

## EASEMENT AGREEMENT

This Easement Agreement (“Easement Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2011 by and between the **CITY OF SOUTH EUCLID, OHIO**, an Ohio municipal corporation (“**Grantor**”) and **FISE LLC**, an Ohio limited liability company (“**Grantee**”).

### **RECITALS:**

A. Grantor is the owner of certain real estate located in the City of South Euclid, Cuyahoga County, Ohio more specifically described on Exhibit “A” attached hereto and incorporated herein by reference (the “Grantor Property”).

B. Grantee is the owner of certain real estate located immediately adjacent to the Grantor Property and more specifically described on Exhibit “B” attached hereto and incorporated herein by reference (the “Grantee Property”), which Grantee intends to develop into a commercial retail development.

C. Grantor and Grantee entered into a Donation Agreement dated as of \_\_\_\_\_, 2011 (the “Donation Agreement”), whereby, among other things, Grantor agreed to grant to Grantee certain easements over a portion of the Grantor Property for purposes of constructing, operating, monitoring, repairing and replacing certain storm water detention basins and related systems.

D. Capitalized terms not defined herein shall have the meanings ascribed in the Donation Agreement.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants, promises and agreements herein contained, Grantor and Grantee hereby agree as follows:

1. **Grant of Construction Easement.** Grantor hereby grants, bargains, sells, conveys and releases to Grantee, for the benefit of the Grantee Property and Grantee’s successors and assigns, a non-exclusive temporary construction easement over, across and upon the Grantor Property (the “Construction Easement”) to complete the construction and installation (and/or reconstruction or relocation as provided in Section 4 hereof) of the storm water detention basins and all related systems, including, without limitation, drainage pipes, lines and related improvements (collectively, the “Detention Systems”) including, but not limited to, ingress and egress of vehicles and persons transporting construction materials and equipment and for the temporary storage of equipment and materials being utilized in connection with such construction.

2. **Grantee Covenants.** Grantee covenants, represents and agrees that all work necessary to complete the construction of the Detention Systems will be performed and completed at Grantee’s sole cost and expense in a good and workmanlike manner, free of mechanic’s liens and in compliance with all applicable laws, ordinances, rules and regulations;

that all such work shall be performed only after Grantee has obtained all necessary governmental approvals and permits relating to construction of the Detention Systems on the Grantor Property. Upon completion of construction, Grantee shall repair any damage caused to the Grantor Property by Grantee as a result of such construction. With fourteen (14) business days after Grantee has received final non-appealable site plan and (if required) subdivision approval and issuance of a building permit by the City of South Euclid for Phase I of Grantee's development of a shopping center upon the Grantee Property (as such term [i.e. Phase I] is specifically defined in that certain Development Agreement between Grantor and Grantee dated as of the date hereof) (the "Contingency Satisfaction Date"), Grantee, at its cost and expense, shall commence pursuit of all permits and other approvals required to construct the Detention Systems and thereafter diligently pursue completion thereof.

3. **Grant of Storm Water Maintenance Easement.** Grantor hereby grants, bargains sells, conveys and releases to Grantee, for the benefit of the Grantee Property and Grantee's successors and assigns: (1) a permanent exclusive easement upon the Grantor Property located in the area shown on **Exhibit "C"** as the "Detention Area" for purposes of locating thereon the Detention Systems, (2) a permanent non-exclusive easement for purposes of channeling, transporting and discharging surface and storm water to, through and from the Detention Systems and (3) a permanent non-exclusive ingress and egress easement upon and across the Grantor Property in order to provide access to the Detention Systems for purposes of performing all necessary monitoring, maintenance, repairs and replacements to said Detention Systems (collectively, the "Storm Water Easement").

4. **Right to Relocate Detention Systems.** Grantee shall have the right at any time, after notice to Grantor and, if necessary, receipt of all necessary governmental approvals and permits, to reconfigure, reconstruct, replace and/or relocate the Detention Systems within the Detention Area.

5. **Maintenance.** Grantee covenants and agrees with Grantor to maintain the Detention Systems in good, clean, safe and working condition in accordance with sound construction and engineering standards and practices.

6. **Reservation of Rights.** Except for the Detention Area, which shall be utilized exclusively by Grantee, and except as otherwise provided herein, Grantor reserves the right to use and enjoy the Grantor Property for any and all purposes, provided such use and enjoyment shall not materially interfere with the easement rights and privileges granted to Grantee hereunder.

7. **Indemnification.** Grantee shall indemnify and save harmless Grantor from and against any and all loss, damage, liens, expense, claims, demands, actions or causes of action of whatever kind or nature which arise by reason of the rights and easements granted herein or the exercise of such rights by Grantee or by the failure of Grantee to properly and timely perform its agreements and obligations hereunder.

8. **Term Of Easements.** The Construction Easement shall be effective as of the date hereof and continue until completion of construction of the Detention Systems and during any period of reconstruction or relocation of the Detention Systems. The Storm Water Easement shall commence as of the date hereof continue for so long as such easement is necessary for the

operating, monitoring, repairing and replacing of the Detention Systems on the Grantor Property.

**9. Notices.** All notices herein authorized or required to be given to Grantor shall be sent certified mail, registered mail or overnight express, postage prepaid, to Grantor at:

City of South Euclid  
Attn: Mayor Georgine Welo  
1349 South Green Road  
South Euclid, Ohio 44121  
With a copy to:

Michael P. Lograsso  
City of South Euclid  
1414 South Green Road, #310  
South Euclid, Ohio 44121

or to such other address as Grantor may from time to time designate in accordance with this paragraph. All notices herein authorized or required to be given to Grantee shall be sent by certified mail, registered mail or overnight express, postage prepaid, to the Grantee at:

FISE LLC  
The Offices at Legacy Village  
25333 Cedar Road, Suite 300  
Lyndhurst, Ohio 44124  
Attn: Mitchell C. Schneider, President

With a copy to:  
First Interstate Properties, Ltd.  
The Offices at Legacy Village  
25333 Cedar Road, Suite 300  
Lyndhurst, Ohio 44124  
Attn: General Counsel

or to such other address as Grantee may from time to time designate in accordance with this paragraph.

10. **Entire Agreement.** This Easement Agreement together with the Exhibits attached hereto contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understanding are superseded hereby.

10. **Successors And Assigns.** The parties hereto agree that the easements contained in this Easement Agreement shall run with the land and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and/or assigns.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, Grantor and Grantee have executed and delivered this Easement Agreement as of the day and year first above written.

**GRANTOR:**

**CITY OF SOUTH EUCLID, OHIO**  
an Ohio municipal corporation

By: \_\_\_\_\_

**GRANTEE:**

**FISE LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

**DRAFT**

STATE OF OHIO                    )  
  ) SS  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named **CITY OF SOUTH EUCLID, OHIO** an Ohio municipal corporation, by \_\_\_\_\_, its \_\_\_\_\_ who acknowledged that she did sign the foregoing instrument on behalf of said limited liability company, and that the same is his free act and deed and the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named **FISE LLC**, an Ohio limited liability company, by Mitchell C. Schneider, its Managing Member who acknowledged that he did sign the foregoing instrument on behalf of said limited liability company, and that the same is his free act and deed and the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description of Grantor Property**

Situated in the City of South Euclid, County of Cuyahoga, State of Ohio and known as being Sublot No. 455 in The Rapid Transit Co's Subdivision No. 17A as shown by the recorded plat in Volume 81 of Maps, Page 32 of Cuyahoga County Records, all of and more land being part of Original Euclid Township, Lot Nos. 23 and 24, Tract No. 2 and is further bounded and described as follows:

Beginning at a 5/8" iron pin found at the intersection of the center line of Warrensville Center Road (86 feet wide) with the center line of Cedar Road (70 feet wide). Thence North 00°-34'-38" West, along said center line of Warrensville Center Road, a distance of 1830.92 feet to a Northeasterly corner of said Rapid Transit Land Co's Subdivision No. 17A. Thence North 89°-52'-17" West, along a Northerly line of said Rapid Transit Land Co's Subdivision No. 17A, a distance of 43.00 feet to the Westerly right of way line of said Warrensville Center Road. Thence North 89°-52'-17" West, continuing along said Northerly line of The Rapid Transit Land Co's Subdivision No. 17A, a distance of 1357.38 feet to the intersection of the Southerly prolongation of the Easterly right of way line of Andrews Road (20 feet wide) and the principal place of beginning of the land herein described;

- Course 1      Thence North 89°-52'-17" West, continuing along said Northerly line of The Rapid Transit Land Co's Subdivision No. 17A, a distance of 901.96 feet to the Northeasterly corner of said Sublot No. 455;
- Course 2      Thence South 00°-11'-56" East, along the Easterly line of said Sublot No. 455, a distance of 105.00 feet to the Southeasterly corner thereof and the Northerly right of way line of East Antisdale Road (50 feet wide);
- Course 3      Thence North 89°-52'-17" West, along said Northerly right of way line of East Antisdale Road, distance of 45.00 feet to the Southwesterly corner of said Sublot No. 455;
- Course 4      Thence North 00°-11'-56" West, along the Westerly line of said Sublot No. 455, a distance of 105.00 feet to the Northwesterly corner thereof and the aforesaid Northerly line of The Rapid Transit Land Co's Subdivision No. 17A;
- Course 5      Thence North 89°-52'-17" West, along said Northerly line of The Rapid Transit Land Co's Subdivision No. 17A, a distance of 314.99 feet to the Northwesterly corner thereof and an Easterly line of the Taylor Heights Allotment as shown by the recorded plat in Volume 61 of Maps, Page 15 of Cuyahoga County Records;
- Course 6      Thence North 00°-11'-56" West, along said Easterly line of the Taylor Heights Allotment, a distance of 724.74 feet to a 1" iron pin found at the Northwesterly corner of the aforesaid Original Lot No. 24, Tract No. 2 and an interior corner of Blanche Road (25 feet wide);

Course 7 Thence North  $89^{\circ}-56'-50''$  East, along the Northerly line of said Original Lot No. 24, Tract No. 2 and a Southerly right of way line of said Blanche Road, distance of 1269.91 feet to a drill hole found in old fence post foundation at the intersection with the Easterly right of way line of aforesaid Andrews Road;

Course 8 Thence South  $00^{\circ}-25'-43''$  West, along the aforesaid Southerly prolongation of the Easterly right of way line of Andrews Road, a distance of 728.76 feet to the principal place of beginning and containing 21.2286 Acres (924,719 Square Feet) of land according to a survey made by Thomas J. Neff, Jr. Registered Surveyor No. 7065-Ohio in November of 2010.

The subject premises being the same land conveyed to FISE LLC by deed recorded in A.F.N. 201012291035 and 2011\_\_\_\_\_ of Cuyahoga County Records.

The basis of bearings for the premises surveyed is North  $89^{\circ}-56'-50''$  East as the Northerly line of said Original Lot No. 24, Tract No. 2 and a Southerly right of way line of said Blanche Road as evidenced in the Taylor Heights Allotment as shown by the recorded plat in Volume 61 of Maps, Page 15 of Cuyahoga County Records.

Be the same more or less, but subject to all legal highways and easements of record.

EXHIBIT "B"

Legal Description of Grantee Property

Situated in the City of South Euclid, County of Cuyahoga, State of Ohio and known as being part of Original Euclid Township, Lot Nos. 23 and 24, Tract No. 2 and is further bounded and described as follows:

Beginning at a 5/8" iron pin found at the intersection of the center line of Warrensville Center Road (86 feet wide) with the center line of Cedar Road (70 feet wide). Thence North 00°-34'-38" West, along said center line of Warrensville Center Road, a distance of 1830.92 feet to a Northeasterly corner of The Rapid Transit Land Co's Subdivision No. 17A as shown by the recorded plat in Volume 81 of Maps, Page 32 of Cuyahoga County Records. Thence North 89°-52'-17" West, along a Northerly line of said Rapid Transit Land Co's Subdivision No. 17A, a distance of 43.00 feet to the Westerly right of way line of said Warrensville Center Road and the principal place of beginning of the land herein described;

- Course 1 Thence North 89°-52'-17" West, continuing along said Northerly line of The Rapid Transit Land Co's Subdivision No. 17A, a distance of 1357.39 feet to the intersection of the Southerly prolongation of the Easterly right of way line of Andrews Road (20 feet wide);
- Course 2 Thence North 00°-25'-43" East, along said Southerly prolongation and along said Easterly right of way line of Andrews Road, a distance of 1319.46 feet to a Northwesterly corner of the aforesaid City of South Euclid;
- Course 3 Thence South 89°-40'-23" East, along a Northerly line of said City of South Euclid, a distance of 1338.79 feet to the aforesaid Westerly right of way line of Warrensville Center Road;
- Course 4 Thence South 00°-03'-46" East, along said Westerly right of way line of Warrensville Center Road, a distance of 502.25 feet to an angle point therein;
- Course 5 Thence South 00°-34'-38" East, continuing along said Westerly right of way line of Warrensville Center Road, a distance of 812.63 feet to the principal place of beginning and containing 40.7198 Acres (1,773,754 Square Feet) of land according to a survey made by Thomas J. Neff, Jr. Registered Surveyor No. 7065-Ohio in November of 2010.

The subject premises being the same land conveyed to the Oakwood Club by deed recorded in Volume 1485, Page 228 of Cuyahoga County Records.

The basis of bearings for the premises surveyed is North 89°-56'-50" East as the Northerly line of said Original Lot No. 24, Tract No. 2 and a Southerly right of way line of said Blanche Road as evidenced in the Taylor Heights Allotment as shown by the recorded plat in Volume 61 of Maps, Page 15 of Cuyahoga County Records.

Be the same more or less, but subject to all legal highways and easements of record.

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**EXHIBIT "C"**

Site Plan

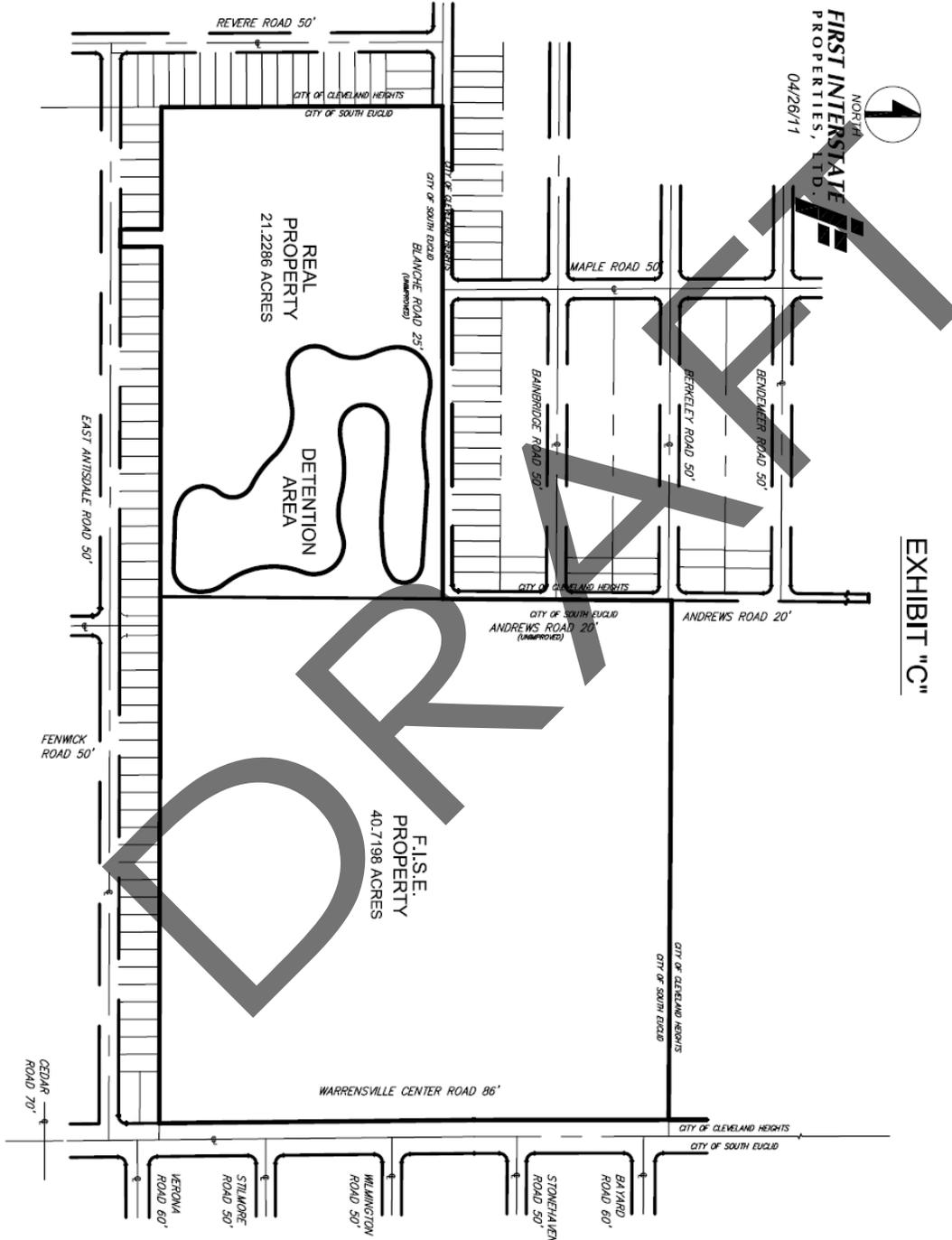


EXHIBIT "C"