

COMPENSATION AGREEMENT

This Compensation Agreement (this "Agreement"), is made and entered into on this day of March 20, 2018, by and between the CITY OF CLEVELAND HEIGHTS, OHIO (the "City"), a municipal corporation organized and existing under the laws of the State of Ohio, and the CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS CITY SCHOOL DISTRICT (the "School District"), a city school district organized and existing under the laws of the State of Ohio.

WITNESSETH:

WHEREAS, the City owns (or may acquire) certain real property located at the intersection of Cedar Road and Euclid Heights Boulevard and sometimes referred to herein as the "Top of the Hill Property" more particularly depicted in Exhibit A attached hereto; and

WHEREAS, by Ordinance to be introduced in Cleveland Heights City Council (including any amendments thereto, the "TIF Ordinance"), the City proposes to establish a tax increment financing area with respect to the Top of the Hill Property, to exempt from real property taxation improvements to be made to the Top of the Hill Property pursuant to Section 5709.41 of the Ohio Revised Code (the "TIF Statute") and to require the development entity to be established by F & C Development, Inc. to lease from the City and improve the parcels included in the Top of the Hill Property (such entity, the "Developer"), to make Service Payments In Lieu of Taxes in an amount equal to the amount of real property taxes that would have been payable if the Improvements described below had not been exempted from taxation under the TIF Ordinance (those payments in lieu of taxes, together with any related penalties, interest and rollback payments, are collectively referred to herein as "PILOTS"), and to use such PILOTS to pay a portion of the principal of, interest on and premium, if any, with respect to bonds expected to be issued by the Cleveland-Cuyahoga County Port Authority (or any other such governmental authority as may be designated by the City) or other financing and any renewals or refunding thereof (collectively, the "TIF Debt") which may be issued or entered into to pay the cost of acquisition and construction of improvements as part of the proposed Top of the Hill Property development; and

WHEREAS, by the TIF Ordinance, the City intends to designate the parcels depicted in Exhibit A hereto (collectively referred to herein as the "TIF Area"), with the parcels comprising the real property within the TIF Area, as improved, referred to hereinafter as the "Parcels"; and

WHEREAS, the City has provided information to the School District with respect to a proposed mixed-use development of the Parcels which will include construction of (a) 200 luxury market-rate apartments, (b) 15,000 square feet of first floor restaurant, retail and commercial space, (c) a public parking garage containing 525 parking spaces, (d) public gathering and green spaces, (e) 20 for-sale townhomes, (f) a nationally-branded hotel or boutique hotel, (g) all sidewalks, driveways, access ways and utility connections, and which will potentially include (h) "Class A" office space (all of the foregoing being referred to herein collectively as the "Improvements"); and

WHEREAS, the City and the School District will derive substantial and significant benefits from the Improvements; and

WHEREAS, the City, in the TIF Ordinance, intends to declare the Improvements (other than those Improvements, if any, to be used for residential purposes as such term is used in Section 5709.41(B) of the Ohio Revised Code) to be for a “public purpose” and exempted 100% of the assessed valuation of the Improvements from real property taxation for a period not to exceed thirty (30) years in accordance with Section 5709.41 of the Ohio Revised Code; and

WHEREAS, on March [13], 2018, the Board of the School District adopted a resolution (the “School District Resolution”) approving this Agreement and the exemption of the Improvements as will be provided in the TIF Ordinance (the “TIF Exemption”); and

WHEREAS, to facilitate the construction of the Improvements and to compensate the School District for a portion of the revenue that the School District would have received had the Improvements been made and not been exempted from taxation, the City and the School District have determined to enter into this Agreement, on the terms as hereinafter provided;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, and to induce the Developer to proceed with the construction of the Improvements, the parties hereto agree as follows:

Section 1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

“Base Value” means the assessed value (35% of market value under current law) of the Parcels within the TIF Area for tax year 2017.

“Exempted Value” means the assessed value (35% of market value under current law) of the Parcels within the TIF Area over the Base Value that is to be exempted from real estate taxation under the TIF Ordinance and the TIF Statute.

“Exemption Year” means, for any Parcel, any calendar year in which Improvements would be taxable but for the exemption from taxation pursuant to the TIF Ordinance.

“\$44 Million Fair Market Value Threshold” means, for purposes of determining School Payments under Section 2(A) hereof, that portion of the market value of the Parcels within the TIF Area (excluding any Townhome Parcels) that is equal to or less than \$44,000,000.

“\$50 Million Fair Market Value Threshold” means, for purposes of determining School Payments under Section 2(A) hereof, that portion of the market value of the Parcels within the TIF Area (excluding any Townhome Parcels) that is equal to or greater than \$50,000,000.

“New School District Levies” means any School District levies first effective on or after the date of this Agreement. New School District Levies shall not include any replacement tax levies, to the extent of the effective rate of the levy that is being replaced, or any renewal levies. For example, if an existing levy has an effective tax rate of 10 mills as of the date of the replacement levy and 5 effective new mills are approved with the replacement of the existing levy,

New School District Levies shall exclude the prior existing effective millage (10 effective mills) and include the new 5 mills. The existing levies included in the School District's Effective Millage as of the 2017 tax year are set forth in Schedule I hereto.

"PILOTS to be received at the "\$44 Million Fair Market Threshold" means the PILOTS to be received by the City in any Exemption Year determined at the \$44 Million Fair Market Value Threshold.

"PILOTS to be received at the "\$50 Million Fair Market Threshold" means the PILOTS to be received by the City determined at the \$50 Million Fair Market Value Threshold.

"School District's Effective Millage" means the rate of real property tax millage applicable to the Parcels determined for the School District pursuant to Section 319.301 of the Ohio Revised Code in effect for any particular Exemption Year; provided, however, that the School District's Effective Millage shall not include any millage related to New School District Levies.

"Townhome Parcel" means any Parcel or portion thereof upon which is constructed a townhome or other Improvements to be used for residential purposes as such term is used in Section 5709.41(B) of the Ohio Revised Code.

Section 2. City Payments to School District. Unless otherwise agreed to in writing by the City and the School District, with respect to Improvements located within the TIF Area, for each Exemption Year for such Improvements, the City agrees to pay the School District the payments determined under subsection (A) of this Section 2 (referred to herein as the "School Payments"):

(A) School District Portion. The amounts calculated under the following clauses for each Exemption Year:

- (1) In any Exemption Year in which the market value of the Parcels in the TIF Area (excluding any Townhome Parcels) have a market value of equal to or less than the \$44 Million Fair Market Value Threshold, semi-annual payments equal to 25% of the tax revenue that the School District would have received with respect to that Exemption Year on the Exempted Value but for the TIF Exemption, based on the School District's Effective Millage.
- (2) In addition to the School Payments required by subsection (A)(1) hereof (i.e., the 25% payment calculated on the market value less than or equal to the \$44 Million Fair Market Value Threshold), in any Exemption Year in which the market value of the Parcels in the TIF Area (excluding any Townhome Parcels) have a market value of greater than the \$44 Million Fair Market Value Threshold but less than the \$50 Million Fair Market Value Threshold, semi-annual payments equal to 33.33% of the tax revenue that the School District would have received with respect to that Exemption Year on that portion of the Exempted Value attributable to that portion of the market value of the Parcels in the TIF Area (other than any Townhome Parcels) in excess of the \$44 Million Fair Market Value Threshold but for the TIF Exemption, based on the School District's Effective Millage.

- (3) In addition to the School Payments required by subsections (A)(1) and (A)(2) hereof (i.e., the 25% payment calculated on the market value less than or equal to the \$44 Million Fair Market Value Threshold and the 33.33% payment calculated on the market value greater than the \$44 Million Fair Market Value Threshold and less than or equal to the \$50 Million Fair Market Value Threshold), in any Exemption Year in which the market value of the Parcels in the TIF Area (excluding any Townhome Parcels) have a market value equal to or greater than the \$50 Million Fair Market Value Threshold, semi-annual payments equal to 50% of the tax revenue that the School District would have received with respect to that Exemption Year on that portion of the Exempted Value attributable to that portion of the market value of the Parcels in the TIF Area (other than any Townhome Parcels) in excess of the \$50 Million Fair Market Value Threshold but for the TIF Exemption, based on the School District's Effective Millage..
- (4) In addition to the School Payments required by subsections (A)(1), (A)(2) and (A)(3) hereof, semi-annual payments equal to 100% of the of the tax revenue that the School District would have received with respect to that Exemption Year from the New School District Levies, if any.

(B) Timing of Payments. The City shall cause the School Payments to be made semiannually within thirty (30) days after PILOT payments are received by the City from the Treasurer of Cuyahoga County, Ohio (the "Treasurer"). Such payments due to the School District shall be made by the City solely from the PILOTs it receives from the Treasurer. The City may provide that such amounts shall be paid directly by the Treasurer to the School District and shall not be paid to the City.

(C) Bond Issuance Test. Unless the School District consents as hereinafter described, no TIF Debt shall be issued by the City, the Cleveland-Cuyahoga County Port Authority or any such other governmental authority as may be designated by the City unless at the time of authorization of the TIF Debt the projected PILOTs based on the projected market value of the Exempted Property, according to pro forma projections presented to both the City and the School District, which projections shall assume no growth in value, will result in a debt service coverage ratio of not less than 1.25:1 for all of the TIF Debt, including principal and interest then due or coming due in the next succeeding 12-month period and administrative expenses of the City and the Cleveland-Cuyahoga County Port Authority (or any such other governmental authority as may be designated by the City) with respect to the TIF Debt, including but not limited to the fees of any trustee for the TIF Debt (the "Minimum Debt Service Coverage Ratio Requirement"). If the School District consents in writing, TIF Debt may be issued by the City, the Cleveland-Cuyahoga County Port Authority or any other such governmental authority as may be designated by the City even if the Minimum Debt Service Coverage Ratio Requirement is not satisfied. Such consent by the School District is in the sole and absolute discretion of the School District. It is the intention of the parties hereto that there will always be sufficient PILOTs during any given calendar year to pay both the debt service described in Section 2(D)(1)(a) below and all School Payments as required by this Agreement.

(D) Subordination of School Payments.

- (1) The School District acknowledges and agrees that the right of the School District to receive School Payments is subordinate to the payment of the TIF Debt and that the PILOTs will be applied in the following order:

(a) First, to pay debt service charges on the TIF Debt, including principal, interest then due or coming due in the next succeeding 12-month period, early redemption premiums and the replenishment of any required reserve funds for the TIF Debt, and administrative expenses of the City and the Cleveland-Cuyahoga County Port Authority (or any other such governmental authority as may be designated by the City) with respect to the TIF Debt and the PILOTs (including but not limited to the fees of any trustee for the TIF Debt).

(b) Second, to pay to the School District the School Payments currently due under Section 2(A) hereof.

(c) Third, for all other uses as authorized by law and as may be agreed upon by the City and the Developer.

In consideration of the foregoing, the City agrees that, in connection with any TIF Debt, the owners of the Improvements on the Parcels within the TIF Area (excluding any Townhome Parcels) (initially, the Developer) will be required to pay so-called minimum service payments in an amount not less than the amount of PILOTs that would be payable had the market value of the Parcels in the TIF Area been equal to the \$44 Million Fair Market Threshold even though the market value of those Parcels may be less than the \$44 Million Fair Market Threshold (the "Minimum Service Payments"), provided that the payment of Minimum Service Payments by the owners of the Improvements on the Parcels within the TIF Area (excluding any Townhome Parcels) will not entitle the School District to School Payments in amounts greater than the amounts calculated as set forth in Section 2(A) hereof.

- (2) In the event that the PILOTs are not sufficient to pay the School Payments due to the School District in full, any School Payments not paid in any Tax Year shall be a deficiency (each, a "Deficiency"). Notwithstanding anything to the contrary in this Agreement, in the event that one or more Deficiencies shall exist, in any Exemption Year in which the market value of the Parcels in the TIF Area have a market value of greater than the \$44 Million Fair Market Value Threshold, the PILOTs attributable to the Exempted Value in excess of the \$44 Million Fair Market Value Threshold will be used first to pay any Deficiencies due to the School District under this Section 2(D) (beginning with the oldest then-remaining Deficiency) and then, after payment of all such Deficiency amounts, the remainder applied according to Section 2(A) hereof.

(E) Termination of Agreement. After the Director of Finance has determined that (a) all of the payments and reimbursements described in the TIF Ordinance, including those then due and those coming due in the future, have been made or provided for, (b) the TIF Debt has been paid in full or otherwise discharged, and (c) all of the School Payments then due under this Section 2 have been made or provided for, then the exemption from taxation pursuant to the TIF Ordinance and the PILOTs shall end, and this Agreement shall terminate.

Section 3. Review of Records. The School District may from time to time, with reasonable advance notice, review the records of the City relating to its receipt of PILOTs. The City and School District shall work together and communicate as to the calculation of the payment in Section 2, including exchanging information as to the valuation of the Parcels and tax rates.

Section 4. Reconciliation. The City and School District shall annually meet to review, calculate and reconcile payments to the School District and City.

Section 5. School District Consents and Waivers. In consideration of the compensation to be provided to it under this Agreement, the School District hereby:

(A) approves all TIF exemptions that may be granted under the TIF Ordinance in the TIF Area for the number of years and the percentage specified (the "TIF Exemptions");

(B) waives any notice or other requirements set forth in Sections 5709.41, 5709.82, 5709.83 and 5715.27, Revised Code, with respect to the TIF Exemptions;

(C) waives any School District rights pursuant to Section 5715.27, Revised Code; and

(D) waives any defects or irregularities relating to the exemption from taxation of any Improvement, and agrees not to challenge, directly or indirectly, the validity of the exemption from taxation of any Improvement.

Section 6. Application of Ohio Revised Code Section 5709.82. The School District acknowledges and agrees that this Agreement provides for the only compensation to be received by the School District from the City in connection with real property tax exemptions granted pursuant to the TIF Ordinance, there will be no income tax sharing in connection with those exemptions, and the compensation provided for herein is in lieu of any other compensation that may be provided for in Section 5709.82, Revised Code.

Section 7. Amendment. This Agreement may be amended or modified by the parties only in writing, signed by both parties to the Agreement.

Section 8. Entire Agreement. This Agreement is executed pursuant to Sections 5709.41, 5709.82, 5709.83 and 5715.27(D) Revised Code, and sets forth the entire agreement and understanding between the parties as to the subject matter hereof, including without limitation all forms of compensation to be paid by the City to the School District pursuant to those sections, and merges and supersedes all prior discussions, agreements, and undertakings of every kind and nature between the parties with respect to the subject matter of this Agreement. It

is understood by the parties hereto that if all or a portion of the Parcels are ever deemed to be exempt from real property taxes under any other section of the Revised Code, and if as a result, the City does not receive any PILOTs, the City's payment to the School District will terminate.

Section 9. Notices. All payments, certificates and notices which are required to or may be given pursuant to the provisions of this Agreement shall be sent by the United States ordinary mail, postage prepaid, and shall be deemed to have been given or delivered when so mailed to the following addresses:

If to the City: City of Cleveland Heights
40 Severance Circle
Cleveland Heights, OH 44118
Attention: City Manager

If to the School District: Cleveland Heights-University Heights City
School District
2155 Miramar Boulevard
University Heights, OH 44118
Attention: Scott Gainer, CFO/Treasurer

With a copy to: David Seed, Esq.
Brindza, McIntyre & Seed LLP
1111 Superior Avenue, Suite 1025
Cleveland, OH 44114

Any party may change its address for receiving notices and reports by giving written notice of such change to the other parties.

Section 10. Change in Development. The City shall notify the School District if the Development to be constructed changes substantially after the date of this Agreement, and if requested by one of the parties, the two parties agree to meet to discuss the implications of that change.

Section 11. Severability of Provisions. The invalidity of any provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if any invalid portions were omitted.

Section 12. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this Agreement by signing any such counterpart.

Section 13. Extent of Covenants; Binding Effect; No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. Each provision of the Agreement is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under law to take the actions as may be necessary to perform all

or any part of the duty required by a given provision of this Agreement. Each duty of the City and its bodies, officers and employees, undertaken pursuant to the Agreement, is established as a duty with the City and of each such officer, employee or body having authority to perform that duty, specifically and enjoined by law resulting from an office, trust or station within the meaning of Section 2731.01, Revised Code, providing for enforcement by writ of mandamus. No such covenant, stipulation, obligation or agreement shall be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties in their individual capacity.


CITY OF CLEVELAND HEIGHTS, OHIO

CLEVELAND HEIGHTS-UNIVERSITY
HEIGHTS CITY SCHOOL DISTRICT

By: _____
City Manager

By: _____
Treasurer

Approved as to Form and Correctness:

By: _____
City Law Director

4817-9955-3374

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Cleveland Heights under the foregoing Agreement, certifies hereby that any moneys required to meet the obligations of the City during the year 2018 under the foregoing Agreement have been appropriated lawfully for that purpose, and is in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: March 20, 2018


Laurie Sabin

Director of Finance
City of Cleveland Heights, Ohio

FISCAL OFFICER'S CERTIFICATE

The undersigned, Treasurer of the Cleveland Heights-University Heights City School District under the foregoing Agreement, certifies hereby that the moneys required to meet any obligations of the School District during the year 2018 under the foregoing Agreement have been appropriated lawfully for that purpose, and is in the Treasury of the District or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: March 13, 2018



Treasurer
Cleveland Heights City School District, Ohio

EXHIBIT A
TIF AREA PARCELS
(Identified by Parcel Number)

685-18-008

685-18-009

685-18-010

685-18-011

685-18-012

685-18-013

685-18- 016

685-18-018

685-18-019

SCHEDULE I
SCHOOL DISTRICT'S CURRENT TAX LEVIES

See attached DTE 515 dated 12/8/17

TE050008
12/08/17 14:23:00
DTE515
PAGE 39

STATE OF OHIO

COMPOSITE REDUCTION FACTOR REPORT FOR THE TAX YEAR 2017

COUNTY 18 CUYAHOGA

TAXING DISTRICT NUMBER: 00180
TAXING DISTRICT: CLEV HI-CY C HI/UNIV HT CSD

LEVY YEAR / DESCRIPTION ROLL	TAX	-----RES/AG CLASS-----			-----NON-RES/AG (OTHER)-----		
		REDUCTION	COMPOSITE	EFFECTIVE	REDUCTION	COMPOSITE	EFFECTIVE
BACK	RATE	FACTOR	FACTOR	RATE	FACTOR	FACTOR	RATE
CUYAHOGA COUNTY							
UNIT # 10180		XXXXXXX		.50000	XXXXXXX		.50000
GENERAL FUND	0.500	XXXXXXX		.95000	XXXXXXX		.95000
DEBT SERVICE	0.950	XXXXXXX		3.857934	0.003488		3.886396
2005 MENTAL HEALTH & RETARDATION	3.900	0.010786		4.748227	0.003488		4.783257
2008 HEALTH AND WELFARE	4.800	0.010786		3.857934	0.003488		3.886396
2013 HEALTH SERVICES	3.900	0.010786		13.914095		0.003129	14.006049
SUB TOTAL	14.050		0.009673				
CLEVELAND HTS-UNIVERSITY HTS C							
UNIT # 21080		XXXXXXX		4.450000	XXXXXXX		4.450000
GENERAL FUND	4.450	XXXXXXX		10.638239	0.591731		21.250401
1976 CURRENT EXPENSE	52.050	0.795615		2.582325	0.502621		3.431915
1980 CURRENT EXPENSE	6.900	0.625750		2.576952	0.439338		3.363972
1983 CURRENT EXPENSE	6.000	0.570508		1.932795	0.437408		2.531664
1985 CURRENT EXPENSE	4.500	0.570490		2.709630	0.384468		3.693192
1986 CURRENT EXPENSE	6.000	0.548395		4.290551	0.384276		5.849378
1988 CURRENT EXPENSE	9.500	0.548363		5.845858	0.182853		7.272608
1993 CURRENT EXPENSE	8.900	0.343162		6.708339	0.140657		7.648152
1996 CURRENT EXPENSE	8.900	0.246254		7.589663	0.081657		8.632424
2000 CURRENT EXPENSE	9.400	0.192589		.600000	XXXXXXX		.600000
2001 BOND/LIBRARY (\$9,500,000)	0.600	XXXXXXX		3.473093	0.000000		3.800000
2002 PERMANENT IMPROVEMENT-ONGOING	3.800	0.086028		8.500000	0.000000		8.500000
2004 CURRENT EXPENSE	8.500	0.000000		7.200000	0.000000		7.200000
2007 CURRENT EXPENSE	7.200	0.000000		6.900000	0.000000		6.900000
2011 CURRENT EXPENSE	6.900	0.000000		6.990000	XXXXXXX		6.990000
2013 BOND (\$134,800,000)	6.990	XXXXXXX		5.500000	0.000000		5.500000
2016 CURRENT EXPENSE	5.500	0.000000		88.487445		0.310567	107.613706
SUB TOTAL	156.090		0.433100				
CLEVELAND HTS CITY							
UNIT # 51780		XXXXXXX		2.220000	XXXXXXX		2.220000
GENERAL FUND	2.220	XXXXXXX		1.500000	XXXXXXX		1.500000
SINKING FUND AND BOND	1.500	XXXXXXX		6.480000	XXXXXXX		6.480000
1976 CHARTER/CURRENT EXPENSE	6.480	XXXXXXX		.300000	XXXXXXX		.300000
1986 CHARTER/FIREMAN'S FUND	0.300	XXXXXXX		.300000	XXXXXXX		.300000
1986 CHARTER/POLICE PENSION	0.300	XXXXXXX		.700000	XXXXXXX		.700000
2004 CHARTER/RECREATION IMPROVEMENT	0.700	XXXXXXX		.920000	XXXXXXX		.920000
2014 CHARTER/CURRENT EXP(HB59 INCR)	0.920	XXXXXXX		12.420000		0.000000	12.420000
SUB TOTAL	12.420		0.000000				

