

**NICOLA, GUDBRANSON & COOPER, LLC**  
**ATTORNEYS AND COUNSELLORS**  
LANDMARK OFFICE TOWERS  
REPUBLIC BUILDING, SUITE 1400  
25 WEST PROSPECT AVENUE  
CLEVELAND, OHIO 44115-1048  
216/621-7227  
Fax 216/621-3999  
[www.nicola.com](http://www.nicola.com)  
Direct e-mail: [mcconville@nicola.com](mailto:mcconville@nicola.com)

## **MEMORANDUM**

TO: All of Council

CC: Mayor Michael Dylan Brennan

FROM: Luke F. McConville

DATE: December 13, 2022

RE: Aleksander Shul Settlement Agreement

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The City's outside legal counsel Marl Landes and the City Law Department recommend that the City enter into a certain Settlement Agreement by and among the City of University Heights and Mayor Brennan and the Aleksander Shul, Shnior Salman Denciger and University Realty USA, LLC. The Settlement Agreement would fully and finally resolve the two lawsuits pending among the parties, being (i) a case filed by the City in the Cuyahoga County Court of Common Pleas, captioned *City of University Heights v. University Realty USA, LLC at al*, Case No. CV-21-948437 and (ii) a case filed by the Aleksander Shul in the United States District Court for the Northern District of Ohio, captioned *Aleksander Shul, et al. v. City of University Heights*, Case No. 1:21-cv-01945 (collectively, the "Litigation").

The following noteworthy provisions are included in the proposed Settlement Agreement:

- The United States District Court for the Northern District of Ohio and Judge Philip Calabrese will retain jurisdiction over enforcement of the Settlement Agreement, including timely construction of the improvements at 4380 University Parkway.
- The Aleksander Shul has included renderings of a new shul to be constructed on the site. The proposed building is subject to internal administrative review only, and will not require additional approvals by the City Planning Commission, Board of Zoning Appeals or Architectural Review Board.
- The Aleksander Shul will post a \$750,000 bond for the benefit of the City, as security for the timely completion of the project within two years of the date of approval by the City of construction drawings.

- Mutual releases are granted to all parties.
- The Aleksander Shul will indemnify the City in connection with its construction activities on site.
- The parties will enter into a Development Agreement that imposes the City's standard obligations for developers, and includes the various conditions established by the City Planning Commission for operation of a house of worship at the site.
- The Aleksander Shul will publish an ad in the Cleveland Jewish News thanking the City and Mayor Brennan for working collaboratively to reach a resolution of the parties' issues.
- The parties will file a joint motion with the Shaker Heights Municipal Court to modify the University Realty USA, LLC's sentence by suspending all fines.
- The parties will present briefs and arguments to the United States District Court for the Northern District of Ohio and Judge Philip Calabrese relating to the payment of attorney fees.

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**ORDINANCE NO. 2022-78**

**INTRODUCED BY: Mayor Michael Dylan Brennan**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH THE ALEKSANDER SHUL AND RELATED PARTIES AND DECLARING AN EMERGENCY**

**WHEREAS**, the City and the Aleksander Shul are parties to two separate lawsuits, being (i) a case filed by the City in the Cuyahoga County Court of Common Pleas, captioned *City of University Heights v. University Realty USA, LLC et al.*, Case No. CV-21-948437 and (ii) a case filed by the Aleksander Shul in the United States District Court for the Northern District of Ohio, captioned *Aleksander Shul, et al. v. City of University Heights*, Case No. 1:21-cv-01945 (collectively, the “Litigation”); and

**WHEREAS**, the Aleksander Shul has previously obtained a Special Use Permit, subject to various conditions established by the City Planning Commission, to locate a house of worship at 4380 University Parkway in University Heights (the “Property”); and

**WHEREAS**, the parties wish to enter into a Settlement Agreement to settle the Litigation and to cause the parties to enter into a Development Agreement governing the development and construction of improvements at the Property, implementing the Planning Commission’s conditions on operation of a house of worship, creating security obligations for the construction, and establishing certain time frames in connection with the development;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, COUNTY OF CUYAHOGA, AND STATE OF OHIO, THAT:**

**Section 1.** Council hereby authorizes the Mayor to enter into the Settlement Agreement with the Aleksander Shul, Shnier Zalman Denciger and University Realty USA LLC (collectively, the “Aleksander Shul”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

**Section 2.** Council hereby affirmatively waives the City’s rights to cause or require further appearances by the Aleksander Shul before the City’s Planning Commission, Board of Zoning Appeals or Architectural Review Board.

**Section 3.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including the requirements of Section 121.22 of the Ohio Revised Code.

**Section 4.** This Ordinance is declared to be an emergency measure necessary for the preservation of the public peace, safety, health and welfare of the citizens of the City of University Heights, the emergency being the need to implement the terms of settlement as soon as possible, in order to cause the prompt construction of a code-compliant building on property owned by the Aleksander Shul. It shall therefore become effective upon its passage by the affirmative vote of not less than five (5) members of Council and approval of the Mayor; otherwise it shall become effective at the earliest time allowed by law.

**City of University Heights, Ohio**

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**Michael Dylan Brennan, Mayor**

**Passed:** \_\_\_\_\_

**Attest:** \_\_\_\_\_  
**Kelly M. Thomas, Clerk of Council**

**Approved**  
**as to form:** \_\_\_\_\_  
**Luke F. McConville, Law Director**