



COUNCIL UPDATE

SEPTEMBER 6, 2019

MEETINGS & REMINDERS

Monday, September 9	-	6:15 p.m.	-	Committee of the Whole
Tuesday, September 10	-	7:30 p.m.	-	Citizens Advisory Committee (agenda attached)
Wednesday, September 11	-	7:00 p.m.	-	Planning Commission (agenda attached)
Thursday, September 12	-	6:00 p.m.	-	Meet Your Police
Sunday, September 15	-	Noon – 6:00 p.m.	-	Heights Heritage Home & Garden Tour

UPCOMING EVENTS

Wednesday, September 25	-	7:00 p.m.	-	Noble Neighbors Candidates Forum at Noble Road Presbyterian Church
Wednesday, October 2	-	7:00 p.m.	-	Noble Neighbors City Governance Forum at Noble Road Presbyterian Church
Thursday, October 3	-	7:00 p.m.	-	League of Women Voters – Candidates Night at the Community Center
Sunday, October 6	-	10:00 a.m.	-	Cleveland Heights Happy 5K & 10K

Thursday, October 10 - 7:00 p.m. - League of Women Voters –
Community Forum at the
High School

Saturday, October 12 - 9:00 a.m. – Noon Shredding Day

LEGISLATION

- **NOPEC.** An Ordinance authorizing all actions necessary to accept Northeast Ohio Public Energy Council 2019 Energized Community Grant(s) Funds
- **Edwards Rd.** An Ordinance to Vacate a portion of the Street Right-of-Way for Edwards Road, to Reserve an Easement for Utilities and Drainage.
- **Rudy’s Pub.** A Resolution authorizing the City Manager to enter into an agreement with Rudy’s Pub for a commercial revolving loan under the City’s Economic Development Loan Fund Program for acquisition of real estate and other assets
- **Zhug.** A Resolution authorizing the City Manager to enter into an agreement with Zhug for a commercial revolving loan under the City’s Economic Development Loan Fund Program for acquisition of equipment and other improvements
- **Medusa.** An Ordinance authorizing the City Manager to enter into an agreement with BNB Medusa, LLC, issuing a loan in the amount of \$396,440 to assist with its acquisition of the commercial property located at 3008 Monticello Boulevard

ECONOMIC DEVELOPMENT

The Economic Development Department will provide a presentation and or answer questions on the following projects:

- Student Loan Incentive Program
- Zhug Restaurant Loan
- Rudy’s Pub Loan

Information associated with each of these projects is included in this packet;

In addition, potential Loan restructuring documents are included in the packet pertaining to the proposed Medusa Project for Council review.



CLEVELAND HEIGHTS

Committee of the Whole

September 9, 2019

Agenda

1. Report of City Council Members 6:15 p.m. – 6:30 p.m.
Goal: Mayor and City Council members will provide updates on items of interest
2. Legislation Discussion 6:30 p.m. – 6:35 p.m.
Goal: Review upcoming legislation
3. Student Loan Incentive Research 6:35 p.m. – 7:05 p.m.
Goal: Staff will present research on student loan repayment incentive programs
4. Economic Development Loan Proposal 7:05 p.m. – 7:35 p.m.
Goal: Staff will review recommendations for loans to Zhug and Rudy's Pub
5. Executive Session 7:35 p.m. – 8:00 p.m.
To consider the investigation of charges against a public employee

Cleveland Heights Economic Development



To: Economic Development Director Tim Boland
From: Business Development Manager Brian Anderson
Subject: Student Loan Incentive Program

Student Loan Incentive Program

Background

In December 2018, the Village of Newburgh Heights created a student loan incentive program to encourage college graduates to move to and purchase a home in the village. City Council has requested that staff look into this program and do initial research on its potential application here in Cleveland Heights. This memo reviews Newburgh Heights' program and includes a look at a number of factors the City should take into account when considering a similar program in Cleveland Heights.

Overview of Newburgh Heights' Program

Newburgh Heights has created their Student Loan Assistance Program in order to attract young professionals and recent college graduates to the village. The village has a population of just over 2,000 people but has seen their population and housing values decline in recent decades. Approximately 15% of the village's housing stock is estimated to be vacant.

The village has seen significant interest and significant media attention since passing legislation in late 2018. The village is still in the process of implementation to allow individuals to apply to utilize the program.

In order to be eligible, an individual must meet the following criteria:

- Buy a single-family home in the village;
- Purchase price of \$50,000 or greater (average property value in Newburgh Heights is \$65,400);
- The individual must use the home as their primary residence;
- Graduate from an accredited college or university with a bachelor's degree or greater within the last five years;
- Proof of existing student loan debt.

Incentive Levels

- Up to 50 percent of college loan debt up to a maximum of \$50,000;
- The program has two payment milestones:
 - After 10 years, the individual will receive 80% of the incentive amount;
 - After 15 years, the individual will receive the remaining 20% of the incentive amount;

- No incentive is paid if the individual lives in the village or owns the property for less than 10 years.

Funding

The program will be administered and paid through the village’s CIC. Annual funding for the program will be appropriated by the village to the CIC out of their General Fund. The village hopes the program will be self-funding, i.e. it creates increased property and income tax revenues.

Factors Related to Cleveland Heights

Current Conditions

According to the most recent data available, Cleveland Heights has an educational attainment level of a bachelor’s degree or higher for those 25 and over of 52.6%. The numbers below demonstrate how that compares to rates nationally and locally:

Cleveland Heights	52.6%
Cuyahoga County	32.0%
Ohio	27.2%
United States	31.0%
Lakewood	45.0%
South Euclid	39.1%
Euclid	20.9%
Shaker Heights	64.7%
University Heights	57.6%
Beachwood	59.2%
Newburgh Heights	20.1%

Cleveland Heights’ bachelor’s degree rate is higher than the national, state, and county rate and compares favorably with adjacent communities. However, that rate varies widely within the City when looking at Census Tract Block Groups. The rate ranges from a high of 89.1% to a low of 13.5%. See attached map detailing bachelor’s degree rates by Census Tract Block Group.

The City also performs well at attracting younger residents. The average resident age is 35.9 years compared to 40.4 years for Cuyahoga County, 39.3 years for Ohio and 37.7 years for the United States as a whole.

Cleveland Heights has an active housing market that has seen increases in annual residential property purchases and average property value.

Cleveland Heights Recent Housing Metrics:

	Number of Sales	Average Sale Price
2018	1,087	\$102,000
2017	1,171	\$100,000
2016	1,026	\$97,200
2015	909	\$78,000
2014	822	\$87,750

Recommendation

Overall, the City’s educational attainment level, average age, and housing metrics (see attached maps) would indicate that the City is competitive in attracting college graduates, young residents, and home buyers to the City. However, there are significant differences between different parts of the City in terms of educational attainment and housing values.

Staff recommends looking at tailoring a student loan assistance program that would encourage home ownership in the areas that would have the largest impact, similar to how the new Community Reinvestment Area was structured. Given the City’s demographics and housing market, staff does not believe a comprehensive City-wide student loan assistance program is necessary or an effective use of financial resources.

The City may also want to consider limiting this incentive to new single-family construction on currently vacant lots. This would maximize the new revenue being generated to the City and addresses the largest need at the neighborhood level. There are approximately 170 vacant residential lots controlled by the City or County Land Bank.

Program Cost Versus Revenue Generated

It is hard to estimate the impact of the program from the perspective of cost versus new revenue generated. The major variables that will impact this calculation are the size of the incentives awarded, the household income of those participating in the program, and the number of individuals who use the program. The household income will determine the amount of new income tax generated to the City and will be the primary revenue benefit the City would be able to quantify. As an example, an individual receiving a \$50,000 incentive (the maximum under the Newburgh Heights program) disbursed over 15 years would need to average \$150,000 in yearly household income over those same 15 years to generate new income tax to the City equal to the incentive. The table below illustrates the income tax generated per household at various income levels.

Income Tax Generated Per Household Income Level

	\$50,000	\$75,000	\$100,000	\$125,000	\$150,000
5 Years	\$5,625	\$8,438	\$11,250	\$14,063	\$16,875
10 Years	\$11,250	\$16,875	\$22,500	\$28,125	\$33,750
15 Years	\$16,875	\$25,313	\$33,750	\$42,188	\$50,625

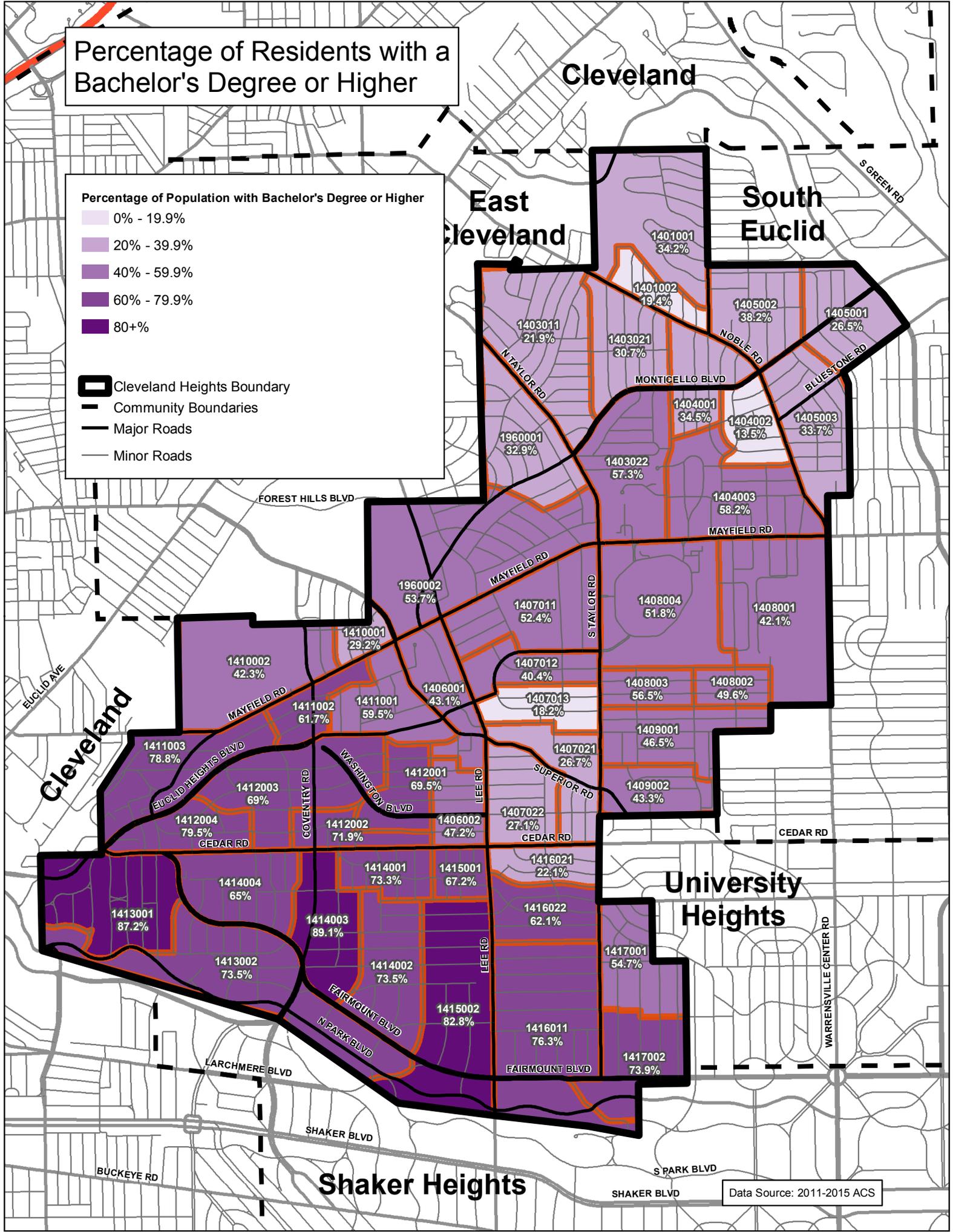
A \$25,000 maximum benefit would appear to give the program a better chance at being revenue positive or at least revenue neutral. This also assumes this would be truly “new” revenue that wouldn’t have been generated without the benefit. A single-family home that is currently occupied is most likely already generating income tax to the City. Giving an incentive under this program for someone to purchase an existing home will not generate significant additional revenue, if any, depending on the household incomes of the seller and buyer. This would seem to give additional weight to the option of limiting the incentive for the purchase of a newly constructed home on a currently vacant lot because that lot is not generating any income tax to the City.

Percentage of Residents with a Bachelor's Degree or Higher

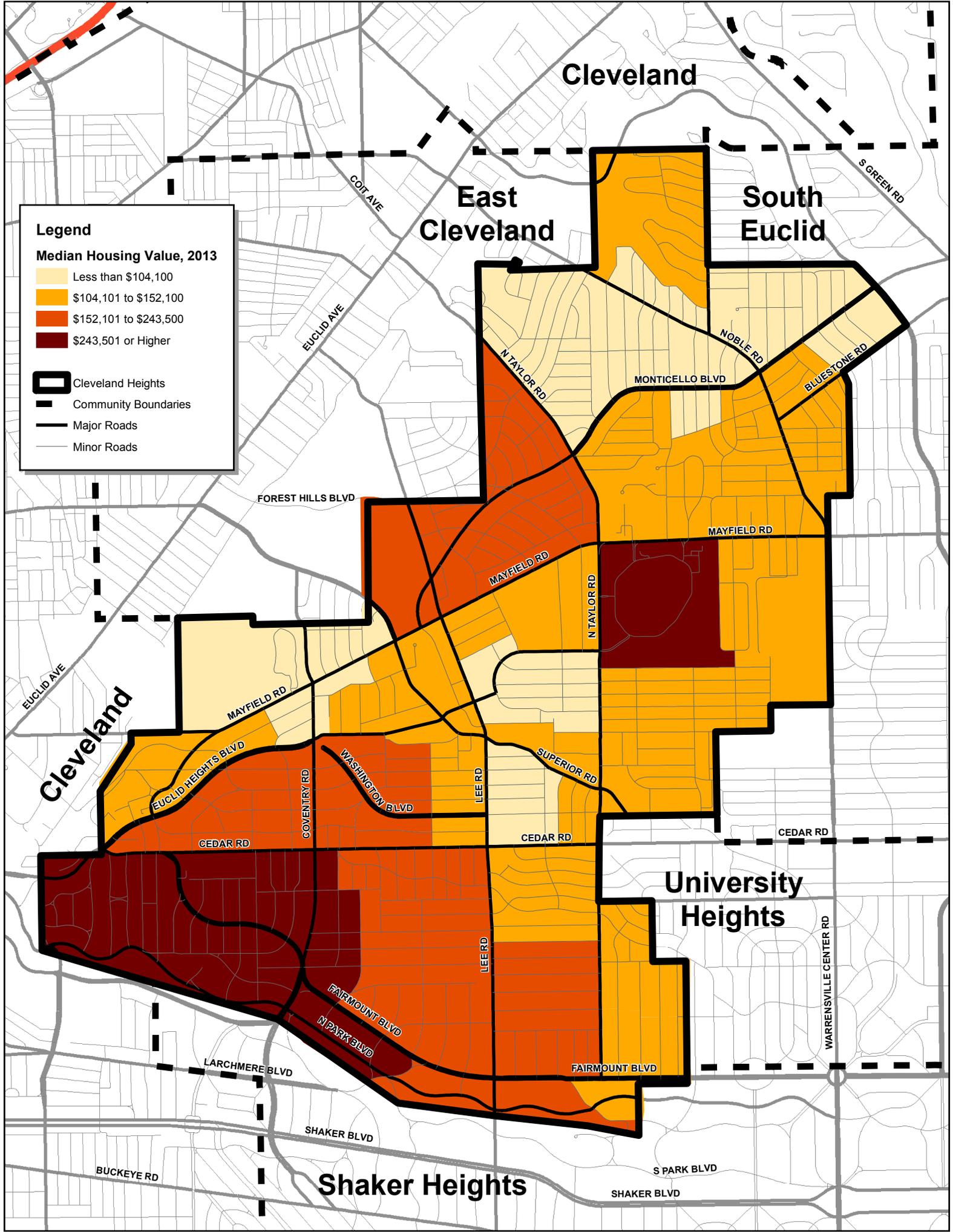
Percentage of Population with Bachelor's Degree or Higher

- 0% - 19.9%
- 20% - 39.9%
- 40% - 59.9%
- 60% - 79.9%
- 80+%

- Cleveland Heights Boundary
- Community Boundaries
- Major Roads
- Minor Roads



Data Source: 2011-2015 ACS



Legend

Median Housing Value, 2013

- Less than \$104,100
- \$104,101 to \$152,100
- \$152,101 to \$243,500
- \$243,501 or Higher

- Cleveland Heights
- Community Boundaries
- Major Roads
- Minor Roads

Cleveland

East Cleveland

South Euclid

Cleveland

University Heights

Shaker Heights

COIT AVE
EUCLID AVE

S GREEN RD

N TAYLOR RD

NOBLE RD

BLUESTONE RD

MONTICELLO BLVD

FOREST HILLS BLVD

MAYFIELD RD

MAYFIELD RD

N TAYLOR RD

EUCLID AVE

MAYFIELD RD

EUCLID HEIGHTS BLVD

COVENTRY RD

WASHINGTON BLVD

LEE RD

SUPERIOR RD

CEDAR RD

CEDAR RD

CEDAR RD

WARRENSVILLE CENTER RD

WARRENSVILLE CENTER RD

CEDAR RD

FAIRMOUNT BLVD

N PARK BLVD

FAIRMOUNT BLVD

LARCHMERE BLVD

SHAKER BLVD

BUCKEYE RD

S PARK BLVD

SHAKER BLVD

Cleveland Heights Economic Development

SEPTEMBER 2019
BUSINESS DEVELOPMENT PROJECT



RUDY'S PUB COMMERCIAL REVOLVING LOAN FUND APPLICATION

EXECUTIVE SUMMARY

Overview

Rudy's Pub, located at 2191 Lee Road, has requested financing support through the City to assist in their acquisition of the real estate and other assets at the property they are currently leasing.

Rudy's Pub has been in business for thirteen years, the last three of which has been in Cleveland Heights at their current location. They have applied for support from the City in the form of a Commercial Revolving Loan to help finance the acquisition of the commercial building in Cleveland Heights.

More specifics are included below.

Borrower: Rudy's Pub
2191 Lee Road
Cleveland Heights, OH 44118

Guarantors: Amanda J. Elfers & Quintin Jones
3647 Avalon Road
Shaker Heights, OH 44120

Amount: \$124,935 Commercial Revolving Fund Loan

Proposed Terms of Repayment: The Borrower will repay the City of Cleveland Heights \$124,935 over fifteen years, at a rate of five percent (5.0%) for the \$124,935 loan. Payments will be deferred for three months from final disbursement.

Proposed Security: The City will secure personal guarantees and cognovit notes from the guarantors. The City will have a second position mortgage on the property at 2191 Lee Road.

Purpose of Loan: To assist in the acquisition of the real property at 2191 Lee Road by an existing business in order to retain seven jobs.

Use and Sources of Funds:

U S E S		Percentage
-	-	-
Property Acquisition	\$375,000	90%
Equipment & Other Assets	\$41,450	10%
-	-	-
TOTAL	\$416,450	100%

S O U R C E S		Percentage
-	-	-
Village Capital CDFI	\$208,225	50%
Equity investment	\$83,290	20%
Commercial Revolving loan	\$124,935	30%
-	-	-
TOTAL	\$416,450	100%

Type of Business:

Rudy's Pub is a restaurant/pub. It has been located at its current address on Lee Road for three years and was in Shaker Square previous to that for 10 years.

Employment and Taxes:

Rudy's Pub currently has two full-time and five part-time employees. Year 1 projected wages/income is \$40,000, which translates to \$900 of income tax withholding. Please note that the majority of the employees are in tipped positions that include additional income.

Financial Analysis and Staff Recommendation:

An analysis of the income and cash flow projections show that Rudy's Pub can carry its projected debt over the next three years. Projections show the debt coverage ratio (net income divided by the required debt service) is 1.68 in Year 1, 1.77 in Year 2 and 1.86 in Year 3. The projected debt coverage ratio far exceeds debt to income ratio standards of a minimum of 1.15-1.25.

In terms of security, the City would require personal guarantees and cognovit notes from the guarantors. The City would also take a second position mortgage on the property at 2191 Lee Road. Based on the \$350,000 appraisal, the City's second position provides \$141,775 of collateral on the City's \$124,935 loan. Additionally, the City would file a lien on the equipment

at 2191 Lee Road. An appraisal of the equipment would be required to determine the value of that collateral that lien would provide.

Given the history of the business, including the last three years in Cleveland Heights, the financials and cash flow of the business, and the credit worthiness of the applicant, staff recommends proceeding with the loan.

Staff is confident in the ability of the borrowers to meet the terms of the loan and grow sales/revenue for the following reasons:

- The long-time operation and success of the business in Cleveland Heights;
- Steady growth in revenue over the previous three years;
- Increased cash flow versus leasing the property.

This loan would also help a minority/woman-owned business remain in Cleveland Heights. Additionally, with recent and proposed investments in the Cedar Lee District, this loan would help an existing business remain in the City that otherwise may be pushed out due to gentrification/increasing rents.

Terms and conditions are subject to both Council and Legal Department review.

OPERATING PROFORMA: INCOME AND CASH FLOW PROJECTION

name: Rudy's Pub
 address: 2191 Lee Road
 Cleveland Heights, Ohio 44118

U S E S	Percentage		S O U R C E S	Percentage		Proposed City Financing Terms	
Property Acquisition	\$375,000	90%	Village Capital	\$208,225	50%	Amount	\$124,935
Equipment	\$41,450	10%	Equity invesme	\$83,290	20%	Rate	5.00%
			CRLF Loan	\$124,935	30%	Term	15
TOTAL	\$416,450	100%	TOTAL	\$416,450	100%		

	2015	2017	2018	Year 1 Projections	Year 2 Projections	Year 3 Projections
REVENUES	\$323,621	\$337,984	\$361,875	\$379,969	\$398,967	\$418,916
- COST OF REVENUES	\$152,007	\$158,810	\$169,985	\$178,484	\$187,408	\$196,779
GROSS PROFIT	\$171,614	\$179,174	\$191,890	\$201,485	\$211,559	\$222,137
-OPERATING EXPENSES	\$163,392	\$165,059	\$172,870	\$181,514	\$190,589	\$200,119
= NET OPERATING INCOME	\$8,222	\$14,115	\$19,020	\$19,971	\$20,970	\$22,018
CITY DEBT SERVICE				\$11,856	\$11,856	\$11,856
DEBT COVERAGE RATIO				1.68	1.77	1.86

Notes: CRLF montly payments estimated at \$987.98
 Village Capital monthly payments estimated at \$1,700
 Current monthly taxes \$900
 Projected montly taxes \$1,452

Total projected monthly payments to purchase buiding: \$4,100

Cleveland Heights Economic Development

SEPTMEBER 2019
BUSINESS DEVELOPMENT PROJECT



ZHUG COMMERCIAL REVOLVING LOAN FUND APPLICATION

EXECUTIVE SUMMARY

Overview

Zhug is a proposed restaurant at 12413 Cedar Road in the Cedar Fairmount Commercial District. Zhug will be a full service restaurant focusing on Mediterranean-style small plates. The restaurant will be owned and operated by Doug Katz, who is a Cleveland Heights resident and also operates his prep kitchen commissary and catering business in Cleveland Heights at 1975 Lee Road. Mr. Katz has also been the long-time owner-operator of Fire, a successful restaurant located in Shaker Square.

Mr. Katz has requested financing support through the City to assist in their acquisition of equipment and other improvements to the commercial space at 12413 Cedar Road.

More specifics are included below.

Borrower: Zhug
12413 Cedar Road
Cleveland Heights, OH 44118

Guarantors: Douglas Katz
2720 East Overlook Road
Cleveland Heights, OH 44106

Amount: \$150,000 Commercial Revolving Fund Loan

Proposed Terms of Repayment: The Borrower will repay the City of Cleveland Heights \$150,000 over seven years, at a rate of two (2.0%) for the \$150,000 loan. Payments will be deferred for six months from final disbursement.

Proposed Security: The City will secure a personal guarantee and cognovit note from the guarantor. The City will also have a first position mortgage on the property at 1975 Lee Road.

Purpose of Loan: To assist in the opening of a new restaurant at 12413 Cedar Road. Funding will be used exclusively for the purchase of equipment and furniture. The equipment being purchased will have hookups and required utilities already in place.

Use and Sources of Funds:

U S E S		Percentage
-	-	-
Leasehold improvements	\$181,585	38%
Equipment	\$122,639	26%
Interior design/fixtures	\$63,738	13%
Contingency	\$82,038	17%
Demo	\$30,000	6%
-	-	-
TOTAL	\$480,000	100%

S O U R C E S		Percentage
-	-	-
Bank financing	\$150,000	31%
Equity investment	\$150,000	31%
CRLF Loan	\$150,000	31%
Landlord	\$30,000	6%
-	-	-
TOTAL	\$480,000	100%

Type of Business:

Zhug will be a full service restaurant focusing on Mediterranean-style small plates.

Employment and Taxes:

Zhug projects to create 10-14 jobs. Year 1 projected wages are \$591,408, which translates to \$13,306 of income tax withholding to the City. Approximately half of the created job would be salary/hourly employees and half would be tipped employees.

Financial Analysis and Staff Recommendation:

An analysis of the income and cash flow projections show that Zhug can carry its projected debt over the next three years. Projections show the debt coverage ratio (net income divided by the

required debt service) is 15.23 in Year 1, 15.99 in Year 2 and 16.79 in Year 3. The projected debt coverage ratio far exceeds debt to income ratio standards of a minimum of 1.15-1.25.

In terms of security, the City would require personal guarantees and cognovit notes from the guarantor. The City would also have a first position mortgage on the commercial property at 1975 Lee Road. That property is currently valued by the County at \$231,500, providing ample collateral coverage on the City's \$150,000 loan.

The guarantor currently has an Economic Development Loan with the City related to the property at 1975 Lee Road. That remaining loan balance (approximately \$30,000) would be paid in full in advance of closing on this new Commercial Revolving Loan.

Given the track record of the owner, including an existing business location in Cleveland Heights and successful operation of similar businesses in other locations, the credit worthiness of the applicant, and the City's strong first position mortgage collateral position, staff recommends proceeding with the loan.

Terms and conditions are subject to both Council and Legal Department review.

OPERATING PROFORMA: INCOME AND CASH FLOW PROJECTION

name: Zhug
 address: 12413 Cedar Road
 Cleveland Heights, Ohio 44122

U S E S		Percentage	S O U R C E S		Percentage	Proposed City Financing Terms	
Leasehold improvement	\$181,585	38%	Bank financing	\$150,000	31%	Amount	\$150,000
Equipment	\$122,639	26%	Equity invesme	\$150,000	31%	Rate	2.00%
Interior design/fixtures	\$63,738	13%	CRLF Loan	\$150,000	31%	Term	7
Contigency	\$82,038	17%	Landlord	\$30,000	6%		
Demo	\$30,000	6%					
			TOTAL	\$480,000	100%		
TOTAL	\$480,000	100%					

	2017	2018	2019	Year 1 Projections	Year 2 Projections	Year 3 Projections
REVENUES				\$1,971,360	\$2,069,928	\$2,173,424
- COST OF REVENUES				\$591,408	\$620,978	\$652,027
GROSS PROFIT				\$1,379,952	\$1,448,950	\$1,521,397
-OPERATING EXPENSES				\$1,028,982	\$1,080,431	\$1,134,453
= NET OPERATING INCOME				\$350,970	\$368,519	\$386,944
CITY DEBT SERVICE				\$23,040	\$23,040	\$23,040
DEBT COVERAGE RATIO				15.23	15.99	16.79

Notes: CRLF montly payments estimated at \$1,920



MEMORANDUM

TO: CITIZENS ADVISORY COMMITTEE (CAC) & OTHER INTERESTED PARTIES

FROM: PLANNING & DEVELOPMENT DEPARTMENT

DATE: September 3, 2019

SUBJECT: PUBLIC MEETING NOTICE AND AGENDA

A scheduled meeting of the CAC will be held **Tuesday, September 10, 2019 at 7:30 p.m.** in the Executive Conference Room of City Hall, 40 Severance Circle. If you are unable to attend please call Brian Iorio at 291-4845 or email bio@clvhts.com in advance of the meeting so that your absence can be recorded as being excused.

A G E N D A

1. CALL TO ORDER/ROLL CALL
2. 5-Year Consolidated Plan Presentation
 - Paul Herdeg, Interim Deputy Chief Economic Development Officer
Cuyahoga County Department of Development
3. APPROVAL OF MINUTES
 - August 6, 2019
 - August 13, 2019
4. STAFF REPORTS
5. UNFINISHED BUSINESS
6. NEW BUSINESS
 - Subcommittee Reports
 - Finance & Other
 - Commercial Areas
 - Neighborhood Activities
 - Preservation & Housing
 - Preliminary Admin Recommendation
6. ADJOURNMENT



CLEVELAND
HEIGHTS

CITY OF CLEVELAND HEIGHTS
PLANNING COMMISSION AGENDA

There will be a regular meeting of the Planning Commission of the City of Cleveland Heights at **7:00 p.m. on Wednesday, September 11, 2019**, in Council Chambers, located on the second floor of City Hall, 40 Severance Circle.

A G E N D A

1. Call to Order
2. Approval of Minutes for the August 20, 2019, regular meeting.
3. **Proj. No. 19-19: E. Drake & D. Johnson, owners of PPN 686-04-006 on Lamberton Road, "A" Single-Family**, request lot resubdivision per Code chapters 1111, 1115, & 1121.
4. **Proj. No. 19-18: FA OH HND, LLC, 2953 Mayfield Road**, C3 General Commercial, requests conditional use permit to operate existing Honda dealership for auto sales (new & used) & auto service (major & minor) per Code chapters 1111, 1115, 1131, 1151, 1153, 1161, 1163 & 1166.
5. **Proj. No. 19-17: True North Energy LLC, 2310-2314 Lee Road**, C2X Multiple Use, requests conditional use permit to open northern Lee Road driveway access to site, creating two driveways onto Lee Road per Code chapters 1111, 1115, 1131, 1151, 1153, 1161 & 1166.
6. Old Business
7. New Business
8. Adjournment

Proposed: 09/03/2019

ORDINANCE NO. 80-2019 (SMS), Second Reading

By Council Member Yasniow

An Ordinance authorizing all actions necessary to accept Northeast Ohio Public Energy Council 2019 Energized Community Grant(s) Funds; and declaring an emergency.

WHEREAS, the City of Cleveland Heights is a member of the Northeast Ohio Public Energy Council (“NOPEC”) and is eligible for one or more NOPEC Energized Community Grant(s) for 2019 (“NEC Grant(s)”) as provided for in the NEC Grant Program guidelines; and

WHEREAS, the City has previously entered into a Grant Agreement with NOPEC on August 23, 2019 to receive one or more NEC Grant(s); and

WHEREAS, this Council has determined that it would be in the City and its residents’ best interest to accept the NEC Grant(s) for 2019.

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

SECTION 1. The City Manager be, and she is hereby, authorized to take all actions necessary to accept the NEC Grant(s) funds for 2019.

SECTION 2. 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 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the timely need to accept the grant funds described herein. 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.

ORDINANCE NO. 80-2019 (SMS)

CAROL ANN ROE, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED:

Proposed: 09/03/2019

ORDINANCE NO. 81-2019 (HT), Second Reading

By Council Member Dunbar

An Ordinance to Vacate a portion of the Street Right-of-Way for Edwards Road, to Reserve an Easement for Utilities and Drainage, and declaring an emergency.

WHEREAS, by Ordinance No. 7-2018, this Council authorized the City Manager to enter into the Development Agreement with F & C Development, Inc., as amended by Ordinance 135-2018, passed December 3, 2018 (“Agreement”), which Agreement has been executed; and

WHEREAS, said Agreement describes the intended development plan for the site known as Top of the Hill; and

WHEREAS, the development plan requires that Edwards Road, which currently runs through a portion of the Top of the Hill site, be partially vacated to accommodate the proposed buildings and improvements to be constructed; and

WHEREAS, the City has published notice on July 25, August 1, August 8, August 15, August 22, and August 29, 2019, of its intent to declare a portion of Edwards Road, more fully described on the plat attached hereto as Exhibit A, vacated.

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

SECTION 1. This Council declares its intent to vacate the portion of Edwards Rd. more fully described in the attached Exhibit A.

SECTION 2. Such vacation is declared by the City Council upon being satisfied that there is good cause for such vacation, that it will not be detrimental to the general interest, and that it should be made.

SECTION 3. That an easement for utilities and drainage shall be reserved in, over, under and through the area to be vacated, in a form to be executed by the City Manager, and approved as to form by the Director of Law.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to prevent undue delay to the development of Top of the Hill, and thus delay the City’s receipt of the benefits inherent in Top of the Hill opening. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. 81-2019 (HT)

CAROL ANN ROE, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED:

CONSOLIDATION, RE-SUBDIVISION, AND VACATION PLAT

Situated in the City of Cleveland Heights, County of Cuyahoga, and State of Ohio:
Being a Re-Subdivision and Consolidation of Part of Sublots 4 Through 34, 36 Through 42
And Sublot 59 of J.J. Low's Allotment As Shown by Plat Recorded in Volume 5, Page 31
Of Cuyahoga County Map Records; and All of Sublots 232 Through 236 of a Subdivision of
Original 100 Acre Lots 405 and 406 Made by a Decree of the Cuyahoga County of Common Pleas
Case Number 127782 Recorded in Court Journal Volume 194, Page 427; Along With a Vacation of
Part of Edwards Street (50 Feet Wide), Known as Being Part of Original 100 Acre Lot 405
July 6, 2019 Scale: 1 Inch = 40 Feet

OWNER'S ACCEPTANCE

WE, THE UNDERSIGNED, THE CITY OF CLEVELAND HEIGHTS OHIO, OWNERS OF THE
WITHIN PLATTED LAND, DO HEREBY CONSENT TO, AND ACCEPT THIS RE-SUBDIVISION,
CONSOLIDATION, AND VACATION PLAT OF THE SAME AS SHOWN HEREON

THE CITY OF CLEVELAND HEIGHTS

STATE OF OHIO)
COUNTY OF _____)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF
_____, 2019.

NOTARY PUBLIC

COMMISSION EXPIRATION DATE: _____

BOUNDARY CERTIFICATION:

I HEREBY CERTIFY THAT I HAVE SURVEYED THE PREMISES AND PREPARED THE ATTACHED PLAT IN
ACCORDANCE WITH THE PROVISIONS OF CHAPTER 4733-37 OF THE OHIO ADMINISTRATIVE CODE
AND THE DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF, ALL OF WHICH ARE CORRECT
TO THE BEST OF MY KNOWLEDGE AND BELIEF. IRON MONUMENTS OR PINS AS INDICATED WERE
FOUND OR SET AS SHOWN HEREON. THE TERM CERTIFY AS USED IN THIS STATEMENT IS
UNDERSTOOD TO BE THE PROFESSIONAL OPINION OF THE SURVEYOR WHICH IS FORMULATED ON
HIS BEST KNOWLEDGE, INFORMATION AND BELIEF, AND AS SUCH, IT DOES NOT CONSTITUTE A
GUARANTEE OR WARRANTY, EITHER EXPRESSED OR IMPLIED. THIS PLAT WAS PREPARED WITHOUT
THE BENEFIT OF AN ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATE OF FACTS REVEALED BY A
EXAMINATION OF THE SAME. ALL IRON PINS SET ARE 5/8" X 30" LONG REBAR WITH A PLASTIC CAP
STAMPED "POLARIS". BEARINGS REFER TO THE OHIO COORDINATE SYSTEM OF 1983 - NORTH ZONE
1986 ADJUSTMENT.

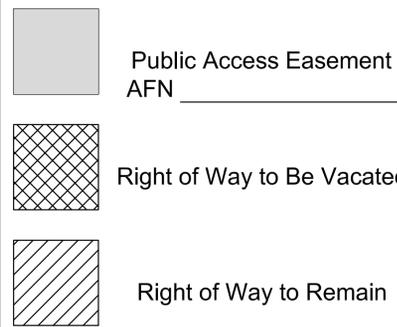
Michael P. Spellacy
MICHAEL SPELLACY P.S. #8169

07/08/2019



CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C-1 R/M	256.66	412.37	132.64	252.54	S80°36'56"E	35°39'40"
C-2 R/M	303.89	2189.38	152.19	303.65	S85°31'50"W	7°57'10"
C-3 Act.	169.62	2229.38	84.85	169.58	S83°44'01"W	4°21'33"
C-3 Rec.	169.63	2202.41		169.59		4°24'47"
C-4 Act.	56.88	372.37	28.50	56.82	N85°55'48"E	8°45'07"
C-4 Rec.	56.89	372.37		56.84		
C-5 Act.	206.57	380.00	105.90	204.03	S76°12'30"E	31°08'45"
C-5 Rec.	204.78	380.00		204.24		
C-6 R/M	54.89	30.00	38.98	47.55	S08°02'34"E	104°49'56"
C-7 Calc.	396.27	1601.42	199.15	395.26	N52°12'43"E	14°10'41"
C-8 Calc.	224.75	1601.42	112.56	224.57	S63°19'17"W	8°02'28"
C-9 Calc.	434.16	1666.42	218.32	432.93	S51°50'13"W	14°55'39"
C-10 Calc.	254.49	1666.42	127.49	254.25	S63°40'33"W	8°45'01"
C-11 Calc.	20.95	1601.42	10.47	20.94	S44°44'53"W	0°44'58"

NOTE: PPN 685-18-011 TO BE TRANSFERRED
TO THE CITY OF CLEVELAND HEIGHTS
PRIOR TO RECORDING OF THIS PLAT



DATE: 07/08/2019
SCALE: HOR. 1" = 40'
VERT. N/A
FOLDER: DWG/Survey
FILENAME: Consolidation
TAB: 01-Consol/Vacation
DRAWN: MPS

BASIS OF BEARINGS
BEARINGS SHOWN
HEREON ARE
BASED ON THE OHIO
STATE PLANE
COORDINATE SYSTEM OF
1983 - NORTH ZONE, 1986
ADJUSTMENT

BOUNDARY SURVEY LEGEND

- 5/8" X 30" IRON PIN (ID: POLARIS) SET
- IRON PIN FOUND
- IRON PIPE FOUND
- MONUMENT BOX FOUND

APPROVALS
THIS PLAT IS HEREBY APPROVED BY THE PLANNING COMMISSION OF THE
CITY OF CLEVELAND HEIGHTS, OHIO

THIS _____ DAY OF _____, 20____

SECRETARY OF PLANNING COMMISSION

THIS PLAT IS HEREBY APPROVED BY THE DIRECTOR OF PLANNING AND DEVELOPMENT OF THE
CITY OF CLEVELAND HEIGHTS, OHIO

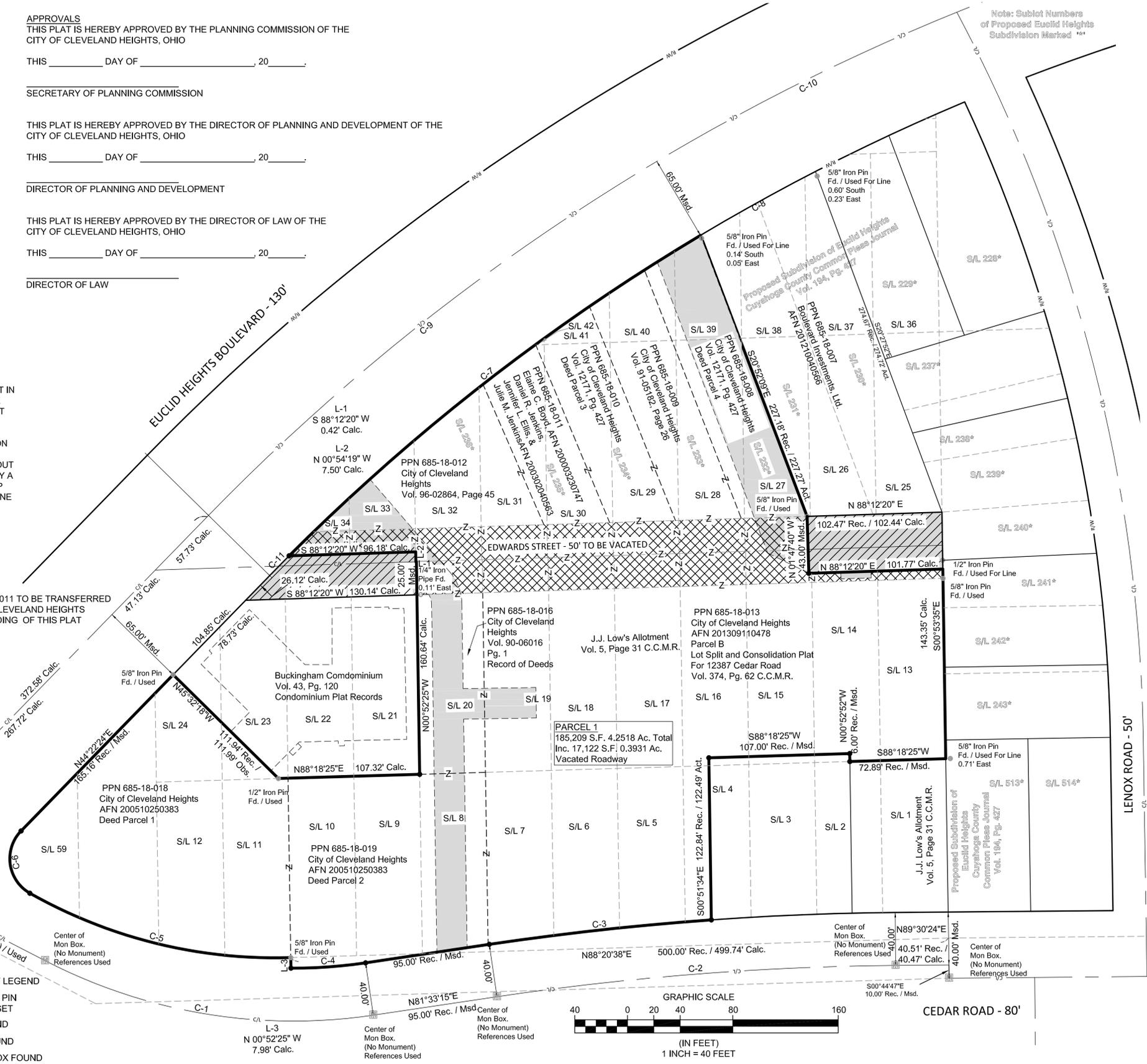
THIS _____ DAY OF _____, 20____

DIRECTOR OF PLANNING AND DEVELOPMENT

THIS PLAT IS HEREBY APPROVED BY THE DIRECTOR OF LAW OF THE
CITY OF CLEVELAND HEIGHTS, OHIO

THIS _____ DAY OF _____, 20____

DIRECTOR OF LAW



Note: Sublot Numbers
of Proposed Euclid Heights
Subdivision Marked *PM

BEACON ON THE HILL
CITY OF CLEVELAND HEIGHTS-CUYAHOGA COUNTY-OHIO

POLARIS ENGINEERING & SURVEYING, INC.
34600 CHARDON ROAD - SUITE D
WILLOUGHBY HILLS, OHIO 44094
(440) 944-4433 (440) 944-3722 (fax)
www.polaris-es.com



**CONSOLIDATION /
VACATION PLAT**

CONTRACT No.	
17248	
SHEET	OF
01	01

Proposed: 09/03/2019

RESOLUTION NO. (PD)

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with Rudy's Pub for a commercial revolving loan under the City's Economic Development Loan Fund Program for acquisition of real estate and other assets; and declaring an emergency.

WHEREAS, Rudy's Pub is an existing business in the City, located at 2191 Lee Road; and

WHEREAS, Rudy's Pub has applied to the City for a loan under the City's Economic Development Loan Fund Program for financing support to assist in its acquisition of real property and other assets at 2191 Lee Road, which it is currently leasing; and

WHEREAS, this Council has determined that making the requested loan would be consistent with the objectives of the Economic Development Loan Fund Program and would be in the City's best interest; and

WHEREAS, there are Economic Development funds available for this purpose.

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

SECTION 1. The City Manager be, and she is hereby, authorized to execute a loan agreement and all necessary documents to make a loan under the City's Economic Development Loan Fund Program to Rudy's Pub, to assist in the acquisition of real property and other assets at 2191 Lee Road. The loan shall be in the sum of One Hundred Twenty-Four Thousand Nine Hundred Thirty-Five Dollars (\$124,935.00), at an interest rate of five percent (5%), with a fifteen (15) year repayment schedule after a ninety (90) day deferral from final disbursement. The loan shall be secured by personal guarantees and cognovit notes from the guarantors Amanda J. Elfers & Quintin Jones; and a lien on equipment at 2191 Lee Road. All documents hereunder shall be approved as to form by the Director of Law.

SECTION 2. Notice of the passage of this Resolution 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 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the timely need to meet the City's loan

RESOLUTION NO. (PD)

closing goals. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

CAROL ANN ROE, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED:

COMMERCIAL LOAN AGREEMENT

between

THE CITY OF CLEVELAND HEIGHTS

and

RUDY'S PUB, LLC

THIS AGREEMENT, made and entered into at Cleveland Heights, Ohio this ____ day of September, 2019 by and between the CITY OF CLEVELAND HEIGHTS, an Ohio Municipal Corporation, 40 Severance Circle, Cleveland Heights, Ohio, 44118 (hereafter the "City" or "Lender"), acting through its City Manager, duly authorized by Resolution No. XX-2019 passed by City Council on September X, 2019, and RUDY'S PUB, LLC (hereafter "Borrower"), an Ohio limited liability corporation, whose mailing address is 2191 Lee Road, Cleveland Heights, Ohio, 44118.

WHEREAS, Borrower intends to own and operate a restaurant at 2191 Lee Road in the City of Cleveland Heights named the "Rudy's Pub;" and

WHEREAS, Borrower has applied to Lender for a loan in the amount of ONE HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED THIRTY FIVE AND 00/100 DOLLARS (\$124,935.00) (hereafter the "Commercial Revolving Loan") to assist with the purchase of the real property at 2191 Lee Road; and

WHEREAS, Lender desires to make the applied-for Loan to Borrower to enable Borrower to carry out its plans, subject to the terms and conditions hereinafter set forth; and

WHEREAS, the City has determined that the Loan will enable the company to continue its business which will retain low/moderate income jobs, and be in the best interests of the City of Cleveland Heights and its residents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Lender and Borrower agree as follows:

ARTICLE I

PROJECT

SECTION 1.01 PROJECT

Borrower agrees to undertake, or cause to be undertaken, the following activity (hereafter referred to as the "Project"): to own and operate a restaurant at 2191 Lee Road named "Rudy's Pub" in the City of Cleveland Heights, which shall hold or make available a minimum of four (4) (full-time equivalent) jobs to low-to-moderate income persons.

SECTION 1.02 FINANCING SOURCE FOR THE PROJECT

The financing sources for the Project shall include a Commercial Revolving Loan from the City of Cleveland Heights in the sum of ONE HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED THIRTY FIVE AND 00/100 DOLLARS (\$124,935.00).

SECTION 1.03 TIMETABLE FOR PROJECT ACTIVITIES

Borrower agrees to purchase the real property at 2191 Lee Road on or before January 1, 2020 and continue to operate the restaurant named "Rudy's Pub." Borrower also agrees to meet low-to-moderate income job requirements on or before January 1, 2020. Lender may grant an extension of time to complete the Project if necessary because of unforeseen circumstances. Borrower's request shall be in writing and any granted extension shall be in writing.

SECTION 1.04 GUARANTEE OF COMPLETION AND REPAYMENT

Borrower unconditionally and irrevocably guarantees timely completion of the Project in accordance with Section 1.03 and timely repayment of the Loan in accordance with Article II. To accomplish complete and timely execution of the Project, Borrower shall make payment for any cost overruns.

ARTICLE II

THE LOAN

SECTION 2.01 THE LOAN, RATE AND NOTE

Subject to the terms and conditions of this Agreement, Lender hereby agrees to lend to Borrower, and Borrower agrees to borrow from Lender, the sum of ONE HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED THIRTY FIVE AND 00/100 DOLLARS (\$124,935.00) for the Project. The loan may be prepaid in full at any time with no prepayment penalty.

SECTION 2.02 USE TERM AND REPAYMENT OF LOANS

The Commercial Revolving Loan in the sum of ONE HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED THIRTY FIVE AND 00/100 DOLLARS (\$124,935.00) shall be solely for the purpose of acquiring the real property at 2191 Lee Road to continue to operate the restaurant named "Rudy's Pub."

The obligation of the Borrower to repay the Loan shall be evidenced by and repayable in accordance with the terms of the Agreement and in accordance with the terms of a Cognovit Note (hereinafter "Loan Note") of Borrower in a form satisfactory to Lender (or in the form of Exhibit A attached hereto), dated the date on which the Commercial Revolving Loan is made (hereinafter the "Closing Date"), payable to the order of the lender in the amount of the Commercial Revolving Loan with interest on the unpaid principal balance thereof, from time to time outstanding, at a fixed annual rate of five percent (5%).

The Term of the Commercial Revolving Loan shall be for One Hundred Eighty (180) months.

The payment schedule shall start six (6) months after final disbursement continuing in monthly installments of Nine Hundred Eighty Seven Dollars (\$987.00) for an additional one hundred seventy nine (179) months.

The first installment of the loan repayment shall be due six (6) months from the date of the final disbursement. Subsequent installments shall be due in advance on the first day of every calendar month thereafter during the Term of the loan. All payments shall be made payable to the City of Cleveland Heights and be made promptly to Lender at the following address or at such other address as Lender may designate in writing: Department of Planning and Development, Attn: Loan Processing, City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, Ohio 44118.

other agreement or instrument to which Borrower is a party or by which it or its property may be bound or affected.

SECTION 3.02 LITIGATION

There are no legal actions, suits, or other proceedings pending, or to the knowledge of Borrower, threatened against Borrower before any court or administrative agency which, if determined adversely to Borrower, would have an adverse effect on the financial condition or business of Borrower, which have not be disclosed in writing to Lender.

SECTION 3.03 GOVERNMENTAL CONSENTS

No authorization, consent or approval, or any formal exception of any governmental body, regulatory authorities (federal, state or local) or mortgagor, creditor or third party is or was necessary to the valid execution and delivery by Borrower of this Agreement, the Loan Note, Personal Guarantees, or other document.

SECTION 3.04 NO ADVERSE CHANGE

There has been no adverse change since the date of application for the Commercial Revolving Loan in the financial condition, fixed properties, debts, or liabilities of Borrower.

SECTION 3.05 ABSENCE OF DEFAULTS

Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note or otherwise evidence of indebtedness or any mortgage or collateral instrument securing the same.

SECTION 3.06 TAX RETURNS AND PAYMENTS

Borrower has filed all required tax returns and has paid or made provision for the payment of all taxes, if any, which have or may become due pursuant to said returns or pursuant to any assessments levied against Borrower or its personal or real property by any federal, state or local taxing agency. No tax liability has been asserted by the Internal Revenue Service or any other taxing agency, (federal, state or local) for taxes materially in excess of those already provided for, and Borrower knows of no basis for any such deficiency assessment.

SECTION 3.07 MATERIAL FACTS

No representation or warranty contained herein or made hereunder and no certificate, schedule, or other document furnished or to be furnished in connection with the transactions contemplated hereby contains or will contain a misstatement of material fact or omits or will omit to state a material fact required to be stated herein or therein in order to ensure that statements contained herein and therein are not misleading.

SECTION 3.08 PROHIBITION OF CONFLICT OF INTEREST

No person who is an employee, officer, agent or consultant of the City of Cleveland Heights, or an elected public official or member of the Cleveland Heights City Council or appointed public official of the City of Cleveland Heights who exercises or has exercised any functions or responsibilities with respect to the Project or who is in a position to participate in a decision-making process or gain inside information with regard to the Project may obtain a personal or financial interest or benefit from the Project, or have an interest in any contract, subcontract, or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties. The above restrictions shall apply to all activities comprising the Project, and shall cover any such interest or benefit during, and any time after, such person's tenure.

SECTION 3.09 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Borrower will comply with all applicable federal, state and local laws, ordinances and administrative rulings pertaining to the Project.

SECTION 3.10 PERFORMANCE ON OTHER CONTRACTS WITH THE CITY

Borrower will fully perform all other contracts with the City, if any, in a timely and workmanlike manner.

ARTICLE IV

CONDITIONS OF LENDING

The obligation of Lender to make the Commercial Revolving Loan shall be subject to the fulfillment on or before the Closing Date of each of the following conditions:

SECTION 4.01 EXECUTION AND DELIVERY OF LOAN AGREEMENT AND NOTE

Borrower shall execute and deliver to Lender this Agreement and the Loan Note, in the form substantially similar to that attached as Exhibit A.

SECTION 4.02 EXECUTION AND DELIVERY OF COLLATERAL DOCUMENTS

Borrower's shall execute and deliver to Lender the mortgage, described in Section 2.04, and attached hereto as Exhibit B; and the personal guarantees of Amanda Elfers and Quintin Jones, attached hereto as Exhibit C.

Borrower acknowledges and understands that the City shall place a lien on the equipment owned by Borrower valued at approximately _____ (\$_____)

SECTION 4.03 HUD APPROVAL

Borrower shall submit sufficient documentation, if required by the United States Department of Housing and Urban Development (“HUD”) or Lender to establish to HUD’s satisfaction that Borrower and/or Guarantor are in compliance with all applicable federal laws and regulations.

SECTION 4.04 GOVERNMENTAL APPROVAL

Borrower shall have secured all necessary approvals and consents of governmental bodies having jurisdiction with respect to any Project activities.

SECTION 4.05 APPROVAL OF OTHERS

Borrower shall have secured all necessary approvals and consents required with respect to this transactions by any creditor or other party having any financial interest in Borrower or its property.

SECTION 4.06 REPRESENTATION AND WARRANTIES

The representation and warranties contained herein shall be true and correct as of the date hereof and the Closing Date. Borrower shall deliver to Lender an affidavit to that effect, substantially in the form of Exhibit D attached hereto.

ARTICLE V

AFFIRMATIVE COVENANTS

Borrower agrees to comply with the following covenants with respect to itself and Guarantor from the date hereof until the Loan has been fully repaid to Lender, or such longer time as specifically provided in the covenant, unless Lender or its assigns otherwise consent in writing:

SECTION 5.01 PAYMENT OF LOANS

Borrower agrees to pay punctually the principal on the Loan Note according to its terms and conditions and to repay punctually any other amounts that may become due and payable to Lender under or pursuant to the terms of this Agreement or the Note.

SECTION 5.02 PAYMENT OF OTHER INDEBTEDNESS

Borrower agrees to pay punctually the principal and interest due on any other indebtedness now or hereafter owing by Borrower to Lender or any other Lender.

SECTION 5.03 MAINTAIN AND INSURE PROPERTIES

Borrower agrees at all times to maintain the real property provided as security for this Loan in such condition and repair that Lender's security will be adequately protected and so that the business carried on in connection therewith may be properly and advantageously carried out at all times. Borrower also agrees to maintain during the term of the Loan adequate hazard insurance policies covering fire and extended coverage and such other hazards as may be deemed appropriate in amounts and form sufficient to prevent Borrower from becoming a co-insurer and issued by companies satisfactory to Lender with acceptable loss-payee clauses in favor of Lender. Such insurance insofar as Lender's loss-payee coverage is concerned shall be in an amount of at least \$124,935.00. Borrower further agrees to maintain adequate liability and worker's compensation insurance in amounts and forms satisfactory to Lender, and to provide written proof thereof to Lender upon request.

SECTION 5.04 PAYMENT OF TAXES

Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties or its business(es) prior to the date on which penalties would attach thereto, except that Borrower shall not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate and timely proceedings, provided that Borrower so advises Lender in writing of such contest and proceedings.

SECTION 5.05 INFORMATION

Borrower agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions, such entries to be made in accordance with generally accepted accounting principles consistently applied, and to permit Lender or HUD to inspect said books upon reasonable advance notice. In addition, Borrower shall deliver to Lender annual financial statements, certified by Borrower to be true, upon request.

Borrower further agrees to provide information, and execute and deliver any and all additional documents and instruments as may be reasonably requested by Lender, its assigns or attorneys.

Borrower further agrees to provide written notice to Lender of any public hearing or meeting before any administrative or other public agency which may in any manner materially affect the real estate securing the Loan.

SECTION 5.06 INDEMNIFICATION

Borrower agrees to indemnify and save Lender, its officials, employees, agents

and assigns harmless against any and all liability with respect to, or resulting from, any delay in Borrower's discharging any of its obligations, or any failure of Borrower to discharge any of its obligations, and in no instance shall any official, employee or agent of Lender or its assigns be personally liable to Borrower.

SECTION 5.07 EXPENSE OF COLLECTION OR ENFORCEMENT

Borrower agrees, if at any time Borrower defaults on any provision of this Agreement, to pay Lender or its assigns, in addition to any other amounts that may be due from Borrower, an amount equal to the reasonable costs and expenses incurred by Lender or its assigns in the collection, enforcement, correction or waiver of such default, including, without limitation, attorneys' fees.

SECTION 5.08 ABSENCE OF RELATIONSHIPS

Borrower agrees that neither the execution and delivery of this Agreement nor the receipt by it of the Loan nor the performance of its obligations hereunder will or shall be deemed to create any relationship between Borrower and Lender, whether as a third-party beneficiary, partner, joint venturer, shareholder, agent, principal or otherwise; and Borrower agrees to make no representation or statement to any party to such effect. Borrower further agrees that Lender is acting as a conduit for the Federal funds comprising the Loan and is in no way lending its aid and credit to Borrower and Borrower agrees to make no representation or statement to any party to such effect.

SECTION 5.09 DISCLOSURE OF DOCUMENTS

Disclosure of documents which are in the possession of the City shall be governed by the applicable federal, state and local laws.

SECTION 5.10 SUPPORT SID AND/OR MERCHANT ASSOCIATION

Borrower shall actively support the Cedar-Lee Special Improvement District's activities. If qualified to become a member of a local Merchant Association within the City, Borrower shall become a member of that Merchant Association and actively support its activities.

ARTICLE VI

NEGATIVE COVENANTS

Borrower covenants and agrees that, from the date of the execution of this Agreement until payment in full of the Loan Note, unless Lender or its assigns shall otherwise consent in writing, it will not undertake any act, enter into any

agreement or make any commitment which the performance of which or failure of performance would constitute a breach of any of the covenants contained in this Agreement including, but not limited to, the following covenants:

SECTION 6.01 LIMITATION OF LIENS

Borrower will not create nor suffer to exist any mortgage, pledge, lien, charge or encumbrance of any kind on any of its properties or assets used as collateral to secure this Commercial Revolving Loan, except as otherwise provided herein or approved in writing by Lender.

SECTION 6.02 TRANSFER OF PROPERTY

Borrower shall not transfer any interest in the property or equipment which are subject of the Mortgage described herein, without the written consent of Lender.

SECTION 6.03 CHANGE IN OWNERSHIP

Borrower will not permit, without the prior written approval of Lender, which approval will not be unreasonably withheld, any material change in the ownership structure, control, or operation of its business including, without limitation, (i) merger into or consolidation with any other persons, firm or corporation; (ii) changing the nature of its business as intended to be carried on at the date hereof; or (iii) substantial distribution, liquidation or other disposal of its assets.

ARTICLE VII

EVENTS OF DEFAULT

The entire unpaid principal of the Loan Note shall become and be immediately due and payable upon the written demand of Lender or its assigns, without any other notice or demand or any kind of presentment or protest, if any one of the following events (hereinafter an "Event of Default") occurs and is continuing at the time of such demands, whether it is voluntarily or involuntarily or, without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administration or governmental body.

(A) PAYMENT DEFAULT UNDER NOTE

If Borrower shall fail to make payment when due of any installment of principal or other charges on the Note and the default remains

unremedied for sixty (60) days or more.

(B) INCORRECT REPRESENTATIONS OR WARRANTIES

If any representation or warranty contained in or made in connection with the execution and delivery of this Agreement, instrument or certificate furnished pursuant hereto shall prove to have been incorrect in any material respect when made.

(C) DEFAULT IN COVENANTS

If Borrower or any Guarantor defaults in the performance of any other term, covenant or agreement contained in this Agreement or any other Agreement between Borrower and Lender and such default shall continue unremedied for thirty (30) days after written notice thereof was given to Borrower by Lender.

(D) VOLUNTARY INSOLVENCY

If Borrower or any Guarantor become insolvent or ceases to pay its/her debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator for it/her or a substantial portion of its/her assets to effect a plan or other arrangement with creditors, or is adjudicated bankrupt, or shall make a voluntary assignment for the benefit of creditors.

(E) INVOLUNTARY INSOLVENCY

If an involuntary petition shall be filed against Borrower or any Guarantor under any bankruptcy, insolvency or similar law seeking the reorganization of or the appointment of any receiver, trustee or liquidator for its/her property, or of a substantial part of such property, or a writ or warrant of attachment or similar process is issued against a substantial part of the property of Borrower/Guarantor, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded within thirty (30) days after the filing or levy.

(F) JUDGMENTS

If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of TEN THOUSAND DOLLARS (\$10,000.00) shall be rendered against Borrower and/or either Guarantor and, within thirty (30) days, is not discharged, or an appeal therefrom taken and execution thereon effectively stayed pending such

appeal, or, if such judgment be affirmed on such appeal, the same is not discharged within thirty (30) days, or if Borrower/Guarantor has not entered into payment agreement with the judgment/creditor.

(G) FAILURE TO OPERATE RESTAURANT

If at any time during the term of the Revolving Loan, the restaurant known as Rudy's Pub or a City-approved substitute should fail to operate for a period of fourteen (14) or more consecutive days, or shall be closed for more than sixty (60) days in any calendar year, other than for remodeling or renovation, or should be operated by someone other than Rudy's Pub, LLC, or a City-approved substitute then Borrower shall be in default under this loan and all principal and unpaid interest, if any, shall be immediately due and payable. In the event of remodeling/renovation is necessary due to fire or other natural disaster, or is desired for business or cosmetic reasons, such remodeling/renovation shall proceed as quickly as is reasonably possible and Borrower shall give Lender written notice of expected closure within five (5) business days of the closing of the restaurant. In the event that Rudy's Pub relocates operations outside the City then the Borrower shall be in default under this loan and all principal and unpaid interest, if any, shall be immediately due and payable.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01 WAIVER OF NOTICE

No failure or delay on the part of Lender in exercising any rights, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No modification or waiver of any provision of this Agreement or of the Note, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other further notice or demand in similar or other circumstances.

SECTION 8.02 ENFORCEABILITY

When this Agreement is executed by Borrower and Lender, and when the Loan Note and other required documents are executed and delivered by Borrower for value, each such instrument shall constitute the legal, valid and binding obligation of the parties thereto in accordance with their terms. Any instruments, mortgages and other liens on chattel or real estate shall constitute legal, valid and binding liens free and clear of all prior liens and encumbrances, except those in favor of Lender.

SECTION 8.03 ENTIRE AGREEMENT, AMENDMENTS

This Agreement embodies the entire agreement and understanding between Lender and Borrower and supersedes all prior agreements and understandings relating to the subject matter hereof. Borrower and Lender and their successors and assigns hereby expressly reserve all rights to amend any provision of this Agreement, to amend or consent to or waive departure from the provisions of the Note, and to release or to otherwise deal with any collateral security for the payment of the Note; provided, however, that all such amendments be in writing and executed by Lender or its assigns and Borrower.

SECTION 8.04 SEVERABILITY

Borrower agrees that in the event that any provision of this Agreement or any other instrument executed at closing or the application thereof shall be declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement or such instrument nevertheless shall remain in full force and effect, and to this end, the provisions of all covenants, conditions and agreements described herein are deemed to be separate.

SECTION 8.05 NOTICES

All notices, consents, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail, prepaid, to Lender and Borrower at the address in the heading or such other address as either party may have designated in writing to the other party hereto.

SECTION 8.06 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All agreements, representations, and warranties made by Borrower herein or any other document or certificate delivered to Lender in connection with the transactions contemplated by this Agreement shall survive the delivery of this Agreement and the Note and shall continue in full force and effect so long as the Loan Note is outstanding.

SECTION 8.07 SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon Borrower, and its successors and assigns, except that Borrower may not assign or transfer its rights or obligations hereunder without the prior written approval of Lender. This Agreement shall inure to the benefit of Lender, its successors and assigns, and all subsequent holders of the Loan Note.

SECTION 8.08 ARTICLE AND SECTION HEADINGS

Article and Section headings used herein are for convenience only and shall not affect the constitution of this Agreement.

SECTION 8.09 COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Borrower covenants and agrees to comply with all applicable federal laws and regulations governing the receipt, expenditure and use of the Loan funds including, but not limited to, the following to the extent applicable:

1. Section 106 of the National Historic Preservation Act of 1966;
2. Title VII of the Civil Rights Act of 1968;
3. Section 109 of the Housing and Community Development Act of 1974;
4. Section 504 of the Rehabilitation Act of 1973;
5. The Age Discrimination Act of 1975;
6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Section 104(j) of the Urban and Rural Recovery Act of 1973; and
7. The regulations and requirements of OMB Circular Nos. 102 and A-87.

SECTION 8.09 COMPLIANCE WITH LOCAL LAWS AND REGULATIONS

Borrower covenants and agrees to comply with all applicable local laws and regulations including, but not limited to, Chapter 749, "Fair Practices," of the Codified Ordinances of the City of Cleveland Heights.

IN WITNESS WHEREOF the parties hereto have each caused this Loan Agreement to be duly executed as of the day and the year first written above.

Signed in the presence of:

CITY OF CLEVELAND HEIGHTS, OHIO

By: _____
City Manager

RUDY'S PUB, LLC
2191 Lee Road
Cleveland Heights, Ohio,
EIN# NO: _____

Signed in the presence of:

By: _____
Amanda Elfers, Member

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Tanisha R. Briley, City Manager of the City of Cleveland Heights, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed personally and as such City Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland Heights, Ohio, this _____ day of _____, 2019.

Notary Public

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Amanda Elfers, individually and as member of Rudy's Pub, LLC, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed and the free act and deed of the limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at _____, Ohio, this _____ day of _____, 2019.

Notary Public

Approved as to form:

WILLIAM R. HANNA
Director of Law
Authorized by Resolution No. XX-2019

EXHIBIT A

COGNOVIT NOTE

\$124,935.00 Cleveland Heights, Ohio
September ____, 2019

FOR VALUE RECEIVED, the Undersigned, RUDY'S PUB, LLC ("Maker") promises to pay to the order of the CITY OF CLEVELAND HEIGHTS, Ohio, 40 Severance Circle, Cleveland Heights, Ohio 44118 (the "City") the principal sum of ONE HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED THIRTY FIVE DOLLARS (\$124,935.00) with interest thereon as herein set forth. The Term of the Revolving Loan shall be fifteen (15) years or one hundred eighty (180) months. The loan shall be paid in monthly installments of Nine Hundred Eighty Eight Dollars (\$988.00). The first installment shall be due six (6) months from the date of the final disbursement. Subsequent installments shall be due in advance on the first day of every calendar month thereafter during the Term of the Loan. From and including the date hereof until the date of payment in full, the principal balances of this Note from time to time outstanding shall bear interest at an interest rate of five percent (5%) per annum.

This Note is issued pursuant to a Commercial Revolving Loan Agreement, dated September __, 2019, by and between Maker and the City, to which reference hereby is made for a statement of the right of the holder hereof to declare this Note due prior to its stated maturity and the right and obligation of Borrower to repay this Note. In the event Maker should be in default, as defined in said Loan Agreement, this Note shall thereafter bear interest at the rate of ten percent (10%) per annum.

The Undersigned expressly and unconditionally waives presentment and demand of payment, notice of dishonor, protest and other notices of any kind.

Principal and interest hereon shall be payable in lawful money of the United States of America as such place as the holder shall designate in writing to Borrower. This Note shall be governed by Ohio law.

The Undersigned hereby authorizes any attorney-at-law to appear in any court of record in the State of Ohio or any other State of Territory of the United States after the indebtedness guaranteed hereunder becomes due by acceleration or otherwise, and waive the issuing and service of process and confess judgment

against the Undersigned in favor of Lender or other holder of the Note for the amount then appearing due and the cost of suit, and thereupon to release all errors and waive all rights of appeal and stay of execution. No judgment against the Undersigned of this Note shall bar any subsequent judgment against any other party(ies) liable as Maker or Guarantor.

WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE OH HIS/HER PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the day and year first above written.

RUDY'S PUB, LLC
2191 Lee Road
Cleveland Heights, Ohio,
EIN# NO: _____

Signed in the presence of:

By: _____
Amanda Elfers, Member

EXHIBIT B

MORTGAGE

This Mortgage is made and entered into this _____ day of September, 2019, by and between the CITY OF CLEVELAND HEIGHTS, 40 Severance Circle, Cleveland Heights, Ohio 44118 (hereinafter referred to as "Mortgagee") and RUDY'S PUB, LCC, an Ohio limited liability corporation, whose mailing address is 2191 Lee Road, Cleveland Heights, Ohio 44118 (hereinafter referred to as Mortgagor").

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the Mortgagor does hereby mortgage, sell, grant, assign, and convey unto the Mortgagee, its successors, and assigns, all of the following described property:

Situated in the City of Cleveland Heights, County of Cuyahoga, State of Ohio, and known as being Sublot No. 216 in J.A. Wigmore's Company's Cedarbrook Allotment of part of the Original Warrensville Township Lot(s) Nos. 2 and 3, as shown in the recorded Plat in Volume 59 of Maps, Page 26 of Cuyahoga County Records, and forming a parcel of land 40 feet on the Easterly side of Lee Road and extending back 109.20 feet deep on the Northerly line, 102 feet deep on the Southerly line and having a rear line of 40.64 feet, as appears by said plat be the same more or less, but subject to all legal highways.

2189 Lee Road
Cleveland Heights, Ohio 44118

Permanent Parcel No. 687-06-003

Together with and including, without limitation, all buildings, fixtures, plumbing, heating, lighting, ventilating, refrigerating, incinerating, and air conditioning apparatus (the Mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as a part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described

property (provided, however, that the Mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues and profits until default), to have and to hold the same unto the Mortgagee, and its successors in interest and assigns, forever in fee simple or such other estate, if any is stated herein.

The Mortgagor covenants that it is lawfully seized and possessed of and has the rights to sell and convey said property, subject to any easements of record, and in addition thereto such easements as are necessary for public utilities, subject to applicable zoning laws and further subject to taxes not yet due and payable, that the same is free from all encumbrances and that it hereby binds itself and its heirs, executors, administrators, successors and assigns to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever. Mortgagor covenants that it will comply with all federal, state and local laws regarding the use of the property, and not commit waste or otherwise limit or detract from the useability or marketability of the property.

This instrument is given to secure the payment of a certain Cognovit Note, dated September __, 2019 , in the principal sum of ONE HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED THIRTY FIVE DOLLARS (\$124,935.00) (the "Loan Note") signed by Rudy's Pub, LLC, of which Mortgagor Amanda Elfers is a member.

Default in any of the covenants or conditions of this instrument, the Note, or a certain Loan Agreement dated September __. 2019, between Rudy's Pub, LLC and the Mortgagee, City of Cleveland Heights, ("Loan Agreement") secured hereby shall terminate the Mortgagor's right to possession, use, and enjoyment of the property, at the option of the Mortgagee or its successors or assigns (it being agreed that the Mortgagor shall have such right until default). Upon any such default, the Mortgagee shall become the owner of all the rents and profits accruing thereafter as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rentals on said property to that extent.

In the event that the Mortgagor fails to pay any federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property, the Mortgagee is hereby authorized at its option to pay the same. Any sums so paid by the Mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by the Loan Note and subject to the same terms and conditions therein. If the Mortgagor shall pay such principal sums evidenced by the Note and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this Mortgage, then this Mortgage shall be canceled and surrendered.

The covenants contained herein shall bind and the benefits and advantages shall incur to the respective heirs, administrators, executors, successors and assigns

of the parties hereto. Whenever used, the singular number shall include the plural, if appropriate, and the use of any gender shall include all genders.

No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the Note or Loan Agreement secured hereby.

A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provision or portions of this instrument.

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed and the Mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

Executed and delivered in the presence of the following witnesses:

RUDY'S PUB, LLC
2191 Lee Road
Cleveland Heights, Ohio,
EIN# NO: _____

Signed in the presence of:

By: _____
Amanda Elfers, Member

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Amanda Elfers, individually and as member of Rudy’s Pub, LLC, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed and the free act and deed of the limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal,
at _____, Ohio, this _____ day of _____, 2019.

Notary Public

EXHIBIT C

UNCONDITIONAL AND CONTINUING GUARANTEE

For one dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, and to induce the CITY OF CLEVELAND HEIGHTS, OHIO (hereinafter called "Lender"), to extend credit to RUDY'S PUB, LLC (hereinafter called "Borrower"), and in consideration thereof, the Undersigned absolutely and unconditionally guarantees the prompt and punctual payment when due, by acceleration or otherwise, of each obligation, direct, indirect, or contingent, now existing or hereafter created or acquired and howsoever the same may be evidenced or secured (hereinafter called "Guaranteed Obligation"), of the Borrower to the Lender, together with all interest, charges and penalties accruing thereon, and the faithful, punctual and complete observance and performance by the Borrower of all of the covenants, terms and conditions contained in promissory note, drafts, agreements, mortgages and other instruments evidencing, securing or pertaining to any Guaranteed Obligation(s).

The Undersigned hereby agrees that, without notice to, without consent of, and without affecting the liability of the Undersigned:

1. Any Guaranteed Obligation(s) may be renewed or the maturity thereof extended from time to time and at any rate or rates of interest.
2. Property now or hereafter held as security for or pertaining to any Guaranteed Obligation(s) may be sold, exchanged, surrendered or otherwise dealt with by the Lender.
3. Settlements, compromises, compositions, accounts stated and agreed balances pertaining to any Guaranteed Obligation(s) may be affected in good faith between the Lender and the Borrower.
4. The Lender may take judgment against the Borrower and/or modify, waive, supplement or otherwise change the terms, conditions, provisions, restrictions or liabilities contained in one or more note, drafts, agreements, mortgages or other instruments evidencing, securing or pertaining to any Guaranteed Obligation(s).

It shall not be necessary for the Lender to resort to or exhaust its remedies against the Borrower or against any other party or parties liable thereon or to resort to property held as security therefor or pertaining thereto, before calling upon the Undersigned for payment of any Guaranteed Obligation(s).

The liability of the Undersigned hereunder shall in no way be released,

mitigated or otherwise affected by (i) the release or discharge of the Borrower in any creditors, receivership, bankruptcy or other proceedings, or the commencement or pendency of any such proceedings, (ii) the impairment, limitation or modification of the liability of the Borrower in bankruptcy, or of any remedy for the enforcement of the Borrower's liability under any instrument evidencing any Guaranteed Obligation, or under any other instrument executed and delivered in connection therewith, resulting from the operation of any present or future provision of the U.S. Bankruptcy Code or other statute or from a decision in any court; or (iii) any assignment or transfer of any instrument evidencing any Guaranteed Obligation whether by Borrower and/or Lender by operation of law or otherwise.

This Guarantee shall become immediately effective and shall continue indefinitely subject to the right of the Undersigned to terminate liability hereunder as to each obligation of the Borrower arising after written notice of such termination has been received by the Lender. If at any time any whole or partial payment of any Guaranteed Obligation is to be rescinded or must otherwise be restored or returned by Lender upon the insolvency or bankruptcy of Borrower or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, this Guarantee shall continue to be effective, or be reinstated, as the case may be, all as though such payment had not been made. The Undersigned waives notice of the acceptance hereof, waives demand for payment and protest relative to each Guaranteed Obligation, waives all notices to which the Undersigned must otherwise be entitled by law, and also waives all defenses, legal or equitable, otherwise available to the Undersigned. This Guarantee shall be construed in accordance with the laws of the State of Ohio, shall inure to the benefit of the Lender, its successors and assigns, and to any other holder(s) of any Guaranteed Obligation(s), and shall be binding upon the heirs, executors, administrators, successors and assigns of the Undersigned.

The Undersigned further agrees that the Guarantee hereunder will not be discharged or affected by the fact that the promissory note, drafts, agreements, mortgages or other instruments evidencing, securing and/or pertaining to any Guaranteed Obligations, or any provision thereof shall be held to be invalid, illegal or unenforceable for any reason. This Guarantee shall remain in full force and effect notwithstanding any legal, contractual or other restriction, limitation, or bar to the Lender proceeding against the Borrower or its properties and assets. This Guarantee shall be liberally construed in favor of the Lender, it being the intention of the Undersigned that the Guarantee hereunder be absolute, continuing and unconditional in any and all circumstances and that this Guarantee shall only be discharged by the complete payment by the Borrower (or the Undersigned) of all debts, liabilities and obligations of the Borrower guaranteed hereby.

The Undersigned shall have no right of reimbursement, subrogation or set-off against the Borrower; and the Undersigned hereby waives, releases and discharges any rights of exoneration which the Undersigned may have with respect to the Note

unless and until the Lender receives payment in full from the Borrower (or the Undersigned) of all debts, liabilities and obligation owing from Borrower to the Lender.

The Undersigned hereby authorizes any attorney-at-law to appear in any Court of Record in the State of Ohio or any other State or Territory of the United States after the indebtedness guaranteed hereunder becomes due by acceleration or otherwise, and waive the issuing and service of process and confess judgment against the Undersigned in favor of Lender or other holder of the Note for the amount then appearing due and the cost of suit, and thereupon to release all errors and waive all rights of appeal and stay of execution.

WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE OH HIS/HER PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

Date: September ____, 2019

AMANDA ELFERS

UNCONDITIONAL AND CONTINUING GUARANTEE

For one dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, and to induce the CITY OF CLEVELAND HEIGHTS, OHIO (hereinafter called "Lender"), to extend credit to RUDY'S PUB, LLC (hereinafter called "Borrower"), and in consideration thereof, the Undersigned absolutely and unconditionally guarantees the prompt and punctual payment when due, by acceleration or otherwise, of each obligation, direct, indirect, or contingent, now existing or hereafter created or acquired and howsoever the same may be evidenced or secured (hereinafter called "Guaranteed Obligation"), of the Borrower to the Lender, together with all interest, charges and penalties accruing thereon, and the faithful, punctual and complete observance and performance by the Borrower of all of the covenants, terms and conditions contained in promissory note, drafts, agreements, mortgages and other instruments evidencing, securing or pertaining to any Guaranteed Obligation(s).

The Undersigned hereby agrees that, without notice to, without consent of, and without affecting the liability of the Undersigned:

1. Any Guaranteed Obligation(s) may be renewed or the maturity thereof extended from time to time and at any rate or rates of interest.
2. Property now or hereafter held as security for or pertaining to any Guaranteed Obligation(s) may be sold, exchanged, surrendered or otherwise dealt with by the Lender.
3. Settlements, compromises, compositions, accounts stated and agreed balances pertaining to any Guaranteed Obligation(s) may be affected in good faith between the Lender and the Borrower.
4. The Lender may take judgment against the Borrower and/or modify, waive, supplement or otherwise change the terms, conditions, provisions, restrictions or liabilities contained in one or more note, drafts, agreements, mortgages or other instruments evidencing, securing or pertaining to any Guaranteed Obligation(s).

It shall not be necessary for the Lender to resort to or exhaust its remedies against the Borrower or against any other party or parties liable thereon or to resort to property held as security therefor or pertaining thereto, before calling upon the Undersigned for payment of any Guaranteed Obligation(s).

The liability of the Undersigned hereunder shall in no way be released, mitigated or otherwise affected by (i) the release or discharge of the Borrower in any creditors, receivership, bankruptcy or other proceedings, or the commencement or

pendency of any such proceedings, (ii) the impairment, limitation or modification of the liability of the Borrower in bankruptcy, or of any remedy for the enforcement of the Borrower's liability under any instrument evidencing any Guaranteed Obligation, or under any other instrument executed and delivered in connection therewith, resulting from the operation of any present or future provision of the U.S. Bankruptcy Code or other statute or from a decision in any court; or (iii) any assignment or transfer of any instrument evidencing any Guaranteed Obligation whether by Borrower and/or Lender by operation of law or otherwise.

This Guarantee shall become immediately effective and shall continue indefinitely subject to the right of the Undersigned to terminate liability hereunder as to each obligation of the Borrower arising after written notice of such termination has been received by the Lender. If at any time any whole or partial payment of any Guaranteed Obligation is to be rescinded or must otherwise be restored or returned by Lender upon the insolvency or bankruptcy of Borrower or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, this Guarantee shall continue to be effective, or be reinstated, as the case may be, all as though such payment had not been made. The Undersigned waives notice of the acceptance hereof, waives demand for payment and protest relative to each Guaranteed Obligation, waives all notices to which the Undersigned must otherwise be entitled by law, and also waives all defenses, legal or equitable, otherwise available to the Undersigned. This Guarantee shall be construed in accordance with the laws of the State of Ohio, shall inure to the benefit of the Lender, its successors and assigns, and to any other holder(s) of any Guaranteed Obligation(s), and shall be binding upon the heirs, executors, administrators, successors and assigns of the Undersigned.

The Undersigned further agrees that the Guarantee hereunder will not be discharged or affected by the fact that the promissory note, drafts, agreements, mortgages or other instruments evidencing, securing and/or pertaining to any Guaranteed Obligations, or any provision thereof shall be held to be invalid, illegal or unenforceable for any reason. This Guarantee shall remain in full force and effect notwithstanding any legal, contractual or other restriction, limitation, or bar to the Lender proceeding against the Borrower or its properties and assets. This Guarantee shall be liberally construed in favor of the Lender, it being the intention of the Undersigned that the Guarantee hereunder be absolute, continuing and unconditional in any and all circumstances and that this Guarantee shall only be discharged by the complete payment by the Borrower (or the Undersigned) of all debts, liabilities and obligations of the Borrower guaranteed hereby.

The Undersigned shall have no right of reimbursement, subrogation or set-off against the Borrower; and the Undersigned hereby waives, releases and discharges any rights of exoneration which the Undersigned may have with respect to the Note unless and until the Lender receives payment in full from the Borrower (or the Undersigned) of all debts, liabilities and obligation owing from Borrower to the

Lender.

The Undersigned hereby authorizes any attorney-at-law to appear in any Court of Record in the State of Ohio or any other State or Territory of the United States after the indebtedness guaranteed hereunder becomes due by acceleration or otherwise, and waive the issuing and service of process and confess judgment against the Undersigned in favor of Lender or other holder of the Note for the amount then appearing due and the cost of suit, and thereupon to release all errors and waive all rights of appeal and stay of execution.

WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE OH HIS/HER PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

Date: September ____, 2019

QUINTIN JONES

EXHIBIT D

**CERTIFICATE OF NO EVENT OF DEFAULT
AND REPRESENTATIONS AND WARRANTIES**

The undersigned, pursuant to a certain Commercial Revolving Loan Agreement, dated September __, 2019, (the "Loan Agreement"), by and between RUDY'S PUB, LLC ("Borrower") and the CITY OF CLEVELAND HEIGHTS ("City"), hereby certifies that:

(a) At the date hereof, no event or condition that constitutes an Event of Default (as defined in the Loan Agreement) or which, after notice or lapse of time or both, would constitute an Event of Default, exists or will result from Borrower's acceptance of the Loan pursuant to the Loan Agreement; and

(b) At the date hereof, the representations and warranties of RUDY'S PUB, LLC, contained in Article III of the Loan Agreement are true and correct, and the conditions of the Loan have been duly satisfied as of the Closing Date.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of September, 2019.

Signed in the presence of:

By: _____
Amanda Elfers, Member

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Amanda Elfers, individually and as member of Rudy's Pub, LLC, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed and the free act and deed of the limited liability

company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal,
at _____, Ohio, this _____ day of _____, 2019.

Notary Public

Proposed: 09/03/2019

RESOLUTION NO. (PD)

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with Zhug for a commercial revolving loan under the City's Economic Development Loan Fund Program for acquisition of equipment and other improvements; and declaring an emergency.

WHEREAS, Zhug, a proposed restaurant in the Cedar Fairmount Commercial District, has applied to the City for a loan under the City's Economic Development Loan Fund Program for acquisition of equipment and other improvements to the commercial space at 12413 Cedar Road, Cleveland Heights; and

WHEREAS, this Council has determined that making the requested loan would be consistent with the objectives of the Economic Development Loan Fund Program and would be in the City's best interest; and

WHEREAS, there are Economic Development funds available for this purpose.

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

SECTION 1. The City Manager be, and she is hereby, authorized to execute a loan agreement and all necessary documents to make a loan under the City's Economic Development Loan Fund Program to Zhug, to assist in the acquisition of equipment and other improvements to the commercial space at 12413 Cedar Road. The loan shall be in the sum of One Hundred Fifty Thousand Dollars (\$150,000.00), at an interest rate of two percent (2%), with a seven (7) year repayment schedule after a one hundred eighty (180) day deferral from final disbursement. The loan shall be secured by a personal guarantee and cognovit note from the guarantor Douglas Katz; and a first priority mortgage on the commercial property located at 1975 Lee Road. All documents hereunder shall be approved as to form by the Director of Law.

SECTION 2. Notice of the passage of this Resolution 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 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the timey need to meet the City's loan closing goals. Wherefore, provided it receives the affirmative vote of five (5) or more of the

RESOLUTION NO. (PD)

members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

CAROL ANN ROE, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED:

COMMERCIAL LOAN AGREEMENT

between

THE CITY OF CLEVELAND HEIGHTS

and

ZHUG, LLC

THIS AGREEMENT, made and entered into at Cleveland Heights, Ohio this ____ day of September, 2019 by and between the CITY OF CLEVELAND HEIGHTS, an Ohio Municipal Corporation, 40 Severance Circle, Cleveland Heights, Ohio, 44118 (hereafter the “City” or “Lender”), acting through its City Manager, duly authorized by Resolution No. XX-2019 passed by City Council on September X, 2019, and ZHUG, LLC (hereafter “Borrower”), an Ohio limited liability corporation, whose mailing address is 12413 Cedar Road, Cleveland Heights, Ohio, 44106.

WHEREAS, Borrower intends to own and operate a restaurant at 12413 Cedar Road in the City of Cleveland Heights to be named “Zhug;” and

WHEREAS, Borrower has applied to Lender for a loan in the amount of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00) (hereafter the “Commercial Revolving Loan”) to assist with the establishment of Zhug; and

WHEREAS, Lender desires to make the applied-for Loan to Borrower to enable Borrower to carry out its plans, subject to the terms and conditions hereinafter set forth; and

WHEREAS, the City has determined that the Loan will enable the company to establish its business which will create low/moderate income jobs, and be in the best interests of the City of Cleveland Heights and its residents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Lender and Borrower agree as follows:

ARTICLE I

PROJECT

SECTION 1.01 PROJECT

Borrower agrees to undertake, or cause to be undertaken, the following activity (hereafter referred to as the "Project"): to own and operate a restaurant at 12413 Cedar Road named "Zhug" in the City of Cleveland Heights, which shall hold or make available a minimum of five (5) (full-time equivalent) jobs to low-to-moderate income persons.

SECTION 1.02 FINANCING SOURCE FOR THE PROJECT

The financing sources for the Project shall include a Commercial Revolving Loan from the City of Cleveland Heights in the sum of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00).

SECTION 1.03 TIMETABLE FOR PROJECT ACTIVITIES

Borrower agrees to open Zhug on or before January 1, 2020. Borrower also agrees to meet low-to-moderate income job requirements on or before March 1, 2020. Lender may grant an extension of time to complete the Project if necessary because of unforeseen circumstances. Borrower's request shall be in writing and any granted extension shall be in writing.

SECTION 1.04 GUARANTEE OF COMPLETION AND REPAYMENT

Borrower unconditionally and irrevocably guarantees timely completion of the Project in accordance with Section 1.03 and timely repayment of the Loan in accordance with Article II. To accomplish complete and timely execution of the Project, Borrower shall make payment for any cost overruns.

ARTICLE II

THE LOAN

SECTION 2.01 THE LOAN, RATE AND NOTE

Subject to the terms and conditions of this Agreement, Lender hereby agrees to lend to Borrower, and Borrower agrees to borrow from Lender, the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$150,00.00) for the Project. The loan may be prepaid in full at any time with no prepayment penalty.

SECTION 2.02 USE TERM AND REPAYMENT OF LOANS

The Commercial Revolving Loan in the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$150,00.00) shall be solely for the purpose of assisting with the establishment of Zhug.

The obligation of the Borrower to repay the Loan shall be evidenced by and repayable in accordance with the terms of the Agreement and in accordance with the terms of a Cognovit Note (hereinafter "Loan Note") of Borrower in a form satisfactory to Lender (or in the form of Exhibit A attached hereto), dated the date on which the Commercial Revolving Loan is made (hereinafter the "Closing Date"), payable to the order of the lender in the amount of the Commercial Revolving Loan with interest on the unpaid principal balance thereof, from time to time outstanding, at a fixed annual rate of two percent (2%).

The Term of the Commercial Revolving Loan shall be for Eighty-Four (84) months.

The payment schedule shall start six (6) months after final disbursement continuing in monthly installments of One Thousand Nine Hundred Twenty Dollars (\$1,920.00) for an additional eighty-three (83) months.

The first installment of the loan repayment shall be due six (6) months from the date of the final disbursement. Subsequent installments shall be due in advance on the first day of every calendar month thereafter during the Term of the loan. All payments shall be made payable to the City of Cleveland Heights and be made promptly to Lender at the following address or at such other address as Lender may designate in writing: Department of Planning and Development, Attn: Loan Processing, City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, Ohio 44118.

All payments shall be applied first to interest and late fees, and then to principal. If any installment is not paid within fifteen (15) days after it is due,

Lender may charge a late fee equal to five percent (5%) of the amount of the payment due and may continue to charge such five percent (5%) fee for each additional fifteen (15) day period the payment remains outstanding. If any installment remains unpaid for more than sixty (60) days, or if Borrower is in default of any provision of this Agreement and has failed to cure such default within the time and as provided in this Agreement, the entire principal balance and any unpaid interest and/or charges thereon shall become immediately due and payable, and shall bear interest thereafter at the rate of ten percent (10%) per annum.

SECTION 2.03 CONDITIONS OF DISBURSEMENT OF LOAN

The City shall disburse the Loan funds to Borrower as set forth herein. No disbursement of loan funds shall be made unless and until all loan documents, mortgages, notes, security agreements, guarantees, insurance certificates, and other required documentation have been properly executed, received, and approved by the City as set forth herein. Upon completion of all required loan documents, disbursement will be done on a reimbursement basis with the borrower submitting required documentation of incurred eligible expenses.

SECTION 2.04 UNDERLYING SECURITY

Borrower's obligation to make payments of principal and interest on the Commercial Revolving Loan and any other sums payable hereunder shall be secured by: (i) a first Mortgage on the property described in Exhibit B attached hereto, which lien evidenced by such Mortgage shall be free and clear of all prior liens and encumbrances; and (ii) the personal guarantee of Douglas Katz in the form set forth in Exhibit C.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that the following are true with respect to the Borrower and Guarantor:

SECTION 3.01 AUTHORIZATION

The entering into and performance by Borrower of this Agreement and the execution and delivery of the Loan Note and all other documents and instruments required under this Agreement will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect and having applicability to Borrower, or result in a breach of or constitute a default under any indenture, bank loan, credit agreement or any other agreement or instrument to which Borrower is a party or by which it or its property may be bound or affected.

SECTION 3.02 LITIGATION

There are no legal actions, suits, or other proceedings pending, or to the knowledge of Borrower, threatened against Borrower before any court or administrative agency which, if determined adversely to Borrower, would have an adverse effect on the financial condition or business of Borrower, which have not be disclosed in writing to Lender.

SECTION 3.03 GOVERNMENTAL CONSENTS

No authorization, consent or approval, or any formal exception of any governmental body, regulatory authorities (federal, state or local) or mortgagor, creditor or third party is or was necessary to the valid execution and delivery by Borrower of this Agreement, the Loan Note, Personal Guarantees, or other document.

SECTION 3.04 NO ADVERSE CHANGE

There has been no adverse change since the date of application for the Commercial Revolving Loan in the financial condition, fixed properties, debts, or liabilities of Borrower.

SECTION 3.05 ABSENCE OF DEFAULTS

Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note or otherwise evidence of indebtedness or any mortgage or collateral instrument securing the same.

SECTION 3.06 TAX RETURNS AND PAYMENTS

Borrower has filed all required tax returns and has paid or made provision for the payment of all taxes, if any, which have or may become due pursuant to said returns or pursuant to any assessments levied against Borrower or its personal or real property by any federal, state or local taxing agency. No tax liability has been asserted by the Internal Revenue Service or any other taxing agency, (federal, state or local) for taxes materially in excess of those already provided for, and Borrower knows of no basis for any such deficiency assessment.

SECTION 3.07 MATERIAL FACTS

No representation or warranty contained herein or made hereunder and no certificate, schedule, or other document furnished or to be furnished in connection with the transactions contemplated hereby contains or will contain a misstatement of material fact or omits or will omit to state a material fact required to be stated herein or therein in order to ensure that statements contained herein and therein are not misleading.

SECTION 3.08 PROHIBITION OF CONFLICT OF INTEREST

No person who is an employee, officer, agent or consultant of the City of Cleveland Heights, or an elected public official or member of the Cleveland Heights City Council or appointed public official of the City of Cleveland Heights who exercises or has exercised any

functions or responsibilities with respect to the Project or who is in a position to participate in a decision-making process or gain inside information with regard to the Project may obtain a personal or financial interest or benefit from the Project, or have an interest in any contract, subcontract, or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties. The above restrictions shall apply to all activities comprising the Project, and shall cover any such interest or benefit during, and any time after, such person's tenure.

SECTION 3.09 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Borrower will comply with all applicable federal, state and local laws, ordinances and administrative rulings pertaining to the Project.

SECTION 3.10 PERFORMANCE ON OTHER CONTRACTS WITH THE CITY

Borrower will fully perform all other contracts with the City, if any, in a timely and workmanlike manner.

ARTICLE IV

CONDITIONS OF LENDING

The obligation of Lender to make the Commercial Revolving Loan shall be subject to the fulfillment on or before the Closing Date of each of the following conditions:

SECTION 4.01 EXECUTION AND DELIVERY OF LOAN AGREEMENT AND NOTE

Borrower shall execute and deliver to Lender this Agreement and the Loan Note, in the form substantially similar to that attached as Exhibit A.

SECTION 4.02 EXECUTION AND DELIVERY OF COLLATERAL DOCUMENTS

Borrower's shall execute and deliver to Lender the mortgage, described in Section 2.04, and attached hereto as Exhibit B; and the personal guarantee of Douglas Katz, attached hereto as Exhibit C.

SECTION 4.03 HUD APPROVAL

Borrower shall submit sufficient documentation, if required by the United States Department of Housing and Urban Development (“HUD”) or Lender to establish to HUD’s satisfaction that Borrower and/or Guarantor are in compliance with all applicable federal laws and regulations.

SECTION 4.04 GOVERNMENTAL APPROVAL

Borrower shall have secured all necessary approvals and consents of governmental bodies having jurisdiction with respect to any Project activities.

SECTION 4.05 APPROVAL OF OTHERS

Borrower shall have secured all necessary approvals and consents required with respect to this transactions by any creditor or other party having any financial interest in Borrower or its property.

SECTION 4.06 REPRESENTATION AND WARRANTIES

The representation and warranties contained herein shall be true and correct as of the date hereof and the Closing Date. Borrower shall deliver to Lender an affidavit to that effect, substantially in the form of Exhibit D attached hereto.

ARTICLE V

AFFIRMATIVE COVENANTS

Borrower agrees to comply with the following covenants with respect to itself and Guarantor from the date hereof until the Loan has been fully repaid to Lender, or such longer time as specifically provided in the covenant, unless Lender or its assigns otherwise consent in writing:

SECTION 5.01 PAYMENT OF LOANS

Borrower agrees to pay punctually the principal on the Loan Note according to its terms and conditions and to repay punctually any other amounts that may become due and payable to Lender under or pursuant to the terms of this Agreement or the Note.

SECTION 5.02 PAYMENT OF OTHER INDEBTEDNESS

Borrower agrees to pay punctually the principal and interest due on any other indebtedness now or hereafter owing by Borrower to Lender or any other Lender.

SECTION 5.03 MAINTAIN AND INSURE PROPERTIES

Borrower agrees at all times to maintain the real property provided as security for this Loan in such condition and repair that Lender's security will be adequately protected and so that the business carried on in connection therewith may be properly and advantageously carried out at all times. Borrower also agrees to maintain during the term of the Loan adequate hazard insurance policies covering fire and extended coverage and such other hazards as may be deemed appropriate in amounts and form sufficient to prevent Borrower from becoming a co-insurer and issued by companies satisfactory to Lender with acceptable loss-payee clauses in favor of Lender. Such insurance insofar as Lender's loss-payee coverage is concerned shall be in an amount of at least \$150,000.00. Borrower further agrees to maintain adequate liability and worker's compensation insurance in amounts and forms satisfactory to Lender, and to provide written proof thereof to Lender upon request.

SECTION 5.04 PAYMENT OF TAXES

Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties or its business(es) prior to the date on which penalties would attach thereto, except that Borrower shall not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate and timely proceedings, provided that Borrower so advises Lender in writing of such contest and proceedings.

SECTION 5.05 INFORMATION

Borrower agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions, such entries to be made in accordance with generally accepted accounting principles consistently applied, and to permit Lender or HUD to inspect said books upon reasonable advance notice. In addition, Borrower shall deliver to Lender annual financial statements, certified by Borrower to be true, upon request.

Borrower further agrees to provide information, and execute and deliver any and all additional documents and instruments as may be reasonably requested by Lender, its assigns or attorneys.

Borrower further agrees to provide written notice to Lender of any public hearing or meeting before any administrative or other public agency which may in any manner materially affect the real estate securing the Loan.

SECTION 5.06 INDEMNIFICATION

Borrower agrees to indemnify and save Lender, its officials, employees, agents

and assigns harmless against any and all liability with respect to, or resulting from, any delay in Borrower's discharging any of its obligations, or any failure of Borrower to discharge any of its obligations, and in no instance shall any official, employee or agent of Lender or its assigns be personally liable to Borrower.

SECTION 5.07 EXPENSE OF COLLECTION OR ENFORCEMENT

Borrower agrees, if at any time Borrower defaults on any provision of this Agreement, to pay Lender or its assigns, in addition to any other amounts that may be due from Borrower, an amount equal to the reasonable costs and expenses incurred by Lender or its assigns in the collection, enforcement, correction or waiver of such default, including, without limitation, attorneys' fees.

SECTION 5.08 ABSENCE OF RELATIONSHIPS

Borrower agrees that neither the execution and delivery of this Agreement nor the receipt by it of the Loan nor the performance of its obligations hereunder will or shall be deemed to create any relationship between Borrower and Lender, whether as a third-party beneficiary, partner, joint venturer, shareholder, agent, principal or otherwise; and Borrower agrees to make no representation or statement to any party to such effect. Borrower further agrees that Lender is acting as a conduit for the Federal funds comprising the Loan and is in no way lending its aid and credit to Borrower and Borrower agrees to make no representation or statement to any party to such effect.

SECTION 5.09 DISCLOSURE OF DOCUMENTS

Disclosure of documents which are in the possession of the City shall be governed by the applicable federal, state and local laws.

SECTION 5.10 SUPPORT SID AND/OR MERCHANT ASSOCIATION

Borrower shall actively support the Cedar-Fairmount Special Improvement District's activities. If qualified to become a member of a local Merchant Association within the City, Borrower shall become a member of that Merchant Association and actively support its activities.

ARTICLE VI

NEGATIVE COVENANTS

Borrower covenants and agrees that, from the date of the execution of this Agreement until payment in full of the Loan Note, unless Lender or its assigns shall otherwise consent in writing, it will not undertake any act, enter into any

agreement or make any commitment which the performance of which or failure of performance would constitute a breach of any of the covenants contained in this Agreement including, but not limited to, the following covenants:

SECTION 6.01 LIMITATION OF LIENS

Borrower will not create nor suffer to exist any mortgage, pledge, lien, charge or encumbrance of any kind on any of its properties or assets used as collateral to secure this Commercial Revolving Loan, except as otherwise provided herein or approved in writing by Lender.

SECTION 6.02 TRANSFER OF PROPERTY

Borrower shall not transfer any interest in the property or equipment which are subject of the Mortgage described herein, without the written consent of Lender.

SECTION 6.03 CHANGE IN OWNERSHIP

Borrower will not permit, without the prior written approval of Lender, which approval will not be unreasonably withheld, any material change in the ownership structure, control, or operation of its business including, without limitation, (i) merger into or consolidation with any other persons, firm or corporation; (ii) changing the nature of its business as intended to be carried on at the date hereof; or (iii) substantial distribution, liquidation or other disposal of its assets.

ARTICLE VII

EVENTS OF DEFAULT

The entire unpaid principal of the Loan Note shall become and be immediately due and payable upon the written demand of Lender or its assigns, without any other notice or demand or any kind of presentment or protest, if any one of the following events (hereinafter an "Event of Default") occurs and is continuing at the time of such demands, whether it is voluntarily or involuntarily or, without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administration or governmental body.

(A) PAYMENT DEFAULT UNDER NOTE

If Borrower shall fail to make payment when due of any installment of principal or other charges on the Note and the default remains

unremedied for sixty (60) days or more.

(B) INCORRECT REPRESENTATIONS OR WARRANTIES

If any representation or warranty contained in or made in connection with the execution and delivery of this Agreement, instrument or certificate furnished pursuant hereto shall prove to have been incorrect in any material respect when made.

(C) DEFAULT IN COVENANTS

If Borrower or any Guarantor defaults in the performance of any other term, covenant or agreement contained in this Agreement or any other Agreement between Borrower and Lender and such default shall continue unremedied for thirty (30) days after written notice thereof was given to Borrower by Lender.

(D) VOLUNTARY INSOLVENCY

If Borrower or any Guarantor become insolvent or ceases to pay its/her debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator for it/her or a substantial portion of its/her assets to effect a plan or other arrangement with creditors, or is adjudicated bankrupt, or shall make a voluntary assignment for the benefit of creditors.

(E) INVOLUNTARY INSOLVENCY

If an involuntary petition shall be filed against Borrower or any Guarantor under any bankruptcy, insolvency or similar law seeking the reorganization of or the appointment of any receiver, trustee or liquidator for its/her property, or of a substantial part of such property, or a writ or warrant of attachment or similar process is issued against a substantial part of the property of Borrower/Guarantor, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded within thirty (30) days after the filing or levy.

(F) JUDGMENTS

If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of TEN THOUSAND DOLLARS (\$10,000.00) shall be rendered against Borrower and/or either Guarantor and, within thirty (30) days, is not discharged, or an appeal therefrom taken and execution thereon effectively stayed pending such

appeal, or, if such judgment be affirmed on such appeal, the same is not discharged within thirty (30) days, or if Borrower/Guarantor has not entered into payment agreement with the judgment/creditor.

(G) FAILURE TO OPERATE RESTAURANT

If at any time during the term of the Revolving Loan, the restaurant known as Zhug or a City-approved substitute should fail to operate for a period of fourteen (14) or more consecutive days, or shall be closed for more than sixty (60) days in any calendar year, other than for remodeling or renovation, or should be operated by someone other than Zhug, LLC, or a City-approved substitute then Borrower shall be in default under this loan and all principal and unpaid interest, if any, shall be immediately due and payable. In the event of remodeling/renovation is necessary due to fire or other natural disaster, or is desired for business or cosmetic reasons, such remodeling/renovation shall proceed as quickly as is reasonably possible and Borrower shall give Lender written notice of expected closure within five (5) business days of the closing of the restaurant. In the event that Zhug relocates operations outside the City then the Borrower shall be in default under this loan and all principal and unpaid interest, if any, shall be immediately due and payable.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01 WAIVER OF NOTICE

No failure or delay on the part of Lender in exercising any rights, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No modification or waiver of any provision of this Agreement or of the Note, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other further notice or demand in similar or other circumstances.

SECTION 8.02 ENFORCEABILITY

When this Agreement is executed by Borrower and Lender, and when the Loan Note and other required documents are executed and delivered by Borrower for value, each such instrument shall constitute the legal, valid and binding obligation of the parties thereto in accordance with their terms. Any instruments, mortgages and other liens on chattel or real estate shall constitute legal, valid and binding liens free and clear of all prior liens and encumbrances, except those in favor of Lender.

SECTION 8.03 ENTIRE AGREEMENT, AMENDMENTS

This Agreement embodies the entire agreement and understanding between Lender and Borrower and supersedes all prior agreements and understandings relating to the subject matter hereof. Borrower and Lender and their successors and assigns hereby expressly reserve all rights to amend any provision of this Agreement, to amend or consent to or waive departure from the provisions of the Note, and to release or to otherwise deal with any collateral security for the payment of the Note; provided, however, that all such amendments be in writing and executed by Lender or its assigns and Borrower.

SECTION 8.04 SEVERABILITY

Borrower agrees that in the event that any provision of this Agreement or any other instrument executed at closing or the application thereof shall be declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement or such instrument nevertheless shall remain in full force and effect, and to this end, the provisions of all covenants, conditions and agreements described herein are deemed to be separate.

SECTION 8.05 NOTICES

All notices, consents, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail, prepaid, to Lender and Borrower at the address in the heading or such other address as either party may have designated in writing to the other party hereto.

SECTION 8.06 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All agreements, representations, and warranties made by Borrower herein or any other document or certificate delivered to Lender in connection with the transactions contemplated by this Agreement shall survive the delivery of this Agreement and the Note and shall continue in full force and effect so long as the Loan Note is outstanding.

SECTION 8.07 SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon Borrower, and its successors and assigns, except that Borrower may not assign or transfer its rights or obligations hereunder without the prior written approval of Lender. This Agreement shall inure to the benefit of Lender, its successors and assigns, and all subsequent holders of the Loan Note.

SECTION 8.08 ARTICLE AND SECTION HEADINGS

Article and Section headings used herein are for convenience only and shall not affect the constitution of this Agreement.

SECTION 8.09 COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Borrower covenants and agrees to comply with all applicable federal laws and regulations governing the receipt, expenditure and use of the Loan funds including, but not limited to, the following to the extent applicable:

1. Section 106 of the National Historic Preservation Act of 1966;
2. Title VII of the Civil Rights Act of 1968;
3. Section 109 of the Housing and Community Development Act of 1974;
4. Section 504 of the Rehabilitation Act of 1973;
5. The Age Discrimination Act of 1975;
6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Section 104(j) of the Urban and Rural Recovery Act of 1973; and
7. The regulations and requirements of OMB Circular Nos. 102 and A-87.

SECTION 8.09 COMPLIANCE WITH LOCAL LAWS AND REGULATIONS

Borrower covenants and agrees to comply with all applicable local laws and regulations including, but not limited to, Chapter 749, "Fair Practices," of the Codified Ordinances of the City of Cleveland Heights.

IN WITNESS WHEREOF the parties hereto have each caused this Loan Agreement to be duly executed as of the day and the year first written above.

Signed in the presence of:

CITY OF CLEVELAND HEIGHTS, OHIO

By: _____

City Manager

ZHUG, LLC
12413 Cedar Road
Cleveland Heights, Ohio,
EIN# NO: _____

Signed in the presence of:

By: _____

Douglas Katz, Member

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Tanisha R. Briley, City Manager of the City of Cleveland Heights, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed personally and as such City Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland Heights, Ohio, this _____ day of _____, 2019.

Notary Public

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Douglas Katz, individually and as member of Zhug, LLC, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed and the free act and deed of the limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at _____, Ohio, this _____ day of _____, 2019.

Notary Public

Approved as to form:

WILLIAM R. HANNA
Director of Law
Authorized by Resolution No. XX-2019

EXHIBIT A

COGNOVIT NOTE

\$150,000.00 Cleveland Heights, Ohio
September ____, 2019

FOR VALUE RECEIVED, the Undersigned, ZHUG, LLC (“Maker”) promises to pay to the order of the CITY OF CLEVELAND HEIGHTS, Ohio, 40 Severance Circle, Cleveland Heights, Ohio 44118 (the “City”) the principal sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) with interest thereon as herein set forth. The Term of the Revolving Loan shall be seven (7) years or eighty-four (84) months. The loan shall be paid in monthly installments of One Thousand Nine Hundred Twenty Dollars (\$1,920.00). The first installment shall be due six (6) months from the date of the final disbursement. Subsequent installments shall be due in advance on the first day of every calendar month thereafter during the Term of the Loan. From and including the date hereof until the date of payment in full, the principal balances of this Note from time to time outstanding shall bear interest at an interest rate of two percent (2%) per annum.

This Note is issued pursuant to a Commercial Revolving Loan Agreement, dated September __, 2019, by and between Maker and the City, to which reference hereby is made for a statement of the right of the holder hereof to declare this Note due prior to its stated maturity and the right and obligation of Borrower to repay this Note. In the event Maker should be in default, as defined in said Loan Agreement, this Note shall thereafter bear interest at the rate of ten percent (10%) per annum.

The Undersigned expressly and unconditionally waives presentment and demand of payment, notice of dishonor, protest and other notices of any kind.

Principal and interest hereon shall be payable in lawful money of the United States of America as such place as the holder shall designate in writing to Borrower. This Note shall be governed by Ohio law.

The Undersigned hereby authorizes any attorney-at-law to appear in any court of record in the State of Ohio or any other State of Territory of the United States after the indebtedness guaranteed hereunder becomes due by acceleration or otherwise, and waive the issuing and service of process and confess judgment against the Undersigned in favor of Lender or other holder of the Note for the

amount then appearing due and the cost of suit, and thereupon to release all errors and waive all rights of appeal and stay of execution. No judgment against the Undersigned of this Note shall bar any subsequent judgment against any other party(ies) liable as Maker or Guarantor.

WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE OH HIS/HER PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the day and year first above written.

ZHUG, LLC
12413 Cedar Road
Cleveland Heights, Ohio,
EIN# NO: _____

Signed in the presence of:

By: _____
Douglas Katz, Member

EXHIBIT B

MORTGAGE

This Mortgage is made and entered into this _____ day of September, 2019, by and between the CITY OF CLEVELAND HEIGHTS, 40 Severance Circle, Cleveland Heights, Ohio 44118 (hereinafter referred to as “Mortgagee”) and ZHUG, LCC, an Ohio limited liability corporation, whose mailing address is 12413 Cedar Road, Cleveland Heights, Ohio 44106 (hereinafter referred to as Mortgagor”).

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the Mortgagor does hereby mortgage, sell, grant, assign, and convey unto the Mortgagee, its successors, and assigns, all of the following described property:

Parcel No. 1

Situated in the City of Cleveland Heights, County of Cuyahoga, State of Ohio and known as being Sublots Nos. 1, 2 and 3 in in the Cedar Heights Land Company’s East Overlook Berkshire subdivision of part of original Euclid Township Lots Nos. 16 and 49, as shown by the recorded plat in Volume 66 of Maps, Page 31 of Cuyahoga County Records and together forming a parcel of land having a frontage of 135.17 feet on the Easterly side of Lee Road, 23.39 feet on the curved turnout between said Easterly line and the Southeasterly line of East Overlook Road and extending back 125 feet on the Southerly line and having a rear line of 150 feet as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel No. 2

Situated in the City of Cleveland Heights, County of Cuyahoga, State of Ohio and known as being Sublots Nos. 1, 2 and 3 in in the Cedar Heights Land Company’s East Overlook Berkshire subdivision of part of original Euclid Township Lots Nos. 16 and 49, as shown by the recorded plat in Volume 66 of Maps, Page 31 of Cuyahoga County Records and being 50 feet on the Easterly side of Lee Road and extending back between parallel lines 125 feet deep, as appears by said plat, be the same more or less, but subject to all legal highways.

1975 Lee Road
Cleveland Heights, Ohio 44118

Permanent Parcel No. 687-01-029 (listed together with 687-01-030, 687-01-03 & 687-01-032)

Together with and including, without limitation, all buildings, fixtures, plumbing, heating, lighting, ventilating, refrigerating, incinerating, and air conditioning apparatus (the Mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as a part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described property (provided, however, that the Mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues and profits until default), to have and to hold the same unto the Mortgagee, and its successors in interest and assigns, forever in fee simple or such other estate, if any is stated herein.

The Mortgagor covenants that it is lawfully seized and possessed of and has the rights to sell and convey said property, subject to any easements of record, and in addition thereto such easements as are necessary for public utilities, subject to applicable zoning laws and further subject to taxes not yet due and payable, that the same is free from all encumbrances and that it hereby binds itself and its heirs, executors, administrators, successors and assigns to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever. Mortgagor covenants that it will comply with all federal, state and local laws regarding the use of the property, and not commit waste or otherwise limit or detract from the useability or marketability of the property.

This instrument is given to secure the payment of a certain Cognovit Note, dated September __, 2019 , in the principal sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (the "Loan Note") signed by Zhug, LLC, of which Mortgagor Douglas Katz is a member.

Default in any of the covenants or conditions of this instrument, the Note, or a certain Loan Agreement dated September __. 2019, between Zhug, LLC and the Mortgagee, City of Cleveland Heights, ("Loan Agreement") secured hereby shall terminate the Mortgagor's right to possession, use, and enjoyment of the property, at the option of the Mortgagee or its successors or assigns (it being agreed that the Mortgagor shall have such right until default). Upon any such default, the Mortgagee shall become the owner of all the rents and profits accruing thereafter as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rentals on said property to that extent.

In the event that the Mortgagor fails to pay any federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property, the Mortgagee is hereby authorized at its option to pay the same. Any sums so paid by the Mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by the Loan Note and subject to the same terms and conditions therein. If the Mortgagor shall pay such principal sums evidenced by the Note and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this Mortgage, then this Mortgage shall be canceled and surrendered.

The covenants contained herein shall bind and the benefits and advantages shall incur to the respective heirs, administrators, executors, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, if appropriate, and the use of any gender shall include all genders.

No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the Note or Loan Agreement secured hereby.

A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provision or portions of this instrument.

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed and the Mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

Executed and delivered in the presence of the following witnesses:

THE KATZ CLUB, LLC
2179 Lee Road
Cleveland Heights, Ohio,
EIN# NO: _____

Signed in the presence of:

By: _____
Douglas Katz, Member

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Douglas Katz, individually and as member of The Katz Club, LLC, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed and the free act and deed of the limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal,
at _____, Ohio, this _____ day of _____, 2019.

Notary Public

EXHIBIT C

UNCONDITIONAL AND CONTINUING GUARANTEE

For one dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, and to induce the CITY OF CLEVELAND HEIGHTS, OHIO (hereinafter called "Lender"), to extend credit to ZHUG, LLC (hereinafter called "Borrower"), and in consideration thereof, the Undersigned absolutely and unconditionally guarantees the prompt and punctual payment when due, by acceleration or otherwise, of each obligation, direct, indirect, or contingent, now existing or hereafter created or acquired and howsoever the same may be evidenced or secured (hereinafter called "Guaranteed Obligation"), of the Borrower to the Lender, together with all interest, charges and penalties accruing thereon, and the faithful, punctual and complete observance and performance by the Borrower of all of the covenants, terms and conditions contained in promissory note, drafts, agreements, mortgages and other instruments evidencing, securing or pertaining to any Guaranteed Obligation(s).

The Undersigned hereby agrees that, without notice to, without consent of, and without affecting the liability of the Undersigned:

1. Any Guaranteed Obligation(s) may be renewed or the maturity thereof extended from time to time and at any rate or rates of interest.
2. Property now or hereafter held as security for or pertaining to any Guaranteed Obligation(s) may be sold, exchanged, surrendered or otherwise dealt with by the Lender.
3. Settlements, compromises, compositions, accounts stated and agreed balances pertaining to any Guaranteed Obligation(s) may be affected in good faith between the Lender and the Borrower.
4. The Lender may take judgment against the Borrower and/or modify, waive, supplement or otherwise change the terms, conditions, provisions, restrictions or liabilities contained in one or more note, drafts, agreements, mortgages or other instruments evidencing, securing or pertaining to any Guaranteed Obligation(s).

It shall not be necessary for the Lender to resort to or exhaust its remedies against the Borrower or against any other party or parties liable thereon or to resort to property held as security therefor or pertaining thereto, before calling upon the Undersigned for payment of any Guaranteed Obligation(s).

The liability of the Undersigned hereunder shall in no way be released,

mitigated or otherwise affected by (i) the release or discharge of the Borrower in any creditors, receivership, bankruptcy or other proceedings, or the commencement or pendency of any such proceedings, (ii) the impairment, limitation or modification of the liability of the Borrower in bankruptcy, or of any remedy for the enforcement of the Borrower's liability under any instrument evidencing any Guaranteed Obligation, or under any other instrument executed and delivered in connection therewith, resulting from the operation of any present or future provision of the U.S. Bankruptcy Code or other statute or from a decision in any court; or (iii) any assignment or transfer of any instrument evidencing any Guaranteed Obligation whether by Borrower and/or Lender by operation of law or otherwise.

This Guarantee shall become immediately effective and shall continue indefinitely subject to the right of the Undersigned to terminate liability hereunder as to each obligation of the Borrower arising after written notice of such termination has been received by the Lender. If at any time any whole or partial payment of any Guaranteed Obligation is to be rescinded or must otherwise be restored or returned by Lender upon the insolvency or bankruptcy of Borrower or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, this Guarantee shall continue to be effective, or be reinstated, as the case may be, all as though such payment had not been made. The Undersigned waives notice of the acceptance hereof, waives demand for payment and protest relative to each Guaranteed Obligation, waives all notices to which the Undersigned must otherwise be entitled by law, and also waives all defenses, legal or equitable, otherwise available to the Undersigned. This Guarantee shall be construed in accordance with the laws of the State of Ohio, shall inure to the benefit of the Lender, its successors and assigns, and to any other holder(s) of any Guaranteed Obligation(s), and shall be binding upon the heirs, executors, administrators, successors and assigns of the Undersigned.

The Undersigned further agrees that the Guarantee hereunder will not be discharged or affected by the fact that the promissory note, drafts, agreements, mortgages or other instruments evidencing, securing and/or pertaining to any Guaranteed Obligations, or any provision thereof shall be held to be invalid, illegal or unenforceable for any reason. This Guarantee shall remain in full force and effect notwithstanding any legal, contractual or other restriction, limitation, or bar to the Lender proceeding against the Borrower or its properties and assets. This Guarantee shall be liberally construed in favor of the Lender, it being the intention of the Undersigned that the Guarantee hereunder be absolute, continuing and unconditional in any and all circumstances and that this Guarantee shall only be discharged by the complete payment by the Borrower (or the Undersigned) of all debts, liabilities and obligations of the Borrower guaranteed hereby.

The Undersigned shall have no right of reimbursement, subrogation or set-off against the Borrower; and the Undersigned hereby waives, releases and discharges any rights of exoneration which the Undersigned may have with respect to the Note

unless and until the Lender receives payment in full from the Borrower (or the Undersigned) of all debts, liabilities and obligation owing from Borrower to the Lender.

The Undersigned hereby authorizes any attorney-at-law to appear in any Court of Record in the State of Ohio or any other State or Territory of the United States after the indebtedness guaranteed hereunder becomes due by acceleration or otherwise, and waive the issuing and service of process and confess judgment against the Undersigned in favor of Lender or other holder of the Note for the amount then appearing due and the cost of suit, and thereupon to release all errors and waive all rights of appeal and stay of execution.

WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE OH HIS/HER PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

Date: September ____, 2019

DOUGLAS KATZ

EXHIBIT D

**CERTIFICATE OF NO EVENT OF DEFAULT
AND REPRESENTATIONS AND WARRANTIES**

The undersigned, pursuant to a certain Commercial Revolving Loan Agreement, dated September __, 2019, (the “Loan Agreement”), by and between ZHUG, LLC (“Borrower”) and the CITY OF CLEVELAND HEIGHTS (“City”), hereby certifies that:

(a) At the date hereof, no event or condition that constitutes an Event of Default (as defined in the Loan Agreement) or which, after notice or lapse of time or both, would constitute an Event of Default, exists or will result from Borrower’s acceptance of the Loan pursuant to the Loan Agreement; and

(b) At the date hereof, the representations and warranties of ZHUG, LLC, contained in Article III of the Loan Agreement are true and correct, and the conditions of the Loan have been duly satisfied as of the Closing Date.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of September, 2019.

Signed in the presence of:

By: _____
Douglas Katz, Member

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

Before me, a Notary Public in and for said County and State, personally appeared the above-named Douglas Katz, individually and as member of Zhug, LLC, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed and the free act and deed of the limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal,
at _____, Ohio, this _____ day of _____, 2019.

Notary Public

DRAFT 9/6/19

Proposed:

ORDINANCE NO. (PD)

By Council Member

An Ordinance authorizing the City Manager to enter into an agreement with BNB Medusa, LLC, issuing a loan in the amount of \$396,440 to assist with its acquisition of the commercial property located at 3008 Monticello Boulevard; and declaring an emergency.

WHEREAS, GMG Cleveland, LLC currently owns the property at 3008 Monticello Boulevard, known as the “Medusa Building”; and

WHEREAS, the City, pursuant to Ordinance No. 1-2015, entered into an agreement with GMG Cleveland, LLC, issuing a loan of approximately Four Hundred Seventy Thousand Five Hundred Thirty Seven Dollars (\$470,537); and

WHEREAS, pursuant to the terms and conditions of the loan to GMG Cleveland, LLC, any transfer of title, debts, or obligations relating to the purchase of the Medusa Building is subject to approval by the City; and

WHEREAS, GMG Cleveland, LLC has executed a purchase agreement with BNB Medusa, LLC to purchase the Medusa Building; and

WHEREAS, upon purchase, BNB Medusa, LLC intends to redevelop the Medusa Building as a residential and mixed-use project; and

WHEREAS, it is in the best interest of the City to support the development of the Medusa Building in accordance with the City’s Master Plan and to encourage productive and creative land development in the city; and

WHEREAS, subject to the transfer of the Medusa Building from GMG Cleveland, LLC to BNB Medusa, LLC and termination of the loan to GMG Cleveland, LLC, BNB Medusa, LLC has negotiated with the City an agreement whereby the City will issue BNB Medusa, LLC a loan in the sum of Three Hundred Ninety Six Thousand Four Hundred Forty Dollars (\$396,440), under certain terms and conditions, to purchase the Medusa Building.

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

SECTION 1. The City Manager is hereby authorized to execute a loan and all necessary documents to issue a loan to BNB Medusa, LLC to assist in the purchase of the Medusa Building, subject to the submission of all requested documentation. The loan shall be in the amount of Three Hundred Ninety Six Thousand Four Hundred Forty Dollars (\$396,440), which shall bear a fixed interest rate of zero percent (0%) and shall be for the term of fifteen (15) years,

RESOLUTION NO. (PD)

by means of BNB Medusa, LLC assuming the obligations of GMG Cleveland, LLC, pursuant to certain terms and conditions. The loan shall be secured by a cognovit note, a first mortgage on the Medusa Building, an assignment of rents and leases, a corporate guarantee from BNB Medusa, LLC, and a cognovit personal guarantee from the guarantor Roger Bliss. The loan shall contain such other terms as recommended by the City Manager and Director of Law. The loan and all related documents shall be in a form approved by the Director of Law.

SECTION 2. The City Manager further is authorized to execute any and all agreements necessary for the purpose of terminating the loan to GMG Cleveland, LLC, which was established pursuant to the terms and conditions set forth in Resolution No. 1-2015.

SECTION 3. Notice of the passage of this Resolution 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 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the timely need to move forward with improvements to the property. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

CAROL ANN ROE, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED:

COMMERCIAL LOAN AGREEMENT

between

THE CITY OF CLEVELAND HEIGHTS

and

BNB MEDUSA, LLC

THIS AGREEMENT is made and entered into at Cleveland Heights, Ohio, this ____ day of September, 2019 by and between the CITY OF CLEVELAND HEIGHTS, an Ohio municipal corporation, 40 Severance Circle, Cleveland Heights, Ohio 44118 (hereafter the “City” or “Lender”), acting through its City Manager, duly authorized by Ordinance No. X-2019, passed by Council of the City on September X, 2019, and BNB MEDUSA, LLC (hereafter “Borrower”), an Ohio limited liability company located at 121 South Street, Chardon, OH 44024.

WHEREAS, Borrower intends to purchase the commercial property consisting of parcel 681-39-003 (“Medusa Property”) from its current owner, GMG Cleveland, LLC (the “Seller”) pursuant to a Real Estate Purchase Agreement dated as of February 27, 2019 (the “Purchase Agreement”) between the Seller and Borrower; and

WHEREAS, as part of the purchase price to be paid to Seller under the Purchase Agreement, Borrower has agreed to assume Seller’s existing loan from the City (the “GMG Loan”) which is evidenced by a Cognovit Promissory Note dated May 7, 2015 and is currently outstanding in the amount of Three Hundred Ninety Six Thousand Four Hundred Forty and No/100 Dollars (\$396,440.00); and

WHEREAS, Lender and Borrower intend to document Borrower’s assumption of the GMG Loan by having Borrower enter into this Commercial Loan Agreement pursuant to which Borrower will borrow the current outstanding balance of the GMG Loan (\$396,440.00) from Lender (hereinafter the “BNB Loan” or the “Loan”). Upon closing of the BNB Loan, no cash or other moneys will be disbursed to Borrower. Rather, at the closing of such BNB Loan the City shall terminate the GMG Loan and release the Seller from any further obligations with respect to the GMG Loan.

WHEREAS, Lender desires to make the BNB Loan to Borrower to enable Borrower to satisfy its obligation to assume the GMG Loan as part of its purchase the Medusa Property pursuant to the Purchase Agreement, subject to the terms and conditions hereinafter set forth; and

WHEREAS, Guarantor Roger Bliss desires to provide an unconditional and continuing guarantee of Borrower’s obligations with respect to the BNB Loan; and

WHEREAS, the City has determined that the BNB Loan will enable the Borrower to acquire and redevelop the property which will create new residential units and jobs and be in the best interests of the City of Cleveland Heights and its residents; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Lender and Borrower agree as follows:

ARTICLE I

PROJECT

SECTION 1.01 PROJECT

Borrower agrees to undertake, or cause to be undertaken, the following activity (hereafter referred to as the “Project”): acquisition of the Medusa Property from the Seller and redevelopment of the Medusa Property as a residential and mixed-use project.

SECTION 1.02 FINANCING SOURCES FOR THE PROJECT

The financing sources for the Project shall include (a) release of the GMG Loan upon closing of the BNB Loan as described in this Commercial Loan Agreement, (b) a senior construction loan obtained by Borrower from a commercial lender (the “Senior Loan”), (c) state and federal tax credits, and (d) Borrower equity.

SECTION 1.03 TIMETABLE FOR PROJECT COMPLETION

Borrower agrees to complete the acquisition of the Medusa Property and the redevelopment of the property as a residential and mixed-use property within 24 months. Lender may grant one or more extension(s) of time to complete the Project if necessary because of unforeseen circumstances.

SECTION 1.04 GUARANTEE OF COMPLETION AND REPAYMENT

Borrower unconditionally and irrevocably guarantees timely completion of the Project in accordance with Section 1.03 and timely repayment of the BNB Loan in accordance with Article II.

ARTICLE II

THE LOAN

SECTION 2.01 THE LOAN, RATE AND NOTE

Subject to the terms and conditions of this Commercial Loan Agreement (hereinafter “Agreement”), Lender hereby agrees to loan to Borrower, and Borrower agrees to borrow from Lender, the sum of \$396,440.00 for the Project; provided that at closing of this BNB Loan no moneys shall be disbursed; rather in consideration for the obligations of Borrower and Guarantor under this Agreement the City will upon closing of the Purchase Agreement release the Seller

from its obligations under the GMG Loan so that the effective result of the closing of the BNB Loan is an “assumption” by Borrower of the obligation to pay the then outstanding balance of the GMG Loan to the City in accordance with the terms and conditions of this Agreement and the Purchase Agreement. The BNB Loan may be prepaid in full at any time without premium or penalty, provided that there are no existing events of default and payments include any and all accrued interest, and provided all other requirements of this Agreement and the Cognovit Promissory Note (defined below) have been fulfilled.

SECTION 2.02 LOAN PURPOSE, TERM AND REPAYMENT

The BNB Loan in the sum of \$396,440.00 shall be solely for the purpose of satisfying Borrower’s obligation to assume the GMG Loan as partial consideration for its acquisition of the Medusa Property pursuant to the Purchase Agreement.

The obligation of the Borrower to repay the BNB Loan shall be evidenced by and repayable in accordance with the terms of this Agreement and in accordance with the terms of a Cognovit Promissory Note (the “Cognovit Promissory Note”) of Borrower in a form satisfactory to Lender, dated the date on which the BNB Loan is made (hereinafter the “Closing Date”), payable to the order of the Lender in the amount of the BNB Loan with interest on the unpaid principal balance thereof, from time to time outstanding, at a fixed annual rate of zero percent (0%).

The Term of the BNB Loan shall be fifteen (15) years or one hundred and eighty (180) months or until the BNB Loan is paid in full pursuant to the repayment terms set forth in this Section 2.02 and the Cognovit Promissory Note. The terms of the repayment shall be as specified in the Cognovit Promissory Note agreed to and executed contemporaneous with this Agreement. No principal payments shall be due for a twenty-four (24) month period (the “Deferred Payment Period”) commencing on the date title to the Medusa Property transfers from Seller to Borrower and ending on the date which is twenty-four (24) months from such title transfer date. Thereafter, commencing on the first day of the calendar month immediately subsequent to the month in which the Deferred Payment Period ends, Borrower shall pay the balance of the loan in one hundred fifty-six (156) monthly roughly equal installments of principal, sufficient to fully amortize the principal balance over the remaining term of the BNB Loan, subject to adjustment as provided below.

The outstanding loan balance may be reduced over the term of the BNB Loan if the Project meets certain City income tax thresholds as described below:

- (a) Year 1 Following Project Stabilization. If \$50,000 or more in income tax revenue is realized by the City from the Project and its residents in the first full calendar year following the year in which Project Stabilization (as defined herein) occurs (“Measurement Year #1”), the City agrees to reduce the principal balance of the BNB Loan by \$50,000. The amount of income tax realized by the City from the Project and its residents for Measurement Year #1 will be determined by the City on a date (hereinafter the “Calculation Date”) that is no later than July 1 of the calendar year following Measurement Year #1. If on the Calculation Date for Measurement Year #1 the City determines that \$50,000 or more has been realized

from the Project and its residents, it shall (i) notify Borrower of such determination and (ii) provide Borrower with a revised amortization schedule reflecting the then outstanding principal balance of the Loan less the \$50,000 reduction in principal amount (the "Adjusted Balance"). The Adjusted Balance shall be payable in roughly equal monthly principal installments over the remaining term of the Loan commencing with the first month following the month in which the Calculation Date occurred. If on the Calculation Date for Measurement Year #1 the City determines that less than \$50,000 of income tax revenue has been realized from the Project and its residents for Measurement Year #1, the City shall notify the Borrower of that determination. If after receiving such notice the Borrower has a reasonable basis to believe \$50,000 of income tax can be realized by the City from the Project and its residents for Measurement Year #1 if the City takes into account income taxes paid by residents who requested an income tax filing extension for their Measurement Year #1 income tax returns, the Borrower shall have sixty (60) days from the date it receives such notice to request in writing that the City measure the amount of income tax realized after the date residents with filing extensions are required to file income tax returns. If so requested by Borrower, the City will make a second calculation on a date (the "Second Calculation Date") which is no later than January 30 of the calendar year following the year in which the first Calculation Date for Measurement Year #1 occurred, and if such second calculation results in a determination that \$50,000 or more of income tax revenue was realized by the City for Measurement Year #1 the City shall (i) notify the Borrower of such determination and (ii) provide Borrower with a revised amortization schedule reflecting an Adjusted Balance as of such Second Calculation Date, and the revised amortization will require the Adjusted Balance to be paid in roughly equal installments over the then remaining term of the Loan commencing with the first month following the month in which the Second Calculation Date occurred. If on the Second Calculation Date for Measurement Year #1 the City determines that less than \$50,000 has been realized from the Project and its residents for Measurement Year #1, the City shall notify the Borrower of that determination.

- (b) Year 2 Following Project Stabilization. If \$50,000 or more in income tax revenue is realized by the City from the Project and its residents in the second full calendar year following the year in which Project Stabilization (as defined herein) occurs ("Measurement Year #2"), the City agrees to reduce the principal balance of the BNB Loan by \$50,000. The amount of income tax realized by the City from the Project and its residents for Measurement Year #2 will be determined by the City on a Calculation Date that is no later than July 1 of the calendar year following Measurement Year #2. If on such Calculation Date the City determines that \$50,000 or more of income tax has been realized from the Project and its residents for Measurement Year #2, it shall (i) notify Borrower of such determination and (ii) provide Borrower with a revised amortization schedule reflecting the then outstanding principal balance of the Loan less the \$50,000 reduction in principal amount (the "Adjusted Balance"). The Adjusted Balance shall be payable in roughly equal monthly principal installments over the remaining term of the Loan commencing with the first month following the month

in which the Calculation Date occurred. If on the Calculation Date for Measurement Year #2 the City determines that less than \$50,000 of income tax revenue has been realized from the Project and its residents for Measurement Year #2, the City shall notify the Borrower of that determination. If after receiving such notice the Borrower has a reasonable basis to believe \$50,000 of income tax can be realized by the City from the Project and its residents for Measurement Year #2 if the City takes into account income taxes paid by residents who requested an income tax filing extension for their Measurement Year #2 income tax returns, the Borrower shall have sixty (60) days from the date it receives such notice to request in writing that the City measure the amount of income tax realized after the date residents with filing extensions are required to file income tax returns. If so requested by Borrower, the City will make a second calculation on a date (the "Second Calculation Date") which is not later than January 30 of the calendar year following the year in which the first Calculation Date for Measurement Year #2 occurred, and if such second calculation results in a determination that \$50,000 or more of income tax revenue was realized by the City for Measurement Year #2 the City shall (i) notify the Borrower of such determination and (ii) provide Borrower with a revised amortization schedule reflecting the Adjusted Balance as of the Second Calculation Date, and the revised amortization will require the Adjusted Balance to be paid in roughly equal installments over the then remaining term of the Loan commencing with the first month following the month in which the Second Calculation Date occurred. If on the Second Calculation Date for Measurement Year #2 the City determines that less than \$50,000 of income tax revenue has been realized from the Project and its residents for Measurement Year #2, the City shall notify the Borrower of that determination.

- (c) Year 3 Following Project Stabilization. If \$50,000 or more in income tax revenue is realized by the City from the Project and its residents in the third full calendar year following the year in which Project Stabilization (as defined herein) occurs ("Measurement Year #3"), the City agrees to reduce the principal balance of the BNB Loan by \$50,000. The amount of income tax realized by the City from the Project and its residents for Measurement Year #3 will be determined by the City on a Calculation Date that is no later than July 1 of the calendar year following Measurement Year #3. If on such Calculation Date the City determines that \$50,000 or more has been realized from the Project and its residents for Measurement Year #3, it shall (i) notify Borrower of such determination and (ii) provide Borrower with a revised amortization schedule reflecting the then outstanding principal balance of the Loan less the \$50,000 reduction in principal amount (the "Adjusted Balance"). The Adjusted Balance shall be payable in roughly equal monthly principal installments over the then remaining term of the Loan commencing with the first month following the month in which the Calculation Date occurred. If on the Calculation Date for Measurement Year #3 the City determines that less than \$50,000 of income tax revenue has been realized from the Project and its residents for Measurement Year #3, the City shall notify the Borrower of that determination. If after receiving such notice the Borrower has a reasonable basis to believe \$50,000 of income tax revenue can be

realized from the Project and its residents for Measurement Year #3 if the City takes into account income taxes paid by residents who requested an income tax filing extension for their Measurement Year #3 income tax returns, the Borrower shall have sixty (60) days from the date it receives such notice to request in writing that the City measure the amount of income tax realized after the date residents with filing extensions are required to file income tax returns. If so requested by Borrower, the City will make a second calculation on a date (the "Second Calculation Date") which is no later than January 30 of the calendar year following the year in which the first Calculation Date for Measurement Year #3 occurred, and if such second calculation results in a determination that \$50,000 or more of income tax revenue was realized by the City for Measurement Year #3 the City shall (i) notify the Borrower of such determination and (ii) provide Borrower with a revised amortization schedule reflecting the Adjusted Balance as of the date of such second calculation, and the revised amortization will require the Adjusted Balance to be paid in roughly equal installments over the then remaining term of the Loan commencing with the first month following the month in which the Second Calculation Date occurred. If on the Second Calculation Date for Measurement Year #3 the City determines that less than \$50,000 of income tax revenue has been realized from the Project and its residents for Measurement Year #3, the City shall notify the Borrower of that determination.

For purposes of this Section 2.02, "Project Stabilization" will be deemed to have occurred on the first date on which ninety percent (90%) of all units in the Project (currently expected to be a total of 70 units) are occupied. For avoidance of doubt, if the Project as built has a total of 70 units, Project Stabilization will occur on the first date on which at least 63 units are occupied.

All payments due under the Cognovit Promissory Note shall be made in immediately available funds at the City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, Ohio 44118 and be made no later than the first (1st) day of each month. If the installment is not paid within fifteen (15) days after it is due, Lender may charge a late fee equal to five percent (5%) of the amount of the payment due and may continue to charge such five percent (5%) fee for each additional fifteen (15) day period the payment remains outstanding. If the installment remains unpaid for more than thirty (30) days, or if Borrower is in default of any provision of this Agreement and has failed to cure such default within the time and as provided in this Agreement, the entire principal balance and any unpaid interest and/or charges thereon shall become immediately due and payable, and shall bear interest thereafter at the rate of ten percent (10%) per annum.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that the following are true with respect to the Borrower:

SECTION 3.01 AUTHORIZATION

The entering into and performance by Borrower of this Agreement and the execution and delivery of the Cognovit Promissory Note and all other documents and instruments required under this Agreement will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect and having applicability to Borrower or result in a breach of or constitute a default under any indenture, bank loan, credit agreement or any other agreement or instrument to which Borrower is a party or by which it or its property may be bound or affected.

SECTION 3.02 AGENTS

Borrower represents that there are no brokers or agents utilized in connection with this transaction.

SECTION 3.03 ENFORCEABILITY

When this Agreement is executed by Borrower and Lender, and when the Cognovit Promissory Note is executed and delivered by Borrower for value, each such instrument shall constitute the legal, valid and binding obligation of Borrower enforceable in accordance with their terms.

SECTION 3.04 LITIGATION

There are no legal actions, suits, or proceedings pending, or to the knowledge of Borrower, threatened against Borrower before any court or administrative agency, which, if determined adversely to Borrower, would have an adverse effect on the financial condition or businesses of Borrower which have not been disclosed in writing to Lender.

SECTION 3.05 GOVERNMENTAL CONSENTS

No authorization, consent or approval, or any formal exception of any governmental body, regulatory authorities (federal, state or local) or mortgagor, creditor or third party is or was necessary to the valid execution and delivery by Borrower of this Agreement, the Cognovit Promissory Note, Mortgage, Guarantee or other document.

SECTION 3.06 NO ADVERSE CHANGE

There has been no adverse change since the date of application for the Loan in the financial condition, fixed properties, debts or liabilities of Borrower.

SECTION 3.07 ABSENCE OF DEFAULTS

Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

SECTION 3.08 TAX RETURNS AND PAYMENTS

Borrower has filed all required tax returns and has paid or made provision for the payment of all taxes, if any, which have or may become due pursuant to said returns or pursuant to any assessments levied against Borrower or its personal or real property by any federal, state or local taxing agency. No tax liability has been asserted by the Internal Revenue Service or any other taxing agency, (federal, state or local) for taxes materially in excess of those already provided for, and Borrower knows of no basis for any such deficiency assessment.

SECTION 3.09 MATERIAL FACTS

No representation or warranty contained herein or made hereunder and no certificate, schedule or other document furnished or to be furnished in connection with the transactions contemplated hereby contains or will contain a misstatement of material fact or omits or will omit to state a material fact required to be stated herein or therein in order to ensure that statements contained herein and therein are not misleading.

SECTION 3.10 PROHIBITION OF CONFLICT OF INTEREST

Borrower acknowledges that no person who is an employee, officer, agent or consultant of the City of Cleveland Heights, or an elected public official or member of the Cleveland Heights City Council or appointed public official of the City of Cleveland Heights who exercises or has exercised any functions or responsibilities with respect to the Project or who is in a position to participate in a decision-making process or gain inside information with regard to the Project may obtain a personal or financial interest or benefit from the Project, or have an interest in any contract, subcontract, or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties. Borrower further acknowledges and understands that the above restriction shall apply to all activities comprising the Project, and shall cover any such interest or benefit during, and any time after, such person’s tenure.

SECTION 3.11 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Borrower will comply with all applicable federal, state and local laws, ordinances and administrative rulings pertaining to the Project.

SECTION 3.12 PERFORMANCE ON OTHER CONTRACTS WITH THE CITY

Borrower will fully perform all other contracts with the City, if any, in a timely and workmanlike matter.

ARTICLE IV

CONDITIONS OF LENDING

The obligation of Lender to make the Loan shall be subject to the fulfillment on or before the Closing Date of each of the following conditions:

SECTION 4.01 CLOSING OF PURCHASE AGREEMENT

Borrower shall have closed on the Purchase Agreement and title to the Medusa Property shall have transferred from Seller to Borrower.

SECTION 4.02 EXECUTION AND DELIVERY OF LOAN AGREEMENT AND NOTE

Borrower shall execute and deliver to Lender this Agreement and the Cognovit Promissory Note.

SECTION 4.03 EXECUTION AND DELIVERY OF COLLATERAL DOCUMENTS

Borrower's obligation to make payments of principal and interest on the Loan and any other sums payable hereunder shall be secured by: a first mortgage on the Medusa Property; an assignment of rents and leases, and a guarantee from Roger Bliss. Lender agrees to subordinate its first mortgage position and accept a second position mortgage if and when required by any senior lender providing the primary financing for the Project.

SECTION 4.04 GOVERNMENTAL APPROVAL

Borrower shall have secured all approvals and consents of governmental bodies that may be required prior to the acquisition of the Medusa Property from Seller pursuant to the Purchase Agreement.

SECTION 4.05 APPROVAL OF OTHER CREDITORS

Borrower shall have secured all necessary approvals and consents required with respect to this Loan transaction by any creditor or other party having any financial interest in Borrower or its property.

SECTION 4.06 REPRESENTATION AND WARRANTIES AND CONDITIONS OF LENDING

The representation and warranties and conditions of lending contained herein shall be true and correct as of the date hereof and the Closing Date and shall remain true and correct throughout the term of the Loan. Borrower shall deliver to Lender an affidavit to that effect, effective as of the Closing Date.

SECTION 4.07 EXPENSES AND FEES

The Borrower shall pay loan fees including, search fees, Borrower's legal fees, survey fees, recording fees, title insurance and associated fees, etc. Each party shall be responsible for payment of their own legal fees.

ARTICLE V

AFFIRMATIVE COVENANTS

Borrower agrees to comply with the following covenants from the date hereof until the Loan has been fully repaid to Lender, or such longer time as specifically provided in the covenant, unless Lender or its assigns otherwise consent in writing:

SECTION 5.01 PAYMENT OF LOANS

Borrower agrees to pay punctually the principal on the Cognovit Promissory Note according to its terms and conditions and to repay punctually any other amounts that may become due and payable to Lender under or pursuant to the terms of this Agreement or the Cognovit Promissory Note.

SECTION 5.02 PAYMENT OF OTHER INDEBTEDNESS

Borrower agrees to pay punctually the principal and interest due on any other indebtedness now or hereafter owing by Borrower to Lender or any other lender or creditor.

SECTION 5.03 MAINTAIN AND INSURE PROPERTY

Borrower agrees at all times to maintain its property so that the business carried on in connection therewith may be properly and advantageously carried out at all times. Borrower also agrees to maintain during the term of the Loan adequate hazard insurance policies providing fire and extended coverage protecting Lender's interest in the Medusa Property and the Project, and to provide written proof thereof to Lender. Borrower further agrees to maintain adequate liability and workers' compensation insurance in amounts and forms satisfactory to Lender, and to provide written proof thereof to Lender upon request. Lender shall be named as an additional insured on all liability and casualty policies relating to the Project.

SECTION 5.04 PAYMENT OF TAXES

Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties or its business(es) prior to the date on which penalties would attach thereto, except that Borrower shall not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate and timely proceedings, provided that Borrower so advises Lender in writing of such contest and proceedings.

SECTION 5.05 INFORMATION

Borrower agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions, including, without limitation, such entries to be made in accordance with generally accepted accounting principles consistently applied, and to permit Lender to inspect said books upon reasonable advance notice. In addition, Borrower shall deliver to Lender annual financial statements during the term of the Loan, certified by Borrower to be true, on or before the first day of _____ following each such year commencing with financial statements for 2020 to be delivered on or before _____, 2021.

Borrower further agrees to provide information, and execute and deliver any and all additional documents and instruments as may be reasonably requested by Lender, its assigns or attorneys.

Borrower further agrees to provide written notice to Lender of any public hearing or meeting before any administrative or other public agency which may in any manner materially affect the real estate securing the Loan.

SECTION 5.06 SEVERABILITY

Borrower agrees that in the event that any provision of this Agreement or any other instrument executed at closing or the application thereof shall be declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement or such instrument nevertheless shall remain in full force and effect, and to this end, the provisions of all covenants, conditions and agreements described herein are deemed to be separate.

SECTION 5.07 INDEMNIFICATION

Borrower agrees to indemnify, defend and hold Lender, its officials, employees, agents and assigns harmless against any and all claims, injury, damage, loss, liability, cost and expense (including attorney's fees, costs and expenses) of any and every kind to any persons by reason of, with respect to, or resulting from, (i) the operation or maintenance of the Project, (ii) any delay in Borrower's discharging any of its obligations under this Agreement, or (iii) any failure of Borrower to discharge any of its obligations under this Agreement. In no instance shall any official, employee or agent of Lender or its assigns be personally liable to Borrower.

SECTION 5.08 EXPENSE OF COLLECTION OR ENFORCEMENT

Borrower agrees, if at any time Borrower defaults on any provision of this Agreement, to pay Lender or its assigns, in addition to any other amounts that may be due from Borrower, an amount equal to the reasonable costs and expenses incurred by Lender or its assigns in the collection, enforcement, correction or waiver of such default, including, without limitation, Lender's attorneys' fees.

SECTION 5.9 DISCLOSURE OF DOCUMENTS

Disclosure of documents which are in the possession of the City shall be governed by the applicable federal, state and local laws.

ARTICLE VI

NEGATIVE COVENANTS

Borrower covenants and agrees that, from the date hereof until payment in full of the Cognovit Promissory Note, unless Lender or its assigns shall otherwise consent in writing, it will not undertake any act, enter into any agreement or make any commitment which the performance

of which or failure of performance would constitute a breach of any of the covenants contained in this Agreement including, but not limited to, the following covenants:

SECTION 6.01 CHANGE IN OWNERSHIP

Borrower will not permit, without the prior written approval of Lender, which approval will not be unreasonably withheld, any material change in the ownership structure, control, or operation of its business including, without limitation, (i) merger into or consolidation with any other persons, firm or corporation; (ii) changing the nature of its business as intended to be carried on at the date hereof; or (iii) substantial distribution, liquidation or other disposal of its assets.

ARTICLE VII

EVENTS OF DEFAULT

The entire unpaid principal balance of the Cognovit Promissory Note, together with any and all accrued and unpaid interest shall become and be immediately due and payable upon the written demand of Lender or its assigns, without any other notice or demand or any kind of presentment or protest, if any one of the following events (hereinafter an "Event of Default") occurs and is continuing at the time of such demand, whether it is voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administration or governmental body.

(A) **PAYMENT DEFAULT UNDER NOTE**

If Borrower shall fail to make payment when due of the principal, interest or other charges on the Cognovit Promissory Note when due and the default remains unremedied for thirty (30) days or more after written notice to the Borrower.

(B) **INCORRECT REPRESENTATIONS OR WARRANTIES**

If any representation or warranty contained in or made in connection with the execution and delivery of this Agreement, or any instrument or certificate furnished pursuant hereto shall prove to have been incorrect in any material respect when made.

(C) **DEFAULT IN COVENANTS**

If Borrower defaults in the performance of any other term, covenant or agreement contained in this Agreement or any other agreement between Borrower and Lender and such default shall continue unremedied for thirty (30) days after written notice thereof was given to Borrower by Lender.

(D) **VOLUNTARY INSOLVENCY**

If Borrower becomes insolvent or ceases to pay its debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator for it or a substantial portion of its assets to effect a plan or other arrangement with creditors, or is adjudicated bankrupt, or shall make a voluntary assignment for the benefit of creditors.

(E) INVOLUNTARY INSOLVENCY

If an involuntary petition shall be filed against Borrower under any bankruptcy, insolvency or similar law seeking the reorganization of or the appointment of any receiver, trustee or liquidator for its property, or of a substantial part of such property, or a writ or warrant of attachment or similar process is issued against a substantial part of the property of Borrower, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded within thirty (30) days after the filing or levy.

(F) JUDGMENTS

If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of TEN THOUSAND DOLLARS (\$10,000.00) shall be rendered against Borrower and, within thirty (30) days, is not discharged, or an appeal therefrom taken and execution thereon effectively stayed pending such appeal, or if such judgment be affirmed on such appeal, the same is not discharged within thirty (30) days, or if Borrower has not entered into payment agreement with the judgment creditor.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01 NO WAIVER

No failure or delay on the part of Lender in exercising any rights, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No modification or waiver of any provision of this Agreement or of the Cognovit Promissory Note, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other further notice or demand in similar or other circumstance.

SECTION 8.02 ENTIRE AGREEMENT, AMENDMENTS

This Agreement embodies the entire agreement and understanding between Lender and Borrower and supersedes all prior agreements and understandings relating to the subject matter

hereof. Borrower and Lender and their successors and assigns hereby expressly reserve all rights to amend any provision of this Agreement, to amend or consent to or waive departure from the provisions of the Cognovit Promissory Note, and to release or to otherwise deal with any collateral security for the payment of the Cognovit Promissory Note; provided, however, that all such amendments be in writing and executed by Lender or its assigns and Borrower.

SECTION 8.03 NOTICES

All notices, consents, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail, prepaid, to Lender and Borrower at the address in the first paragraph of this Agreement or such other address as either party may have designated in writing to the other party hereto.

SECTION 8.04 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All agreements, representations, and warranties made by Borrower herein or any other document or certificate delivered to Lender in connection with the transactions contemplated by this Agreement shall survive the delivery of this Agreement and the Cognovit Promissory Note and shall continue in full force and effect so long as the Cognovit Promissory Note is outstanding.

SECTION 8.05 SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon Borrower, and its successors and assigns, except that Borrower may not assign or transfer its rights or obligations hereunder without the prior written approval of Lender. This Agreement shall inure to the benefit of Lender, its successor and assigns, and all subsequent holders of the Cognovit Promissory Note.

SECTION 8.06 ARTICLE AND SECTION HEADINGS

Article and section headings used herein are for convenience only and shall not affect the interpretation of this Agreement.

SECTION 8.07 COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Borrower covenants and agrees to comply with all applicable federal laws and regulations governing the receipt, expenditure and use of the Loan funds including, but not limited to, the following to the extent applicable:

1. Section 106 of the National Historic Preservation Act of 1966;
2. Title VII of the Civil Rights Act of 1968;
3. Section 109 of the Housing and Community Development Act of 1974;
4. Section 504 of the Rehabilitation Act of 1973;
5. The Age Discrimination Act of 1975;

- 6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Section 104(j) of the Urban and Rural Recovery Act of 1973; and
- 7. The regulations and requirements of OMB Circular Nos. 102 and A-87.

IN WITNESS WHEREOF the parties hereto have each caused this Agreement to be duly executed on the date and month herein written.

WITNESSES

THE CITY OF CLEVELAND HEIGHTS

 By: Tanisha R. Briley
 City Manager

WITNESSES

BNB MEDUSA, LLC

 By: Roger Bliss
 _____, BNB Medusa, LLC

EIN#: _____

STATE OF OHIO)
)
 COUNTY OF CUYAHOGA))

Before me, a Notary Public in and for said County and State, personally appeared the above-named Tanisha R. Briley, City Manager of the City of Cleveland Heights, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed personally and as such City Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland Heights, Ohio, this ____ day of _____ 2019.

 Notary Public

STATE OF OHIO)
)
COUNTY OF CUYAHOGA))

Before me, a Notary Public in and for said County and State, personally appeared the above-named Roger Bliss, _____, BNB Medusa, LLC, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed and the free act and deed of the limited liability company BNB Medusa, LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland Heights, Ohio, this ____ day of _____ 2019.

Notary Public

Approved as to form:

Director of Law