

EXHIBIT A

SECOND AMENDED AND RESTATED COMPENSATION AGREEMENT

This Second Amended and Restated Compensation Agreement (the “Agreement”) is made and entered into as of _____, 2020, by and among the CITY OF BRECKSVILLE, OHIO (the “City”), a municipal corporation organized and existing under the constitution, its Charter, and the laws of the State of Ohio with its principal offices at 9060 Brecksville Road, Brecksville, Ohio 44141, the BRECKSVILLE-BROADVIEW HEIGHTS CITY SCHOOL DISTRICT (the “School District” or “BBHCSD”), a public school district with its principal offices located at 6638 Old Mill Road, Brecksville, OH 44141, and DiGERONIMO DEVELOPMENT LLC (the “Developer”), an Ohio limited liability company with its principal offices located at 5720 E. Schaaf Road, Independence, Ohio 44131, and amends and restates that certain Amended and Restated Compensation Agreement approved by the Board of Education of the School District (the “Board”) pursuant to a resolution adopted by the Board on January 22, 2020.

WITNESSETH:

A. The City and the Developer, together with the Brecksville Community Improvement Corporation (the “CIC”), have entered into a Development Agreement dated as of June 19, 2018 (the “Development Agreement”), as amended by _____. Pursuant to the Development Agreement, the Developer intends to acquire all or a portion of the 103.049 acre site formerly known as the Brecksville Division of the Louis Stokes VA Medical Center (the “Valor Acres Site”) from the CIC, as transferee of the City, in phases, and to develop or redevelop the Site (defined below) as a mixed-use development (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. The Developer further intends to acquire all or a portion of the 88-acre site adjacent to the Valor Acres Site (the “Adjacent Site” and, together with the Valor Acres Site, the “Site”) and to develop or redevelop the Adjacent Site as part of the Development.

C. Pursuant to Ohio Revised Code Sections 5709.40, .41, .42, and .43 (together with related provisions of the Ohio Revised Code, the “TIF Act”) the Developer has requested the City to, among other actions: (i) establish one or more tax increment financing programs with respect to the real property that will be developed and redeveloped in phases on the Site (the “TIF”); (ii) declare 100% of the increase in assessed value of the real property comprising each phase of the Site (which increase in assessed value is also hereinafter referred to as the “Improvement” as defined in the TIF Act) to be a public purpose and exempt from real property taxation (the “TIF Exemption”) following the effective dates specified in the TIF Ordinances for the duration of the TIF Exemption; (iii) provide 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 real property comprising each phase of the Site; and (iv) authorize the payment from the Service Payments of certain costs of acquiring, constructing, improving, furnishing and equipping public infrastructure improvements and real property for economic development.

EXHIBIT A

D. The City proposes to enact the following ordinances on or after _____, 2020, as follows:

1. one or more TIF Ordinances enacted by Brecksville City Council on or before May 31, 2021 (the “Phase I TIF Ordinances”) for parcels comprising all or portions of the Valor Acres Site and all or portions of the Adjacent Site (the “Phase I Parcels”). Each Phase I TIF Ordinance will exempt one hundred percent (100%) of the increase in the assessed value of the applicable Phase I Parcels (the “Phase I Improvements”) from real property taxation on such Phase I Parcels for a period of thirty (30) years, commencing on the date provided in the applicable Phase I TIF Ordinance and ending on the earlier of (i) the date such Phase I Improvements have been exempted from taxation for a period of 30 years or (ii) the date the Phase I Improvements cease to be a public purpose;
2. one or more TIF Ordinances (the “Future Phase TIF Ordinances” and, together with the Phase I TIF Ordinances, the “TIF Ordinances”) for the parcels comprising the remaining portion of the Site (the “Future Phase Parcels”). Each Future Phase TIF Ordinance will exempt one hundred percent (100%) of the increase in the assessed value of the applicable Future Phase Parcels (the “Future Phase Improvements” and, together with the Phase I Improvements, the “Improvements”) from real property taxation on such Future Phase Parcels for a period of thirty (30) years, commencing on the date provided in the applicable Future Phase TIF Ordinance, and ending on the earlier of (i) the date such Future Phase Improvements have been exempted from taxation for a period of 30 years or (ii) the date the Future Phase Improvements cease to be a public purpose;

The City will authorize the execution of one or more Tax Increment Financing Agreements (the “TIF Agreement”) between the City and the Developer, and/or its successors and assigns as owners of all or a portion of the Site, providing for, among other things, the obligation of the Developer and its successors and assigns to make the Service Payments in an amount equal to the taxes that the owners would have paid with respect to such Improvements;

E. The City and the School District will derive substantial and significant benefits from the Improvements; and

F. On April 24, 2019, and prior to the passage of the TIF Ordinances, the Board of the School District adopted a resolution granting its approval of a Compensation Agreement (the “Original Compensation Agreement”) and the exemption of the real property taxes on the Phase I Improvements as provided in the Phase I TIF Ordinances and waived any further requirements of the TIF Act and Sections 5709.82 and 5709.83 of the Ohio Revised Code on the condition that the City and the Developer execute and deliver the Original Compensation Agreement; and

EXHIBIT A

G. On January 22, 2020, and prior to the passage of the TIF Ordinances, the Board adopted a resolution granting its approval of the TIF Exemption and the Amended and Restated Agreement and waived any further requirements of the TIF Act and Sections 5709.82 and 5709.83 of the Ohio Revised Code on the condition that the City and the Developer execute and deliver this Agreement; and

H. On July 22, 2020, and prior to the passage of the TIF Ordinances, the Board adopted a resolution granting its approval of the TIF Exemption and this Second Amended and Restated Agreement and waived any further requirements of the TIF Act and Sections 5709.82 and 5709.83 of the Ohio Revised Code on the condition that the City and the Developer execute and deliver this Agreement; and

I. To facilitate the construction of the public and private improvements to the Site, to permit the acquisition, construction, improvement, furnishing and equipping of real property for economic development, and to compensate the School District for a portion of the real property taxes that the School District would have received had the Site been improved and not been exempted from taxation, the City, the Developer and the School District have determined to enter into this Second Amended and Restated Compensation Agreement, which Agreement is in the vital and best interest of the City and the School District and will improve the health, safety and welfare of the citizens of the City and the School District.

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

Section 1. School District Approval and Agreement. In consideration of the compensation to be provided to it under this Agreement, the School District hereby approves the TIF Exemption in the amount of 100% for up to 30 years, as provided for in the TIF Ordinances and waives any payment of income tax revenues derived from new employees at the Site as provided in Section 5709.82 of the Ohio Revised Code.

Section 2. Compensation Payments to School District. (a) The parties agree that, as consideration for the School District's agreement in Section 1,

(i) commencing with the first collection year in which Service Payments are received by the City with respect to a parcel, and ending with the thirtieth collection year in which Service Payments are received by the City with respect to such parcel, the School District shall not receive any portion of the real property taxes that would have been distributed to the School District but for the TIF Exemption. During such period, the City shall pay semi-annually to the School District, as Compensation Payments, but solely from Service Payments received by the City, an amount equal to twenty-five percent (25%) of the real property taxes that the School District would have received from such parcel, but for the TIF Exemption pursuant to the following formula:

EXHIBIT A

$$\text{Compensation Payments} = \text{Service Payments received} \times 25\% \times \frac{\text{School District effective millage}}{\text{Total effective millage}}$$

As used in the foregoing formula, School District effective millage shall not include any millage used to calculate the payment in paragraph (ii) below.

(ii) In addition, the City shall pay to the School District, but solely from Service Payments, an amount equal to one hundred percent (100%) of the Real Property taxes that the School District would have received, but for the TIF Exemption, that are derived from any Tax Increase Amount. As used herein, "Tax Increase Amount" means, for each year that this Agreement is in effect, the portion, if any, of the Service Payments derived from (a) additional property tax levies approved by the voters of the School District after January 1, 2019 and any renewals or replacements of such levies, and (b) a renewal levy or a replacement levy with an increase, replacing or renewing, as applicable, a levy in existence as of December 31, 2019, to the extent such renewal or replacement levy exceeds the stated tax rate of the levy as it exists immediately prior to being replaced or renewed; provided, however, that an additional property tax levy approved by the voters of the School District within one year of the expiration or discontinuance of a then-existing levy shall not be treated as an additional levy unless the expired or discontinued levy is a levy described in clause (a) above. The School District shall notify the City if there is any effective millage constituting the Tax Increase Amount, and the payment pursuant to this paragraph (ii) shall be calculated pursuant to the following formula:

$$\text{Payment} = \text{Service Payments received} \times 100\% \times \frac{\text{Tax Increase Amount effective millage}}{\text{Total effective millage}}$$

(b) The payments specified in subsections (i) and (ii) shall be made only to the extent that the City actually receives Service Payments in an amount equal to the real property taxes that the School District would have received, but for the TIF Exemption. Amounts received by the School District in accordance with subsections (i) and (ii) of this Section 2 are collectively referred to herein as "TIF Revenue Payments." In the event that the valuation of the Site or any portion thereof is challenged by an owner or by the School District and the result of such challenge is an increase or decrease in the assessed valuation of such parcel which increase or decrease is finally determined, either through all appeals or after expiration of any appeal period, in a later collection year, the TIF Revenue Payments due to the School District in the year of such final determination shall be increased or decreased to reflect such increased or decreased valuation.

Section 3. Timing of Payments. The City shall distribute the TIF Revenue Payments to the School District on or before each June 15 and December 15. The records of the City relating to the amount of any TIF Revenue Payment shall be made available to the School District for audit annually by the treasurer of the School District or by an independent auditor of the School District's choice and at its sole expense.

EXHIBIT A

Section 4. No Contest. The School District agrees that while the TIF Exemption is in effect, neither it nor anyone acting on its behalf shall file a complaint pursuant to Section 5715.19 of the Ohio Revised Code or otherwise seeking to increase the tax year 2019 value of the Phase I or Future Phase Parcels or any Improvements thereto from the value assigned thereto by the County Fiscal Officer.

Section 5. Developer Contribution. The Developer agrees that it shall contribute the Developer Contribution to the School District to be used as determined by the Board. As used in this Section 5, the "Developer Contribution" shall be equal to fifty percent (50%) of the amount of the School District's portion of the real property taxes exempted for each parcel pursuant to the TIF Ordinance in the first year that the value of the Improvements as completed first appears on the tax duplicate for such Parcels (the "First Year Exemption"), net of TIF Revenue Payments to be paid to the School District pursuant to Section 2 for the first tax year for which such amounts would be payable (the "First Year TIF Revenue Payments"). Inasmuch as the First Year Exemption will not appear on the tax duplicate prior to the closing of construction financing for the Phase I Development (and First Year TIF Revenue Payments will not be known), the Developer shall provide an estimate of such First Year Exemption (the "Estimated Exemption") and the First Year TIF Revenue Payments for the Phase I Parcels (collectively, the "Estimated Developer Contribution") to the School District not later than five (5) business days prior to the closing of construction financing.

The Estimated Developer Contribution shall be paid as follows:

- (a) Seven Hundred Fifty Thousand Dollars (\$750,000) shall be paid to the School District within thirty (30) days after the passage of a TIF Ordinance by the City following the acquisition of the Adjacent Site by the City, provided however, that in no event shall the payment be due later than October 15, 2020; and
- (b) The balance of the Estimated Developer Contribution shall be paid to the School District upon closing of construction financing for the Phase I Development.

A sample Calculation of Developer Contribution is attached hereto and incorporated herein by reference as Exhibit A.

When the full value of the Phase I Improvements first appears on the tax duplicate for the Phase I Parcels, the Developer shall compute the exact amount of the First Year Exemption and the TIF Revenue Payments for the Phase I Parcels and provide that computation to the School District not later than February 28 of the calendar year in which the exact amount of the Developer Contribution is determined. If the Estimated Developer Contribution was greater than the exact amount of the Developer Contribution, the difference between the amount paid and the Estimated Developer Contribution shall be credited to the Developer against future payments due to the School District or, if no future payments are expected, refunded to the Developer not later than April 30 of the calendar year in which the exact amount of the Developer Contribution is determined. If the Estimated Developer Contribution was less than the exact amount of the Developer Contribution, the Developer agrees to pay to the School District an amount equal to the difference between the amount

EXHIBIT A

paid and the Developer Contribution not later than April 30 of the calendar year in which the exact amount of the Developer Contribution is determined.

The Developer covenants and agrees that the Developer or its assignees will invest at least Seventy-Five Million Dollars (\$75,000,000) in Phase I of the Development, including the value of the Phase I Parcels, the costs of demolition and environmental remediation, and improvements to the Phase I Parcels.

With respect to subsequent exemptions of Future Phase Parcels, the Developer shall pay the Developer Contribution to the School District based on an Estimated Exemption not later than the closing of construction financing for each Future Phase Parcel, and the Developer and the School District shall calculate the Developer Contribution based on the exact amount of the First Year Exemption and the TIF Revenue Payments as provided in the preceding paragraph; provided, however that if the Estimated Developer Contribution related to the last-to-be-developed Parcel described in a Future Phase TIF Ordinance is greater than the First Year Exemption for that Parcel, the School District shall refund to the Developer the amount of overpayment not later than April 30 of the calendar year in which the exact amount of the First Year Exemption for that Parcel is determined.

Section 6. Sharing of Information. The City agrees to cooperate to share information with the School District as to its receipt of Service Payments upon request of the School District, subject to any restrictions imposed by law, and shall provide the School District with a copy of information it sends to the State to comply with annual reporting requirements in connection with the exemption under the TIF Ordinance.

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, Waiver of Notice. 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. The School District hereby waives any notice requirements set forth in the TIF Act or in Sections 5709.82, 5709.83 and 5715.27(D) of the Ohio Revised Code with respect to the TIF Exemption and waives any defects or irregularities relating to the TIF Exemption.

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 address set forth in the first paragraph of this Agreement, to the attention of the Mayor, the Superintendent or the Manager, as applicable. Any party may change its address for receiving notices and reports by giving written notice of such change to the other parties.

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.

EXHIBIT A

Section 11. Partial Assignments. The Developer may assign this Agreement, including the benefits and obligations thereof, with respect to any portion of the Site comprising no less than twenty (20) acres, provided (i) the assignee is the purchaser of the portion of the Site (the "Transferred Portion") to which the assignment pertains, and (ii) the Developer and the assignee deliver to the School District and the City an assignment and assumption agreement wherein the assignee assumes the obligations of the Developer with respect to the Transferred Portion. For avoidance of doubt, (a) the assignee's obligations will include payment of the Developer Contribution with respect to the Transferred Portion (or, as may be agreed by the Developer and the assignee, so long as the entire Estimated Developer Contribution is paid and the School District is provided an accounting of the funding), (b) if the assignment occurs after the passage of the applicable Phase I TIF Ordinance and payment of the amount due pursuant to Section 5(a) above, the assignee shall not be responsible for the payment of the Estimated Developer Contribution described in Section 5a above, and (c) the covenant and agreement regarding a minimum investment of \$75,000,000 will remain an aggregate obligation of the Developer and assignee.

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.

Remainder of Page Intentionally Left Blank

Signature Page Follows

EXHIBIT A

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered on the date set forth above.

CITY OF BRECKSVILLE, OHIO

**BRECKSVILLE-BROADVIEW
HEIGHTS CITY SCHOOL DISTRICT**

By:

By:

Superintendent

By:

Treasurer

By:

President of the Board of Education

Approved as to legal form:

Law Director

DIGERONIMO DEVELOPMENT LLC

By:

Name:

Title: __

EXHIBIT A

**SECTION 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS**

The undersigned, Director of Finance of the City of Brecksville, Ohio (the "City"), hereby certifies in connection with the Amended and Restated Compensation Agreement among the City, the Brecksville-Broadview Heights City School District and DiGeronimo Development LLC, dated _____, 2020, that:

The amount required to meet the contract, obligation, or expenditure of the City during fiscal year 2020 for the attached, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2020.

Director of Finance

Dated: _____, 2020

EXHIBIT A

Exhibit A
Calculation of Developer Contribution
Sample - Phase I

Information provided to BBHCSD as of January 17, 2020

Phase I Estimated Value	\$371,000,000
Projected Phase I Market Value at 75%	\$278,250,000
Projected Phase I Assessed Value at 35% of Market	\$97,387,500
Exempted BBHCSD Millage	\$4,813,096
25% Due to BBHCSD (First Year TIF Revenue Payments)	\$1,203,274
Full Year Exempted from BBHCSD	\$3,609,822
50% Estimated Developer Contribution	\$1,804,911
Due Up Front	\$750,000
Balance Due at Financing	\$1,054,911