

AGREEMENT

This Agreement is made and entered into as of this ___ day of January, 2018 by and between Summit View Development, LLC, an Ohio limited liability company (the “Developer”) and The City of Blue Ash, Ohio, an Ohio municipal corporation (the “City”).

WITNESSETH:

WHEREAS, the Developer has submitted to the City for its approval Final Development Plans permitting the Developer to proceed with the development and construction of 290 rental apartments in accordance with the terms of the School Compensation Agreement and a 201 unit senior housing development each as part of the Neighborhoods at Summit Park Development.

WHEREAS, the Development, including the apartment and senior housing, will be located on a 77.6772 acre site within the City as described on the attached Exhibit “A” (the Property).

WHEREAS, the Developer has proposed the addition of certain conditions relating to the proposed Final Development Plan prior to the final consideration of the Final Development Plan by the Blue Ash City Council; and

WHEREAS, the Developer and the City have agreed to enter into this Agreement in order to proceed with the final consideration of the Developer’s Final Development Plans;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Contemporaneously with the issuance of a building permit for the Developer’s construction of the proposed mixed-use development, including the 290 rental apartment units on the Property, the Developer shall deliver to the City security in the form of cash, a letter of credit, or a performance bond (each in a form reasonably acceptable to the City) in an amount of \$1,000,000 (the “Security”). In the event that the Developer has not within twenty four (24) months after the delivery of the Security, submitted to the City an application for a building permit for the construction of an office building containing a minimum of approximately 75,000 square feet on the Property, the Developer shall forfeit the Security to the City, which Security the City may use for whatever municipal purposes it deems appropriate, and the Developer shall have no further rights in or claims to the Security. It is understood that Council approval of a final development plan is required prior to submission of the building permit and such approval shall not be unreasonably withheld. In the event that the Developer does submit an application for a building permit for the construction of an office building on the Property within such twenty four (24) month period, the City shall return the Security to the Developer and the City shall have no further rights in or claims to the Security.

The Developer’s rights and obligations with respect to the Security as set forth herein are separate and apart from the Developer’s other rights and obligations with respect to the Property established by contract, zoning or other action of the City.

2. From and after the issuance of a building permit for the Developer’s construction of the proposed mixed-use development, including the 290 rental apartment units on the Property, the Developer agrees that no more than the 290 rental apartment units approved for

construction under the Final Development Plan and the building permit referenced above may be constructed on the Property; provided, however, such restriction shall not apply to 201 living units that are designed as residences for elderly persons as part of a senior living facility, also granted Final Development Plan approval, or to future hotel units not currently approved. The Developer agrees that this Agreement, or a memorandum relating thereto, may be recorded against the Property.

3. This Agreement shall be binding upon the parties hereto, and their respective successors and assigns. The restrictions imposed by Section 2 hereto shall be binding upon the Property and run with the ownership of the Property.

4. Each of the parties hereto represents to the other that it is duly organized under applicable laws, and possesses all requisite authority, permits and power to enter into this Agreement, and that the execution and delivery of this Agreement and the performance by it of its obligations hereunder are within its legal powers and have been authorized by all necessary action.

5. This Agreement may not be amended, changed, modified or assigned except by written agreement executed by each of the parties. This Agreement may be signed in counterpart and in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement and the rights and obligations of the parties hereunder shall be governed by the substantive laws of the State, without regard to choice of law principles, and no action may be brought with respect to this Agreement except in a federal or state court located in Hamilton County, it being understood and agreed that, as a result of the location of the Property, and of each of the parties within Hamilton County, any other forum is and, so long as this Agreement is in effect, will be inconvenient to the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SUMMIT VIEW DEVELOPMENT, LLC

By: Al. Neyer, LLC, a Manager

By: _____
Molly North, President and
Chief Executive Officer

CITY OF BLUE ASH, OHIO

By: _____
David Waltz, City Manager

APPROVED AS TO FORM:

Bryan E. Pacheco, City Solicitor