

COMPENSATION AGREEMENT

This Compensation Agreement (the “Agreement”), dated as of _____, 2017 (the “Effective Date”), is made by and among GATEWAY HURON, LLC and/or its assignees, nominees or affiliates (the “Developer”), an Ohio limited liability company, THE BOARD OF EDUCATION OF THE CLEVELAND MUNICIPAL SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO (the “School District”), a school district and political subdivision of the State of Ohio, and the CITY OF CLEVELAND (the “City”), a municipal corporation and political subdivision of the State of Ohio.

WITNESSETH:

WHEREAS, pursuant to Ohio Revised Code (“R.C.”) Sections 5709.41 through 5709.43 (the “TIF Statutes”), the City may, under certain circumstances, declare the increase in the assessed value of real property located within the City subsequent to the acquisition of such real property by the City (the “Improvement,” as further defined in the TIF Statutes) to be a public purpose and exempt from real property taxation, provide for service payments in lieu of taxes (“Service Payments,” as further defined in the TIF Statutes) by the owners of the real property, and establish an urban redevelopment tax increment equivalent fund; and

WHEREAS, the exemption of Improvement pursuant to the TIF Statutes may only exceed 10 years or 75% with the approval of the board of education of the affected school district; and

WHEREAS, pursuant to the authority of the TIF Statutes, the City Council for the City passed Ordinance No. 1570-14 on November 26, 2014, which Ordinance was amended and replaced by Ordinance No. _____ passed on _____, 2017 (collectively, the “TIF Ordinance”), which TIF Ordinance exempts 100% of the Improvement of certain real property located within the City (the “Property,” as described in Exhibit A attached hereto and incorporated herein by this reference) for a period of 30 years; provided, however, that the TIF Ordinance shall not exempt any portion of the Abated Value for the period during which such Abated Value is abated pursuant to the City’s Community Reinvestment Area program; and

WHEREAS, the Developer desires to construct the Project (as defined herein), provided that the appropriate development incentives are available to support the viability of such Project; and

WHEREAS, the City desires to assist the Developer with the financing of the Project through the passage of the TIF Ordinance; and

WHEREAS, the Property is located within the School District; and

WHEREAS, as required by the TIF Statutes, prior to the passage of the TIF Ordinance, the Board of Education of the School District passed Resolution No. _____ on _____, 2017 waiving certain statutory notice requirements and approving the exemption provided in the TIF Ordinance, contingent upon the execution of this Agreement; and

WHEREAS, the Developer, the City and the School District desire to execute this Agreement to provide compensation to the School District as provided herein and to provide for certain waivers and authorizations with respect to the City’s passage of the TIF Ordinance;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties agree as follows:

Section 1. Definitions. In addition to or supplementing words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

“2012 Levy” means the School District’s existing 15-mill current expense levy that was first effective in 2012 and renewed in 2016.

“Abated Value” means \$115,000,000 in residential assessed value of the Property that is expected to be abated under a City Community Reinvestment Area abatement for 15 years, which Abated Value will be adjusted annually by an assumed 1% appreciation rate.

“Actual Assessed Value” means the assessed (i.e., non-abated) value of the Property as determined by the County Fiscal Officer for any Exemption Year.

“Additional Compensation” means semi-annual payments equal to 50% of the School District Foregone Tax Revenue on the Additional Increment for each Exemption Year, if any; provided, however, that the School District shall receive as Additional Compensation 100% of the School District Foregone Tax Revenue solely associated with any New School Levies. Sample Additional Compensation scenarios and calculations are contained in Exhibits B and D attached hereto and incorporated herein by this reference, respectively.

“Additional Increment” means the positive difference, if any, between the Actual Assessed Value and the Initial Value, but which Additional Increment shall not include any assessed value related to the Abated Value for the entirety of the period for which the Abated Value receives a Community Reinvestment Area abatement from the City.

“Base Compensation” means an amount equal to \$18,000,000, which represents the School District Foregone Tax Revenue on the Initial Value, discounted to net present value using a 7.12% discount rate and assuming an annual real property appreciation rate of 1%. The calculation of the Base Compensation is shown on Exhibit C attached hereto and incorporated herein by this reference.

“County Fiscal Officer” means the Fiscal Officer for Cuyahoga County, Ohio.

“County Treasurer” means the Treasurer for Cuyahoga County, Ohio.

“Exemption Year” means each tax year for which an exemption is provided for any Parcel of the Property pursuant to the TIF Ordinance.

“Full Stabilization” means that both of the following have been satisfied: (i) certificates of occupancy have been issued for the office tower, the hotel, the residential tower, the residential liner units, and the parking garage constructed as part of the Project, and (ii) thirty percent (30%) of the retail space has been turned over by the landlord to the respective tenants.

“Initial Value” means \$250,000,000, initially comprised of the Abated Value of \$115,000,000 and the Non-Abated Value of \$135,000,000, which Initial Value will be adjusted annually by an assumed 1% appreciation rate, as shown on Exhibit C attached hereto and incorporated herein by this reference. For purposes of calculating the Additional Compensation during the term of the abatement the Initial Value excludes the Abated Value.

“New School Levies” means any School District levies first effective on or after the Effective Date of this Agreement. For example, the approval of a 6 mill levy for any reason for a period of years or a continuing period of time after the Effective Date of this Agreement would be considered a New School Levy for purposes of this Agreement. New School Levies also shall include any additional effective millage passed with respect to the renewal and increase of the 2012 Levy. For example, if the 2012 Levy has an effective residential and commercial tax rate of 14 mills as of the date of the levy and 6 new mills are approved with the renewal of the 2012 Levy, New School Levies shall exclude the prior existing effective millage (14 effective mills) and include the new 6 mills. Further, in the event of the replacement of the 2012 Levy, New School Levies shall exclude the effective millage as of the date of the replacement levy and include any additional effective millage approved as a result of the replacement (and increase) of the levy. For example, if 15, mill 2012 Levy has an effective residential and commercial 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 15, mill 2012 Levy, New School Levies shall exclude the prior existing effective millage (10 effective mills) and include the new 5 mills.

“Non-Abated Value” means \$135,000,000 in initial non-abated assessed value of the Property, which Non-Abated Value will be adjusted annually by an assumed 1% appreciation rate.

“Parcel” means each separately identifiable parcel of the Property, whether as currently appearing on the tax list and duplicate or as subdivided or combined in the future.

“Project” means the mixed-use development in the City known as nuCLEus containing (i) at least 100,000 square feet of retail space; (ii) at least 200,000 square feet of office space; (iii) at least 400 residential units; (iv) at least 1,800 structured parking spaces serving the Project and the surrounding area; and (v) a hotel containing at least 110 rooms.

“School District Effective Millage” means the rate of real property tax millage applicable to the Property determined for the School District pursuant to R.C. Section 319.301 in effect for any particular Exemption Year; provided, however, that the School District Effective Millage shall not include any millage related to New School Levies.

“School District Foregone Tax Revenue” means an amount determined by multiplying the Additional Increment for a particular Exemption Year by the School District Effective Millage, or, with respect to any payments made pursuant to Section 2(D) of this Agreement, by the millage associated with any New School Levies, for a particular Exemption Year.

“Term” means the total period for which an exemption is provided for any Parcels of the Property pursuant to the TIF Ordinance.

Section 2. School District Compensation.

A. Base Compensation. The Developer shall pay or cause to be paid to the School District the Base Compensation pursuant to the terms of this Section 2(A). The Base Compensation shall be paid to the School District no later than 10 days after the date that the Developer closes on the construction financing for the Project.

B. Base Compensation Reconciliation. The parties hereto recognize that the assumptions used to calculate the Base Compensation and the Additional Compensation could differ from the actual results of the Project. As a result, the Developer and the School District agree as follows:

(i) Difference at Full Stabilization. Not later than March 31 of the sixth Exemption Year (the "Reconciliation Date"), the Developer shall determine if the actual Initial Value (including both the actual Abated Value and actual Non-Abated Value) for the first tax year for which the Project achieves Full Stabilization differs from the estimates reflected on Exhibit C. If the actual Initial Value differs from the estimates, the Developer shall prepare an updated schedule in the same form as Exhibit C, using the same discount rate and appreciation assumptions, and present it to the School District no later than the Reconciliation Date. The Developer shall adjust the amount of Additional Compensation paid over the succeeding five Exemption Years for which Additional Compensation is due to account for the positive or negative difference between the original Base Compensation amount and the reconciled Base Compensation amount, with such difference amortized equally over that five year period. For example, if the TIF Ordinance is first effective for tax year 2017 (paid in 2018), the Reconciliation Date would be March 31, 2022.

(ii) Initial Value Reached Early. If the Initial Value is first reached for an Exemption Year prior to the Exemption Year estimated in Exhibit C, the Developer shall pay to the School District as Additional Compensation 50% of the School District Foregone Tax Revenue associated with any Additional Increment generated for that Exemption Year, as further described in Section 2(C) hereto.

(iii) Pending Tax Complaints. As of the Effective Date, there are several complaints pending with the Ohio Board of Tax Appeals regarding the valuation of the Property, the resolution of which could affect the base value of the Property used in the calculation of the Base Compensation. To the extent that the resolution of the pending complaints changes the base value of the Property for TIF purposes, the Developer shall prepare a reconciliation of the effect of the change in base value on the calculation of Base Compensation no later than 30 days after final resolution of the pending complaints. The Developer shall adjust the amount of Additional Compensation paid over the succeeding five Exemption Years for which Additional Compensation is due to account for the positive or negative difference between the original Base Compensation amount and the reconciled Base Compensation amount, with such difference amortized equally over that five year period.

C. Additional Compensation. The Developer shall pay or cause to be paid to the School District the Additional Compensation due for any Exemption Year during the Term. The Additional Compensation shall be paid to the School District semi-annually, no later than 30 days after the Developer receives TIF payments from the City resulting from settlement between the County Fiscal Officer and the County Treasurer for each of the first half and second half settlements for each Exemption Year. The intent of the Additional Compensation is to provide for

semi-annual payments to the School District collectively equal to 50% of the amount of School District Foregone Tax Revenue on the Additional Increment had the Additional Increment not been exempted from real property taxes as provided in the TIF Ordinance, with the exception of any School District Foregone Tax Revenue on any New School Levies, as described in Section 2(D) below.

D. New School Levies. The School District shall receive as part of the Additional Compensation 100% of the School District Foregone Tax Revenue solely associated with any New School Levies.

Section 3. Accounting; School District Cooperation. Each payment of Additional Compensation or Base Compensation reconciliation made by the Developer or its successors and assigns pursuant to Section 2 of this Agreement shall be accompanied by an accounting prepared by the Developer demonstrating the calculation of the portion of the Additional Compensation or Base Compensation reconciliation included with the payment. The School District may request any reasonable additional backup information used in calculating the Additional Compensation or Base Compensation reconciliation upon reasonable notice to the Developer. If the School District disputes the calculation of the Additional Compensation or Base Compensation reconciliation, the School District may provide notice of such dispute to the Developer, after which the Developer and the School District will be required to meet and attempt to settle the dispute. If the Developer and the School District are unable to reach a mutually-agreeable solution, the parties will be required to submit the dispute to binding arbitration.

Section 4. School District Consents and Waivers. In return for the Base Compensation and Additional Compensation to be paid pursuant to this Agreement, the School District hereby:

(i) Waives compliance with any notice requirements associated with the City's passage of the TIF Ordinance, including the 45-business day notice required under R.C. Section 5709.41(C)(3) and the 14-day notice required under R.C. Section 5709.83;

(ii) Waives any defects or irregularities contained in the TIF Ordinance;

(iii) Agrees that the Base Compensation and Additional Compensation provided for herein is the only compensation to be received by the School District from the Developer or the City in connection with the TIF Ordinance, is in lieu of any other compensation that may be provided for in R.C. Section 5709.82, and that all remaining TIF revenues received by the City pursuant to the TIF Ordinance shall be used to support the Project as provided in the TIF Ordinance and any related documents;

(iv) Agrees that no minimum service payments or other credit enhancements will be imposed by the School District in connection with the TIF Ordinance; and

(v) Agrees that no date certain will be set for the closing on the financing for the Project by the Developer.

Section 5. Real Property Valuation Challenges. Each of (i) the Developer and any future owners of the property, and (ii) the School District retains the right to contest the value of the Property using any methods permissible under current and/or future law.

Section 6. Amendment. This Agreement may be amended or modified by the parties only in writing, signed by the parties to the Agreement.

Section 7. Assignment. This Agreement may be assigned by the Developer in whole or in part without the prior approval of the School District. Any such assignee shall execute an assignment and assumption agreement with the Developer for the portion of the Property and/or the Project being assigned pursuant to which the assignee agrees to assume all of the obligations of the Developer pursuant to this Agreement for that particular portion of the Property and/or the Project. The Developer shall provide the School District with a copy of any such assignment and assumption agreement no later than 30 days after it is executed by the Developer and the assignee.

Section 8. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof 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.

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 to the following:

If to the Developer: Gateway Huron, LLC
c/o Stark Enterprises
1350 West 3rd Street
Cleveland, Ohio 44113
Attn: CFO

With copies to: Gateway Huron, LLC
c/o Stark Enterprises
1350 West 3rd Street
Cleveland, Ohio 44113
Attn: Director of Development

And to: Jeffrey Wild, Esq.
Benesch, Friedlander, Coplan & Aronoff, LLP
200 Public Square, Suite 2300
Cleveland, Ohio 44114

If to the School District: Cleveland Municipal School District
1111 Superior Avenue, Suite 1800
Cleveland, Ohio 44114
Attention: CFO

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

If to the City: Mayor
City of Cleveland
610 Lakeside Avenue
Cleveland, Ohio 44114

With copies to: Director of Law
City of Cleveland
610 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

And to: Director of Finance
City of Cleveland
610 Lakeside Avenue, Room 104
Cleveland, Ohio 44114

A notice may be sent by United States ordinary mail, postage prepaid, and shall be deemed to have been given or delivered when so mailed. A notice may also be sent by electronic transmittal. A payment to the School District may be made by delivery by mail, overnight mail, messenger, wire transmission, or any mutually agreeable form of payment.

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

Section 10. 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 11. 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.

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GATEWAY HURON, LLC

By: _____

Its: _____

Date: _____

BOARD OF EDUCATION OF THE
CLEVELAND MUNICIPAL SCHOOL
DISTRICT

By: _____
CEO

Date: _____

By: _____
CFO

Date: _____

By: _____
Chair of the Board of Education

Date: _____

CITY OF CLEVELAND, OHIO

By: _____
David Ebersole, Interim Director
Economic Development

Date: _____

EXHIBIT A to Compensation Agreement

PROPERTY

The Property is the approximately 2.8436 ± acres of real estate situated in the City of Cleveland, Cuyahoga County, Ohio shown on the attached survey and comprised of the following parcel numbers:

101-28-007
101-29-001
101-29-010
101-29-011
101-29-012
101-29-045
101-28-008
101-28-009
101-28-010
101-28-011
101-28-012
101-28-013
101-28-014
101-28-015
101-28-016
101-28-029
101-28-030
101-28-031
101-28-033
101-28-034
101-28-035
101-28-032
101-29-002

EXHIBIT B to Compensation Agreement

ADDITIONAL COMPENSATION EXAMPLES

- Example A: Assume that the Actual Assessed Value for the Property for a future Exemption Year is \$130,000,000 at a time when the CRA abatements are still in place. There would be no Additional Compensation paid for that Exemption Year because the Actual Assessed Value is less than the Non-Abated Value, and thus there is no Additional Increment.
- Example B: Assume that the Actual Assessed Value of the Property for a future Exemption Year is \$150,000,000 at a time when the CRA abatements are still in place, and the Initial Value (consisting of only the Non-Abated Value) as adjusted for the assumed 1% annual appreciation for that Exemption Year is approximately \$139,000,000. The Additional Increment would be equal to \$11,000,000, and the Additional Compensation paid to the School District would be equal to 50% of the School District Foregone Tax Revenue on that \$11,000,000 based on the School District Effective Millage for that Exemption Year.
- Example C: Assume that the Actual Assessed Value of the Project for a future Exemption Year is \$320,000,000 at a time when the CRA abatements have expired, and the Initial Value as adjusted for the assumed 1% annual appreciation for that Exemption Year is approximately \$300,000,000. The Additional Increment would be equal to \$20,000,000, and the Additional Compensation paid to the School District would be equal to 50% of the School District Foregone Tax Revenue on that \$20,000,000 based on the School District Effective Millage for that Exemption Year.

EXHIBIT C to Compensation Agreement
BASE COMPENSATION CALCULATION
(attached hereto)

EXHIBIT D to Compensation Agreement

ADDITIONAL COMPENSATION SAMPLE CALCULATIONS