

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Area Agreement ("Agreement") is made and entered into as of this ___ day of ___, 2017 by and between:

City of Green, Ohio, an Ohio Municipal Corporation, with its main offices located at 1755 Town Park Boulevard, P.O. Box 278, Green, OH 44232-0278 ("City"),

FedEx Freight, Inc., an Arkansas Corporation with its main offices located at 2200 Forward Dr., Harrison, AR 72601 ("FedEx"), and

KW AKR, LLC, an Arizona limited liability company, with its main offices located P.O. Box 979, Telluride, CO 81435 ("KW AKR").

WITNESSETH;

WHEREAS, the City has encouraged the development of real property and the acquisition of personal property located in the area designated as a Community Reinvestment Area ("CRA"); and

WHEREAS, KW AKR desires to construct within the City and the boundaries of Community Reinvestment Area #1—Aultman (CRA Number 15331664-01), a new, custom 63,000 square foot distribution center for FedEx on an undeveloped site in the City ("Project"). The new building will be located on Global Gateway and leased by FedEx for an initial term of 15 years with renewals contemplated thereafter. The facility is being proposed to manage the projected increase in package volume and more efficiently serve the greater Akron service area ("Project Site"); and

WHEREAS, the Council of the City of Green, Ohio by Ordinance 2003-02 adopted February 11, 2003 and subsequently amended by Ordinance 2004-11, adopted April 27, 2004; and again, amended by Ordinance 2006-01, adopted February 14, 2006; and most recently amended by Ordinance 2009-19, adopted August 11, 2009, designated the area as a "Community Reinvestment Area" pursuant Chapter 3735 of the Ohio Revised Code; and

WHEREAS, effective April 28, 2003, and most recently reconfirmed effective September 14, 2009, the Director of Development of the State of Ohio, now known as the Director of Development Services Agency, determined that the area designated in Ordinance 2009-19 contains the characteristics set forth in Section 3735.66 of the Ohio Revised Code and confirmed the area as a Community Reinvestment Area in compliance with Chapter 3735; and

WHEREAS, the City, having the appropriate authority for this type of Project, desires to provide KW AKR and FedEx with the incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code; and

WHEREAS, FedEx has submitted a Proposed Agreement Application ("Application") to the City, a copy of which is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, FedEx has remitted the required state application fee of \$750.00 made payable to the Ohio Development Services Agency with the Application to be forwarded with a copy of the final Agreement; and

WHEREAS, the authorized representatives of the City have investigated FedEx's Application and have recommended the same to the Council of the City on the basis that FedEx and KW AKR are 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 as proposed by FedEx is located in the Green Local School District and

WHEREAS, the City and the School District entered into CRA School Compensation Agreement on or about May 25, 2017, as authorized pursuant to Resolution 2017-R38; and

WHEREAS, the School District by entering into the CRA School Compensation Agreement consented to the passage of all Ordinances authorizing the City to enter into CRA Agreements and the exemptions provided thereunder, and waived the statutory notice provisions under Sections 3735.671 and 5709.83 of the Revised Code, so long as the City provides the School District a thirty (30) day notice prior to the time City Council intends to take action to formally approve a CRA Agreement; and

WHEREAS, the School District has been notified in accordance with its agreement with the City and has been given a copy of the Application; and

WHEREAS, the Portage Lakes School Board on October 16, 2003, passed a resolution waiving any notice under Section 5709.83 of the Revised Code; and

WHEREAS, pursuant to Ohio Revised Code Section 3735.67(A) and in conformance with the format required under Ohio Revised Code Section 3735.671(B), the parties desire to set forth their agreement.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and the benefit to be derived by the parties from the execution of this Agreement, the parties agree as follows:

1. KW AKR shall construct a 63,000 square foot building on Global Gateway, in the City of Green, County of Summit, State of Ohio on property currently known as permanent parcel number 28-15964 ("Property").

The Project will involve an estimated total real property investment of Sixteen Million Four Hundred Eighty Thousand Dollars (\$16,480,000.00) at the Project Site for

construction of the facility by KW AKR. The newly constructed facility will be utilized for warehousing; receiving of material; and the shipment of goods to customers. The proposal will allow FedEx to expand its capacity to meet current and expected increasing customer demand.

The Project will result in KW AKR investing:

Sixteen Million Four Hundred Eighty Thousand Dollars (\$16,480,000.00) for new construction at the Project Site;

Zero Dollars (\$0) for new machinery and equipment to be first used in operation at the Project Site;

Zero Dollars (\$0) for new furniture and fixtures at the Project Site;

Zero Dollars (\$0) for new inventory at the Project Site;

Zero Dollars (\$0) for relocated furniture and fixtures and machinery and equipment previously used at another location in the State prior to this Agreement; and

Zero Dollars (\$0) for relocated inventory transferred from another location in the State prior to this Agreement.

Real and Personal Property Investments by FedEx and KW AKR will provide for a total Project investment of Sixteen Million Four Hundred Eighty Thousand Dollars (\$16,480,000.00) plus or minus ten percent (10%). The Project will begin in November of 2017, and all acquisition, construction, and installation will be completed by December 31, 2018.

In addition, FedEx further estimates that the Project will result in the relocation of Seventy-Four (74) Full-Time Permanent employees and Thirty-Four (34) Part-Time Permanent employees with a payroll of Three Million Eight Hundred and Fifty-Seven Thousand, Two Hundred Forty Dollars (\$3,857,240.00) for the Full-Time Permanent Employees and Six Hundred Twenty Five Thousand Eight Hundred Seventy Dollars (\$625,870.00) for the Part-Time Permanent Employees. The Total Payroll at this Project Site within the City of Green for transferred Full-Time and Part-Time Permanent employees will be Four Million Four Hundred and Eighty Three Thousand One Hundred and Ten Dollars (\$4,483,110.00).

2. FedEx shall create, within a time period not exceeding Forty-Eight (48) months after the completion of construction deadline of December 31, 2018, the equivalent of:

12	new Full-Time Permanent employees;
6	new Part-Time Permanent employees;
0	new Full-Time Temporary employees; and

0 new Part-Time Temporary employees.

By 2022, FedEx will hire Twelve (12) Full-Time Permanent employees and Six (6) Part-Time Permanent employees.

This increase in the number of employees will result in approximately Seven Hundred Thirty-Five Thousand Nine Hundred Dollars (\$735,900.00) of annual payroll for FedEx.

The following is an itemization of payroll by the type of new employees created:

\$625,500.00	Full-Time Permanent;
\$110,400.00	Part-Time Permanent;
\$0	Full-Time Temporary; and
\$0	Part-Time Temporary.

The job creation period begins December 31, 2018 and all employees will be in place by December 31, 2022.

FedEx currently has zero (0) employees at the Project Site.

In total, as of October 1, 2017, FedEx has in the State of Ohio:

1,791	existing Full-Time Permanent employees;
602	existing Part-Time Permanent employees;
0	existing Full-Time Temporary employees; and
0	existing Part-Time Temporary employees.

For a total of Two Thousand Three Hundred Ninety-Three (2,393) existing employees.

3. KW AKR and FedEx shall provide to the City's CRA Housing Officer any information reasonably required by the Officer for use by the Tax Incentive Review Council and the City to evaluate each of such party's compliance with the Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02, if requested by the CRA Housing Officer or Tax Incentive Review Council.
4. The City grants KW AKR 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:

Exemption Year	Tax Year	Collection Year	Percent
1	2019	2020	100%
2	2020	2021	100%

3	2021	2022	100%
4	2022	2023	100%
5	2023	2024	100%

The percentage of the assessed value of the real property improvements shall be exempted for Five (5) years at One Hundred percent (100%).

The exemption commences the first year the real property would first be taxable were that Property not exempted from taxation. Tax exemption shall commence when 100% the real property valuation from the Project is placed on Summit County tax rolls (estimated date of January 1, 2019) and no tax exemption shall extend beyond the tax year ending December 31, 2024 ("Exemption Period"). This Agreement shall be effective as of its date and will continue in full force and effect for the Exemption Period as set forth herein.

FedEx must file the appropriate tax forms with the County Auditor (DTE 24) and with the State Department of Taxation (Ohio Tax Form #913) to effect and maintain the exemptions covered in the Agreement. The #913 Ohio Tax Form **must** be filed annually.

5. During the Exemption Period, Fed Ex agrees to compensate the Green Local School District those amounts the Green Local School District would have received but for the granting of this exemption ("Direct Compensation Payment"). FedEx shall deliver the Direct Compensation Payment, after verification by the City, to the School District on an annual calendar year basis. The City shall be required to invoice FedEx at least thirty (30) days prior to the deadline set forth below and FedEx shall provide written confirmation of the Direct Compensation Payment to the City.

Commencing on or before May 31st of the first year following the first Exemption Year and continuing the same schedule each year thereafter through and including May 31st of the first year following the final exemption year. The Direct Compensation Payments provided for under this Agreement shall be tendered by FedEx on or before May 31st of each year following the first exemption year, directly to the School District, in all events once receipt of the tax incentive under this Agreement has commenced. The obligation to make the Direct Compensation Payments to the School District is made for the benefit of the School District.

6. During the Exemption Period, FedEx 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 City shall be required to invoice FedEx at least thirty (30) days prior to the deadline set forth below.

The annual fee shall be made payable to the City of Green by March 31st of each year the Agreement is in effect and such payment shall be made by company check delivered to the office of the City of Green Planning Department. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with Ohio Revised Code Section 3735.671(D) and by the Tax Incentive Review Council created under Ohio Revised Code Section 5709.85, exclusively for the purposes of performing the duties prescribed under that section.

7. FedEx shall pay such real property taxes as are not exempted under this Agreement and charged against such Property and shall file all tax reports and returns as required by law. If FedEx fails to pay such taxes or file such returns and reports, all exemptions from taxation 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.
8. The City shall perform all such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain the exemption 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.
9. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Development Services Agency revokes certification of the area, or the City revokes the designation of the area, the exemptions and entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless FedEx materially fails to fulfill their obligations under this Agreement and the City terminates or modifies the exemptions from taxation granted under this Agreement.
10. If FedEx and/or KW AKR materially fail 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 and will require upon demand the repayment of the amount of taxes for real property that would have been owed if the Property had not been exempted from taxation under this Agreement.

A material failure includes, but is not limited to, FedEx's failure to meet any of the requirements set forth in Item one (1), Item two (2), and/or Item three (3) of this Agreement during any one (1) tax year.

FedEx or KW AKR shall have the right to terminate this Agreement upon notice if they are unable to meet the requirements set forth in Item one (1) and/or Item two (2) of this Agreement, and FedEx will be required to repay the total amount of abated taxes as of the date of such termination.

11. FedEx and KW AKR certify, as to itself only, that at the time this Agreement is executed, neither FedEx nor KW AKR, as applicable, owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which such party is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Ohio Revised Code, or, if such delinquent taxes are owed, such party 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 11 U.S.C.A. 101, et seq., or such a petition has been filed against it. For the purpose of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.
12. FedEx and KW AKR, as to itself only, affirmatively covenant that neither 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.
13. FedEx, KW AKR and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of the City as a condition of this Agreement taking effect. This Agreement takes effect upon such approval and subsequent execution of this Agreement by the Mayor of the City.
14. The City encourages recipients of Community Reinvestment Area tax benefits to use non-discriminatory hiring practices in their operations. By executing this Agreement, FedEx and KW AKR commit to follow non-discriminatory hiring practices and each acknowledges that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
15. Exemptions from taxation granted under this Agreement shall be revoked if it is determined that KW AKR or FedEx, any successor party to KW AKR or FedEx, or any related member (as those terms are defined in division (E) 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 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.
16. FedEx and KW AKR affirmatively covenant that they have made no false statement to the State or local political subdivisions in the process of gaining approval of the Community Reinvestment Area incentives. If any representative of either FedEx or KW AKR has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives,

such misrepresenting party shall be required to immediately return all benefits received under the Community Reinvestment Area 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 One Thousand Dollars (\$1,000.00) and/or a term of imprisonment of not more than Six (6) months.

17. By the entering into and the execution of this Agreement, FedEx and KW AKR acknowledge that the City in no way waives or implies the approval of a site plan for the Project or requires the City to render an approval of any site plan submitted for the Project. FedEx and KW AKR agree to follow the usual and customary process of site plan approval per the City's Land Development Code, including the current zoning of the Property.
18. Neither FedEx nor KW AKR for themselves, their successors and assigns and every successor in interest to the Property or any part thereof, during the Exemption Period, shall seek a reduction in the County Fiscal Officer's appraised value of the Property. Furthermore, FedEx and KW AKR agree that the Direct Compensation Payment obligations set forth herein shall continue during the Exemption Period notwithstanding that a subsequent owner of the Property or use of the Property may be by a non-profit entity exempt from the payment of real estate taxes.
19. This Agreement will not be amended, supplemented, or modified except by an instrument in writing, signed by the City, FedEx and KW AKR.
20. This Agreement sets forth the entire agreement between the parties as to its subject matter and merges and supersedes all previous discussions, agreements, and undertakings between the parties with respect to the subject matter of this Agreement. In addition, the Green Local School District shall be an intended third-party beneficiary of this Agreement and may specifically enforce the obligations of FedEx herein for payment due the Green Local School District under this Agreement.
21. This Agreement may be signed in any number of counterparts, each of which constitute an original but all of which constitute one agreement. Any party to this Agreement may sign this Agreement by signing any counterpart. Additionally, the parties agree that for purposes of facilitating the signing of this Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully signed counterparts and (b) a facsimile transmission or .pdf file transmitted via electronic mail will be deemed to be an original signature for all purposes. All executed counterparts of this

Agreement will be deemed to be originals, but all counterparts taken together or collectively, as the case may be, will constitute one and the same agreement.

22. All notices, communications, requests and demands between the parties required or permitted to be given under this Agreement to be effective must be in writing (including without limitation by facsimile transmission or electronic mail), and, unless otherwise expressly provided, will be deemed to have been sufficiently given or made when physically delivered or mailed by U. S. registered or certified mail or, in the case of notice by facsimile transmission or electronic mail, when received and telephonically or electronically confirmed, addressed as follows, or to any address as may be notified in writing by the parties:

If to City of Green:

Attention: Wayne L. Wiethe, Director of Planning

City of Green Planning Department
1755 Town Park Boulevard
PO Box 278
Green, Ohio 44232-0278
E-Mail: wwiethe@cityofgreen.org
Phone: 330.896.6614

If to KW AKR, LLC:

Attention: Kevin M. Kiernan

KW AKR, LLC
P.O. Box 979
Telluride, CO 81435
E-Mail: kevin@thekiernancompanies.com
Phone: _____

With a copy to:

Attention: GinaMarie K. Spencer

Mendelsohn Oseran & Spencer, PLC
2525 E. Broadway Blvd., Suite 201
Tucson, AZ 85716
E-Mail: gspencer@moslawyers.com
Phone: 520.325.7500

If to FedEx Freight, Inc.:

Attention: Debbie Dillinger, TITLE

FedEx Freight, Inc.

2200 Forwood Dr.
Harrison, AR 72601
E-Mail: debbie.dillinger@fedex.com
Phone: 412.859.5089

23. This Agreement will be binding upon and inure to the benefit of the City, FedEx and KW AKR, and their respective successors and assigns. Neither FedEx nor KW AKR may assign this Agreement or any of its rights or obligations in whole or in part to any person without the prior written consent of the City, which consent must not be unreasonably withheld. This Agreement is not transferable or assignable without the express, written approval of the City.
24. This Agreement and the rights and obligations of the parties under this Agreement will be governed by, and construed and interpreted in accordance with, the law of the State of Ohio without regard to conflict of laws principles.
25. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to the jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable the provision in any other jurisdiction.
26. Any headings and/or table of contents contained in this Agreement are for convenience of reference only and will not limit or otherwise affect the meaning.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed after due authorization as of the date aforesaid.

CITY OF GREEN:

By: _____
Gerard M. Neugebauer, Mayor

Date: _____, 2017

KW AKR, LLC:

By: KMK FX, LLC, Manager

By: Four Pine, LLC, Member

By: _____
Kevin Kiernan
Manager

Date: _____, 2017

FedEx Freight, Inc.:

By: _____
Kimberly W. Barr, Assistant Treasurer

Date: _____, 2017

The legal form of the within instrument is hereby approved.

By: _____
Diane A. Calta, Director of Law

Date: _____, 2017

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on _____, 2017, by Gerard M. Neugebauer, the Mayor of the City of Green, Ohio, an Ohio political subdivision, on behalf of the City.

[SEAL]

NOTARY PUBLIC
My Commission Expires: _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Kevin Kiernan as, Manager of Four Pine, LLC, an Arizona limited liability company, Member of KMK FX, LLC, an Arizona limited liability company, Manager of KW AKR, LLC an Arizona limited liability company. He is personally known to me or has produced a driver's license as identification.

[SEAL]

NOTARY PUBLIC
My Commission Expires: _____

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by FedEx Freight, Inc., an Arkansas Limited Liability Corporation, registered to do business in the state of Ohio by Kimberly W. Barr, as its Assistant Treasurer. She is personally known to me or has produced a driver's license as identification.

[SEAL]

NOTARY PUBLIC
My Commission Expires: _____