

ORDINANCE NO. 2020-01 (previously 2019-78)

AN ORDINANCE AMENDING ORDINANCE NO. 2001-28; DECLARING IMPROVEMENTS TO CERTAIN REAL PROPERTY LOCATED IN CITY OF UNIVERSITY HEIGHTS TO BE A PUBLIC PURPOSE IN CONNECTION WITH THE ESTABLISHMENT OF TAX INCREMENT FINANCING UNDER OHIO REVISED CODE SECTION 5709.41; DECLARING SUCH IMPROVEMENTS TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING THE OWNERS THEREOF TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION OF A TAX INCREMENT FINANCING AGREEMENT WITH THE DEVELOPER; AUTHORIZING THE EXECUTION OF A COMPENSATION AGREEMENT WITH THE CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS CITY SCHOOL DISTRICT; ESTABLISHING AN URBAN REDEVELOPMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SUCH SERVICE PAYMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, the development and redevelopment of commercial properties in the City of University Heights, Ohio (the "City") will benefit the City and its residents by creating jobs, enlarging the property tax base, enhancing income tax revenues, eliminating blight and stimulating collateral development in the City; and

WHEREAS, the City provided a tax increment financing exemption on certain parcels (the "Original TIF Parcels") pursuant to Ordinance No. 2001-28 passed April 16, 2001 to provide revenue to pay debt service on the Cleveland-Cuyahoga County Port Authority Special Assessment/Tax Increment Revenue Bonds, Series 2001 (University Heights, Ohio – Public Parking Garage Project) (the "Original Bonds"), originally issued in the aggregate principal amount of \$40,600,000 and currently outstanding in the principal amount of \$33,780,000, in order to finance the construction of a public parking garage (the "Garage") located on and serving a development located at the intersection of Cedar Road and Warrensville Center Road known as University Square (the "Original Development"); and

WHEREAS, the Original Development was subsequently transferred by sheriff's auction to an owner who failed to make tax increment financing payments, causing the Original Bonds to go into default and portions of the Original Development to fall into disrepair; and

WHEREAS, UMB Bank, N.A. as trustee (the "Trustee") for the Original Bonds entered into a deed in lieu of foreclosure agreement with such owner with respect to the property located in the City currently identified as Permanent Parcel No. 721-01-001 (the "Redevelopment TIF Parcel"), the property currently identified as Permanent Parcel No. 721-01-003 on which the Garage was constructed (the "Garage Parcel") and the property currently identified as Permanent Parcel No. 721-01-147 ("Outlot Parcel"); and

WHEREAS, ownership of the Garage Parcel is now intended to be transferred to the Cleveland-Cuyahoga County Port Authority (the "Cleveland Port") which currently owns the improvements constituting the Garage; and

WHEREAS, KL Holdings, LLC, an Ohio limited liability company (or such other entity as shall enter into or be assigned the anticipated purchase agreement with an affiliate of the Trustee for the acquisition of the Redevelopment TIF Parcel and Outlot Parcel and its successors and assigns (referred to herein as the "Developer")) has proposed a plan to redevelop the Redevelopment TIF Parcel; and

WHEREAS, in connection with such redevelopment and at the direction of the Trustee, the Original Bonds will be refunded and restructured with refunding bonds to be issued by the Cleveland Port (the "Series 2020 Refunding Bonds"), significantly reducing the outstanding principal amount thereof; and

WHEREAS, pursuant to Ohio Revised Code Section 5709.41, .42, and .43 (together with related provisions of the Ohio Revised Code, the "TIF Act"), the City may, among other

things, (i) declare the increase in assessed value of real property located in the City to be a public purpose, thereby exempting such increase from real property taxation for a period of time; (ii) provide for the making of service payments in lieu of taxes by the owners of such real property; and (iii) provide for compensation payments to the affected school district out of such service payments in lieu of taxes; and

WHEREAS, pursuant to the TIF Act, the City may utilize tax increment financing to declare the increase in the assessed value of any parcel of real property to be a public purpose and to exempt such increased value from real property taxation, in order to provide a mechanism to refinance the Original Bonds and finance the redevelopment of the Redevelopment TIF Parcel; and

WHEREAS, the City previously entered into the chain of title for the Redevelopment TIF Parcel, as required by the TIF Act; and

WHEREAS, on December 9, 2019, the Board of Education of the Cleveland Heights-University Heights City School District (the "School District"), passed Resolution No. 19-12-141 (the "School Board Resolution") that, among other things, waived the notice requirements of the TIF Act and of Sections 5709.82, 5709.83 and 5715.27 of the Ohio Revised Code, and approved the exemption for the Improvements (as defined hereinbelow) to the Redevelopment TIF Parcel on the condition that the City and the School District enter into the School Compensation Agreement (as defined hereinbelow) to compensate the School District for a portion of the real property taxes that would have been received by the School District with respect to the Improvements, but for the exemption for the Improvements granted pursuant to this Ordinance;

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

SECTION 1. Amendment of Ordinance No. 2001-28. The City's Ordinance No. 2001-28 is hereby amended to remove the property now known as Permanent Parcel No. 721-01-001 (the "Redevelopment TIF Parcel") and Permanent Parcel No. 721-01-003 from the tax increment financing exemption provided therein, and the City Law Director is hereby directed to notify the Ohio Development Services Agency that such exemption has been terminated on such parcels as of the effective date of this Ordinance. It is the intention of the City that the exemption on all remaining properties subject to Ordinance No. 2001-28 shall continue as set forth therein and shall not be impacted by the provisions of this Ordinance.

SECTION 2. Parcels of Real Property. The Redevelopment TIF Parcel as removed from Ordinance No. 2001-28, which is now subject to the exemption granted by this Ordinance, is identified and depicted in Exhibit A attached hereto and made a part hereof. In the event of a conflict between the outline of the Redevelopment TIF Parcel shown in the map set forth in such exhibit and the legal description of the Redevelopment TIF Parcel, the legal description shall control.

SECTION 3. Tax Exemption. Pursuant to and in accordance with the TIF Act, this Council hereby finds and determines that 100% of the increase in assessed value of the Redevelopment TIF Parcel (which increase in assessed value is also hereinafter referred to as the "Improvement" as defined in the TIF Act) is hereby declared to be a public purpose and shall be exempt from taxation for a period commencing on the date of this Ordinance and ending on the earlier of (A) thirty (30) years after such commencement or (B) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Act.

SECTION 4. Payment of Service Payments. As provided in Ohio Revised Code Section 5709.42, the owner of the Redevelopment TIF Parcel is hereby required to, and shall make, service payments in lieu of taxes with respect to the Improvements allocable thereto to the County Treasurer of Cuyahoga County, Ohio (the "County Treasurer") on or before the final dates for payment of real property taxes. Each service payment in lieu of taxes 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 against that Parcel if an exemption from taxation not been granted, and otherwise shall be in accordance with the requirements of the TIF Act. Any late payments shall be subject to penalty and bear interest at the then current rate established under Ohio Revised Code Sections 323.121(B)(1) and 5703.47, as the same may

be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the payment of penalties and interest are collectively referred to herein with the service payments in lieu of taxes as the "Service Payments"). The Service Payments shall be allocated and distributed in accordance with Section 5 of this Ordinance and the terms and conditions of any TIF Agreement (as defined below) or any Cooperative Agreement executed in connection with the Series 2020 Refunding Bonds or Development Agreement between the City and Developer.

The Mayor is hereby authorized and directed to execute on behalf of the City a Tax Increment Financing Agreement, between the City and the Developer (the "TIF Agreement"), providing for, among other things, the payment and collection of the Service Payments and the funding of the costs of the redevelopment of the Redevelopment TIF Parcel (including debt service and other costs associated with the Series 2020 Refunding Bonds) from the Service Payments, which agreement shall be in ~~a form~~ the form attached as Exhibit B to this Ordinance with such changes, not substantially inconsistent with the terms of this Ordinance, as approved by the Mayor and the Director of Law. The TIF Agreement shall provide that the payment of Service Payments, and other covenants contained therein, shall run with the land for the benefit of and be enforceable by, the City, its successors and assigns, against Developer and its successors and assigns (any owner of any of the Parcels, including the Developer, being referred to herein as an "Owner"). The approval of the TIF Agreement, and that any changes are not substantially inconsistent with this Ordinance, shall be evidenced conclusively by the execution of the TIF Agreement by the Mayor and the Director of Law.

SECTION 5. Creation and Maintenance of TIF Fund. Pursuant to the TIF Act, there is hereby established the "University Square 2020 Urban Redevelopment Tax Increment Equivalent Fund" (the "TIF Fund"), which fund may be deemed to be any TIF Fund currently maintained by the City for the TIF Redevelopment Parcel. The TIF Fund shall be maintained or continue to be maintained in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 5 hereof. Those Service Payments, and any other payments with respect of each Original TIF Parcel (including the Redevelopment TIF Parcel), shall be used, in the following order, for (i) payment of compensation to the School District as described in the Compensation Agreement, (ii) payment of all Trustee, Cleveland Port and other fees to be paid from the TIF Fund, (iii) payment of principal and interest, and premium, if any, on the Series 2020 Refunding Bonds, (iv) replenishment of the debt service reserve fund for the Series 2020 Refunding Bonds, (v) reimbursement of capital expenditures with respect to the redevelopment and maintenance of the TIF Redevelopment Parcel and Garage and all related costs incurred and/or paid by the Developer, and (vi) any other purposes authorized by the TIF Act. The TIF Fund shall remain in existence so long as such Service Payments are collected and used for the aforesaid purposes, after which time the TIF Fund shall be dissolved and any incidental surplus moneys remaining therein shall be transferred to the City's General Fund, all in accordance with Ohio Revised Code Section 5709.43.

SECTION 6. Distributions. Pursuant to Ohio Revised Code Section 5709.42, the County Treasurer shall remit to the City all Service Payments paid in respect of the Improvements and received by the County Treasurer for further deposit into the TIF Fund. The City will disburse monies on deposit in the TIF Fund in the amounts and order of priority as is consistent with Section 5 of this Ordinance, the TIF Agreement, the School Compensation Agreement (as defined hereinbelow), and a separate agreement or agreements (the "Cooperative Agreement" and/or the "Development Agreement") by and among the City, the Developer, and the Cleveland-Cuyahoga County Port Authority (the "Port"), as the issuer of the Series 2020 Refunding Bonds, which Cooperative Agreement and/or Development Agreement shall be authorized by separate legislation to be submitted to this Council.

SECTION 7. School Compensation Agreement. The Mayor is hereby authorized and directed to execute on behalf of the City a School Compensation Agreement (the "School Compensation Agreement"), between the City and the School District, which agreement shall be in the form attached as Exhibit B-C to this Ordinance with such changes, not substantially inconsistent with the terms of this Ordinance and the School Board Resolution, as approved by the Mayor. The approval of the School Compensation Agreement, and that any changes are not substantially inconsistent with this Ordinance, shall be evidenced conclusively by the execution of the School Compensation Agreement by the Mayor.

SECTION 8. Further Authorizations. This Council further hereby authorizes and directs the Mayor or his designee to take such action and to execute and deliver, on behalf of

the Council, such additional instruments, agreements, certificates, and other documents as may be in their discretion necessary or appropriate in order to carry out the intent of this Ordinance. Such documents shall be in the form not substantially inconsistent with the terms of this Ordinance, as the Mayor or his designee in their discretion shall deem necessary or appropriate.

SECTION 9. Non-Discriminatory Hiring Policy. In accordance with Ohio Revised Code Section 5709.832, the City hereby directs that no Owner shall deny any individual employment based on considerations of race, religion, sex, disability, color, national origin or ancestry. In addition, no Owner shall deny any individual employment based on considerations of sexual orientation, gender identity and expression, age, or veteran status. The TIF Agreement shall provide that the provisions of this Section 9 shall be covenants running with the land.

SECTION 10. Notification of Adoption. Pursuant to Ohio Revised Code Section 5709.41(E), the Clerk is hereby directed to deliver a copy of this Ordinance to the Director of the Development Services Agency of the State of Ohio 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 Clerk or other authorized officer of this City shall prepare and submit to the Director of the Development Services Agency of the State of Ohio the status report required under Section 5709.41(E) of the Ohio Revised Code.


SECTION 11. Open Meeting. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were passed 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 Section 121.22 of the Ohio Revised Code.

SECTION 12. Emergency Measure. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of this City and for the further reasons that this Ordinance is required to be immediately effective to allow for the completion of the redevelopment of the Redevelopment TIF Parcel and the refunding and restructuring of the Original Bonds, which are necessary to provide the desired redevelopment in the City; wherefore, this Ordinance shall be in full force and effect from and immediately after the passage and approval by the Mayor.

CITY OF UNIVERSITY HEIGHTS, OHIO

MICHAEL DYLAN BRENNAN, MAYOR

PASSED: 01/06/2020

ATTEST:

KELLY M. THOMAS, CLERK OF COUNCIL

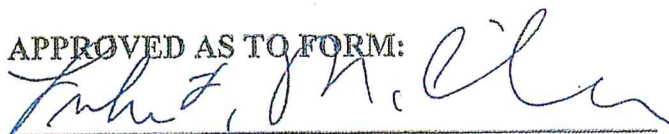
APPROVED AS TO FORM:

LUKE F. MCCONVILLE, LAW DIRECTOR

EXHIBIT A

DESCRIPTION OF THE REDEVELOPMENT TIF PARCEL

[Map and legal description follow on the next page]

EXHIBIT B

FORM OF TAX INCREMENT FINANCING AGREEMENT

THIS TAX INCREMENT FINANCING AGREEMENT (the "Agreement") is entered into as of this ____ day of _____, 2020 by and between **CITY OF UNIVERSITY HEIGHTS**, an Ohio municipal corporation (hereinafter referred to as the "City"), and _____ **LLC**, an Ohio limited liability company (hereinafter referred to as the "Developer"), under the following circumstances:

A. The Developer intends to redevelop a certain parcel of real property located within the boundaries of the City and currently identified as PPN 721-01-001, as further described in Attachment A attached hereto and made a part hereof (the "Redevelopment TIF Parcel") as (a) market-rate apartments, and related improvements, ~~currently anticipated to be constructed at a total cost in excess of \$20,000,000,~~ together with (b) a possible future additional development on a current improved site facing Warrensville Center Road on the Redevelopment TIF Parcel which has not yet been finalized ~~with an estimated total cost in excess of \$10,000,000~~ (collectively, the "Development"). The Development will benefit the City and its residents by creating jobs, enlarging the property tax base, enhancing income tax revenues and stimulating collateral development in the City.

B. Pursuant to Ohio Revised Code ("O.R.C.") Sections 5709.41, .42, and .43 (together with related provisions of the Ohio Revised Code, the "TIF Act") and Ordinance No. 20__ - __ adopted by the City Council on _____, 20__ approving, inter alia, the TIF Exemption, this Agreement, and the Compensation Agreement (the "TIF Ordinance"), the City has, among other actions: (i) established a tax increment financing exemption with respect to the Redevelopment TIF Parcel (the "TIF Exemption"); (ii) declared 100% of the increase in assessed value of the Redevelopment TIF Parcel (which increase in assessed value is also hereinafter referred to as the "Improvement" as defined in the TIF Act) following the effective date of the TIF Ordinance to be a public purpose and exempt from real property taxation for the duration of the TIF Exemption; (iii) provided for service payments in lieu of taxes (the "Service Payments") as obligations running with the land for the duration of the TIF Exemption payable with respect to the Redevelopment TIF Parcel; (iv) authorized the payment of certain costs from the Service Payments; and (v) authorized this Agreement.

C. The Cleveland Heights-University Heights City School District has approved the TIF Exemption and has authorized the execution of the School Compensation Agreement between the City and the School District dated _____, 20__ (the "Compensation Agreement"). The Compensation Agreement provides, among other things, that the City shall pay to the School District, solely out of Service Payments, within 30 days following receipt by the City of each semiannual real property tax settlement, (i) semi-annual payments of \$50,000 and (ii) an amount equal to 100% of the School District Foregone Tax Revenue solely associated with any New School Levies, each as defined in the Compensation Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein contained, the sufficiency of which are acknowledged by the parties hereto, the City and the Developer hereby agree as follows:

SECTION 1. TAX EXEMPTION; OBLIGATION TO MAKE SERVICE PAYMENTS. In accordance with O.R.C. Section 5709.41, the parties hereby agree that the TIF Exemption is a 100% exemption from real property taxation for the Improvements as to the Redevelopment TIF Parcel of the increase in assessed value of the Redevelopment TIF Parcel for a period commencing on the date of the

TIF Ordinance and ending on the earlier of (A) thirty (30) years after such commencement or (B) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Act (the "Exemption Period"). The Developer and any other owners of any portion of the Redevelopment TIF Parcel (each, an "Owner") ~~as such~~ as such Redevelopment TIF Parcel may hereafter be split or consolidated (collectively, the "Parcels") shall make Service Payments for each year of the Exemption Period in an amount equal to the real property taxes that would have been payable with respect to the Improvement owned by that Owner had an exemption with respect to such Improvement not been approved pursuant to O.R.C. Section 5709.41. Each Service Payment to be made under this Agreement shall be made on a semi-annual basis in an amount equal to one-half (1/2) of the annual property tax amount that would have been payable had the TIF Exemption not been granted. The Service Payments shall be due and payable on the date determined by the Treasurer of Cuyahoga County, Ohio (the "County Treasurer") as the date when property taxes are due (such date being hereinafter referred to as a "Service Payment Date") until expiration of the TIF Exemption.

In the event that any Service Payment or any installment thereof is not paid when due by any Owner on any Service Payment Date, to the extent that the County does not impose a late fee or delinquency charge, the City may impose and collect a late payment charge, payable to the City, in the amount of the charges for late payment of real property taxes, including penalty and interest, which would have been paid pursuant to O.R.C. Section 323.121 on the delinquent amount. Any such late fees collected by the City shall be deposited into and constitute a part of the TIF Fund established by or designated in the TIF Resolution for application in accordance with Section 9 hereof.

Each Owner shall only be responsible for making Service Payments that become due and payable during the period of that Owner's ownership of all or any portion of the Redevelopment TIF Parcel and only with respect to the portion of the Redevelopment TIF Parcel owned by the Owner. Upon satisfaction of the obligations under this Agreement and termination of the obligations of the Owner to make the Service Payments, the City shall, upon the request of an Owner, execute an instrument in recordable form evidencing such termination as to such Owner only, without invalidating or terminating the obligations hereunder as to any successor Owner. The parties acknowledge that the provisions of O.R.C. Section 5709.91, which specify that the Service Payments shall be treated in the same manner as taxes for all purposes of the lien described in O.R.C. Section 323.11, including but not limited to, the priority of the lien and the collection of Service Payments, shall apply to this Agreement. The City and each Owner shall perform such acts as are reasonably necessary or appropriate to effect, claim, preserve and maintain the exemptions 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.

No Owner shall, under any circumstances, be required to pay both real property taxes with respect to an Improvement and Service Payments for any tax year with respect to that Improvement, whether pursuant to O.R.C. Section 5709.41, the TIF Resolution, this Agreement or any other applicable law.

SECTION 2. COVENANTS TO RUN WITH THE LAND.

It is intended and agreed, and it shall be so provided by the Developer and each subsequent Owner in any future deed conveying the Redevelopment TIF Parcel or any part thereof, that the covenants and agreements provided in Section 1 shall be covenants running with the land and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit and in favor of and enforceable by the City whether or not this Agreement remains in effect or whether or not such provision is included by the Developer in any succeeding deed to subsequent Owners. It is further intended and agreed that

these agreements and covenants shall remain in effect for the full period of the TIF Exemption permitted in accordance with the requirements of the TIF Act and the TIF Resolution enacted pursuant thereto, and that any failure to so provide this covenant in any future deed conveying the Redevelopment TIF Parcel or any part thereof shall not in any manner alter or diminish the covenant granted hereby.

SECTION 3. ADDITIONAL OBLIGATIONS.

A. Should any Owner default hereunder, such Owner shall pay in addition to Service Payments such amount as is required to reimburse the City or the Developer or their respective assigns for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) incurred by the City or the Developer or their respective assigns to enforce the provisions of this Agreement.

B. It is intended that the Developer shall cause the construction of the Development located on the Redevelopment TIF Parcel. Once this Agreement becomes effective in the manner provided herein, the parcel comprising the Redevelopment TIF Parcel or any portion thereof shall not be subdivided without the express written consent of the City, which decision to expressly consent in writing to the subdivision of the Redevelopment TIF Parcel shall be granted by the City upon completion of any subdivision in accordance with the requirements of the City and Cuyahoga County.

C. Promptly upon the effective date of this Agreement, the Developer shall, at the Developer's sole cost and expense, cause this Agreement to be recorded in the Cuyahoga County, Ohio real property records, it being understood and agreed that the lien of this Agreement shall, in accordance with O.R.C. Sections 323.11 and 5709.91, be prior to any mortgage, assignment, lease or other conveyance of any part of or interest in the Redevelopment TIF Parcel, and prior to any security instrument encumbering all or any part of or interest in the Improvement; provided, however, that nothing contained in this Agreement shall be construed to permit acceleration of Service Payments beyond the current year that such Service Payments are due. The Developer shall cause any and all holders of mortgages or other liens existing on the Redevelopment TIF Parcel, if any, as of the time of recording of this Agreement, to subordinate such liens to this Agreement and such covenants running with the land provided in this Agreement. In addition, during the term of this Agreement, the Developer shall cause all instruments of conveyance of any interest in all or any portion of the Redevelopment TIF Parcel, and of any Improvement thereto, to subsequent mortgagees, lessees, successors, assigns or transferees, to be made expressly subordinate and subject to this Agreement, provided however that a failure to do so shall not in any manner alter or diminish the priority of this Agreement.

D. The Developer and any subsequent Owners agree in accordance with Ohio Revised Code Section 5709.832 that they shall not deny any individual employment based on considerations of race, religion, sex, disability, color, national origin, ancestry, sexual orientation, gender identity and expression, age, or veteran status. Such covenant must run with the land and in any event and without regard to technical classification, be binding to the fullest extent permitted by law and equity, for the benefit of and enforceable by, the City, its successors and assigns, against Developer and its successors and assigns, to the Parcels, including, but not limited to, any grantee in a conveyance of the Parcels through judicial process. The Developer furthermore agrees that it shall use commercially reasonable efforts to require that any lessees or transferees located within the Redevelopment TIF Parcel comply with the provisions of this Section 3.

SECTION 4. BINDING NATURE OF OBLIGATIONS; SECURITY FOR PAYMENT.

The obligation to perform and observe the agreements on the Developer's part contained in this Agreement shall be binding and enforceable against each and every subsequent Owner by the County

Treasurer, to the extent applicable, and shall also, to the extent permitted by law, be enforceable by the City, the Developer and any of their assigns as express third-party beneficiaries of this Agreement, but subject to the provisions of this Section 4 and of Sections 8 and 11 hereof.

Anything herein to the contrary notwithstanding, upon the effective date of this Agreement, the Developer's obligation hereunder to pay Service Payments and to perform and observe any other agreements on its part contained herein, shall be absolute and unconditional and shall be covenants running with the land and shall be binding and enforceable by the City to the extent provided in this Agreement, against all subsequent Owners, as applicable, but only to the extent of the respective Owners' obligations and only with respect to its or their interest in the Redevelopment TIF Parcel, or any part thereof or any interest therein. Each Owner's obligation to pay Service Payments shall be evidenced by the recordation of this Agreement in the public records of Cuyahoga County, Ohio and secured by a lien on its interest in the Redevelopment TIF Parcel, as provided by law and described in Section 11.

The obligations of the Developer and all subsequent Owners will not be terminated for any cause including, without limiting the generality of the foregoing, but by way of example, delay in completion of or failure to complete any improvements included in the Development or any other obligation of the City or the Developer; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Development; commercial frustration of purpose; any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State or any political subdivision thereof. Except as may be expressly provided herein, nothing contained in this Agreement shall be construed to release any Owner from the performance of any of the agreements or obligations on its part contained in this Agreement.

SECTION 5. PAYMENT OF TAXES; CONTESTS. Each Owner shall pay, cause, or require to be paid, as the same become due, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Redevelopment TIF Parcel (except as otherwise provided herein) or any personal property or fixtures installed or brought therein or thereon (including, without limiting the generality of the foregoing, and by way of example, any taxes levied against an Owner with respect to the receipts, income or profits from leasing or subleasing space within the Improvement, which, if not paid, may become or be made a lien on all or any portion of the Redevelopment TIF Parcel). Notwithstanding the foregoing, nothing herein is intended to prevent any Owner (or a successor, assign or transferee), at its expense and in good faith from contesting the amount or validity of any taxes, assessments or other charges; provided, however, that while this Agreement remains in effect, no Owner shall contest the amount or validity of the TIF Exemption.

SECTION 6. NOTICES. All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given on receipt when personally delivered, or forty eight (48) hours after being mailed by registered or certified mail, postage prepaid: if to the City, at 2300 Warrensville Center Road, University Heights, Ohio 44118, Attention: Mayor, with copies to the Finance Director and the Law Director at the same address; if to the Developer, at _____, Attention: _____; and if to a subsequent Owner, at the address for the Redevelopment TIF Parcel or such other address as the Owner may designate. The City, the Developer and any Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices, designations, certificates, requests or other communications shall be sent, and shall provide copies of all such communications to any of the others to all of the others.

SECTION 7. EXEMPTION APPLICATIONS. The Developer does hereby consent to the City's application for exemption from real property taxation pursuant to O.R.C. Section 5709.911(B)(1) with respect to the Redevelopment TIF Parcel. Promptly following the effective date of this Agreement and prior to the Commencement Date for any TIF Parcel, the Developer shall execute a consent in writing on the required DTE 24 form (or any other applicable or required forms) to the City's application for exemption from real property taxation pursuant to O.R.C. Section 5709.911(B)(1) with respect to the Redevelopment TIF Parcel. The City and the Developer shall cooperate with each other, and execute such further documents and provide such further information as are reasonably required in connection with the filing and processing of such applications. The parties hereto intend that such exemption from real property taxation will apply commencing with the tax year set forth in Section 1 and shall use due diligence and commercially reasonable efforts to that end.

SECTION 8. EFFECTIVE DATE; DURATION OF AGREEMENT. This Agreement shall become effective on the Effective Date. The covenants of the Developer (which are binding on any subsequent Owner) that no Owner shall contest the amount or validity of the TIF Exemption or challenge ~~or~~ the obligation of the Owner to pay any and all taxes, assessments or other charges shall remain in effect for the duration of the Exemption Period. Unless sooner terminated, this Agreement shall expire at the end of the Exemption Period. Upon expiration or termination of this Agreement, the City will cause this Agreement to be cancelled of record.

SECTION 9. APPLICATION OF SERVICE PAYMENTS. Service Payments shall be made by or on behalf of the Owners to the Cuyahoga County Treasurer on or before the applicable Service Payment Dates. Upon receipt of Service Payments from the Cuyahoga County Treasurer, and upon receipt of any late fees provided in Section 1 hereof, the City shall deposit all such Service Payments (and any late fees) in the TIF Fund established by or designated in the TIF Resolution; provided, that all such amounts received by the City shall be allocated to and used for the purposes authorized in the TIF Resolution and the Development Agreement (as defined in the TIF Resolution). The parties hereto acknowledge that the Service Payments received by the City and deposited in the TIF Fund may be paid directly to Developer as and for reimbursement of Eligible Costs or, at Developer's option, assigned in connection with Developer's financing, or ~~the Public Financing~~ in connection with the Series 2020 Bonds contemplated in the TIF Resolution.

SECTION 10. DEFAULTS AND REMEDIES. The following shall be events of default under this Agreement:

- (a) the failure of the Developer (or any subsequent Owner) to pay, no later than the fifth calendar day following its due date, any Service Payment or installment thereof due by such Owner, including any applicable late payment charges; and
- (b) the failure of the Developer (or any subsequent Owner) to perform or observe any other covenant made by it in or pursuant to this Agreement.

Upon the occurrence and continuation of any event of default, in addition to other rights of enforcement granted hereunder, the City shall be entitled to exercise any and all remedies available to it hereunder, including the remedies described in Section 11, or under applicable law. Waiver by the City of any event of default shall not be deemed to extend to any subsequent or other event of default under this Agreement.

SECTION 11. ENFORCEMENT; FORECLOSURE OF LIEN. The provisions of this Agreement with respect to the obligations of the Developer and subsequent Owners may be enforced to the fullest extent permitted by law, by (i) the City, (ii) the Treasurer of Cuyahoga County, Ohio, (iii) the

Developer, ~~and~~ (iv) the trustee in connection with the Series 2020 Bonds, and (v) any assignee of Developer with rights to receive payment of monies from the TIF Fund. It is the intention and agreement of the Developer that this Agreement and the covenants herein made shall be specifically enforceable by the City by mandatory injunction or any other remedy at law or in equity, subject to Sections 4 and 8 hereof. It is the further intention and agreement of the Developer that this Agreement shall constitute and be deemed to be a lien encumbering and running with the real property comprising the Redevelopment TIF Parcel to secure the obligations of the Developer to make Service Payments, and, if applicable, pay interest and penalties as described in this Agreement, intended to have the same lien rights as real estate taxes and the same priority in accordance with O.R.C. Sections 323.11 and 5709.91. In furtherance of the foregoing, it is the intention of the Owner that the City and/or the Developer may, upon the occurrence of an event of default set forth in Section 11 hereof, and without limiting any other right or remedy otherwise available to the City or the Developer, take all such steps as may be legally available to it to foreclose upon such lien pursuant to the procedures and requirements of Ohio law relating to either mortgage liens or delinquent real estate taxes; provided, that nothing contained in this Agreement shall be deemed to authorize any acceleration of Service Payments due in future years. The provisions of this Section 11 shall encumber and run with the real property comprising the Redevelopment TIF Parcel.

SECTION 12. COUNTERPARTS; CAPTIONS. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

SECTION 13. SEVERABILITY. In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

All illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

SECTION 14. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, ~~and~~ the Developer, its employees, contractors, subcontractors and agents and/or the Owner arising out of or relating to this Agreement or its breach will be decided in a state court of competent jurisdiction within the State of Ohio.

SECTION 15. ENTIRE AGREEMENT. This document (with its exhibits) contains the entire agreement between the parties as to the payment of Service Payments and supersedes any prior discussions, representations, warranties, or agreements between them respecting the subject matter. No changes or amendments shall be made or be binding unless made in writing and signed by each of the parties.

SECTION 16. NO CITY EXPENDITURES. Nothing contained in this Agreement shall be construed to require the City to expend its own funds in connection with the performance of this Agreement in the current fiscal year and that no City funds, other than funds deposited in the TIF Fund, are pledged or committed by the City.

SECTION 17. ADDITIONAL DOCUMENTS; AMENDMENT. The parties hereto agree for themselves and their respective successors, assigns and transferees, to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement in compliance with all laws and Resolutions controlling this Agreement. Any amendment to this Agreement must be in writing and signed by or on behalf of the City and the Developer and any other person to whom payment of Service Payments have been assigned, together with their respective permitted successors, assigns, and transferees.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement effective as of the date set forth above.

CITY OF UNIVERSITY HEIGHTS, OHIO _____, LLC

By: _____
Mayor

By: _____

Approved as to Form:

By: _____
City Law Director

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of City of University Heights, Ohio (the "City") under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 20__ under the foregoing Agreement have been appropriated lawfully for that purpose, and are 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 Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 20__

Finance Director

ATTACHMENT A
REDEVELOPMENT TIF PARCEL

EXHIBIT B

FORM OF SCHOOL COMPENSATION AGREEMENT