

2
3 CITY OF CUYAHOGA FALLS, OHIO

4
5 ORDINANCE NO. 27 -2022

6
7 AN ORDINANCE AUTHORIZING THE MAYOR TO
8 ENTER INTO A RETROACTIVE COMMUNITY
9 REINVESTMENT AREA AGREEMENT WITH
10 COMING ATTRACTIONS DEVELOPMENT, LLC,
11 AND DECLARING AN EMERGENCY.
12

13 WHEREAS, pursuant to Ordinance No. 95-2004, passed June 28, 2004, this
14 Council established and designated the boundaries of the Cuyahoga River Community
15 Reinvestment Area ("CRA") pursuant to Ohio Revised Code §3735.65 et seq. to encourage
16 the development of real property within the CRA; and
17

18 WHEREAS, the State of Ohio Director of Development (formerly known as the State
19 of Ohio Development Service Agency) has made a determination that the findings
20 contained in Ordinance No. 95-2004 are valid, and that the classification of structures
21 and/or remodeling eligible exemption under the Ordinance is consistent with zoning
22 restrictions applicable to the CRA; and
23

24 WHEREAS, with the receipt of the Director's positive determination, the City is
25 enabled to abate certain taxes on real property located in the CRA, in order to provide an
26 incentive for the creation of jobs and investment within the CRA; and
27

28 WHEREAS, the City Council and Administration wish to provide a CRA to Coming
29 Attractions Development, LLC for the redevelopment of the former Falls Theater located at
30 2220 Front Street, Cuyahoga Falls, Ohio 44221 (Parcel #0219577) at an approximate cost
31 of One Million Eight Hundred Fifty Thousand and No/100 Dollars (\$1,850,000.00); and
32

33 WHEREAS, the City intends to provide a retroactive Community Reinvestment Area
34 Tax Exemption to Coming Attractions Development, LLC for a period of ten (10) years at
35 the rate of fifty (50%) percent.
36

37 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
38 County of Summit, and State of Ohio:
39

40 Section 1. That the Mayor is hereby authorized to enter into a retroactive Community
41 Reinvestment Area (CRA) Agreement with Coming Attractions Development, LLC
42 consistent with the terms in the proposed CRA Agreement and corresponding Application
43 attached hereto as Exhibit A, to provide real property tax relief at the percentage and
44 length of abatement as stipulated in said Agreement to benefit the City and being
45 consistent with the objectives of this ordinance.
46

47 Section 2. That Council further authorizes the Mayor, Director of Finance, Director of
48 Community Development, Director of Law and any other city officials, individually and/or
49 collectively as may be appropriate, to prepare and execute such other documents and do
50 other things as are necessary for and incidental to carrying out the requirements of this

51 legislation consistent with the terms of the attached Agreement and corresponding
52 Application, together with any additions or modifications, as approved by the Director of
53 Law and consistent with this ordinance.
54

55 Section 3. That any ordinances or resolutions or portions of ordinances and resolutions
56 inconsistent herewith be and the same are hereby repealed, but any ordinances and
57 resolutions not inconsistent herewith and which have not previously been repealed are
58 hereby ratified and confirmed.
59


60 Section 4. That it is found and determined that all formal actions of this Council
61 concerning and relating to the adoption of this ordinance were adopted in an open meeting
62 of this Council, and that all deliberations of this Council and of any of its committees that
63 resulted in such formal action, were in meetings open to the public, in compliance with all
64 legal requirements, to the extent applicable, including Chapter 107 of the Codified
65 Ordinances.
66

67 Section 5. That this ordinance is hereby declared to be an emergency measure
68 necessary for the preservation of the public peace, health, safety, convenience and welfare
69 of the City of Cuyahoga Falls and the inhabitants thereof, and provided it receives the
70 affirmative vote of two thirds of the members elected or appointed to Council, it shall take
71 effect and be in force immediately upon its passage and approval by the Mayor; otherwise
72 it shall take effect and be in force at the earliest period allowed by law.
73
74
75

76 Passed: 3-28-2022




President of Council



Clerk of Council

81 Approved: 3-28-2022



Mayor

84 3/14/22

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City of Cuyahoga Falls
APPLICATION FOR COMMUNITY REINVESTMENT AREA TAX INCENTIVES

PROPOSED AGREEMENT for Community Reinvestment Area Tax Incentives
between the City of Cuyahoga Falls located in the County of Summit and:

Coming Attractions Development, LLC
(Company Name)

- 1. a. Name of property owner, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

Coming Attractions Development, LLC Alan Borge
Enterprise Name Contact Person

43 E. Market Street 330 819-3639
Address Telephone Number

aborge@borge-architecture.com
Contact Email

Project site:

2270 Front Street _____
Address Parcel Number

Alan Borge 330 819-3639
Contact Person Telephone Number

aborge@borge-architecture.com
Contact Email

This document is for application purposes only and must be signed in order to be accepted for consideration. All terms and conditions proposed are subject to City of Cuyahoga Falls and State of Ohio approval.

2. a. Nature of commercial/industrial activity (manufacturing, warehousing, wholesale or retail stores, or other) to be conducted at the site. Please be specific with details.

Restaurant/Bar and arcade on the first floor and 4 apartments on the second floor.

- b. List primary 6 digit North American Industry Classification System (NAICS) #
Business may list other relevant SIC numbers.

[REDACTED]

- c. If a consolidation, what are the components of the consolidation? (must itemize the location, assets, and employment positions to be transferred):

[REDACTED]

- d. Form of business of enterprise:

Corporation Partnership Proprietorship Other LLC

3. Name of principal owner(s) or officers of the business.

Alan & Lauren Burge - CAD INC.
The Workz
Christopher Carpenter
Timothy Frankish
Kimberly Green
Melissa Barnes

4. a. State the enterprise's current employment level at the proposed project site:

Full Time: 0 Part Time: 32
(To be considered full time the individual must work at least 35 hours per week.)

b. Will the project involve the relocation of employment positions or assets from one Ohio location to another? Yes No

c. If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:

d. State the enterprise's current employment level in Ohio (itemized for full and part-time and permanent and temporary employees):

	Permanent	Temporary
Full Time	0	12
Part Time	32	12

— construction

(To be considered full time the individual must work at least 35 hours per week.)

e. State the enterprise's current employment level for each facility to be affected by the relocation of employment positions or assets:

N/A

f. What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated?

N/A

5. Does the Property Owner Currently Owe:

a. Any delinquent taxes to the State of Ohio or a political subdivision of the state?

Yes No

b. Any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State? Yes No

c. 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?

Yes No

d. If yes to any of the above, please provide details of each instance including but not limited to the location, amounts and/or case identification numbers.

6. Project Description (Be as detailed as possible):

SEE ATTACHED

7. Project will begin on October 2019 and be completed by July 2022 provided a tax exemption is provided.

8. a. Estimate the number of new employees the property owner will cause to be created at the facility that is the project site (job creation projection must be itemized by the name of the employer, full and part-time and permanent and temporary):

	Permanent	Temporary
Full Time	8	
Part Time	40	

(To be considered full time the individual must work at least 35 hours per week.)

b. State the time frame of this projected hiring: Since Jan 2020 months.

c. State proposed schedule for hiring (itemize by full and part-time and permanent and temporary employees):

Tenant is always hiring

9. a. Estimate the amount of annual payroll such new employees will add (New annual payroll must be itemized by full and part-time and permanent and temporary new employees).

	Permanent		Temporary	
Full-time	\$	225,000	\$	
Part-time	\$	300,000	\$	
TOTAL:	\$	525,000	\$	

(To be considered full time the individual must work at least 35 hours per week.)

b. Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: \$ —

10. An estimate of the amount to be invested by the enterprise to establish, expand, renovate or occupy a facility:

A. Acquisition of Land/Buildings	\$	<u>25,000⁰⁰</u>
B. Additions/New Construction	\$	<u>- 0 -</u>
C. Improvements to Existing Buildings	\$	<u>1,000,000⁰⁰</u>
D. Machinery & Equipment	\$	<u>725,000⁰⁰</u>
E. Furniture & Fixtures	\$	<u>50,000⁰⁰</u>
F. Inventory	\$	<u>50,000⁰⁰</u>
Total New Project Investment	\$	<u>1,850,000⁰⁰</u>

11.

a. Business requests the following tax exemption incentives: 50 %
for 12 years covering the real property improvements as described above.

b. Business' reasons for requesting tax incentives (Be quantitatively specific as possible):

SEE ATTACHED

Submission of this application expressly authorizes the City of Cuyahoga Falls to contact the Ohio Environmental Protection Agency to confirm statements contained within this application, including item # 5, and to review applicable confidential records.

As part of this application, the property owner may also be required to directly request from the Ohio Department of Taxation, or complete a waiver form allowing the Department of Taxation, to release specific tax records to the local jurisdiction considering the request.

Applicant acknowledges an understanding of the following:


- If approved by City Council, there is a \$750 application fee payable to the Ohio Development Services Agency;
- All abatements are only on the improved value of the property;
- Property valuations are determined by the County of Summit Fiscal Office; and
- The investment amounts noted in item # 10 may not be fully reflected in the final appraised value of the property as determined by the County of Summit Fiscal Office.

Receipt of an abatement also requires the following:

- Annual reporting each year of the abatement, including, but not limited to the project investment, payroll and job creation levels identified in this application; copy of W-3 Transmittals; and other items as determined by the State of Ohio Development Services Agency;
- Commitment by applicant and/or any commercial tenant to provide a scholarship in the amount of \$1,000.00 per year and three (3) internships to the Cuyahoga Falls School District for the entire period of the abatement, being [10] years;
- Commitment by applicant and/or any commercial tenant to provide public art in and/or around the new development pursuant to the newly adopted Master Public Arts Plan for Cuyahoga Falls;
- Commitment by applicant AND any commercial tenant to join the Downtown Cuyahoga Falls Partnership; and
- Payment to the City of Cuyahoga Falls of an annual fee in the amount of 1% of the incentives offered, but no less than \$500 and no greater than \$2,500.

The Applicant agrees to supply additional information upon request.

The Applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C)(1) and 2921.13(D)(1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

Alan Burge	owner CAD, Inc.
Name of Property Owner	Title
	2.9.22

Signature

Date

CRA Tax incentives application supplement

Item 6. Project description.

The project is a Historic Renovation of the former Falls Theater and four apartments on the second floor. This involved all new building systems, water, mechanical, electrical, and plumbing services to and in the building. Roof repairs and replacement were undertaken as well. The exterior masonry and decorative concrete was restored and historic wood and metal windows were removed restored and replaced. We also restored the main theater space and lay lights to their former appearance, including new and restored decorative plaster work and lighting. The basement was turned into both service areas and a "speakeasy" bar. The four apartments on the second floor will be restored with new plumbing, kitchens, HVAC, electrical service, restored flooring and finishes. These are scheduled for a summer 2022 completion.

11. B - Reasons for Tax Incentives.

In 2015, the City of Cuyahoga Falls issued an RFP for the Falls Theater Building, a City-Owned Building, which had stood vacant for two decades. The City had previously entered into a development agreement, which was not successful, and the City had to take legal action to take back the building. Our Company, Coming Attractions Development, responded to the RFP in December of 2015 with a plan to renovate and restore the Theater to its former glory. We were selected by the City for the project. While our first tenant backed out of the project, we were confident that we could find a new tenant that would work in the building. The building was not in occupiable condition when we purchased the building from the City. The project to stabilize and renovate the building for its new use, required extensive investment. Work included new roofing on the east section of the building, structural and masonry repairs, new lighting and electrical, new electrical service, new plumbing, restrooms and kitchen, and new heating and cooling systems. None of the existing systems were functional when the building was purchased. This overall renovation cost made the project financing very tight and bank financing was limited due to the start-up nature of the tenant and typical LTV ratios. After careful analysis, the proforma only worked with significant incentives, these are in the form of both Historic Tax Credits and the CRA Tax Abatement. This abatement was negotiated as part of our original Development agreement. The abatement also allowed us to "buy down" some of the rent structure for the main tenant, the Workz, thus making it fit within their cost/revenue model, and still allow us adequate debt coverage. Work yet to be completed includes renovation of four second floor apartments, repairs to the entry way terrazzo flooring by a specialty company, additional roofing, additional door repairs, and additional masonry repairs. Without the Tax Incentives, it will not be feasible to complete the project.

COMMUNITY REINVESTMENT AREA TAX ABATEMENT AGREEMENT

THIS AGREEMENT made on _____, between:

The City of Cuyahoga Falls
an Ohio Municipal Corporation
2310 Second Street
Cuyahoga Falls, OH 44221
(the "CITY")

and

Coming Attractions Development, LLC
43 E. Market Street
Akron, Ohio 44308
(the "COMPANY")

WITNESSETH:

WHEREAS, the CITY of Cuyahoga Falls has encouraged the development of real property in the Cuyahoga River District located in the area designated as a Community Reinvestment Area;

WHEREAS, the Council of the City of Cuyahoga Falls, Ohio by Ordinance No. 95-2004 and adopted on June 28, 2004 creating the Cuyahoga River Community Reinvestment Area, pursuant to Chapter 3735 of the Ohio Revised Code, which designates the Cuyahoga River Community Reinvestment Area as a Community Reinvestment Area and provides tax abatement within said area to property zoned commercial, industrial, residential, and office consistent with applicable zoning regulations are met;

WHEREAS, effective July 28, 2004, the Director of the Development Services Agency determined that the area designated in Ordinance No. 95-2004 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, **Coming Attractions Development, LLC** renovated the abandoned Falls Theater located at 2220 Front Street, Cuyahoga Falls, Ohio 44221 (Parcel # 0219577) and leased it to the Workz on the Riverfront as a full family entertainment venue. **Coming Attractions Development, LLC** is also in the process of renovating the second floor and converting the empty space into four residential multi-family units (the "PROJECT"), within the boundaries of the Cuyahoga River Community Reinvestment Area, provided the appropriate development incentives are available to support the economic viability of said PROJECT;

WHEREAS, the City of Cuyahoga Falls, having the appropriate authority for the stated type of PROJECT is desirous of providing **Coming Attractions Development, LLC**, with incentives available for the development of the PROJECT in said Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code;

WHEREAS, Coming Attractions Development, LLC has submitted a proposed agreement application (herein attached as Exhibit A) to the City of Cuyahoga Falls;

WHEREAS, Coming Attractions Development, LLC has remitted the required state PROJECT fee of \$750.00 made payable to the Ohio Development Services Agency with the application to be forwarded to said department with a copy of the final agreement;

WHEREAS, the Director of Development of the City of Cuyahoga Falls has investigated the application of **Coming Attractions Development, LLC** and has recommended the same to the Council of the City of Cuyahoga Falls on the basis that **Coming Attractions Development, LLC** is qualified by financial responsibility and business experience to preserve and create employment opportunities in said Community Reinvestment Area and improve the economic climate of the City of Cuyahoga Falls, Ohio;

WHEREAS, the PROJECT site as proposed by **Coming Attractions Development, LLC** is located in the Cuyahoga Falls City School District and the Board of Education of the Cuyahoga Falls City School District has been notified in accordance with Section 3735.67 and been given a copy of the application;

WHEREAS, pursuant to Section 3735.67(A) and in conformance 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 the matters hereinafter contained; and

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 agree as follows:

I. THE PROJECT

- A. The COMPANY has renovated the abandoned former Falls Theater located at 2220 Front Street, Cuyahoga Falls, Ohio 44221 (Parcel #0219577). The PROJECT involved renovating the interior and exterior of the building, including masonry, decorative, concrete, wood, window installation, roof replacement, restoration of historical lighting fixtures and plaster, renovation of main theater space, mezzanine and basement levels to serve as entertainment venues. The COMPANY also installed new water, mechanical, and electrical services to the building. The renovation and conversion of the four-multi-family residential units located on the second floor will be completed by August 31, 2022. The scope of the PROJECT is located within the Cuyahoga River CRA District in the City of Cuyahoga Falls, Ohio.

The PROJECT involves a total investment of approximately \$1,850,000.00 (One Million Eight Hundred Fifty Thousand and No/100 Dollars), plus or minus 10% at the PROJECT site. Included in this investment is approximately \$25,000.00 (Twenty-five Thousand and No/100 Dollars) for acquisition, \$1,000,000.00 (One Million and No/100 Dollars) for improvements to the existing facility, \$725,000.00 (Seven Hundred Twenty-five Thousand and No/100 Dollars) for machinery and equipment, \$50,000.00 (Fifty Thousand and No/100 Dollars) for furniture and fixtures, and \$50,000.00 (Fifty Thousand and No/100 Dollars) for inventory.

- B. The COMPANY, and or its tenant, shall put forth their best efforts to create the following new employment opportunities: eight (8) permanent full-time employees and forty (40) permanent part-time employees are anticipated to be hired for this PROJECT by May 31, 2022.
- C. The new annual payroll will result in approximately, plus or minus 10%, \$525,000.00 (Five Hundred Twenty-five Thousand and No/100 Dollars) in full-time and part-time permanent employees.
- D. The COMPANY is responsible for constructing a pedestrian bridge from the Green Parking Deck to the real property known as 2220 Front Street, Cuyahoga Falls, Ohio 44221 (Parcel # 0219577). The bridge will be completed by August 31, 2022.
- E. Construction on the PROJECT has already commenced and is expected to be completed by August 31, 2022.

II. REAL PROPERTY TAX ABATEMENT

- A. The CITY hereby grants the COMPANY a tax exemption for real property improvements made to the PROJECT site pursuant to Section 3735.67 of the Ohio Revised Code and shall be in the following amounts for each portion of the PROJECT represented in an exemption application:

Tax Years 1-10	50%
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- B. The identified PROJECT improvement will receive a ten (10) year, 50% exemption period. The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation.
- C. The COMPANY must annually file the appropriate tax forms with the Cuyahoga Falls Housing Officer to effect and maintain the exemptions granted by this agreement.
- D. The COMPANY shall pay an annual fee equal to the greater of one percent (1%) of the dollar value of incentives offered under the agreement or Five Hundred Dollars (\$500.00): provided, however, that if the value of the incentives exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), the fee shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00). The fee shall be made payable to the CITY once per year for each year the agreement is effective commencing on the first anniversary date of this agreement and payable in the form of a check. The fee is to be made payable to the City of Cuyahoga Falls, Ohio. This fee shall be deposited into a special fund created for such purpose and shall be used exclusively for the purpose of complying with section 3735.672 of the Ohio Revised Code and by the Tax Incentive Review Council (TIRC) created under section 5709.85 of the Ohio Revised Code exclusively for the purposes of performing the duties prescribed under that section.
- E. The COMPANY shall create a scholarship of \$1,000.00 annually during the term of the abatement (10 years). The annual scholarship shall be made payable to the Cuyahoga Falls Scholarship Foundation & Alumni Association and mailed via regular U.S. mail on an annual basis no later than March 31st of every year to 431 Stow Avenue, Cuyahoga Falls,

Ohio 44221. The scholarship shall be awarded to a student selected by the Foundation Board as part of its regular program of annual scholarships. The COMPANY will also continue to make annual donations to the school district as requested throughout the school year.

- F. The CITY shall submit executed copies of this agreement to the Ohio Department of Development within fifteen (15) days of its execution.
- G. 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 necessary certificates required in connection with such exemptions.
- H. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Development Services Agency revokes certification of the zone, or the CITY revokes the designation of the zone, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless the COMPANY materially fails to fulfill their obligations under this agreement and the CITY terminates or modifies the exemptions from taxation granted under this agreement.
- I. If the COMPANY materially fails to fulfill their 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. The CITY may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement.
- J. Exemptions from taxation granted under this agreement shall be revoked if it is determined that the COMPANY, any successor to that person, or any related member (as defined by section 3735.671(E) of the Ohio Revised Code) has violated the prohibition against entering into this agreement under section 3735.671(E) of the Ohio Revised Code, prior to the time prescribed by those sections.

III. ADDITIONAL COMPANY OBLIGATIONS

- A. The COMPANY shall pay such real property taxes that are not exempted under this agreement and are charged against such property to the extent of any portion of the PROJECT it owns, and shall timely file all federal, state, and local tax reports and returns as required by law. If COMPANY (or any subsequent purchaser of any portion of the PROJECT) fails to pay such taxes or file such returns and reports, all incentives granted under this agreement for the benefit of any particular parcel are rescinded as to that particular parcel or parcels only, beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.
- B. The COMPANY shall submit all appropriate plans and apply for all necessary permits through the CITY and the County of Summit, Department of Building Standards.
- C. The COMPANY shall provide the Cuyahoga Falls Housing Council and the Cuyahoga Falls Housing Officer with all information requested by them to evaluate the COMPANY compliance with this agreement and with the ordinance, including without limitation,

returns filed pursuant to section 5711.02 of the Revised Code, if so requested by the Housing Council or the Housing Officer.

IV. THE COMPANY'S REPRESENTATIONS

- A. The COMPANY hereby certifies that at the time this agreement is executed, the COMPANY and/or COMPANY owner does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and owes no delinquent taxes for which the COMPANY and/or owner are liable under Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Revised Code, or, if such delinquent taxes are owed, the COMPANY is currently 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 the 11 U.S.C.A. 101 et seq., or such a petition has been filed against the COMPANY. 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 or other legislation governing payment of those taxes.
- B. The COMPANY and/or owner affirmatively covenant that they do not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the state; and (3) 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.
- C. The CITY has developed a policy to ensure recipients of Community Reinvestment Area tax benefits to practice non-discriminating hiring in its operations. By executing this agreement, the COMPANY and COMPANY owner is committing to following non-discriminating hiring practices in its operations at the site of the PROJECT acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
- D. The COMPANY affirmatively covenant that they have 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 the COMPANY has knowingly made such a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, the COMPANY shall be required to immediately return all benefits received under this agreement pursuant to ORC Section 9.66(C) (2) and shall then be ineligible for any future economic development assistance from the State, a state agency, or a political subdivision of the state pursuant to ORC Section 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a first-degree misdemeanor under ORC Section 2921.13(E)(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.

V. TERM

The COMPANY and the CITY acknowledge that this agreement must be approved by formal action of the legislative authority of the City of Cuyahoga Falls, Ohio as a condition for the agreement to take

effect. This agreement takes effect upon such approval and shall extend for the term of the tax exemption, unless earlier terminated as provided herein.

VI. MISCELLANEOUS PROVISIONS

- A. This agreement shall be binding upon the heirs, successors, and assigns of the parties, but the COMPANY shall not assign its interests under this agreement without the express written consent of the CITY, except as otherwise provided in this agreement. The CITY hereby approves the assignment of this agreement to (i) any affiliated entity of the COMPANY, which is wholly owned by the COMPANY, for the purpose of acquiring and developing the PROJECT and to (ii) any purchaser of units to the extent necessary for the purchaser of the unit to effect and maintain the tax exemption as provided in Section II(C).

Each party represents and acknowledges that it has taken all necessary actions to bind itself to this agreement.

Any notice given pursuant to this agreement shall be deemed received when delivered personally to the receiving party, or sent by certified mail, return receipt requested, to the addresses set forth above, or to any other address as the receiving party may direct in writing.

- B. If any provision contained in this agreement shall be found invalid, illegal, or unenforceable by a court of competent jurisdiction, such finding shall not affect any other provision of this agreement, and it shall be construed as if it had never contained such provision.
- C. This agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings, written or oral, between the parties and their agents regarding the above subject matters.
- D. No amendment or modification of this agreement shall be binding unless the same is in writing, dated after the date of this agreement, and duly executed by the parties.
- E. The rights and remedies provided by this agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
- F. No waiver by any party of any default or breach of any term, condition, or covenant of this agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.
- G. Time is of the essence of this agreement.
- H. The section and paragraph headings contained in this agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this agreement.
- I. This agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

J. This agreement shall be construed under and in accordance with the laws of the State of Ohio. The parties hereby consent to venue in Summit County, so that the Summit County Common Pleas Court shall have exclusive and original jurisdiction to adjudicate any dispute, whether for interim or provisional relief.

IN WITNESS WHEREOF, the City of Cuyahoga Falls, Ohio, by Donald S. Walters, its Mayor and pursuant to Ordinance No. _____, has caused this instrument to be executed this _____ day of _____, 2022 and **Coming Attractions Development, LLC**, by _____, _____ has caused this instrument to be executed on this _____ day of _____ 2022.

WITNESSED BY:

City of Cuyahoga Falls, Ohio:

Donald S. Walters, Mayor

Diana Colavecchio, Director of Community Development

Coming Attractions Development, LLC

By: _____
Name Title

Approved as to form and correctness:

City of Cuyahoga Falls

Janet Ciotola, Law Director