

By Council Member Hart

An Ordinance declaring certain improvements to real property located in the City of Cleveland Heights, Ohio to be a public purpose; declaring such improvements to be exempt from real property taxation; making provision for the collection of service payments in lieu of taxes; establishing an urban redevelopment tax increment equivalent fund for the deposit of such service payments; confirming a compensation agreement with the Cleveland Heights-University Heights City School District; providing related authorizations pursuant to Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43; rescinding Ordinance No. 116-2019 adopted on December 2, 2019; ~~rescinding~~ and Ordinance No. 16-2018 adopted on March 19, 2018, each except as stated herein; and declaring an emergency.

**WHEREAS**, the City of Cleveland Heights (the “City”) owns certain parcels of real property located at the intersection of Cedar Road and Euclid Heights Boulevard and referred to as the “Top of the Hill Property,” which parcels are described 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 herein as the “Parcels”); and

**WHEREAS**, Ohio Revised Code (“R.C.”) Section 5709.41 provides that this Council may, under certain circumstances, declare Improvements (as defined in R.C. Section 5709.41) to the Parcels to be a public purpose, thereby exempting those Improvements from real property taxation; and

**WHEREAS**, pursuant to R.C. Section 5709.41, said exemption may not exceed 75% of such Improvements for up to ten (10) years without the approval of the board of education of the city, local or exempted village school district within the territory in which the Parcels are located; and

**WHEREAS**, the City has entered into a Development Agreement (the “Development Agreement”) with F & C Development, Inc. pursuant to which a development entity established by F & C Development, Inc. (such entity, “the Developer”) will lease the Parcels from the City and improve the Parcels by building thereon a mixed-use development which will include construction of (a) approximately 261 market-rate apartments, (b) approximately 11,400 square feet of first floor restaurant, retail and commercial space, (c) a public parking garage resulting in 550 parking spaces, (d) public gathering and green spaces, and (e) all sidewalks, driveways, access ways and utility connections (all of the foregoing being referred to herein collectively as the “Development”); and

**WHEREAS**, on March 19, 2018, this Council passed Ordinance No. 16-2018 (“Ordinance No. 16-2018”) authorizing a Compensation Agreement dated March 20, 2018 (“Base Compensation Agreement”) with the Board of Education of the Cleveland Heights-University Heights City School District (“School District”), declaring certain Improvements to certain parcels included in the Top of the Hill Property to be a public purpose, declaring such

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Improvements to be exempt from real property taxation, and making provision for the collection of service payments in lieu of the exempted real property taxes; and

**WHEREAS**, on December 2, 2019, this Council passed Ordinance No. 116-2019 on request of the Developer and for the purposes stated therein (“Ordinance No. 116-2019” and, together with Ordinance No. 16-2018, the “Prior Ordinances”), rescinding Ordinance No. 16-2018 (except to the extent expressly saved in Section 1 of Ordinance No. 116-2019), confirming the Base Compensation Agreement and approving an Addendum thereto, declaring Improvements to certain parcels included in the Top of the Hill Property to be a public purpose under R.C. Section 5709.41, declaring such Improvements to be exempt from real property taxation for a period of thirty (30) years commencing with tax year 2021 (the “Exemption Period”), and making provision for the collection of service payments in lieu of the exempted real property taxes; and

**WHEREAS**, the financing for the Development, including the issuance of tax increment financing revenue bonds of the City (“TIF Bonds”), secured by a pledge of the anticipated service payments in lieu of exempted real property taxes to be paid by the owners of the Parcels included in the Development (“Service Payments,” as further defined below) is being finalized, and in conjunction with such TIF Bond financing, the City desires to enact this Ordinance to ensure that the Ohio Department of Taxation will, upon application for the applicable real property tax exemptions, recognize and approve an Exemption Period of thirty (30) years commencing with tax year 2021 for each of the Parcels included in the Development; and

**WHEREAS**, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide that the owner of the Development (initially, the Developer) be required to make Service Payments with respect to the Improvements to the Parcels pursuant to R.C. Section 5709.42; and

**WHEREAS**, the City and School District have entered into the Base Compensation Agreement and, on request of the City, ~~the School District has authorized~~ an Addendum to such Base Compensation Agreement (the “Addendum”; the Base Compensation Agreement, as amended and supplemented by the Addendum, is referred to herein as the “Compensation Agreement<sup>2</sup>”); <sup>2</sup>) to evidence that (1) the description of the Development ~~has had~~ been modified since the date of the Base Compensation Agreement, and (2) the first year of the Exemption Period described in such Base Compensation Agreement may be tax year 2021; and

**WHEREAS**, under the Compensation Agreement, the Board of Education of the School District waived any notice periods prescribed in R.C. Section 5709.41 and 5709.83, approved a 100% exemption for the Improvements to the Parcels under R.C. Section 5709.41 for thirty (30) years, and waived any other rights to compensation related to the grant of that exemption; and

**WHEREAS**, R.C. Section 5709.85(A) requires the legislative authority of any municipal corporation granting an exemption from taxation under R.C. Section 5709.41 to create a tax incentive review council (“TIRC”), which TIRC is required to perform an annual review of exemptions from taxation granted pursuant to R.C. Section 5709.41, and the City has previously created a TIRC;

**BE IT ORDAINED** by the Council of the City of Cleveland Heights, that:

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SECTION 1. The Prior Ordinances are hereby rescinded in their entirety; provided, however, that the authority granted in Section 5 of Ordinance No. 16-2018 (to enter into the Base Compensation Agreement), as saved, adopted, confirmed, ratified and incorporated in Section 1 of Ordinance No. ~~116-2019~~, is 116-2019, and the authority granted in Section 6 of Ordinance No. 116-2019 (to execute and deliver the Addendum) are hereby saved, adopted, confirmed, ratified and incorporated herein, effective as of the effective date of the respective Prior Ordinance ~~No. 16-2018~~, and the execution and delivery of the Base Compensation Agreement and Addendum by the City pursuant to that Section 5 authority is hereby approved, adopted, ratified and confirmed as fully as if ~~either~~ such sections of the Prior Ordinances had remained in effect.

SECTION 2. The Improvements (other than those Improvements, if any, to be used for residential purposes as such term is used in R.C. Section 5709.41(B)) to the Parcels on which the Developer will construct the Development are hereby declared to be a public purpose for purposes of R.C. Section 5709.41. One hundred percent (100%) of the increase in the assessed value of the Parcels (which increase in assessed value is an “Improvement” as defined in R.C. Section 5709.41) shall be exempt from real property taxation for a period of thirty (30) years commencing with tax year 2021.

SECTION 3. As provided in R.C. Section 5709.42, the owner of the Development (initially, the Developer) is hereby required to make annual service payments for a period of thirty (30) years in lieu of taxes to the County Fiscal Officer on or before the final dates for payment of real property taxes. Each such payment (including interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable if the Improvements were not exempt from taxation (with the payments in lieu of taxes, including any penalties, interest and rollback payments, collectively referred to as “PILOTS”). The County Fiscal Officer shall remit all PILOTS to the City. In addition to the payment of PILOTS described herein, in accordance with the Compensation Agreement, in connection with any TIF Debt (as defined in the Compensation Agreement), the owner(s) of the Development may also be required to make minimum service payments (the “Minimum Service Payments” and, together with the PILOTS, the “Service Payments”) as described in the Compensation Agreement.

This Council hereby authorizes the City Manager or designee (the “City Manager”) or an officer of the City who succeeds to the functions, duties or responsibilities of the City Manager pursuant to or by operation of law or who is fully authorized to perform such functions or duties (an “Authorized Officer”) to provide such information and certifications and execute and deliver, or accept delivery of such instruments as are necessary and incidental to collect those PILOTS from the County Fiscal Officer or collect the Minimum Service Payments from the Developer and to make such arrangements as are necessary and proper for payment of the portion of PILOTS and/or Minimum Service Payments dedicated to TIF Debt to be paid, if appropriate, to the trustee for any TIF Debt. Any late payments of PILOTS shall be subject to penalty and bear interest at the then current rate established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time.

No Owner of any portion of the Development shall, under any circumstances, be required in any tax year to both pay PILOTS with respect to an Improvement and reimburse local taxing authorities for the amount of real property taxes that would have been payable to local taxing

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authorities had the Improvements not been exempted from taxation to the extent set forth in this Ordinance.

SECTION 4. The City Manager or an Authorized Officer shall make, or cause to be made, payments to the School District as described in the Compensation Agreement.

SECTION 5. This Council hereby establishes pursuant to and in accordance with the provisions of R.C. Section 5709.43, the Top of the Hill Urban Redevelopment Tax Increment Equivalent Fund (the "Fund"), into which shall be deposited the PILOTS distributed to the City with respect to the Improvements on the Parcels by or on behalf of the County Fiscal Officer as provided in Section 5709.42 of the Revised Code. One hundred percent (100%) of the moneys collected shall be deposited in the Fund and shall be retained by the City and used for any or all of the following purposes:

(i) Payment of all costs associated with the construction of the Development, including costs incurred by the City or other governmental entity, and including debt service and related costs or obligations or loans issued by the City, the State of Ohio or other governmental entity;

(ii) Construction, operation and maintenance of public improvements and publicly-owned facilities on the Parcels, including, but not limited to, streets, storm and sanitary sewers, water treatment facilities and water transmission lines, sidewalks, curbs, street trees and furniture, transitway improvements, off-street parking facilities, street lighting and signalization, pedestrian walkways, and public parks and plazas, whether owned by the City or other governmental entity by agreement with the City, and associated land acquisition and demolition, planning and engineering costs;

(iii) Land and building acquisition, demolition, site preparation, and relocation expenses related to the Development;

(iv) Compensating the School District pursuant to the Compensation Agreement; and

(v) Any other expenditures made with respect to the Parcels in accordance with the Development Agreement or other agreements entered into in connection with development of the Parcels provided such expenditures are otherwise permitted by law.

The Fund shall remain in existence so long as such PILOTS are collected, after which said Fund may be dissolved in accordance with said Section 5709.43 and transferred to the General Fund or any other fund as permitted by applicable law.

SECTION 6. The Compensation Agreement, including the Base Compensation Agreement and the Addendum, each in the form attached to this Ordinance as Exhibit B, is hereby authorized, approved and ratified, with changes or amendments thereto, not inconsistent with this Ordinance and not substantially adverse to the City, as determined by the Director of Law and which are approved by the City Manager or an Authorized Officer. ~~The City Manager or an Authorized Officer, for and in the name of the City, is hereby authorized to execute the Addendum to the Compensation Agreement.~~ The approval of any such changes or amendments by the City Manager or an Authorized Officer, and the character of ~~the~~those changes or

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amendments as not being inconsistent with this Ordinance and not being materially adverse to the City, shall be evidenced conclusively by the execution thereof by the City Manager or an Authorized Officer with the concurrence of the Director of Law. This Council further hereby authorizes and directs the City Manager or an Authorized Officer to make such arrangements as are necessary and proper for payments to be made to the School District pursuant to the Compensation Agreement.

SECTION 7. The City Manager or an Authorized Officer is authorized and directed to sign any other documents, instruments or certificates as are necessary or appropriate to consummate or implement the actions described herein, or contemplated by this Ordinance, including an agreement or agreements with the Developer to provide for the payment of PILOTS and Minimum Service Payments described in this Ordinance and in the Compensation Agreement.

SECTION 8. Pursuant to R.C, Section 5709.41, the City Manager is hereby directed to deliver a copy of this Ordinance to the Director of Development Services of the State within fifteen days after its passage. On or before March 31 of each year that the exemption set forth in Section 3 hereof remains in effect, the City Manager or an Authorized Officer shall prepare and submit to the Director of Development Services of the State the status report required under R.C. Section 5709.41(E).

SECTION 9. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements.

SECTION 10. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 11. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to implement the financing for the Development, including the issuance of the TIF Bonds, as soon as possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON STEIN, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

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PASSED: February 18, 2020

**EXHIBIT A**

**DESCRIPTION OF PARCELS INCLUDED IN TIF AREA**

(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

**EXHIBIT B**

**COMPENSATION AGREEMENT AND FORM OF ADDENDUM**

**(See Attached)**