

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 02-11
INTRODUCED BY: Miller
REQUESTED BY: Mayor

February 14, 2011

AN EMERGENCY ORDINANCE DECLARING IMPROVEMENTS TO A PARCEL OF REAL PROPERTY IN THE DISTRICT TO BE A PUBLIC PURPOSE FOR PURPOSES OF SECTIONS 5709.40 AND 5709.42 OF THE OHIO REVISED CODE; DESCRIBING THE PUBLIC IMPROVEMENTS MADE, TO BE MADE, OR IN THE PROCESS OF BEING MADE THAT DIRECTLY BENEFIT, OR THAT ONCE MADE WILL DIRECTLY BENEFIT THE PARCEL, REQUIRING THE OWNER OF THAT PARCEL TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SERVICE PAYMENTS AND RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40, 5709.42 AND 5709.43; AND AUTHORIZING THE EXECUTION OF VARIOUS CONTRACTS, CERTIFICATIONS, AND OTHER DOCUMENTS RELATED THERETO.

WHEREAS, the City of South Euclid was the owner of a certain parcel of real property within the City as shown in **Exhibit A** hereto and incorporated herein by reference (the "Project Site"); and

WHEREAS, the City has agreed to sell the Project Site to Gordon Food Service for the redevelopment of the Project Site as a Gordon Foods Marketplace; and

WHEREAS, Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 provide that this Council may describe public improvements made and to be made which directly benefit the Project Site, declare Improvements (as defined in Ohio Revised Code Section 5709.40(a)) with respect to such Project Site to be a public purpose, thereby authorizing the exemption of those Improvements from real property taxation for a period of time, and provide for the making of service payments in lieu of taxes by the owner of such parcel, and establish a municipal public improvement tax increment equivalent fund into which such service payments shall be deposited; and

WHEREAS, this Council has made the public infrastructure improvements in the City described in **Exhibit B** hereto (the "Public Improvements"), that directly benefit the Project Site ; and

WHEREAS, the City has determined that it is necessary and appropriate and in the best interests of the City to provide for service payments in lieu of taxes with respect to the Project Site (the "Service Payments") pursuant to Section 5709.42 of the Ohio Revised Code; and

WHEREAS, the City had acquired and desires to finance the Public Improvements with the issuance of bonds of the City, which bonds would be payable from the Service Payments pursuant to separate legislation to be passed by this Council; and

WHEREAS, the Cleveland Heights-University Heights School District (the "School District") was notified on February 15, 2011 of the intent of the City to enact this ordinance, in compliance with Section 5709.40 of the Ohio Revised Code, and the School District, by resolution adopted by a majority of the Board of Education of the School District and certified to this Council on _____, 2011, has approved the exemption from real property taxation in the percentage requested by this Council; and

WHEREAS, this Council by a vote of at least five (5) members elected thereto determines that this ordinance is an emergency measure, and that this ordinance shall take effect at the earliest date possible as set forth in Article II, Section 6 of the Charter of the City of South Euclid;

NOW, THEREFORE, BE IT ORDAINED by the City of South Euclid, Ohio, that;

SECTION 1. The Public Improvements described in **Exhibit B** hereto are hereby designated as those Public Improvements that directly benefit the Project Site. This Council hereby confirms that the Public Improvements are necessary for the public health, safety and welfare.

SECTION 2. That pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.40, this Council hereby finds and determines that the increase in the assessed value of the Property that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance (which increase in assessed value is herein referred to as the "Improvement" or "Improvements" as defined in said Section 5709.40) is a public purpose, and 75% of said Improvement is hereby declared to be a public purpose for a period of 15 years and exempt from taxation commencing with tax year 2012, for collection beginning in 2013, and ending on the earlier of (1) the date the Improvements have been exempted from taxation for a period of 15 years or (2) the date on which the City has collected into the Fund established in Section 4 hereof a total amount of Service Payments available for and sufficient (i) to pay costs of the Public Improvements, (ii) to pay the principal, interest and premium, if any, on financing for such costs of the Public Improvements, (iii) to reimburse the City for other funds used to pay such costs or such principal, interest or premium, prior to receipt of Service Payments, and (iv) for any amounts payable under any agreement with the School District, all as further provided in Section 5 hereof.

SECTION 3. That as provided in Section 5709.42 of the Revised Code, the owner or owners of the Improvements are hereby required to, and shall make, annual Service Payments to the County Treasurer on or before the final dates for payment of real property taxes, which Service Payments shall be deposited in the municipal public improvement tax increment equivalent fund established in Section 4 hereof. This Council hereby authorizes the Mayor, Finance Director and Law Director, and other appropriate officers of the City, to provide such information and certifications, and execute and deliver or accept delivery of such instruments, as are necessary and incidental to collect those Service Payments, and to make such arrangements as are necessary and proper for payment of said Service Payments.

SECTION 4. That this Council hereby establishes pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the Cedar Center Public Improvement Tax Increment Equivalent Fund (the "Fund"), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvements on the Property by or on behalf of the County Treasurer as provided in Section 5709.42 of the Ohio Revised Code, and hereby provides that all of the moneys deposited in the Fund shall be used for any or all of the following purposes:

(i) to pay any and all acquisition, construction, installation, financing costs, and any and all other direct and indirect costs of the Public Improvements, including those costs set forth in Ohio Revised Code Section 133.15(B);

(ii) to pay the interest on, principal of, and any premium on bonds or notes or other obligations, including refunding bonds or notes or other obligations, issued by the City to finance costs of the Public Improvements until such notes or bonds or other obligations are paid in full;

(iii) to reimburse the City for any funds used by such party to pay costs of the Public Improvements, or to pay interest, principal, or premium, on any of the aforesaid notes, bonds, loans or other obligations prior to receipt of Service Payments.; and

(iv) to the extent not paid directly by the County Treasurer to the School District, and to the extent provided in any School Compensation Agreement between the City and the School District, to pay the School District as provided in Section 5709.43(c) in an amount not to exceed 25 % of the amount of real property taxes that such School District would have received from the Improvement if it were not exempt from taxation.

The Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, after which said Fund shall be dissolved in accordance with said Section 5709.43.

SECTION 5. That pursuant to Section 5709.40 of the Ohio Revised Code, the Clerk of Council is hereby directed to deliver a copy of this Ordinance to the Director of the Department of Development of the State of Ohio within fifteen days after its passage. On or before March 31 of each year that the exemption set forth in Section 2 hereof remains in effect, the Mayor or other authorized officer of this City shall prepare and submit to the Director of the Department of Development of the State of Ohio the status report required under Section 5709.40 of the Ohio Revised Code.

SECTION 6. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in open meetings of this Council, and that all such deliberations of this Council and of any of its committees that resulted in any such formal action, were in meetings open to the public, in compliance with all legal requirements including the City's Charter and Code of Ordinances.

SECTION 7. That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation for the public peace, health, and safety and for further reason that the for the further reason that this ordinance is required to be immediately effective to encourage development of the real property which is urgently needed to provide for the welfare of the citizens of the City and to eliminate blighted conditions thereon. Wherefore, this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2011.

David Miller, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael Lograsso, Director of Law

**EXHIBIT A
PROJECT SITE**

Parcel No. 1: Fee Simple (New PPN: 704-23-119)

Situated in the City of South Euclid, County of Cuyahoga and State of Ohio, and known as being Parcel "AA" in the Lot Split of P.P. 704-23-003 of part of Original Euclid Township Lot No. 24, Tract 2 as shown by the recorded plat in Volume 364 of Maps, Page 64 of Cuyahoga County Records, as appears by said plat.

EXHIBIT B

DESCRIPTION OF THE PUBLIC IMPROVEMENTS

The Public Improvements include the following:

The acquisition of real property in aid of industry, commerce, research and distribution.

The construction, improving, equipping or other developing of public parking facilities in the Project area, including, without limitation, one or more structured parking facilities and surface parking facilities, together with the necessary appurtenances to serve the parking areas.

The construction, improving, equipping or other development of public streets, stormwater drainage, sanitary sewers and water facilities, and street and intersection improvements, all in and around the Project, including, as necessary, grading, draining, paving, sidewalks, curbs, landscaping, fire hydrants, street lighting and traffic control devices, and further, including the acquisition of real property or interests therein and any demolition and environmental remediation in connection with all of those public improvements.

Site preparation to support the proposed new buildings, future expansion areas, related parking and circulation areas.

The construction, equipping and improvement of a public park and green space for use for public purposes.

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 03-11
INTRODUCED BY: Miller
REQUESTED BY: Mayor

February 14, 2011

AN ORDINANCE

AN ORDINANCE AMENDING SECTION 1330.04 "TAX EXEMPTION" OF CHAPTER 1330 "COMMUNITY REINVESTMENT AREA" OF PART THIRTEEN "BUILDING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, the Council of the City of South Euclid, Ohio (hereinafter "Council") has enacted Ordinance No. 02-08, codified as Chapter 1330 of the Codified Ordinances, implementing Sections 3735.65 through 3735.70 of the Ohio Revised Code; and

WHEREAS, the Council wishes to clarify the maximum allowable exemption period for new construction of industrial and commercial properties within the City;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Section 1330.04 "Tax Exemption" of Chapter 1330 "Community Reinvestment Area" of Part Thirteen "Building Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby amended to read as follows:

Section 1330.04 Tax Exemption.

(a) Within the Community Reinvestment Area, the percentage of the tax exemption on the increase in the assessed valuation resulting from improvements to commercial and industrial real property and the term of those exemptions shall be negotiated on a case-by-case basis in advance of construction or remodeling occurring according to the rules outlined in the Ohio R.C. Section 3765.67. The results of the negotiation as approved by this Council will be set in writing in a Community Reinvestment Area Agreement as outlined in Ohio R.C. Section 3735.671.

(b) For residential property, a tax exemption on the increase in the assessed valuation resulting from the improvements as described in Ohio R.C. Section 3735.67 shall be granted upon application by the property owner and certification thereof by the designated Housing Officer for the following periods.

1. Five (5) years, for the remodeling of every residential dwelling unit containing not more than two housing units and upon which the cost of remodeling is at least \$2,500, as described in Ohio R.C. Section 3735.67, and with such exemption being Fifty percent (50%) for each of the Five (5) years.
2. Five (5) years, for the remodeling of every residential dwelling unit containing more than two housing units and upon which the cost of remodeling is at least \$5,000, as described in Ohio R.C. Section 3735.67, and with such exemption being Fifty percent (50%) for each of the Five (5) years.
3. Five (5) years, for the construction of new dwellings as described in Ohio R.C. Section 3735.67, with such exemption being Fifty percent (50%) for each of the Five (5) years.
4. Up to, and including, ~~Five (5)~~ **Twelve (12)** years, and up to, and including, Fifty percent (50%) for the remodeling of existing commercial and industrial facilities and upon which the cost of remodeling is at least \$5,000, as described in Ohio R.C. Section 3735.67, the term and percentage of which shall be negotiated on a case-by-case basis in advance of remodeling occurring.

5. Up to, and including, ~~Five (5)~~ **Fifteen (15)** years, and up to, and including, ~~Fifty percent (50%)~~ **Seventy-Five percent (75%)** for the construction of new commercial or industrial facilities, the term and percentage of which shall be negotiated on a case-by-case basis in advance of construction occurring.

6. For the purposes of the above described Community Reinvestment Area, structures exclusively used for residential purposes and composed of four (4) and fewer units shall be classified as residential structures.

7. Up to, and including, Five (5) years, and up to, and including, Seventy-Five percent (75%) for new construction on existing or previously developed residential, ~~commercial, or industrial~~ properties.

(c) If remodeling qualifies for an exemption, during the period of the exemption, the exempted percentage of the dollar amount of the increase in market value of the structure shall be exempt from real property taxation. If new construction qualifies for an exemption, during the period of the exemption the exempted percentage of the structure shall not be considered to be an improvement on the land on which it is located for the purpose of real property taxation.

Section 2: That is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon confirmation by the Director of Development of the findings in this Ordinance.

Section 4: The Mayor of the City of South Euclid is hereby directed and authorized to submit this amendment to the Director of Development to confirm the findings contained within this Ordinance.

Passed this _____ day of _____, 2011

David B. Miller, Council President

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 04-11
INTRODUCED BY: Miller
REQUESTED BY: Mayor

February 14, 2011

AN ORDINANCE

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A COMMUNITY REINVESTMENT AREA AGREEMENT WITH CORAL SECC, LLC PURSUANT TO ORDINANCE NO. 02-08, AS AMENDED BY ORDINANCE NO. 03-11, IMPLEMENTING SECTIONS 3735.65 THROUGH 3735.70 OF THE OHIO REVISED CODE

WHEREAS, the Council of the City of South Euclid, Ohio (hereinafter "Council") has enacted Ordinance No. 02-08, implementing Sections 3735.65 through 3735.70 of the Ohio Revised Code, as amended by Ordinance No. 03-11 (the "CRA Ordinance");

WHEREAS, in order to provide for the redevelopment of the Cedar Center North Property, and to encourage Coral SECC, LLC, an Ohio limited liability company ("Coral"), to acquire a portion of the property owned by the City (the "Project Site") and to develop such property as a multi-tenant retail development project (the "Project"), the City wishes to provide to Coral a real estate tax abatement pursuant to the CRA Ordinance; and

WHEREAS, the CRA Ordinance and Section 3735.671 of the Ohio Revised Code require the City and the owner of property for which tax abatement is proposed to enter into an agreement with respect to the abatement;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That the Mayor is hereby authorized and directed to enter into a Community Reinvestment Area Agreement (the "CRA Agreement") in substantially the form attached hereto as Exhibit A, with such changes to such Agreement as are not substantially adverse to the City and as are approved by the Mayor, the Mayor's signature thereon being evidence of her determination that any such changes are not substantially adverse to the City.

Section 2: That is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance shall take effect and be enforce from and after the earliest period allowed by law.

Passed this _____ day of _____, 2011

David B. Miller, Council President

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Area Agreement (the "Agreement"), dated as of _____, 2011 made and entered into by and between the City of South Euclid, Ohio (the "City"), a municipality and political subdivision, organized and existing under the laws of the State of Ohio (the "State"), with its main offices located at 1349 South Green Road, South Euclid, Ohio, (hereinafter referred to as the "City") and Coral SECC, LLC, an Ohio limited liability company with its principal offices located at 13990 Cedar Road, University Heights, Ohio ("coral")

WITNESSETH

WHEREAS, by Ordinance No. 02-08 passed by the Council of the City on October 27, 2008, as amended by Ordinance No. _____ passed on _____, 2011 (collectively the "CRA Ordinance"), the Council found and determined that the Community Reinvestment Area designated in Ordinance No. 02-08 (the "Community Reinvestment Area") constitutes an area in which housing facilities or structures of historical significance are located and in which new construction and repair of existing facilities has been discouraged; and

WHEREAS, effective _____, the Director of Development of the State determined that the aforementioned area designated in said Ordinance No. 02-08 contains the characteristics set forth in Section 3735.66 of the Ohio Revised Code and confirmed said area as a Community Reinvestment Area under said Chapter 3735; and

WHEREAS, the City has encouraged the development of real property and the acquisition of personal property located in the Community Reinvestment Area; and

WHEREAS, Coral proposes to acquire certain parcels of real property located within the Community Reinvestment Area, being more particularly identified as Permanent Parcel Nos. _____ on the County Auditor's list of lots and lands in the City of South Euclid, Ohio (the "Project Site"); and

WHEREAS, Coral intends to cause the acquisition and construction of an approximately 50,000 square foot multi-tenant retail facility (the "Project") within the boundaries of the aforementioned Community Reinvestment Area, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the City, having the appropriate authority for the Project, is desirous of providing Coral with incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code; and

WHEREAS, Coral has submitted a proposed agreement application (the "Application") (herein attached as Exhibit A) to the City said application; and

WHEREAS, Coral has remitted the required state application fee of \$500.00 made payable to the Ohio Department of Development with the application to be forwarded to said Department with a copy of the final Agreement; and

WHEREAS, the administrative staff of the City has investigated the application of Coral and has recommended the same to the Council of the City on the basis that Coral is qualified by financial responsibility and business experience to create and preserve employment opportunities

in said Community Reinvestment Area and improve the economic climate of the City; and

WHEREAS, the Project Site (defined in Section 1) as proposed by Coral is located in the Cleveland Heights-University Heights City School District (the "District") and the District has been notified in accordance with Sections 3735.671 and 5709.83 and been given a copy of the proposed form of this Agreement and has consented to this Agreement and the abatements contemplated herein; and

WHEREAS, pursuant to Section 3735.67(A) and in accordance with the format required under Section 3735.671(B) of the Ohio Revised Code, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Construction of the Project. Coral agrees to construct on the Project Site an approximately 40,000 to 600,000 square foot one-story multi-tenant retail facility.

In connection with the Project, Coral intends to purchase \$100,000.00 in new machinery and equipment, \$100,000.00 in furniture and fixtures and \$0 in new inventory. Coral agrees that its investment in the Project shall be not less than \$10,000,000 in the aggregate and that such investment shall be made at the Project Site. Included in this investment will be \$6,000,000.00 for construction of the facility, \$0 to purchase first used machinery and equipment and furniture and \$0 for new inventory.

Coral represents that there is no existing building, machinery and equipment or furniture or inventory currently at the Project Site.

Coral will commence the acquisition, construction and installation of the Project on or about September, 2011. All acquisition, construction and installation will be completed by December, 2012.

2. Job Creation and Retention. Coral expects to create or cause to be created by tenants at the Project within a time period not exceeding five years (60 months) after the commencement of construction of the aforesaid facility, the equivalent of twenty (20) new full-time permanent job opportunities, thirty (30) new part-time permanent job opportunities, fifteen (15) full time temporary job opportunities and fifteen (15) part-time temporary job opportunities.

Coral's schedule for creating or causing the creation of new jobs at the Project is as follows: 10 new full-time permanent jobs will be created during the period from January 1, 2012 through December 31, 2012, and 10 new full-time permanent jobs will be created during the period from January 1, 2013 through December 31, 2013. The job creation period begins May, 2012 and all jobs will be in place by December, 2013.

Coral currently has -0- full-time permanent employees, -0- part-time permanent employees, -0- leased full-time temporary employees, and -0- part-time permanent employees at the Project Site. In total, Coral has -0- full-time permanent employees, -0- leased full-time permanent employees, -0- full-time temporary employees, and -0- part-time temporary employees in the State of Ohio.

The increase in the number of employees to be created in accordance with this Section 2 will result in approximately \$ 750,000.00 of additional annual payroll. Of that amount, \$400,000.00 increase in the payroll shall be attributed to the creation of permanent full-time

equivalent positions, \$225,000.00 of this increase will be attributed to the creation of positions for permanent part-time, and \$150,000.00 of this increase will be attributed to the creation of positions for temporary employees. Coral currently has no payroll at the Project Site.

3. Exemption Granted. As authorized under Section 3735.67 of the Ohio Revised Code, the City hereby grants to Coral a tax exemption for real property improvements made to the Project Site equal to seventy-five percent (75%) of the value of the real property improvements. Such real property improvements will receive a fifteen year exemption period, commencing in the first year for which such real property improvements would first be taxable were that property not exempted from taxation. No exemption shall commence prior to January 1, 2012 nor commence after December 31, 2026. No exemption shall extend beyond December 31, 2028.

Coral acknowledges and agrees that it shall have sole and full responsibility for filing the appropriate tax forms to effect and maintain the exemptions contemplated herein, including without limitation, form DTE 24, and that neither the City nor any employee or agent thereof shall have any responsibility for taking any actions, other than those expressly set forth herein, to effect or maintain such exemption.

4. Provision of Information; Coral agrees that it shall promptly provide to the South Euclid Tax Incentive Review Council (the "Council") any information reasonably required by the Council to evaluate Coral's compliance with this Agreement, including, but not limited to, returns filed pursuant to Section 5711.02 of the Ohio Revised Code if requested by the Council.

5. Annual Fee. Coral shall pay to the City an annual fee equal to the greater of one percent of the dollar value of the taxes abated in such year under this Agreement or \$500; provided, however, that if in any year, the value of the taxes abated pursuant to this Agreement shall exceed \$250,000, the fee shall be \$2,500.

Each such payment shall be made to the City on or before February 1 of each year that this Agreement shall be in effect, commencing February 1, 2012, and ending on the February 1 of the calendar year following the last tax year in which taxes shall be abated hereunder. Each such payment shall be made to the Director of Finance of the City and shall be made by certified check or such other method as may be approved by the Director of Finance. Any amounts received by the City may be used for such purposes as are authorized by applicable law, including but not limited to Section 3735.671(D) of the Revised Code.

6. Payment of Taxes. Coral shall pay such real and tangible personal property taxes as are not exempted under this Agreement and are charged against such property and shall file all tax reports and returns as required by law. In the event that Coral fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

7. Further Acts. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions; provided, however that Coral acknowledges and agrees that the City shall have no monetary liability for any damages caused or incurred by Coral by any failure of the City to perform its obligations under this Section 7 or any other provision of this Agreement.

8. Entitlements to Survive Revocation of Area Designation. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Department of Development revokes certification of the Area or the City revokes the designation of the Area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless Coral materially fails to fulfill its obligations under this Agreement and as a result the City terminates or modifies the exemptions from taxation granted under this Agreement.

9. Termination or Modification of the Exemption; Repayment to City of Amounts Exempted. If Coral materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement and may require the repayment of the amount of taxes that would have been payable had the property exempted from taxation hereunder not been exempted from taxation under this Agreement.

If Coral (or a successive owner of the Project) moves substantially all of its business from the City or terminates substantially all of its operations within the City during the period beginning on the effective date of this Agreement and ending on the last day of the year in which taxes abated pursuant to this Agreement would have been payable, or if Coral has violated the prohibition set forth in Section 12 below, the City may terminate or modify this Agreement and may also require the repayment of the amount of taxes that would have been payable had the property exempted from taxation hereunder not been exempted from taxation under this Agreement. The Council of the City may authorize the City to obtain a lien on the Project Site as security for Coral's obligation to make such repayments and such lien shall attach and may be perfected, collected and enforced in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on the Project Site.

Coral or successor entity shall promptly notify the City in writing if any of the following events occurs:

- A. Control of Coral or substantially all of its assets located at the Project Site is obtained by another entity; or
- B. Coral merges with another entity and Coral is not the surviving entity; or
- C. Coral substantially restructures itself through an acquisition or divestiture or otherwise; or
- D. If Coral terminates or substantially reduces its operations within the City.

10. No Delinquent Amounts. Coral hereby certifies that at the time this Agreement is executed, Coral does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which Coral is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, Coral currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Coral. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

Coral further covenants that it does not owe (1) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (2) any other

moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

11. Further Approvals. Coral and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of the City as a condition for the Agreement to take effect. This Agreement takes effect upon such approval. Coral and the City further acknowledge that this Agreement is subject to the approval of the Cleveland Heights-University Heights City School District, and that notwithstanding the preceding sentence, this Agreement shall not be effective until such approval has been given as required by, and in accordance with, applicable law.

12. Revocation of Exemption Under Certain Circumstances. The exemptions from taxation granted under this Agreement shall be revoked if it is determined that Coral, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into this Agreement under Division (E) of Section 3735.671 or Section 5709.62 or Section 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.

13. No False Statements. Coral affirmatively covenants that it has made no false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area incentives. If any representative of Coral has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, Coral acknowledges and agrees that it shall be required to immediately return, and shall return, all benefits received under this Agreement pursuant Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

14. Additional Covenants Coral acknowledges and agrees that if the voters of the District pass any school levies in excess of the voted millage existing as of the date of this Compensation Agreement, Coral shall use commercially reasonable efforts to collect the amounts equal to the abated real estate taxes that would be generated on the Project Site from additional voted millage for the District, and shall pay those amounts annually to the District not later than December 31 of each collection year; provided, however, that if actual collections from tenants fall short of covering the amounts equal to the abated and unabated real estate taxes that would be generated on the Project Site from millage existing as of the date of this Compensation provision.

Coral acknowledges that the City has developed a policy to ensure that recipients of Community Reinvestment Area tax benefits practice non-discriminatory hiring in their operations. By executing this Agreement, Coral agrees to follow non-discriminatory hiring practices, and acknowledges and agrees that no individual shall be denied employment with Coral on the basis of race, religion, sex, disability, color, national origin, or ancestry.

15. Assignment and Transfer. This Agreement is not transferable or assignable without the express, written approval of the City.

16. No Waiver. No failure by the City to insist upon the strict performance by Coral of any provision hereof shall constitute a waiver of the City's right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by Coral to observe or comply with any provision hereof, including but not limited to any

rights of the City under Section 9 of this Agreement.

17. Miscellaneous. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein and each such provision, covenant obligation or agreement shall be deemed to be effective in the manner and to the full extent permitted by law. This Agreement may not be amended except by a written instrument executed by the parties hereto.

All covenants, obligations and agreements of the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any employee, officer, agent, independent contractor or elected representative of the City in other than his or her official capacity, acting pursuant to the laws of the State, and no such employee, officer, agent, independent contractor or elected representative shall be personally liable or in any way obligated by reason hereof or by reason of any other action taken by the City or any representative thereof.

18. Copy of Agreement to be Provided to State. A copy of this Agreement, together with a copy of the Compensation Agreement between the City and the Cleveland Heights-University Heights City School District relating to this Agreement must be forwarded to the Ohio Director of Development within fifteen (15) days of approval, in order for this Agreement to be finalized.

IN WITNESS WHEREOF, the City of South Euclid, Ohio, by its Mayor and Coral by its authorized representative, has caused this Community Reinvestment Area Agreement to be executed all as of the date first written above.

City of South Euclid, Ohio

By: _____
Mayor

Coral SECC, LLC

By: _____
Title: _____

Approved as to form:

Director of Law, City of South Euclid, Ohio

Exhibit A
Application

Exhibit B

Project

The Project will consist of the construction of a single-story, multi-user retail facility at the Project Site. The facility will include a variety of restaurant and retail tenants, in tenant spaces ranging from 1,000 to 12,000 square feet per tenant. The first phase of the Project is anticipated to be between 60,000 and 70,000 square feet.

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 05-11
INTRODUCED BY: Miller
REQUESTED BY: Miller, Goodman, & Mayor

February 14, 2011

AN ORDINANCE

AMENDING ORDINANCE 01-11 TO READ, AMENDING THE ZONING MAP OF THE CITY OF SOUTH EUCLID, OHIO AND SO AS TO CHANGE THE HEREINAFTER DESCRIBED PROPERTY FROM ITS EXISTING CLASS R-75 "ONE-FAMILY RESIDENTIAL DISTRICT" TO C-2 "GENERAL COMMERCIAL DISTRICT"; AND DECLARING AN EMERGENCY.

WHEREAS, FISE LLC, has submitted an amendment to their application requesting the rezoning of the hereinafter described property from its existing Class R-75 "One-Family Residential District" to C-3 "Special Commercial District"; and

WHEREAS, said amendment from FISE, LLC requests rezoning said property to C-2 "General Commercial District; and

WHEREAS, Council deems that the aforesaid zoning change should be made and that the same is conducive to the public, health, safety, convenience, prosperity, and general welfare of the municipality.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of South Euclid, State of Ohio:

Section 1: That the Zoning Map of the City of South Euclid, Ohio made a part of said Ordinance, be changed and amended so as to rezone the following described property from its present Class R-75 "One-Family Residential District" to C-2 "General Commercial District," to wit:

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.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and general welfare and for further reason that this Ordinance is necessary for the City to improve its economic development opportunities; and to expedite the acquisition of property for use as public green space. Wherefore, this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2011.

David B. Miller, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law