before December 31, 2028.

(C) 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.

(D) 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) all of the School Payments and Income Tax Sharing Payments then due under this Section 2 have been made or provided for, and (c) all payments out of the Service Payments to be made to the Developer and City under the Development Agreement have been made, then the exemption from taxation pursuant to the TIF Ordinance and the Service Payments 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 Service Payments 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 Service Payments and the amount of the School Payments owed to the School District based upon the amount of Service Payments received.

Section 4. Reconciliation. The City and School District shall annually meet to review, calculate and reconcile payments to the School District, Developer 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(C) 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 Service Payments, 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 City:	City of Cleveland Heights
	40 Severance Circle
	Cleveland Heights, OH 44118
	Attn: Mayor

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

Roetzel & Andress, LPA
222 S. Main St.
Suite 400
Akron, OH 44308
Attn: Jason D. Dodson, Esq.

If to Developer: WXZ CPV LLC
22720 Fairview Center Drive, Ste.150
Fairview Park, OH 44126
Attn: Matthew Wymer

with a copy to: Kohrman Jackson & Krantz LLP
1375 E. Ninth St.
29th Floor
Cleveland, OH 44114
Attn: Rich A. Morehouse, Esq.

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 620
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 from the Project Improvements as contemplated and set forth in the Development Agreement in any

material fashion, (ii) the replacement or substitution of Developer (other than a related entity), or (iii) the failure to approve the TIF Ordinance for the herein described Improvements on or prior to December 31, 2024. 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.

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 Property identified in Exhibit A other than the TIF Exemption, including as provided in Ohio law under Sections 3735.65 to 3735.70, 5709.40 and 5709.62, Revised Code, without the prior consent of the School District.

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CITY OF CLEVELAND HEIGHTS, OHIO

BOARD OF EDUCATION OF THE
CLEVELAND HEIGHTS-UNIVERSITY
HEIGHTS CITY SCHOOL DISTRICT

By: _____
Kahlil Seren, Mayor

By: _____
Jodi Sourini, President

By: _____
Elizabeth Kirby, Superintendent

By: _____
Scott Gainer, Treasurer

Approved as to Form and Correctness:

WXZ CPV LLC

By: _____
William Hanna, City Law Director

By: _____
Matthew Wymer, Managing Member

FISCAL OFFICER'S CERTIFICATE

The undersigned, 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 2024 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: _____, 2024

Director of Finance
City of Cleveland Heights, Ohio

DRAFT

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 2024 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: _____, 2024

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

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Address: 1908, 1912-1926, and 1932-1946 South Taylor Road, Cleveland Heights, Ohio

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 4; 5 and 6 in The Monroe Allotment Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows: Beginning on the Westerly line of Taylor Road at the Southeasterly corner of said Sublot No. 6; Thence Northerly along said Westerly line of Taylor Road, 134.15 feet to the Southerly end of a turnout between said Westerly line of land and the Southerly line of Superior Park Drive; Thence Northwesterly along said turnout 32.71 feet to the Westerly end thereof; Thence Westerly along said Southerly line of Superior Park Drive, 84.25 feet; Thence Southerly on a line parallel to said Westerly line of Taylor Road, 154.90 feet to the Southerly line of said Sublot No. 6; Thence Easterly along said Southerly line of Sublot No. 6, 105 feet to the place of beginning, be the same more or less, but subject to all legal highways.

EXCEPTING THEREFROM the above parcel that part as shown by Dedication Plat, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, for Taylor Road widening being part of Euclid Township Lot Nos. 16 and 57, Tract 1.

Parcel Number: 684-27-001

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 1, 2 and 3 in the Monroe Allotment Co.'s Monroe Subdivision of part of Original Euclid Township Lot No. 16, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of Taylor Road, at the Northeasterly corner of said Sublot No. 1; thence Southerly along the Westerly line of Taylor Road, 124.79 feet to the Northerly end of a turnout between the Westerly line of Taylor Road, and the Northerly line of Superior Park Drive; thence Southwesterly along said turnout 31.63 feet to the Northerly line of Superior Park Drive; Thence Westerly along the Northerly line of Superior Park Drive, 85.57 feet to the Southeasterly corner of land conveyed to The Mera Realty Company by deed dated January 11, 1930 and recorded in Volume 3988, Page 79 of Cuyahoga County Records; Thence Northerly along the Westerly line of land so conveyed 145 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 27.22 feet to the Northwesterly corner of land described in the Deed from The Cleveland Trust Company to The Orange Realty Company, dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so described in deed to The Orange Realty Company, about 0.45 feet to the Southwesterly corner thereof; Thence Easterly along the Southerly line of land so described in the Deed from The Orange Realty Company about 58 feet to the Northerly line of said Sublot No. 1; thence Easterly along the Northerly line of Sublot No. 1, about 19 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-011

Situated in the City of Cleveland Heights, County of Cuyahoga and State of Ohio:

And known as being part of Sublot Nos. 36 and 37 in Seth Minor Subdivision of part of Original Euclid Township Lot Nos. 15 and 16, Tract No. 1, as shown by the recorded plat in Volume 85 of Maps, Page 23 of Cuyahoga County Records, and also a part of Sublot No. 1 in The Monroe Company's Monroe Subdivision of part of Original Euclid Township Lot No. 16, Tract No. 1, as shown by the recorded plat in Volume 95 of Maps, Page 6 of Cuyahoga County Records, and together forming a parcel of land bounded and described as follows:

Beginning on the Westerly line of South Taylor Road, (formerly Taylor Road, 100 feet wide), as shown by the Dedication Plat of South Taylor Road Widening, recorded in Volume 126 of Maps, Page 19 of Cuyahoga County Records, at a point which is distant 100 feet Northerly, measured along the Westerly line of South Taylor Road, from its intersection with the Southerly line of said Sublot No. 37; thence Westerly parallel to the Southerly line of Sublot No. 37, 80 feet; thence Southerly and parallel to the Westerly line of South Taylor Road, 100 feet to the Southerly line of said Sublot No. 37; Thence Easterly along the Southerly line of said Sublot No. 37, about 23 feet to the Northwesterly corner of the land conveyed to The Orange Realty Company by deed dated February 19, 1930 and recorded in Volume 4016, Page 129 of Cuyahoga County Records; thence Southerly along the Westerly line of land so conveyed to The Orange Realty Company, 0.45 feet to the Southwesterly corner, thereof; thence Easterly along the Southerly line of land so conveyed to The Orange Realty Company about 57 feet to the Westerly line of South Taylor Road; thence Northerly along the Westerly line of South Taylor Road, about 100 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Parcel Number: 684-26-012