

**FIRST AMENDMENT
TO SETTLEMENT AGREEMENT**

Between

**THE CITY OF BROOK PARK, OHIO
and
THE CITY OF CLEVELAND, OHIO**

DATED _____, 2026

This **First Amendment to Settlement Agreement** (“**Amendment**”) is entered into pursuant to **Section 12.2** of the Settlement Agreement dated September 6, 2001 (the “**Settlement Agreement**”), by and between the City of Brook Park, Ohio (“**Brook Park**”) and the City of Cleveland, Ohio (“**Cleveland**”) (collectively, the “**Cities**”).

RECITALS

WHEREAS, the Cities are parties to that certain Settlement Agreement dated September 6, 2001, resolving disputes relating to the expansion of Cleveland Hopkins International Airport, the International Exposition Center (“I-X Center”), tax revenue sharing, and the Residential Acquisition Program (“RAP”);

WHEREAS, the Cities have resolved all remaining disputes and appeals associated with such matters and desire to fully settle and conclude those proceedings;

WHEREAS, in 2017, Brook Park filed a complaint against Cleveland in the Cuyahoga County Court of Common Pleas, alleging that the City defaulted on the Settlement Agreement, *City of Brook Park v. City of Cleveland*, Common Pleas No. CV-17-890610. The trial court issued a judgment in favor of Cleveland, and Brook Park appealed that judgment, *City of Brook Park v. City of Cleveland*, Eighth District No. CA-25-115754 (cases referred together as the “Litigation”);

WHEREAS, pursuant to Section 12.2 of the Settlement Agreement, the Agreement may be altered, amended, or modified only by a written instrument executed pursuant to governmental consent of both Cities;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound, the Cities hereby agree to amend the Settlement Agreement as follows:

ARTICLE I

ELIMINATION OF I-X CENTER TAX SHARING

1.1 Deletion of Section 8.1.2.

Section 8.1.2 (I-X Center Tax Revenues) and Sections 8.1.2.1 and 8.1.2.2 of the Settlement Agreement are hereby deleted in their entirety.

1.2 Effect.

All tax revenues derived from the International Exposition Center property, which is owned by Cleveland and located within Cleveland's corporate limits, shall henceforth be exclusively controlled by Cleveland, and Brook Park shall have no continuing claim thereto.

ARTICLE II

ELIMINATION OF EMERALD PARK JEDZ

2.1 Deletion of Section 8.1.3.

Section 8.1.3 (Emerald Park Joint Economic Development Zone) of the Settlement Agreement is hereby deleted in its entirety.

2.2 Emerald Park Revenues.

The Emerald Park property is located entirely within Cleveland's corporate limits. All revenues derived therefrom shall be controlled exclusively by Cleveland.

ARTICLE III

SPECIAL REVENUE FUND

3.1 Creation of Special Revenue Fund.

Cleveland shall establish a special revenue fund for the budget administered by the Cleveland Department of Finance. Subject only to retaining sufficient funds to ensure the payments contemplated in Paragraph 3.2, Cleveland may use all other funds and revenues from that fund in its sole discretion.

3.2 Payments in Lieu of Taxes.

From such special revenue fund, Cleveland shall pay to Brook Park annual Payment in Lieu of Taxes ("**PILOT**") in the amount of:

- Six Hundred Fifty Thousand Dollars (\$650,000) per year for thirty-three years,
- The first payment shall be due on the latter of January 15, 2027, or within 10 days following the Effective Date. All subsequent payments will be made on the anniversary date of the first payment.

3.3 Form and Enforcement.

The obligation of Cleveland to make the annual payments to Brook Park shall be a legally enforceable general contractual obligation of Cleveland except as expressly provided herein.

ARTICLE IV

PAYMENT OF ATTORNEYS' FEES

4.1 Payment for Legal Fees.

Cleveland shall pay to Brook Park the lump sum of Two Million Dollars (\$2,000,000) as reimbursement for legal fees, costs, and expenses incurred by Brook Park in connection with the litigation and appeal resolved by this Amendment and as consideration for such other obligations as Brook Park may assume or incur under this Amendment.

4.2 Timing.

Payment of the entire sum of Two Million Dollars shall be made by Cleveland on or within ten (10) days following both (i) the Effective Date of this Amendment and (ii) Cleveland's receipt of executed dismissal entries, stipulations, or other documents reasonably necessary to dismiss with prejudice Case No. CV 17 890610 and Case No. CA 25 115754 as provided in Paragraph 9.2 hereof.

ARTICLE V

CONVEYANCE OF PROPERTY

5.1 Conveyance of Zones 1–4 Property.

Cleveland shall convey to Brook Park all of Cleveland's right, title and interest to all real property totaling approximately thirty-four (34+) acres that previously comprised Zones 1 through 4 acquired by Cleveland through the RAP pursuant to Article 9 of the Settlement Agreement.

- (a) Article 9 of the Settlement Agreement, including Phases 1 and 2 of the RAP, is hereby terminated in full.
- (b) Cleveland shall have no further obligation to make acquisition offers or acquire residential property under the RAP.
- (c) Cleveland has not and shall not take any action that would encumber, limit or interfere with Brook Park's right, title and interest in the conveyed property described in this Paragraph.

5.2 Timing.

The property referred to in Paragraph 5.1 shall be conveyed to Brook Park within ten (10) days following the Effective Date of this Amendment.

ARTICLE VI

NEW RESIDENTIAL PROGRAM

6.1 New Residential Program.

Brook Park shall have the right to design and implement a new program (“Residential Program”) for property owners in Zones 5 and 6 of the Expansion Zone as described in the Settlement Agreement and consistent with federal law. Brook Park shall have responsibility for the Residential Program.

ARTICLE VII

Federal Aviation Administration (FAA) Approval

7.1 Cleveland’s Obligation for FAA Approval If Necessary.

Cleveland shall have the obligation to seek the approval or equivalent thereto to this Amendment by the Federal Aviation Administration (FAA), if required. Cleveland shall use best efforts to obtain such approval.

- (a) Cleveland shall bear the risk of all conditions or terms of FAA approval of this Amendment and/or the transfer of property under Article V hereof, including the payment or repayment of monetary obligations to the FAA or other governmental agency or authority that were incurred for the acquisition of properties in Zones 1-4 and are required to be repaid as a result of the transfer of such properties to Brook Park. Any conditions or terms of FAA approval of the Amendment, if required, shall not establish a condition precedent to the validity, enforceability and performance of this Amendment.

ARTICLE VIII

Conditions Precedent

8.1 Express Conditions Precedent. The Cities agree that there are and shall be no conditions antecedent or precedent to the validity, enforceability and performance of this Amendment, except as provided below:

- (a) All provisions of this Amendment shall be null and void if not approved by ordinances duly adopted by the legislative authority of each City.
- (b) This Amendment shall be null and void if the FAA (i) possesses jurisdiction to approve or deny the transfer of real property as set forth in Article V hereof pursuant to this Amendment, (ii) the FAA declines to approve such transfer and/or denies approval of the Amendment, and (iii) the decision of the FAA is final and Cleveland, and other interested parties with standing, have exhausted all legal and administrative appeals or other recourse of such decision by the FAA. This Amendment shall not become effective until the FAA grants approval or affirmatively declines to exercise jurisdiction.

8.2 Effect of Condition Precedent.

In the event of an express condition precedent as set forth in sub-paragraphs (a) or (b) of Paragraph 8.1, this Amendment shall be declared and deemed void ab initio, the Cities shall be restored to the status quo ante as if such Amendment did not exist, and the Settlement Agreement shall remain in force in its entirety. Without limitation of the foregoing, in the event of a condition precedent as set forth herein, the existence, terms and all negotiations of the Amendment shall not be admitted into evidence in any proceeding between the Cities.

ARTICLE IX

PENDING APPEAL

9.1 Stay of Appeal.

The Cities shall confer in good faith with respect to jointly moving, in the interests of justice and judicial economy, for an order staying *City of Brook Park v. City of Cleveland*, Case No. CA 25-115754 (“Appeal”), which case is currently pending in the Ohio Eighth District Court of Appeals.

- (a) Each City shall retain the right to independently seek a stay of the Appeal.
- (b) A decision of the Eighth District Court of Appeals, irrespective of whether such decision is procedural or on the merits, shall not affect the validity, enforceability and performance of this Amendment.
- (c) Without limitation of the foregoing Paragraph 9.1(b), in the event a stay of appeal may expire and/or the Appeal may be decided before the express conditions precedent set forth in Paragraph 8.1(a) and (b) are satisfied, then the Cities shall negotiate in good faith to determine an alternative approach, which the Cities

agree may include an escrow of the deeds to the property referenced in Paragraph 5.1.

9.2 Dismissal of the Appeal

Within three (3) business days following: (i) the Effective Date, (ii) Cleveland's transfer of fee simple deeds as provided in Paragraph 5.1, and (iii) Brook Park's receipt of Cleveland's payment pursuant to Paragraph 4.1 and 4.2 hereof, Brook Park shall file, or cause to be filed, all documents necessary to dismiss with prejudice *City of Brook Park v. City of Cleveland*, Case No. CA 25-115754, pending in the Ohio Eighth District Court of Appeals, and *City of Brook Park v. City of Cleveland*, Case No. CV 17 890610, pending in the Cuyahoga County Court of Common Pleas, including any remaining claims, counterclaims, motions, or requests for relief including attorney fees of and/or between the Cities in those actions.

9.3 Costs

The Cities shall bear their own costs. If costs are assessed by the Clerk of Courts in Case No. CV 17 890610 and/or Case No. CA 25 115754 after the Effective Date, the Cities shall each pay one-half of the assessed costs irrespective of any entry or other apportionment by the Clerk or a Court. The Cities shall bear equally third-party costs of closing this Amendment.

ARTICLE X

GENERAL PROVISIONS

10.1 Effect of This Amendment.

Except as expressly modified herein, all terms of the Settlement Agreement shall remain in full force and effect. Without limitation of the foregoing, the Cities agree that the Amendment is not and shall not be construed as a novation of the Settlement Agreement.

10.2 Conforming Amendments.

All references throughout the Settlement Agreement to any provision deleted or modified by this Amendment, including but not limited to Sections 8.1.2, 8.1.3 of the Settlement Agreement, and Article 9 of the Settlement Agreement, are hereby deleted, amended, or conformed as necessary to give full force and effect to this Amendment.

(a) Without limitation of the foregoing, the following provisions of the Settlement Agreement are and shall be deleted by this Amendment, the effect of which shall be that the referenced provisions in the Settlement Agreement are and shall be null and void as of the Effective Date: Article 4 in its entirety; Article 5 in its entirety; Section 8.1.2 (including 8.1.2.1 and 8.1.2.2); Section 8.1.3; Article 9 in its entirety; Section 11.3.

10.3 Authority.

This Amendment shall be executed pursuant to ordinances duly adopted by the legislative authorities of each City (attached hereto as Exhibits A & B).

10.4 Effective Date.

This Amendment shall become effective ("Effective Date") upon both (i) satisfaction and/or extinguishment of the Express Conditions Precedent set forth in Paragraph 8.1(a) and (b) and (ii) execution of the Amendment by the duly authorized officials of both Cities.

10.5 Counterparts.

This Amendment may be executed in counterparts, each of which shall be deemed an original.

10.6 Cooperation

The Cities agree to cooperate in good faith to effectuate this Amendment. Each City shall have a duty to exercise good faith in the performance of all obligations hereunder. Each City shall perform such further acts and prepare, execute and deliver such documents as may reasonably be required in order to effectuate the purpose and intent of this Agreement.

10.7 No Waiver or Admission

This Amendment is contractual and has been entered into in the respective interests of each City and as a compromise of disputed rights, claims and interests. Except as may be required to enforce this Amendment, this Amendment and each of its provisions shall not be offered or received in evidence in any action or proceeding, or otherwise used, by either City as (i) an admission or concession on the part of the other City of any legal, equitable, or other right, claim, interest or defense of a City, or (ii) a waiver or relinquishment on the part of the other City of any legal, equitable, or other right, claim, interest, or defense of a City.

10.8 Modification of this Amendment

This Amendment may not be amended or modified except by a subsequent written document duly authorized and executed by each of the Cities. Notwithstanding the foregoing, in the event the FAA has not issued its approval by November 1, 2026, the parties may amend any dates or deadlines in this Amendment by a written document executed by the City's respective law directors without need for further legislative approval.

10.9 Headings

The headings of this Amendment have been inserted only for purposes of reference and convenience and shall not be deemed or construed as provisions of the Agreement.

10.10 Complete Amendment to Settlement Agreement

This Amendment sets forth and embodies the complete Amendment to the Settlement Agreement, and each City disclaims any representations or inducements of the other City that are not set forth in writing in this Amendment. Notwithstanding the foregoing, nothing in this Paragraph shall be construed to alter the terms of Paragraph 9.1 hereof stating that this Amendment shall not be considered or construed as a novation of the Settlement Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

The Cities have executed this First Amendment as of the date first above written.

CITY OF CLEVELAND, OHIO

BY: _____
JUSTIN M. BIBB
Mayor

BY: _____
MARK D. GRIFFIN
Director of Law

BY: _____
BRYANT L. FRANCIS
Director of Port Control

This legal form and correctness of the within instrument is hereby approved.

MARK D. GRIFFIN
Director of Law

BY: _____
RICHARD BERTOVICH
Chief Assistant Director of Law
City of Cleveland

CITY OF BROOK PARK, OHIO

BY: _____
EDWARD A. ORCUTT
Mayor

I hereby approve the within instrument as to
legal form and correctness.

BY: _____
CAROL DILLON HORVATH
Director of Law
City of Brook Park, Ohio

CERTIFICATION PAGE

The sum of _____
Dollars required for this contract was on

_____ and is at this date in the City Treasury or in
process of collection, to the credit of

_____ Fund and not appropriated for any other
purpose.

Director of Finance

Commissioner of Accounts

Entered by: _____
Appropriation Clerk