

RESOLUTION NO. 40-2022

Introduced by William Biddlecombe

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SCHOOL COMPENSATION AGREEMENT BY AND AMONG THE CITY OF HURON, HURON CITY SCHOOLS AND SUNSPORT PROPERTIES, LLC.

WHEREAS, the City received a request for tax abatement from Sunsport Properties, LLC and Buckeye Sports Center, Inc. within the City Enterprise Zone for construction of a primary building and separate storage building on property acquired by Sunsport Properties, LLC, more fully described in Exhibit "A" to the School Compensation Agreement (the "Development Site");

WHEREAS, the Huron City School District and its Board of Education was notified in accordance with Section 5709-83 of the Ohio Revised Code and given a copy of the Application and the draft Enterprise Zone Agreement; and

WHEREAS, on March 22, 2022, City Council for the City of Huron passed Ordinance No. 2022-20 authorizing execution of an Enterprise Agreement with Sunsport Properties, LLC providing a fifteen (15) year, One Hundred Percent (100%) real property tax exemption for the assessed value of remodeled and new structures constructed at the Development Site; and

WHEREAS, pursuant to R.C. Sections 3735.671 and 5709.82(B), Sunsport Properties, LLC, the City and Huron City Schools desire to enter into the School Compensation Agreement to make the Huron City Schools whole in connection with the exemption from taxation granted to induce the Development.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

SECTION 1. That the City Manager is authorized and directed to enter into a School Compensation Agreement with Huron City Schools and Sunsport Properties, LLC, which agreement shall be substantially in the form of Exhibit "A" attached hereto and made a part hereof.

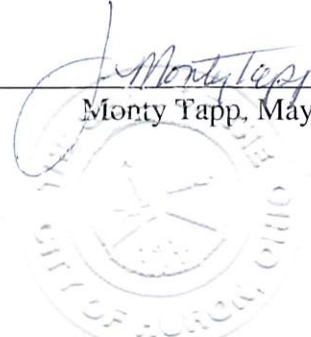
SECTION 2. That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22.

SECTION 3. That this Resolution shall be in full force and effect from and immediately after its adoption.

ATTEST: Gerri Wellkener
Clerk of Council

ADOPTED: 22 MAR 2022

Monty Tapp
Monty Tapp, Mayor



SCHOOL COMPENSATION AGREEMENT

THIS SCHOOL COMPENSATION AGREEMENT (the “**Agreement**”) is made and entered into as of this [6th] day of [April], 2022 (the “**Effective Date**”), by and among the CITY OF HURON, OHIO, an Ohio municipal corporation with a Council-Manager form of government, with its main offices located at 417 Main Street, Huron, Ohio 44839 (the “**City**”), the HURON CITY SCHOOL DISTRICT, a public school district with its principal offices located at 712 Cleveland Road East, Huron, Ohio 44839 (the “**School District**”), and SUNSPORT PROPERTIES, LLC, an Ohio limited liability company having a legal address of 3169 Silver Lake Boulevard, Silver Lake, OH 44224 (“**Sunsport**” and, together with the City and the School District, the “**Parties**”).

WITNESSETH:

WHEREAS, the City has encouraged the development of real property and the acquisition of real property located in the area designated as an Enterprise Zone; and

WHEREAS, Erie County and the City have determined that to induce Sunsport to undertake within the Enterprise Zone the commercial project described herein, it is necessary to authorize a real property tax exemption for the construction of new structures in the Enterprise Zone in accordance with R.C. 5709.63; and,

WHEREAS, on November 17, 2021, the City’s Planning Commission approved a final development plan and/or plat submitted by Sunsport (the “**Development Plan**”), proposing the development of an approximately 5.5131 acre site, as such property is more fully described in **EXHIBIT A**, attached hereto and made a part hereof (the “**Development Site**”); and,

WHEREAS, the Development Plan calls for the Development Site to be developed for commercial or industrial purposes (the “**Development**”); and,

WHEREAS, the Development Site and its attendant Development is also under the jurisdiction of the School District; and,

WHEREAS, on March 22, 2022, City Council for the City passed Ordinance No. 2022-20 (the “**Enterprise Zone Ordinance**”), a copy of which is attached hereto as **EXHIBIT B**, and pursuant to which, among other things, the City authorized the execution of (i) an Ohio Enterprise Zone Agreement with Sunsport providing a fifteen (15) year, One Hundred Percent (100.00%) real property tax exemption for the assessed value of new structures constructed at the Development Site (the “**Enterprise Zone Exemption**”), and (ii) this Agreement; and,

WHEREAS, pursuant to R.C. Sections 5709.63 and 5709.82(B), Sunsport, the City, and the School District desire to enter into this Agreement to make the School District whole in connection with the exemption from taxation granted to induce the Development; and,

WHEREAS, on March 15, 2022, the Board of Education of the School District adopted a resolution (the “**School Resolution**”) granting its approval of this Agreement and waived any further requirements of the Enterprise Zone and R.C. 5709.82 and R.C. 5709.83 on the condition that the City execute and deliver this Agreement; and,

WHEREAS, to compensate the School District for the real property taxes that the School District would have received had the Development Site been improved and not been exempted from taxation under the Enterprise Zone, the City and the School District have determined to enter into this 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. Compensation Payments to School District.

A. Calculated Amounts Due. The Parties agree that Sunsport shall pay to the School District, commencing in the first year in which the tax exemption first applies under the Enterprise Zone Agreement, an amount equal to One Hundred Percent (100.00%) of the amount of taxes that would have been payable if the Development Site had not been exempted from taxation.

B. Timing. Payments under this Section 1 are to be made to the School District no later than December 31st in each year in which the tax exemption applies under the Enterprise Zone Agreement as granted under the Enterprise Zone Ordinance.

Section 2. Term of Agreement; Other Terms.

(A) Term. The term of this Agreement commences on the date of this Agreement and expires on December 31st of the last year in which the Enterprise Zone Exemption applies to the Development.

(B) No Other Compensation. Except for the payments and consideration set forth in Section 1 of this Agreement, the School District shall not be entitled to any other compensation from the City, whether pursuant to R.C. 5709.82 or otherwise, in connection with the Enterprise Zone Exemption.

(C) Waiver of Notice, Defects and Irregularities. The School District hereby waives any right to receive notification of the passage of the Enterprise Zone Ordinance or legislation authorizing the Enterprise Zone Exemption or any other applicable provision of the Ohio Revised Code, including but not limited to R.C. 5709.63, R.C. 5709.82 or R.C. 5709.83, for the Development Site. Further, the School District waives any defects or irregularities relating to the Enterprise Zone Exemption.

(D) Validity of Enterprise Zone Exemption. The School District agrees that it will not contest any application for a real property tax exemption put in place in connection with the Enterprise Zone Exemption.

Section 3. Miscellaneous.

(A) Entire Agreement. This Agreement sets forth the entire agreement and understanding among the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, and undertakings of every kind and nature among the Parties with respect to the subject matter of this Agreement.

(B) Amendment. This Agreement may be amended or modified by the Parties only in writing, signed by all Parties.

(C) Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

(D) Binding Effect. The provisions of this Agreement are binding upon the successors or assigns of the Parties.

(E) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

(F) Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

(G) 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 following addresses:

If to the City: City of Huron
 Attention: City Manager
 417 Main Street
 Huron, Ohio 44839

With copy to: Huron City Council
 Attention: City Manager
 417 Main Street
 Huron, Ohio 44839

If to the Company, to: Sunsport Properties, LLC
 3169 Silver Lake Boulevard
 Silver Lake, OH 44224

If to the School District: 712 Cleveland Road East
Huron, Ohio 44839
Attn: Treasurer

Any Party may change its address for receiving notices and reports by giving written notice of such change to the other Parties.

(H) Events of Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach is not to be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the defaulting Party.

(I) Severability of Provisions. The invalidity of any provision of this Agreement will not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if any invalid portions were omitted.

(J) Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the City, the School District, and Sunsport other than in his or her official capacity, and neither the members of the legislative bodies of the City or the School District nor any official or authorized officer executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations, or agreements of the City, the School District, and Sunsport contained in this Agreement.

(K) Legal Authority. The Parties respectively represent and covenant that each is legally empowered to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The Parties further respectively represent and covenant that this Agreement has, by proper action, been duly authorized, executed, and delivered by the Parties and all steps necessary to be taken by the Parties have been taken to constitute this Agreement, and the covenants and agreements of the Parties contemplated herein, as a valid and binding obligation of the Parties, enforceable in accordance with its terms.

(L) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City, the School District, or Sunsport be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such

damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

(M) No Waiver. No right or remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the Parties hereto, as the case may be.

(N) Ohio Laws. Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code shall include such section, provision or chapter as modified, revised, supplemented, or superseded from time to time; provided, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

(O) Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(P) Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(Q) 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.

(R) Waiver of Notice. The School District hereby waives all notice requirements in connection with approval of the Enterprise Zone Exemption, including but not limited to the 45-day notice and the 14-day notice pursuant to O.R.C. Sections 5709.63 and 5709.83, and waives any statutory defects or irregularities relating to the Enterprise Zone Exemption and notice provided to the School District with respect to the same.

(S) Waiver of Retail Exclusion. Pursuant to O.R.C. Section 5709.634, the School District has reviewed the terms of the aforementioned Enterprise Zone Exemption and hereby waives the retail facilities exclusion under O.R.C. Section 5709.61(C), but only with respect to this exemption proposal.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly signed as of the date set forth above.

CITY OF HURON, OHIO

By: 
City Manager

HURON CITY SCHOOL DISTRICT

By: _____
President of the Board of Education

By: _____
Treasurer

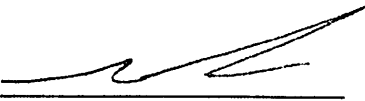
SUNSPORT PROPERTIES, LLC
An Ohio Limited Liability Company

By: _____

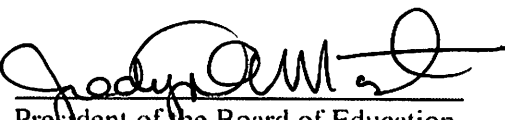
Its: _____

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CITY OF HURON, OHIO

By: 
City Manager

HURON CITY SCHOOL DISTRICT

By: 
President of the Board of Education

By: 
Treasurer

SUNSPORT PROPERTIES, LLC
An Ohio Limited Liability Company

By: _____

Its: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly signed as of the date set forth above.

CITY OF HURON, OHIO

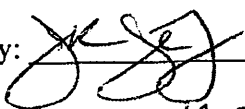
By: _____
City Manager

HURON CITY SCHOOL DISTRICT

By: _____
President of the Board of Education

By: _____
Treasurer

SUNSPORT PROPERTIES, LLC
An Ohio Limited Liability Company

By:  _____
Its: MEMBER

R.C. 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS

The undersigned, Finance Director of the City of Huron, Ohio (the “City”), hereby certifies in connection with the Compensation Agreement between the City and the Huron City School District, dated as of [April 6], 20~~22~~, that:

The amount required to meet the contract, obligation, or expenditure for the attached during Fiscal Year 20~~22~~ (\$0.00), 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. This certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of April, 2022.



Finance Director

Dated: April 6, 2022

EXHIBIT A

Project Site – Legal Description

Permanent Parcel No. 42-02065.000

RN: 202110160

Property Address: 309 Lake Erie Parkway, Huron, OH 44839

Being situated in the State of Ohio, County of Erie, Huron Township, Section 2, Part Original Lot 31, now in the City of Huron and being more definitely described as follows:

Commencing at a 1/2-inch iron pin found, marking the intersection of the East right-of-way line of Lake Erie Parkway with the South right-of-way line of Cleveland Road West;

Thence South 19 deg. 04' 02" East, along the East right-of-way line of Lake Erie Parkway, a distance of 249.99 feet to a 1/2-inch iron pipe, found, marking the Southwest corner of a parcel owned by Park & Fun Limited Partnership (RN 200311806) and the point of beginning;

(1) Thence North 64 deg. 49' 52" East, along the South line of said Park & Fun parcel, a distance of 242.88 feet to a 1/2-inch iron pipe, found on the West line of a parcel owned by 1920 Cleveland Road West, LLC (RN 200600557);

(2) Thence South 01 deg. 14' 25" East, along the West line of said 1920 Cleveland Road West, LLC Parcel, a distance of 1109.53 feet to a 1/2-inch iron pin & cap, set on the East right-of-way line of Lake Erie Parkway;

(3) Thence North 63 deg. 42' 29" West, along the East right-of-way line of Lake Erie Parkway, a distance of 137.89 feet to a point;

(4) Thence northerly continuing along the East right-of-way line of Lake Erie Parkway, a long an arc of a curve to the right, having a radius of 317.00 feet, a delta of 74 deg. 38' 27", a chord bearing of North 26 deg. 23' 16" West, a chord distance of 384.38 feet, an arc length of 412.96 feet to a point;

(5) Thence North 10 deg. 55' 58" East, continuing along said East right-of-way line, a distance of 385.46 feet to a point;

(6) Thence northerly continuing along said East right-of-way line, along an arc of a curve to the left, having a radius of 383.00 feet, a delta of 30 deg. 00' 00", a chord bearing of North 04 deg. 04' 02" West, a chord distance of 198.26 feet, an arc length of 200.54 feet to a point;

(7) Thence North 19 deg. 04' 02" West, continuing along said East right-of-way line, a distance of 25.77 feet to the point of beginning, containing 5.5131 acres, more or less, but being subject to all legal highways, easements and restrictions of record.

The above description was prepared from an actual survey by Daniel E. Hartung, Jr., Professional Surveyor No. 5667 in March 2016. The bearings were assumed only for the purposes of indicating angles.

EXHIBIT B

Enterprise Zone Ordinance

[See Attached.]