

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
RELATED TO THE MALL AREA TAD

This First Amendment to Intergovernmental Agreement related to the Mall Area TAD (the "First Amendment") is made and entered into as of the 7th day of March, 2023, (the "Effective Date") by and between the UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA (the "County") and the CLARKE COUNTY SCHOOL DISTRICT (the "School District").

RECITALS:

WHEREAS, the County and the School District have previously entered into that Intergovernmental Agreement dated as of September 27, 2021, (the "Agreement") related to the Mall Area TAD; and

WHEREAS, Section 3.1 of Article III of the Agreement sets forth the term of the Agreement; and

WHEREAS, the County and the School District desire to amend Subsection (i) of Section 3.1 of Article III of the Agreement so as change the date set forth in Subsection (i) from "December 31, 2040" to "August 30, 2053";

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the School District, intending to be legally bound, hereby agree as follows:

1. Subsection (i) of Section 3.1 of Article III of the Agreement is hereby amended by deleting "December 31, 2040" and replacing it with "August 30, 2053" conditioned upon the Mayor and Commission approving the Community Benefits Agreement for the Mall Area Redevelopment Project and the Planned Development ("PD") for the Mall Area Redevelopment Project on Tuesday, March 7, 2023, and conditioned upon all of the following elements being satisfied:

a. On or before March 7, 2023, the County approves a Community Benefits Agreement ("CBA") with The Leaven Group LLC ("Developer").

b. Said CBA contains substantially the following provisions:

(i) Developer will build out and create 6,100 square feet of newly renovated mall space, which will be leased to the Boys and Girls Club of Athens to kick start their Youth Force initiative at no cost; provided that if the Boys and Girls Club of Athens does not occupy such space, Developer shall promptly notify and provide Athens Community Career Academy (ACCA)

a first right of refusal, and CCSD a second right of refusal to enter into a lease for such space, which first right of refusal shall remain available for exercise by ACCA for no more than 45 (forty-five) days after the date of receipt of the related notice and which second right of refusal shall remain available for exercise by CCSD for no more than 45 (forty-five) days after the date of receipt of the related notice. Such lease shall be coterminous with the remaining Term unless otherwise approved by ACC. In connection therewith, Developer will work on an educational partnership with CCSD to identify students to participate in the programming at this facility. For the avoidance of doubt, CCSD shall not be responsible for any obligations of the Boys and Girls Club or ACCA, as applicable. Such leased space is a part of Phase 1A and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A.

(ii) As part of this educational partnership with CCSD, Developer will make greenspace on the Site available to CCSD, subject to customary scheduling and notice requirements, for enhanced programming correlated to CCSD's arts and music departments, including, without limitation, programming which showcases the visual arts, the performing arts (e.g., plays and dance), jazz and concert band performances through the complimentary use of the performing arts stage located in the central park located on the Site. Such greenspace is a part of Phase 1A's Horizontal Infrastructure and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A.

(iii) Developer will also encourage its contractors and subcontractors to grant internships to CCSD students, including but not limited to an internship program in partnership with the Athens Community Career Academy (ACCA) focused primarily on providing employment opportunities for graduating CCSD students and recent CCSD graduates.

(iv) Developer will provide 4,000 square feet of existing mall space for use as a daycare, Montessori school, early education, pre-school or other education programming, or after school facility that benefits ACC school children, at the discretion of CCSD (the "Education Center"). Such Education Center is a part of Phase 1A and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A. The Education Center will be leased to an operator of the Education Center for the Term at a base rental of \$100/year, provided, however, that if no qualified operator has entered into a lease within 5 years, this commitment lapses and the space goes back to the Developer. Similarly, the space goes back to the Developer if at any time the space ceases to be used as an Education Center for a period of one year or more. Developer will make commercially reasonable efforts to assist the operator in complying with applicable licensing and permitting requirements and pay the cost of buildout in the space up to \$50 per square foot; provided that the operator will be responsible for any costs over and above that amount. The operator will also be required to (i) comply with, as applicable, Rule 290-2-2-.12 of the Rules and Regulations of the State of Georgia or any successor rule and all other laws and regulations governing the operation of such facility and (ii) pay a customary

share of common area maintenance (CAM), taxes, charges and assessments, utilities, and other common area expenses, the same as other tenants.

(v) Developer will offer to rent Affordable Housing Units to employees of CCSD on a basis that, to the extent legally permissible, affords such employees a priority thereto.

(vi) Developer shall set aside and reserve ten percent (10%) of the total multifamily residential units located in the Project (no fewer than 99 units) as affordable housing units for twenty (20) year, for Income Eligible Residents earning in the aggregate no more than sixty percent (60%) of AMI. The affordable housing units shall be similar in construction and appearance (e.g., square footage, type of appliances, materials used for countertops, flooring, etc.) to the market rate units of the Project and shall be interspersed throughout the Project.

(viii) Developer will use best efforts to afford minority and female business enterprises ("MFBE" or "MFBEs") the opportunity to participate in each Phase of business opportunities that relate to the acquisition, design and construction of the Project, including hosting a pre-construction job opportunity fair, soliciting MFBE bid participation and advertising in the local newspaper of general circulation, conduct promotional campaign to alert the area of the job opportunities, planning hiring fairs and interview days, and ensuring that all bids are accepted and considered, provided that bid selections shall be based on qualifications and comparative pricing. "Best efforts" shall mean that Developer will consider all competitive proposals, sub-bids, and quotations received from MFBEs. When a contract or subcontract is not awarded to an MFBE submitting the most competitive bid, Developer must document the reason(s) the award was not made and substantiate that documentation in writing. If Developer terminates an agreement and/or subcontract with an MFBE, Developer will be required to adhere to these provisions in the selection of the replacement for that MFBE. Developer shall not discriminate on the basis of race, color, national origin, or sex when soliciting bids for the acquisition, design and construction of the Project.

(ix) Developer will convert a significant portion of the remaining, second floor of the mall (approximately 81,000 square feet) into loft office-type space, 14,490 square feet of which shall be reserved as affordable commercial space for small, minority, and women-owned businesses (S/M/WBEs) for a period of three (3) years after a certificate of occupancy (CO) is issued for such space to ensure S/M/WBE participation in the resurgence of the mall and the surrounding area. If occupied by an S/M/WBE, rent shall be charged on a per square foot basis commensurate with that certain Shopping Center Lease, dated as of May 24, 2002, between ACC, acting through its Department of Police Services, and KDI Athens Mall, LLC, a Georgia limited liability company, successor to Georgia Square Partnership, a Georgia limited partnership, as amended by that certain First Amendment of Lease, dated November 23, 2015 and that certain Second Amendment of Lease, dated September 20, 2022 (collectively, the "Police and Wellness Center Lease"). If at any time after leasing, any such space is vacated and cannot be reasonably

leased to a S/M/WBE within 12 months, then such space may be leased to a market rate tenant. Such office component is a part of Phase 1A and its construction shall start and shall be completed, subject to Force Majeure, according to the Project Construction Schedule for Phase 1A.

c. On or before March 7, 2023, Developer executes the Waiver and Release attached hereto as Exhibit "A."

d. On or before March 7, 2023, Developer executes the Waiver and Release attached hereto as Exhibit "B."

2. Except as amended hereby, all of the provisions of the Agreement shall remain of full force and effect.

IN WITNESS WHEREOF, the County and the School District have caused this Intergovernmental Agreement to be executed in their respective official names and have caused their respective official seals to be hereunto affixed and attested by their duly authorized officers, all as of the Effective Date set forth hereinabove.

UNIFIED GOVERNMENT OF ATHENS-CLARKE
COUNTY, GEORGIA



Mayor

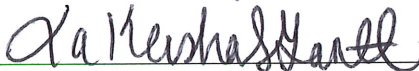


Acting

Clerk of Commission

[SEAL]

CLARKE COUNTY SCHOOL DISTRICT



Dr. LaKeisha Gantt, Board President



Dr. Robbie P. Hooker, Superintendent and Secretary

EXHIBIT A

WAIVER AND RELEASE

This WAIVER AND RELEASE (this “**Waiver and Release**”), dated as of _____, 2023, is entered into by and between **THE LEAVEN GROUP LLC**, a Georgia limited liability company (the “**Developer**”), and the **CLARKE COUNTY SCHOOL DISTRICT** (the “**School District**”).

RECITALS

WHEREAS, the Developer and the Unified Government of Athens-Clarke County, Georgia (the “**County**”) have entered into the Community Benefits Agreement, dated _____, 2023 (the “**CBA**”), relating to the mixed-use redevelopment of the Georgia Square Mall (the “**Project**”); and

WHEREAS, the School District is not a party to the CBA and has limited third party beneficiary rights thereunder to enforce the public benefits negotiated for the benefit of the School District; and

WHEREAS, representatives of the School District served on the joint committee composed of designated members of the Board of Education of the School District and the County’s Mayor and Commission (the “**MARC**”) formed by the County for the purpose of reviewing the CBA and making a recommendation to the County in respect of the propriety of approving or disapproving the CBA;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties agree as follows:

1. The Developer, on behalf of itself and its affiliates, assigns, representatives and agents, if any, hereby covenants not to sue and fully and completely releases the School District, along with its officials, directors, agents, employees, officers and representatives (collectively, the “**Released Parties**”), of and from any and all claims, actions, obligations, liabilities, demands and/or causes of action, of whatever kind or character, whether now known or unknown, which the Developer has or might claim to have against the Released Parties in connection with any transaction, action or omission that occurred or failed to occur in connection with the approval or disapproval of the CBA.

2. The unenforceability or invalidity of any provision in this Waiver and Release shall not affect the enforceability or validity of any remaining provisions in this Waiver and Release, which shall be interpreted and construed to fully carry out the intention of the parties. In the event a court of competent jurisdiction finds any provision (or subpart thereof) to be illegal or unenforceable, the parties agree that the court shall be authorized and instructed to rewrite or modify the provision(s) (or subpart(s) thereof) to make the provision(s) (or subpart(s) thereof) and this Waiver and Release valid and enforceable. The provisions contained in this Waiver and Release shall be construed as provisions independent of each other or any other contract between the parties hereto and any illegal or unenforceable provision (or subpart thereof) shall otherwise be severable and shall not affect the validity of the remainder of such provision and any other provision of this Waiver and Release.

3. The parties hereto acknowledge and agree that the covenants and agreements contained in this Waiver and Release shall be construed as covenants and agreements independent of each other or any other contract between the parties hereto and that the existence of any claim or cause of action by one party

hereto against another party hereto shall not constitute a defense to the enforcement of said covenants and agreements, except as otherwise provided herein. The judicial body interpreting this Waiver and Release shall not more strictly construe the terms of this Waiver and Release against one party, it being agreed that all parties and/or their attorneys or agents have negotiated and/or participated in the preparation hereof.

4. No statement or promise, except as herein set forth, has been made with respect to the subject matter of this Waiver and Release. No modification or amendment hereof shall be effective unless in writing and signed by each of the parties hereto, and no agreement by any party that is inconsistent with the provisions hereof shall be enforceable against such party unless evidenced by the written consent of such party.

5. This Waiver and Release shall not be assigned without the consent of the parties.

6. This Waiver and Release is being delivered in and shall be construed and enforced in accordance with the laws of the State of Georgia. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Waiver and Release shall be brought against any of the parties exclusively in the courts of the State of Georgia, County of Clarke, or, if it has or can acquire jurisdiction, in the United States District Court for the Middle District of Georgia, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

7. The parties acknowledge that it would be difficult to calculate damages from the breach of this Waiver and Release, and that money damages would therefore be an inadequate remedy. Accordingly, upon such breach, the parties acknowledge that the non-breaching party may seek and shall be entitled to temporary, preliminary, and/or permanent injunctive relief, and/or other appropriate orders to restrain such breach.

IN WITNESS WHEREOF, the undersigned have executed this Waiver and Release as of the day and year first above written.

THE LEAVEN GROUP LLC

Name:

Title:

CLARKE COUNTY SCHOOL DISTRICT

Dr. LaKeisha Gantt, Board President

Dr. Robbie P. Hooker, Superintendent and Secretary

(SEAL)

EXHIBIT B

WAIVER AND RELEASE

This WAIVER AND RELEASE (this “**Waiver and Release**”), dated as of _____, 2023, is entered into by and between **THE LEAVEN GROUP LLC**, a Georgia limited liability company (the “**Developer**”), and the **UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA**, a political subdivision of the State of Georgia (“**ACC**”).

RECITALS

WHEREAS, the Developer and ACC have entered into the Community Benefits Agreement, dated _____, 2023 (the “**CBA**”), relating to the mixed-use redevelopment of the Georgia Square Mall (the “**Project**”); and

WHEREAS, the Developer and ACC desire to set forth herein their understanding and agreement regarding any transactions, actions or omissions relating to the approval or disapproval of the CBA;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties agree as follows:

1. The Developer, on behalf of itself and its affiliates, assigns, representatives and agents, if any, hereby covenants not to sue and fully and completely releases ACC, along with its officials, directors, agents, employees, officers and representatives (collectively, the “Released Parties”), of and from any and all claims, actions, obligations, liabilities, demands and/or causes of action, of whatever kind or character, whether now known or unknown, which the Developer has or might claim to have against the Released Parties in connection with any transaction, action or omission that occurred or failed to occur in connection with the approval or disapproval of the CBA.

2. The unenforceability or invalidity of any provision in this Waiver and Release shall not affect the enforceability or validity of any remaining provisions in this Waiver and Release, which shall be interpreted and construed to fully carry out the intention of the parties. In the event a court of competent jurisdiction finds any provision (or subpart thereof) to be illegal or unenforceable, the parties agree that the court shall be authorized and instructed to rewrite or modify the provision(s) (or subpart(s) thereof) to make the provision(s) (or subpart(s) thereof) and this Waiver and Release valid and enforceable. The provisions contained in this Waiver and Release shall be construed as provisions independent of each other or any other contract between the parties hereto and any illegal or unenforceable provision (or subpart thereof) shall otherwise be severable and shall not affect the validity of the remainder of such provision and any other provision of this Waiver and Release.

3. The parties hereto acknowledge and agree that the covenants and agreements contained in this Waiver and Release shall be construed as covenants and agreements independent

of each other or any other contract between the parties hereto and that the existence of any claim or cause of action by one party hereto against another party hereto shall not constitute a defense to the enforcement of said covenants and agreements, except as otherwise provided herein. The judicial body interpreting this Waiver and Release shall not more strictly construe the terms of this Waiver and Release against one party, it being agreed that all parties and/or their attorneys or agents have negotiated and/or participated in the preparation hereof.

4. No statement or promise, except as herein set forth, has been made with respect to the subject matter of this Waiver and Release. No modification or amendment hereof shall be effective unless in writing and signed by each of the parties hereto, and no agreement by any party that is inconsistent with the provisions hereof shall be enforceable against such party unless evidenced by the written consent of such party.

5. This Waiver and Release shall not be assigned without the consent of the parties.

6. This Waiver and Release is being delivered in and shall be construed and enforced in accordance with the laws of the State of Georgia. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Waiver and Release shall be brought against any of the parties exclusively in the courts of the State of Georgia, County of Clarke, or, if it has or can acquire jurisdiction, in the United States District Court for the Middle District of Georgia, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

7. The parties acknowledge that it would be difficult to calculate damages from the breach of this Waiver and Release, and that money damages would therefore be an inadequate remedy. Accordingly, upon such breach, the parties acknowledge that the non-breaching party may seek and shall be entitled to temporary, preliminary, and/or permanent injunctive relief, and/or other appropriate orders to restrain such breach.

IN WITNESS WHEREOF, the undersigned have executed this Waiver and Release as of the day and year first above written.

THE LEAVEN GROUP LLC

Name:

Title:

**UNIFIED GOVERNMENT OF ATHENS-CLARKE
COUNTY, GEORGIA**

Mayor

Clerk of Commission

(SEAL)