

PUBLIC BENEFIT AGREEMENT

This **PUBLIC BENEFIT AGREEMENT** (this "Agreement") is made and entered into this 28th day of JUNE, 2011, by and between the CITY OF SOUTH EUCLID, OHIO, an Ohio municipal corporation, having a mailing address at 1349 South Green Road, South Euclid, Ohio 44121 (the "City") and FISE LLC, an Ohio limited liability company, having a mailing address of 25333 Cedar Road, Suite 300, Lyndhurst, Ohio 44124 ("FISE").

R E C I T A L S:

WHEREAS, pursuant to the terms of that certain Donation Agreement dated as of the date hereof between FISE and the City (the "Donation Agreement"), FISE donated and the City accepted the donation of approximately 21.2286 acres of vacant land more specifically described on Exhibit "A" attached hereto and incorporated herein by reference (the "Donation Property") which the City intends to utilize as public green space.

WHEREAS, the Donation Property is immediately adjacent to other real property owned by FISE comprised of approximately 40.71 acres of land identified on the Site Plan attached hereto as Exhibit "B" as the "FISE Property", which FISE intends to develop into a commercial retail shopping center (the "Shopping Center");

WHEREAS, in connection with and in addition to FISE's commitment to donate the Donation Property to the City, FISE, at its sole cost and expense, has committed to undertake certain improvements upon the Donation Property (more specifically defined below as the "Green Space Improvements") for the benefit of the City and for the betterment of the Donation Property for its use as public green space;

WHEREAS, the parties hereto wish to specify the timing, conditions and terms of the Green Space Improvements; and

WHEREAS, capitalized terms not defined herein shall have the meaning ascribed in the Donation Agreement.

W I T N E S S E T H:

For and in consideration of the covenants herein contained and upon the terms and conditions herein set forth, the City and FISE hereby agree as follows:

1. **Improvements.** Within fourteen (14) business days after FISE has received final non-appealable site plan and (if required) subdivision approval and issuance of a building permit by the City for Phase I of FISE's development of the Shopping Center (as such term [i.e. Phase I] is specifically defined in that certain Development Agreement between FISE and the City dated as of the date hereof) (the "Contingency Satisfaction Date"), FISE, at its cost and expense, shall, subject to force majeure, commence to perform and diligently pursue completion of the following work upon the Donation Property:

- a. demolition of all residential structures located upon that property identified on the Site Plan as the "E. Antisdale Property" and removal of all materials relating to such demolition;

- b. installation of a permeable pavement driveway leading to the parking area identified on the Site Plan;
- c. installation of a buffer along the entry drive as shown on the Site Plan;
- d. installation of a permeable pavement parking area in the area identified on the Site Plan;
- e. addition and installation of new sections of asphalt paved trails, having width similar to the existing trails, in the areas indicated on the Site Plan;
- f. replacement of all sand trap areas located upon the Donation Property with native species plantings;
- g. construction of a timber framed entranceway feature, with signage, in the area designated on the Site Plan; and
- h. remove all putting greens located on the Donation Property and replace with native species plantings.

All of the foregoing shall be collectively referred to as the "Green Space Improvements". FISE, at its sole cost and expense (in accordance with the estimated construction budget attached hereto as **Exhibit "C"** which may be increased [if necessary] to provide for the costs associated with item h above), shall promptly apply for and obtain all necessary permits and approvals for the Green Space Improvements and shall perform and complete all of the Green Space Improvements in a good and workmanlike manner in accordance with all applicable laws, rules, regulations, codes and ordinances.

2. **Warranties against Defects, Ongoing Maintenance.** FISE shall warrant all Green Space Improvements to be free from defects for a period of two (2) years after the City certifies completion thereof. Except for certain monitoring, maintenance, repairs and replacements to the storm water detention systems placed upon the Donation Property by FISE in accordance with the Storm Water Easement dated of even date herewith, upon the City's certification of completion of the Green Space Improvements, FISE shall have no further maintenance or other obligations with respect to the Donation Property or the Green Space Improvements; such obligations to be the sole responsibility of the City at its cost and expense.

3. **City Cooperation.** The City agrees to execute and deliver, or cause to be executed and delivered, any and all permits, consents, approvals and other documents and assurances necessary for commencement and completion of the Green Space Improvements, and to cooperate with FISE in order to allow FISE to complete the Green Space Improvements without hindrance, conditions or unnecessary delay.

4. **Charitable Donation.** The City hereby acknowledges and agrees that the out-of-pocket expenditures incurred by FISE to provide and construct the Green Space Improvements (the "Contribution") constitutes a "charitable contribution" within the meaning of Section 170(c)(1) of the Internal Revenue Code of 1986, as amended (the "Code"). With respect to the Contribution, the City hereby acknowledges that the City has not provided any goods or services in consideration, in whole or in part, for the Contribution. The City further agrees to execute and

deliver or cause to be executed and delivered any and all documents or certifications that FISE may reasonably request to evidence that the Contribution constitutes a “charitable contribution” within the meaning of Code Section 170(c)(1).

5. **Miscellaneous.**

(a) **Maintenance Payment.** The City and FISE acknowledge and agree that certain expenses will be incurred in order to operate and maintain the Donation Property as public green space. In order to help subvent these expenses, and only for so long as the Donation Property is utilized by the City as public green space, FISE has agreed to provide to the City an annual contribution of Twelve Thousand Dollars (\$12,000) (the “Maintenance Fee”) on or before January 30th of each calendar year beginning on January 30, 2012. FISE covenants and agrees that within twelve (12) months after filing of the deed transferring the Donation Property to the City, that FISE shall record a declaration upon the FISE Property which shall, among other things, set forth certain common area maintenance obligations of all of owner(s) of the FISE Property. The Declaration shall include this Maintenance Fee as an ongoing obligation of the FISE Property which shall run with the land in accordance with the commitment in this Section 5(a). In the event that FISE shall not finalize and record such declaration within such twelve (12) month period, then FISE shall record, as a memorandum to this Agreement, a document setting forth FISE’s obligations specified in this Section 5(a).

(b) **Estoppel Certificate.** Each party hereto agrees that within twenty (20) days after receipt of written request from the other party, it will issue to such party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of such party’s knowledge that as of such date:

- (i) whether it knows of any default under this Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;
- (ii) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- (iii) whether this Agreement is in full force and effect; and
- (iv) any other reasonable matters relating to this Agreement.

(c) **Temporary License.** The City hereby grants to FISE, its agents, employees, successors and assigns, a temporary license to enter upon the Donation Property for purposes of carrying out all of its rights and obligations set forth herein.

(d) **Termination of Agreement.** Upon completion of the Green Space Improvements and acceptance by the City and completion of any other applicable obligations hereunder, the parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Agreement.

(e) **Relationship of the Parties.** Notwithstanding any provision to the contrary in this Agreement, the parties agree that the relationship between FISE and the

City is one of donor and donee only, and no provision of this Agreement shall be construed to create any other type of status or relationship between these parties.

(f) **Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

(g) **Waiver.** The failure of any party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but the same shall continue and remain in full force and effect. The continued performance by any party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by any party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

(h) **Notices.** All notices herein authorized or required to be given to the City shall be sent certified mail, registered mail or overnight express, postage prepaid, to the City 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 the City may from time to time designate in accordance with this paragraph. All notices herein authorized or required to be given to the FISE shall be sent by certified mail, registered mail or overnight express, postage prepaid, to the FISE 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 FISE may from time to time designate in accordance with this paragraph.

(i) **Entire Agreement.** No oral statements, representations or agreements other than this Agreement and such other agreements referred to herein or related hereto shall have any force or effect and each party hereto agrees that it will not rely on any representations or agreements other than those contained in this Agreement and those contained in any agreements referred to herein or related hereto.

(j) **Further Assurances.** Each party, upon the request of another party hereto, shall execute and deliver such further documents and instruments as the requesting party may reasonably deem appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

(k) **Headings.** The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

(l) **City Council.** This Agreement and all terms and provisions hereof are subject to and conditioned upon the approval or ratification by duly enacted ordinance or resolution of the City Council of the City of South Euclid.

(m) **Successors.** This Agreement shall bind and inure to the benefit of the parties hereto, their respective successors and assigns, subject to the provisions herein.

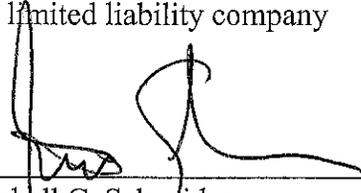
6. **Applicable Law and Binding Effect.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

7. **Counterparts.** This Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

[SIGNATURE PAGE FOLLOWS]

EXECUTED on the date first written above.

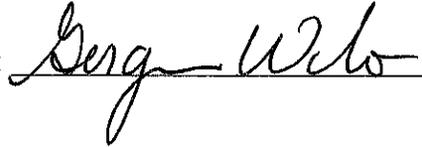
FISE LLC,
an Ohio limited liability company

By: 

Mitchell C. Schneider

Its: Managing Member

CITY OF SOUTH EUCLID, OHIO
an Ohio municipal corporation

By: 

Its: mayor

EXHIBIT "A"

Legal Description of Donation 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 $00^{\circ}-34'-38''$ 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 $89^{\circ}-52'-17''$ 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 $89^{\circ}-52'-17''$ 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 $89^{\circ}-52'-17''$ 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 $00^{\circ}-11'-56''$ 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 $89^{\circ}-52'-17''$ 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 $00^{\circ}-11'-56''$ 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 $89^{\circ}-52'-17''$ 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 $00^{\circ}-11'-56''$ 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"

Site Plan

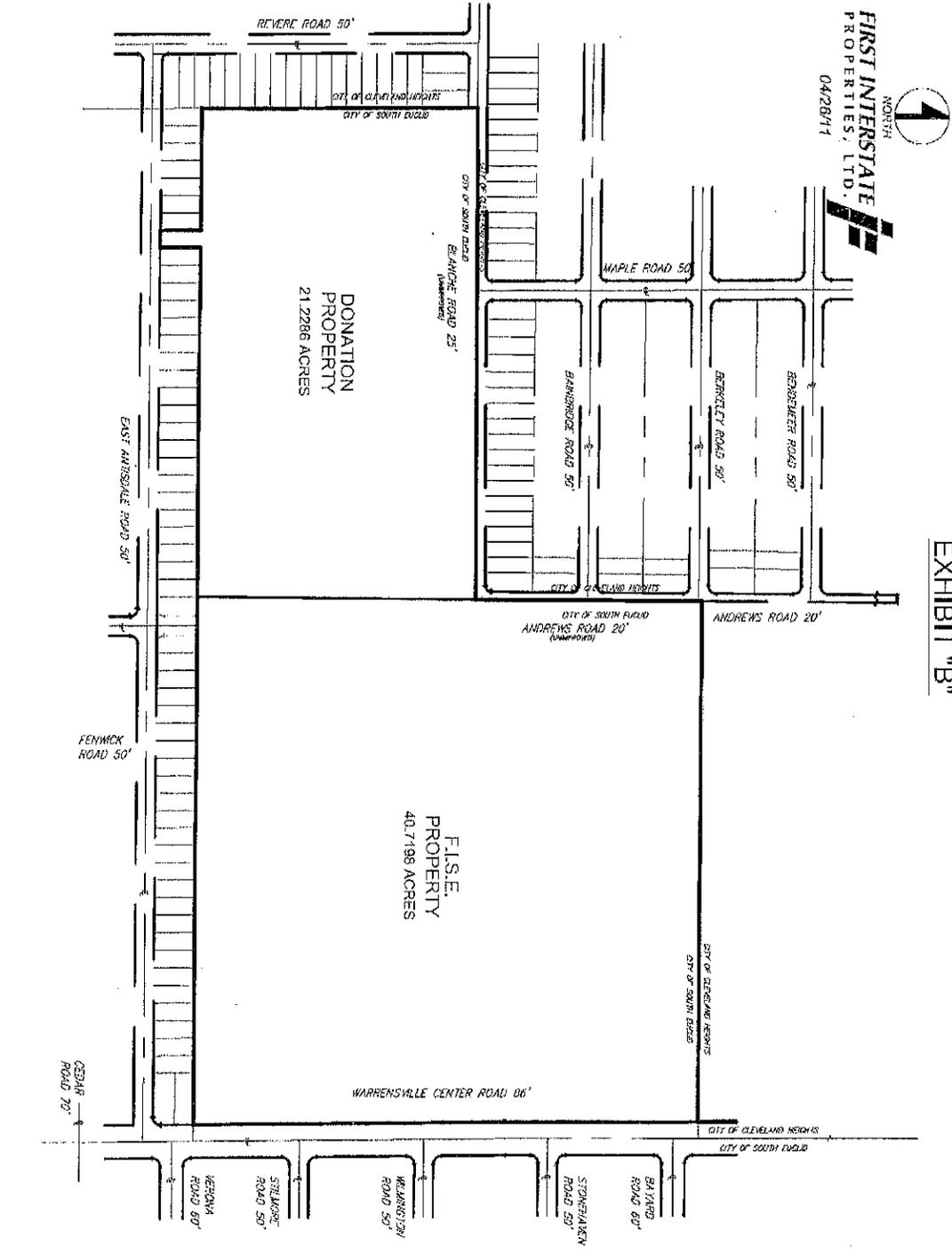


EXHIBIT "B"

EXHIBIT C
PUBLIC BENEFIT AGREEMENT
ESTIMATED CONSTRUCTION BUDGET (NOT TO EXCEED AS A WHOLE)

ITEM	QUANTITY	UNIT PRICE	BUDGET
A. BUILDING ACQUISITION			
1 PURCHASE PPN 704-26-022; 2 STORY HOME	1 LS	\$66,000.00	\$66,000.00
		BUILDING ACQUISITION	\$66,000.00
B. SITE PREPARATION			
2 DEMOLITION OF PPN 704-26-022; 2 STORY HOME	1 LS	\$25,000.00	\$25,000.00
3 EARTHWORK/CLEARING/GRUBBING	1 LS	\$40,000.00	\$40,000.00
4 EROSION CONTROL	1 LS	\$5,000.00	\$5,000.00
		SITE PREPARATION	\$70,000.00
C. CONSTRUCTION			
5 ASPHALT - ROADWAY & PARKING LOT	1,314 SY	\$83.00	\$109,082.00
6 PATHWAYS	19,182 SF	\$6.00	\$115,092.00
7 NATIVE PLANTINGS/SEEDING	1 LS	\$8,250.00	\$8,250.00
8 ENTRANCE STRUCTURE AND VARIOUS AMENITIES	1 LS	\$25,000.00	\$25,000.00
		CONSTRUCTION	\$255,404.00
		TOTAL	\$391,404.00