

9/30

IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO

CITY OF CLEVELAND

Plaintiff,

vs.

SHAKER HEIGHTS APARTMENTS  
OWNER LLC,

Defendant.

EARLE B. TURNER, CLERK  
CLEVELAND MUNICIPAL COURT

2025 SEP 24 P 3:33

FILED

) CASE NO.: 2024-CRB-001655

)

) JUDGE: W. MONA SCOTT

)

) **JOINT AMENDED MOTION of the**

) **CITY OF CLEVELAND &**

) **DEFENDANT FOR AN ORDER**

) **MODIFYING COMMUNITY**

) **CONTROL SANCTIONS**

) **w/SUPPORTING BRIEF AND**

) **PROPOSED ENTRY ATTACHED**

) **TO PERMIT SALE OF 12500-12600**

) **AND 12701 SHAKER BLVD.**

**CLEVELAND, OHIO**

(Oral Hearing Requested)

*NOW COMES JOINTLY* The City of Cleveland (the City) and Defendant Shaker Heights Apartments Owner LLC (SHAO or Defendant), to Move this Honorable Court to modify the Community Control Sanctions prior-issued in the above-captioned case and permit the transfer of certain properties under Community Control known generally as 12500-12600 and 12701 Shaker Boulevard, Cleveland, Ohio 44120 (the "Properties") to a non-party beneficial owner, The Lenox at Shaker Square, LLC ("Buyer"), which must occur, if at all, by September 30, 2025.

As grounds for this Motion, the Parties respectfully seek the Court's judicial notice that the above-captioned case is one of several concurrent cases involving the Parties in various stages of both criminal prosecution and civil litigation. Of particular relevance, the City of Cleveland brought a civil nuisance abatement and receivership case against Defendant SHAO concerning the properties at 12500 Shaker Blvd, Cleveland, Ohio; 12600 Shaker Blvd., Cleveland, Ohio; and 12701 Shaker Boulevard, Cleveland, Ohio. City of Cleveland v. Shaker Heights Apartments Owner, LLC, Case No. 2023-CVH-002772. The purpose of the suit was to compel SHAO to correct code violations at the subject properties or to have the Court appoint a receiver to take control of the properties and correct the code violations. The civil case has not been set for trial and is currently stayed due to the pending appeals of the three other criminal cases. After seven months of difficult and complex multi-

party negotiations,<sup>1</sup> the parties, with input from non-parties, have reached a settlement of the civil case, which required significant compromises and resolutions of different disputes that relate to but are not directly part of the litigation in this Court. As is quite common in civil case settlement agreements, confidentiality is an important component of the terms signed by the parties, some of which are not parties to this case. Due to this need for confidentiality and to protect the interests of nonparties, the exhibit to this Motion is being contemporaneously submitted for *in camera* inspection only and, based on the September 23, 2024 hearing, the parties understand that they will not be made part of the public record. The settlement involves SHAO selling the properties to the Buyer **no later than September 30, 2025**. The calendar and changing fall weather is a large factor as several of the most urgently needed repairs cannot effectively be completed in colder and wetter seasons. If the transfer does not occur by then, the Plan is not reasonably achievable and neither the Buyer nor Metropolitan Commercial Bank will be willing to proceed.

The Buyer is a party to the settlement agreement and has committed, in agreement with the City, to correct all the outstanding violation notices, all of which the Buyer received from the City. Moreover, Buyer has provided proof of funding for its proposed Five Million One Hundred Thousand Dollars of repairs and renovations for the three properties as part of an over Twenty Million Dollars investment. The first phase of the Nuisance Abatement Plan is the most intense and expensive. The full and comprehensive Nuisance Abatement Plan (the "Plan"), which includes the Proposal for abatement and renovation work, the Tenant Management Plan, and financial commitment of Metropolitan Commercial Bank is an independent agreement with the City, contingent upon Buyer actually acquiring the Properties and being submitted contemporaneously for *in camera* inspection only. The financial commitment is adequate to fund all closing costs, including outstanding real estate taxes and other costs, the acquisition of the properties, and the more than Five Million Dollars in repairs.

The Buyer has submitted and the City, after careful review, has approved the Buyer's Plan which, upon the granting of the instant Motion, will serve to correct not only the underlying

---

<sup>1</sup> These complex negotiations included discussions with SHAO and certain of its members, the proposed Buyer and its principal Martin N. Shkreli, primary mortgage holder Metropolitan Commercial Bank, the City of Cleveland, and discussions and notifications with the tenant groups and City Council. These negotiations not only involve the matters presently before this Court in the criminal and civil litigation, but matters between SHAO and Metropolitan Commercial Bank relating to the defaults under the various loans and guaranties related to the properties in question and new negotiations with the proposed Buyer and Metropolitan Commercial Bank related to loans to acquire and remediate the properties.



violations at the center of the instant prosecution but serve as a landmark investment capable of generating positive secondary benefits to the City and its residents. For these reasons and the reasons which follow in the attached supporting brief, this Court should grant this Joint Motion to Modify Community Control Sanctions.

Jointly submitted,

Mark Griffin, Director of Law  
City of Cleveland

By: /s/ William H. Armstrong, Jr.  
David D. Roberts (0059563)  
William H. Armstrong, Jr. (0059919)  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114  
Telephone (216) 664-2887  
Facsimile (216) 664-2663  
Email: droberts3@clevelandohio.gov  
*Attorneys for City of Cleveland*

/s/ Robert G. Friedman  
Robert G. Friedman, Esq. (0063811)  
Thomas P. Owen, Esq. (0080008)  
Kyle L. Ripma, Esq. (0097184)  
Powers Friedman Linn, PLL  
25550 Chagrin Boulevard, Suite 400  
Cleveland, Ohio 44122  
Telephone (216) 514-1180  
Facsimile (216) 514-1185  
Email: generalmail@pfl-law.com  
*Attorneys for Defendant, Shaker Heights  
Apartments Owner, LLC*

Jointly Supported by Counsel in 2023-CVH-002772.

/s/ David M. Douglass  
David M. Douglass (0015312)  
Zachariah S. Germaniuk (0090109)  
Douglass & Associates Co., L.P.A.  
4725 Grayton Road  
Cleveland Ohio 44135  
d.douglass@douglasslaw.com  
Telephone: 216-362-4140  
Facsimile: 216-362-4160

/s/ Daniel F. Lindner  
Daniel F. Lindner (0063918)  
The Lindner Law Firm LLC  
2077 East 4th Street, 2nd Floor  
Cleveland, Ohio 44115  
daniel@justuslawyers.com  
Telephone (216) 737-8888  
Facsimile (216) 737-9999 Fax

## SUPPORTING BRIEF

### I. INTRODUCTION

The City of Cleveland ("City") and Defendant, Shaker Heights Apartments Owner ("SHAO") ("City" and "SHAO" taken together, the "Parties") have engaged in substantial litigation to attempt to resolve and bring into compliance current conditions which exist at certain properties owned by SHAO in the City of Cleveland generally known as 12500-12600 and 12701 Shaker Boulevard, Cleveland, Ohio 44120 ("Properties"). After a substantial period of constructive negotiations, the Parties now jointly move this Court to approve the transfer of the Properties to the proposed Buyer. The Buyer has provided the City with a comprehensive nuisance abatement plan ("Plan") to correct the underlying conditions which have caused such substantial litigation. Based upon that plan, a copy of which is included herein with the Parties' prior consent and agreement *in camera* and sealed, to this Court should have reasonable reassurance in lifting of Prohibition Order and allowing this transfer to proceed so that conditions at these Properties may be corrected for the benefit of tenants, neighboring residents, and the City at large.

### II. FACTUAL BACKGROUND

The relevant factual background of this case is well-known to this Court and self-evident upon a review of the multiple dockets involving the two Parties. Of relevance to the instant Motion, however, are that on May 5<sup>th</sup>, 2025 this Court filed its Judgment Entry and Order sentencing SHAO to a period of community control until on or about May 5<sup>th</sup>, 2028 ("Order"). Among the terms of that community control was a Prohibition Order preventing the sale, gift, or transfer of the Properties without approval of the Court during the period of active Community Control. Concurrently, in both the preceding months and those months following the May 5<sup>th</sup> Sentencing, the Parties by and through counsel engaged in candid, constructive, and considered settlement negotiations to attempt to forge a positive outcome for the Properties, the community and all participants in these proceedings. This substantial period of settlement negotiations, conducted by and through counsel, led to the creation of a comprehensive Plan that would govern the Properties' transition to new ownership, recover the code enforcement costs incurred by the City of Cleveland's taxpayers, provide for the payment of past-due property taxes and utilities, and provide for a structured, comprehensive renovation of the Properties. This Plan was crafted in conformity with this Court's Order and it is that Plan which forms the basis of the Parties joint



Motion to seek this Court's approval of the transfer of these Properties to the Buyer such that this Plan may be implemented.

### III. LAW AND ARGUMENT

#### A. Approval of the Properties' Transfer Consistent with the Purposes of Misdemeanor Sentencing.

This Court should approve the transfer of the Properties as consistent with Ohio's purposes of misdemeanor sentencing. In Ohio, although classified as criminal cases, building-code [prosecutions] are different from other criminal cases because the focus is upon bringing the property into compliance rather than dealing with past misconduct. Lakewood v. Krebs, 150 Ohio Misc.2d 1, 2008-Ohio-7083. *See generally* Cleveland v. Fogos 103 Ohio App.3d 39, 47 658 N.E.2d 789 (8<sup>th</sup> Dist. 1995). Otherwise, and in general:

The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public. Ohio Revised Code section 2929.21(A)

In addition to the elements outlined above, Ohio also provides that: "[u]pon the motion of either party or on the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may modify the community control sanctions or conditions of release previously imposed..." R.C. 2929.25(B). Consistent with Ohio Law, this Court has established a concurrent local rule which provides for modifications of community control as well as the prohibition of sale, transfer, or gift of "all properties that defendant owns in the City of Cleveland pursuant to R.C. 2929.25." Local Rule of Court 2(S)(6). This prohibition is included within the Court's sentencing purview due to the unique circumstance of prosecuting building and housing code violations.

Here, the Court has outlined fifteen (15) interrelated community control sanctions against SHAO which are consistent with Ohio's sentencing standard as articulated above. Beyond the payment of financial obligations, costs, and length of sentence, most sanctions deal with the ownership, management, and maintenance of the Properties themselves. These sanctions include generally: an order prohibiting the Properties' transfer without Court approval; exterior maintenance; payment of delinquent taxes; compliance with rental registration and local agency ordinances; repair of outstanding violations; and the submission of a "Tier III (30 day) Maintenance and Repair plan ...[and] remain in communication [with] Chief Housing Court

Specialist Carl Kannenberg while under this Court's supervision" *See* Sentencing May 5<sup>th</sup>, 2025 Judgment Entry and Order, pgs. 4-5. As the following analysis shows, Buyer's Plan comprehensively addresses not only the Court's Order in the instant case but Ohio's overriding purposes of misdemeanor sentencing. The City is capable and ready to work with the Buyer (following acquisition of the Properties) to implement the Plan.

B. Buyer's Abatement Plan Addresses Community Impact and the Public Interest

This Court should approve the sale of the Properties to the Buyer as the Buyer's Plan, monitored by the City, addresses the underlying complaints which triggered the above-captioned case and similar prosecutions referenced in the Court's Order, as well as other related civil litigation.

In Ohio, any municipal corporation may, in relevant part, "Provide for the inspection of buildings or other structures and for the removal and repair of insecure, unsafe, or structurally defective buildings or other structures under this section..." R.C. 715.26. In the City of Cleveland, that inspection process relies upon complaints brought by members of the public to focus and orient the actions of the City. Those complaints are then investigated by the City's Department of Building and Housing, and if violations of building or housing codes are found, administrative, criminal, and civil remedies can be applied to correct them. *See generally* Cleveland Codified Ordinances, Titles IX and XIII. Here, numerous complaints brought by tenants, neighboring property owners, and residents' elected representatives led to the prosecutions which ultimately led to this Court's Order of May 5<sup>th</sup>, 2025. These complaints largely related to the conditions and operations of elevators, heating systems, and overall maintenance. As the attached Plan shows, the Buyer is committing over *Five Million dollars* in necessary repairs which speak directly to the underlying complaints raised in the course of this and related cases, in addition to the numerous violations referenced by this Court's Order. Moreover, the Buyer's Plan includes immediate commitments to retain local and highly-rated property management, engage specialized contractors to address elevator, electrical, heating, and plumbing repairs, provide 24-hour property supervision and safety, and achieve full compliance with local rental registration and local agent ordinances.

These commitments will only be realized, to benefit all parties, including the City and the tenants if the Court approves the sale of the Properties by September 30, 2025, so that the transfer can occur that day, and such approval is consistent with the overriding purposes of misdemeanor sentencing as articulated by Ohio Law. Otherwise, this opportunity may be lost.



### C. The Transfer of Ownership Provides Significant Restitution to the Public

The sale of the Properties constitutes significant restitution not only for existing tenants and neighbors, but also future tenants, the City, and by extension, the public at large. As the Court has outlined in its Order, beyond code compliance and maintenance, property taxes of \$839,684.46 plus late fees on 12500-12600 Shaker Blvd and \$593,800.75 plus late fees on 12701 Shaker Blvd. and associated costs must be paid. In the instant case, not just delinquent taxes but *all* costs incurred by the City and by extension its taxpayers during the investigations into building and housing conditions at the Properties will be paid. These costs are itemized and will be allocated as follows:

DESCRIPTION	AMOUNT
Public Utilities Restitution	\$455,000.00 rounded
City Enforcement and Legal	\$207,000.00 rounded
Emergency Repairs Restitution	\$12,500.00 rounded

This restitution will only be realized if the Court approves the sale of the Properties by September 30, 2025, and such approval is consistent with the overriding purposes of misdemeanor sentencing as articulated by Ohio Law.

### IV. CONCLUSION

The Parties request that the Court take judicial notice of the fact that the instant case is only one of several concurrent criminal prosecutions and civil actions involving SHAO. As these cases have each proceeded, the Parties have had the opportunity to engage in substantive negotiations on how to best resolve the underlying conditions and legal issues in a comprehensive and permanent manner. Consistent with those negotiations, a Buyer with significant technical ability and financial capacity has emerged with willingness to take on the operational challenges presented by these Properties. As the Plan's Exhibits indicate, the Buyer's Plan is both well-financed and comprehensive. This Plan has received significant support from the existing tenants at the properties, from neighboring property owners, and from the members of Cleveland City Council in whose wards these Properties are located. The Parties, once opposed, are now joined in their

shared belief that transfer of these Properties to the Buyer, and the supervised implementation of the Buyer's Plan, represent the best possible outcome for these Properties. The Parties therefore respectfully and jointly urge this Court to approve the transfer of the Properties on an expedited basis so that the Properties may be transitioned to new and beneficial ownership consistent with the Parties' proposed closing date of September 30<sup>th</sup>, 2025.

Jointly submitted,

Mark Griffin, Director of Law  
City of Cleveland

By: /s/ William H. Armstrong, Jr.  
David D. Roberts (0059563)  
William H. Armstrong, Jr. (0059919)  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114  
Telephone (216) 664-2887  
Facsimile (216) 664-2663  
Email: droberts3@clevelandohio.gov  
*Attorneys for City of Cleveland*

/s/ Robert G. Friedman  
Robert G. Friedman, Esq. (0063811)  
Thomas P. Owen, Esq. (0080008)  
Kyle L. Ripma, Esq. (0097184)  
Powers Friedman Linn, PLL  
25550 Chagrin Boulevard, Suite 400  
Cleveland, Ohio 44122  
Telephone (216) 514-1180  
Facsimile (216) 514-1185  
Email: generalmail@pfl-law.com  
*Attorneys for Defendant, Shaker Heights  
Apartments Owner, LLC*

Jointly Supported by Counsel in 2023-CVH-002772.

/s/ David M. Douglass  
David M. Douglass (0015312)  
Zachariah S. Germaniuk (0090109)  
Douglass & Associates Co., L.P.A.  
4725 Grayton Road  
Cleveland Ohio 44135  
d.douglass@douglasslaw.com  
PHN: 216-362-4140  
FAX: 216-362-4160

/s/ Daniel F. Lindner  
Daniel F. Lindner (0063918)  
The Lindner Law Firm LLC  
2077 East 4th Street, 2nd Floor  
Cleveland, Ohio 44115  
(216) 737-8888 Phone  
(216) 737-9999 Fax  
daniel@justuslawyers.com



IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO

CITY OF CLEVELAND

Plaintiff,

vs.

SHAKER HEIGHTS APARTMENTS  
OWNER LLC,

Defendant.

) CASE NO.: 2024-CRB-001655

)

)

) JUDGE: W. MONA SCOTT

)

) **JUDGMENT ENTRY**

)

)

)

)

On September 24, Plaintiff City of Cleveland and Defendant Shaker Heights Apartments Owner, LLC filed a Joint Motion for an Order Permitting the Sale of the properties located at 12500, 12600, and 12701 Shaker Boulevard, Cleveland, Ohio (the "Properties").

As part of the Court sentencing order dated May 15, 2024, and as part of companion cases known as 2023-CRB-007888, 2023-CRB-007891, and 2023-CRB-007893, the Court issued an order barring the Defendant from gifting, selling, or transferring the Properties without permission or approval of the Court.

The Court finds the joint motion to be well taken and is therefore granted. Pursuant to paragraph 5 of the sentencing order, the Court hereby grants Defendant permission for and approves the sale of the Properties.

IT IS SO ORDERED.

\_\_\_\_\_  
JUDGE W. MONA SCOTT

\_\_\_\_\_  
DATE

Jointly submitted,

Mark Griffin, Director of Law  
City of Cleveland

By: /s/ William H. Armstrong, Jr.

David D. Roberts (0059563)

William H. Armstrong, Jr. (0059919)

601 Lakeside Avenue, Room 106

Cleveland, Ohio 44114

Telephone (216) 664-2887

Facsimile (216) 664-2663

Email: droberts3@clevelandohio.gov

*Attorneys for City of Cleveland*

/s/ Robert G. Friedman

Robert G. Friedman, Esq. (0063811)

Thomas P. Owen, Esq. (0080008)

Kyle L. Ripma, Esq. (0097184)

Powers Friedman Linn, PLL

25550 Chagrin Boulevard, Suite 400

Cleveland, Ohio 44122

Telephone (216) 514-1180

Facsimile (216) 514-1185

Email: generalmail@pfl-law.com

*Attorneys for Defendant, Shaker Heights*

*Apartments Owner, LLC*