ORDINANCE NO. 09-2019

Declaring Improvements to Real Property within the City to be a Public Purpose; Declaring such Property to be Exempt from Real Property Taxation; Requiring the Owners of the Real Property to Make Service Payments In Lieu of Taxes; Establishing an Urban Redevelopment Tax Increment Equivalent Fund for the Deposit of Service Payments; and Authorizing the City Manager to Enter Into a Tax Increment Financing Service Agreement and a Development Agreement with the Property Owner.

WHEREAS, Ohio Revised Code ("**ORC**") Sections 5709.41, 5709.42 and 5709.43 (the **"TIF Statutes"**) provide that this Council may, under certain circumstances, declare improvements to certain parcels of real property to be a public purpose (the **"Improvements"**, as further defined in ORC Section 5709.41 and below) thereby exempting those Improvements from real property taxation, provide for payments in lieu of taxes by the owners of the parcels, and establish an urban redevelopment tax increment equivalent fund (the **"TIF Fund"** as defined below), provided the City has held fee title to such real property prior to the adoption of this Ordinance providing for the exemption; and,

WHEREAS, this Council desires to encourage the redevelopment of the parcel of real property described and depicted on Exhibit A attached to this Ordinance (the **"Property"**) to further the economic development goals of the City in a manner that is consistent with the existing neighborhood; and,

WHEREAS, He Hari, Inc., and any related entity formed for the specific purpose of developing said Property (collectively, the **"Developer"**) desires to redevelop the Property into a mixed-use development featuring an approximately one hundred five (105)-key hotel, approximately thirty thousand (30,000) square feet of restaurant or retail space, and approximately eighteen thousand (18,000) square feet of Class A office space, and certain designated improvements described in the Development Agreement (the "**Designated Improvements**")(collectively, the "**Project**"); and,

WHEREAS, in connection with the construction of the Project, the City and the Developer desire to execute a tax increment financing service agreement substantially in the form attached hereto as Exhibit B (the **"TIF Agreement"**), which TIF Agreement would provide for the undertaking of the Designated Improvements and reimbursement of the Developer for the costs of the Designated Improvements; and,

WHEREAS, in connection with the administration of the TIF Agreement and the Planned Unit Development, the City and the Developer desire to execute a development agreement substantially in the form attached hereto as Exhibit C (the "**Development Agreement**"); and,

WHEREAS, the City seeks to increase employment opportunities and to encourage establishment of new jobs in the City, in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution; and,

WHEREAS, in connection with the redevelopment of the Property and the construction of the Project, it is in the best interest of the City to declare the Improvements to the Property to be a public purpose and to provide an exemption from real property taxes as set forth in this Ordinance; and,

WHEREAS, it is necessary and appropriate and in the best interests of the City to provide for the payment of service payments in lieu of taxes (**"Service Payments"**) by the current and future owners of the Property (each an **"Owner,"** and collectively, the **"Owners"**) with respect to the Improvements pursuant to ORC Section 5709.42; and,

WHEREAS, as authorized by Ordinance No. 08-2019 passed March 18, 2019, the City acquired from the Owner fee title to the Property, pursuant to a Quitclaim Deed recorded with the Franklin County Recorder's Office, and, pursuant to a Quitclaim Deed, has conveyed said Property back to said Owner; and,

WHEREAS, notice of this Council's intention to declare the Improvements exempt from real property taxes and to pass this Ordinance has been delivered to the Board of Education of the Worthington City School District (the **"Board"**) in accordance with ORC §5709.83, and this Council ratifies and affirms the delivery of such notice; and,

WHEREAS, pursuant to ORC §5709.41, this Ordinance directs the Service Payments to be paid to the Board in the amount of the taxes that would have been payable to the Board if the Improvements had not been exempted from taxation, as such payments and their distribution to the Board are described under ORC §5709.42; and,

WHEREAS, pursuant to ORC §5709.82(C)(2), it is the City's intention that Service Payments paid to the Board as directed in this Ordinance represent the full scope of compensation to the Board and the Board shall not be compensated under an income tax sharing arrangement as otherwise described under ORC §5709.82(D); and,

WHEREAS, the City intends to apply for exemptions from taxation on behalf of the Owner or Owners of the Property, pursuant to ORC §5709.911; and,

WHEREAS, this Council desires that the Project be constructed, pursuant to the terms of the Development Agreement; and,

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. Pursuant to and in accordance with the provisions of the TIF Statutes, this Council hereby determines and finds that it is in the best interests of the City to declare the Improvements to the Property to be a public purpose and to grant an exemption from real property taxes on those Improvements. This Council finds and determines that 100% of the increase in the assessed value of the Property subsequent to the acquisition of the Property by the City (which

increase in assessed value is the "**Improvements**" as defined in ORC Section 5709.41(A)(2)) is hereby declared to be a public purpose, and shall be exempt from taxation for a period commencing on the effective date of this Ordinance and ending thirty (30) years after such date, all in accordance with the requirements of ORC Sections 5709.41 and 5709.42.

SECTION 2. As provided in ORC Section 5709.42, the Owner of the parcel comprising the Property is hereby required to, and shall make, Service Payments to the Treasurer of Franklin County (the "**County Treasurer"**) on or before the final dates for payment of real property taxes without penalty or interest, which Service Payments shall be remitted to the City for deposit in the TIF Fund, pursuant to ORC Sections 5709.41 and 5709.42 and as provided in Section 3 of this Ordinance. Each Service Payment shall be in the same amount as the real property taxes that would have been charged and payable against the Improvements (after credit for any other payments received by the City under ORC Section 319.302) had an exemption from taxation not been granted, and otherwise shall be in accordance with the requirements of the TIF Statutes. Any late Service Payments shall be subject to penalty and bear interest at the then current rate established under ORC 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 and any related amounts received by the City under ORC Section 319.302 shall be considered part of the Service Payments). The Service Payments shall be allocated and deposited in accordance with Section 3 of this Ordinance.

SECTION 3. This Council hereby authorizes and directs the Director of Finance to establish pursuant to and in accordance with the provisions of ORC Section 5709.43(B), the Worthington Gateway Urban Redevelopment Tax Increment Equivalent Fund (the **"TIF Fund"**) to be maintained in the custody of the City. The TIF Fund shall receive all Service Payments made in respect of the Improvements which are received by the City from the County Treasurer in accordance with this Ordinance.

The Service Payments received by the City shall be deposited into the TIF Fund and used (i) first, to pay the City's customary and reasonable costs related to the discharge of its obligations under the TIF Statutes, this Ordinance, the Development Agreement and all other related laws, and (ii) second, to reimburse the City for the City's reasonable Project related expenses, including but not limited to legal, engineering, and inspection costs, (iii) third, to reimburse the Developer for the costs of the Designated Improvements, (iv) fourth, if any Service Payments remain in the TIF Fund after the payments described in (i) – (iii) above, to reimburse the City for the cost of any additional public infrastructure improvements as permitted under the TIF Ordinance and the TIF Statutes, and (v) fifth, for any lawful purpose.

The TIF Fund shall remain in existence so long as the Service Payments are collected and used for the aforesaid purposes, after which the TIF Fund shall be dissolved in accordance with ORC Section 5709.43(D). Upon such dissolution, any incidental surplus remaining in the TIF Fund shall be disposed as provided in ORC Section 5709.43(D).

SECTION 4. The City Manager is hereby authorized to execute the TIF Service Agreement and the Development Agreement on behalf of the City substantially in the form attached to this Ordinance, which Development Agreement includes provisions regarding the construction of the Project, administration of the PUD, and the undertaking of the Designated Improvements, and which TIF Service Agreement includes provisions regarding, among other things, the payment of Service Payments with respect to the Property and the use of the TIF Funds, together with such revisions or additions thereto as approved by the City Manager as consistent with the objectives and requirements of this Ordinance, which approval shall be conclusively evidenced by the signing of said TIF Service Agreement and Development Agreement. The City Manager and other appropriate City officials are further authorized to provide such information and to execute, certify or furnish such other documents, and to do all other things as are necessary for and incidental to carrying out the provisions of the TIF Service Agreement and Development Agreement.

SECTION 5. The City Manager, the Director of Finance and the Director of Law, and any other City official, as appropriate, are each authorized and directed to sign any other documents, instruments or certificates and to take such actions as are necessary or appropriate to consummate or implement the transactions described in or contemplated by this Ordinance.

SECTION 6. Pursuant to ORC Section 5709.41(E), the Clerk of this Council is hereby directed to deliver a copy of this Ordinance to the Director of the Ohio Development Services Agency within fifteen days after its passage. On or before March 31st of each year that the exemption set forth in Section 1 hereof remains in effect, the City Manager shall prepare and submit, or cause to be prepared and submitted, to the Director of the Ohio Development Services Agency the status report required under ORC Section 5709.41(E).

SECTION 7. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 8. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed April 15, 2019

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

Introduced March 4, 2019
P.H. April 15, 2019
Effective May 8, 2019

EXHIBIT A

PROPERTY DESCRIPTION

Real property located at 7007 North High Street, Parcel Number 100-001218-00, as that real property is located in the City of Worthington, Franklin County.

The parcels enumerated herein, and any subsequent purported subdivisions and/or re-assigned parcel number identifications or street addresses shall constitute the "**Property**."

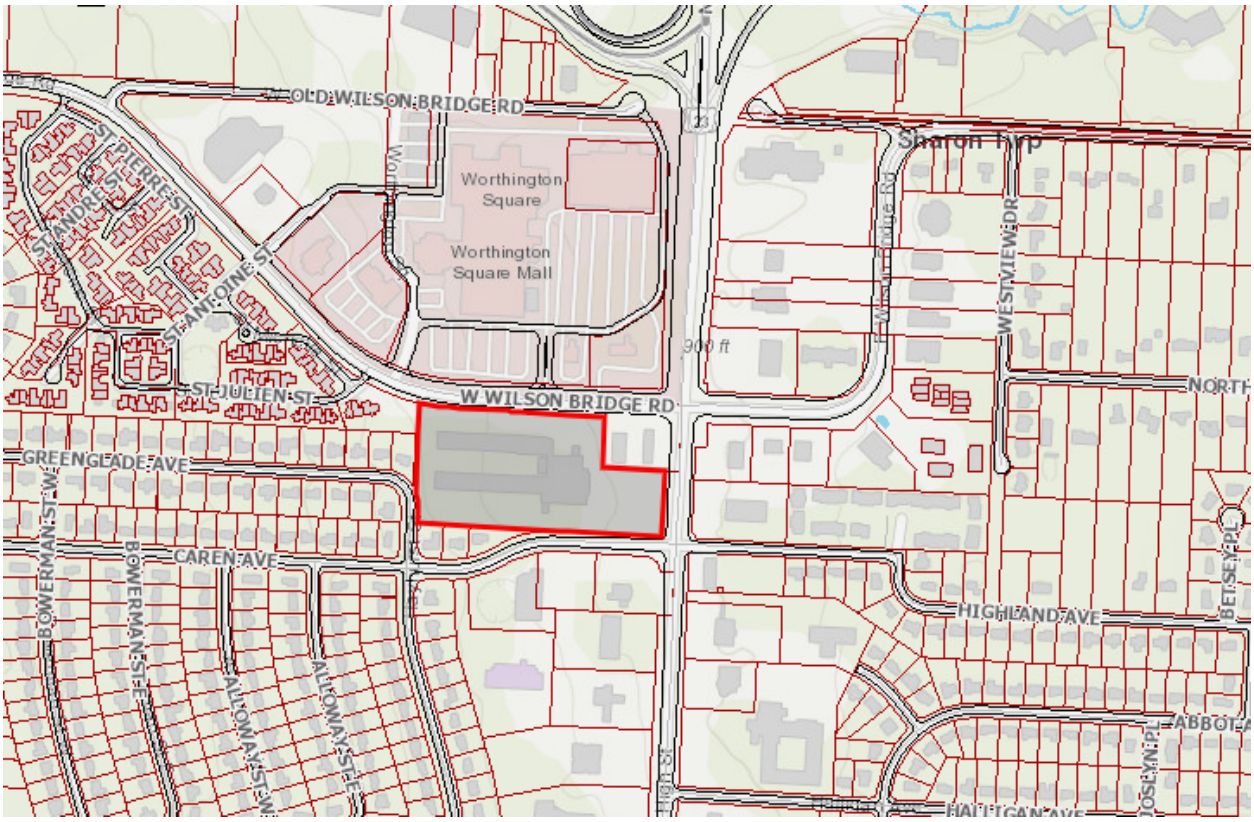


EXHIBIT B

TAX INCREMENT FINANCING SERVICE AGREEMENT

Between

THE CITY OF WORTHINGTON

And

HE HARI, INC.

This Tax Increment Financing Service Agreement (the "**Agreement**") is between He Hari, Inc., an Ohio corporation, having an address at [_____] (the "Developer") and the City of Worthington, Ohio, a municipal corporation organized under the laws of the State of Ohio and its Charter, having an address at 6550 North High Street, Worthington, Ohio 43085 (the "City"). The City and the Developer are collectively referred to herein as the "**Parties**."

WITNESSETH:

WHEREAS, the Developer is the fee owner of the property located at 7007 North High Street, Worthington, Ohio, 43085, and described more fully as Franklin County permanent parcel number 100-001218-00 (the **"Property"**) a description of which real property is attached hereto as Exhibit A and incorporated herein by reference, with each parcel of real property within the Property referred to herein as a "Parcel" (whether as presently appearing on county tax duplicates or as subdivided or combined and appearing on future tax duplicates). In addition, as described herein, the Developer intends to create a new Parcel along the North High Street frontage of the Property (the "North High Street Parcel") and to convey the North High Street Parcel to a third party in accordance with the terms of this Agreement.; and,

WHEREAS, the Developer desires to redevelop the Property into a mixed-use development featuring an approximately one hundred five (105)-key hotel, approximately thirty thousand (30,000) square feet of restaurant or retail space, and approximately eighteen thousand (18,000) square feet of Class A office space (collectively, the "**Project**"), as more fully described in EXHIBIT B, Scope of Work, attached to this Agreement and incorporated herein; and,

WHEREAS, the City anticipates passing or has passed Ordinance No. ___-2019 (the **"TIF Ordinance"**), pursuant to and in accordance with Ohio Revised Code (**"ORC"**) §§5709.41, 5709.42 and 5709.43 (the **"TIF Statutes"**), (i) declaring that the increase in the assessed value of the Property subsequent to the acquisition of the Property by the City (which increase in assessed value is the "**Improvement"** as defined in ORC Section 5709.41(A)(2)) is a "public purpose"; (ii) authorizing the use of the Service Payments (as defined hereinafter) for the Designated Improvements (as defined hereinafter); (iii)

providing for the exemption of one hundred percent (100%) of the Improvement from real property taxation (hereinafter referred to as the **"Exempted Portion of the Improvement"**), commencing with the effective date of the TIF Ordinance and ending on the earlier of (a) thirty (30) years after such commencement date or (b) the date on which the City can no longer require Service Payments (as hereinafter defined) to be paid to the 7007 North High Street Urban Redevelopment Tax Increment Equivalent Fund (the **"TIF Fund"**), which TIF Fund is established in the TIF Ordinance, all in accordance with the requirements of the TIF Statutes; and (iv) providing for the payment of service payments in lieu of real property taxes (the **"Service Payments"**, as further defined in Section 1 hereof), which are to 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 the Exempted Portion of the Improvement; and,

WHEREAS, the Parties have entered into a separate Development Agreement on the __ day of _____, 2019 setting forth additional terms and conditions regarding the Project (the **"Development Agreement")**; and,

WHEREAS, in connection with the Project, the Developer intends to undertake or cause to be undertaken certain improvements that are more fully described in EXHIBIT C attached hereto and incorporated herein by this reference (the **"Designated Improvements"**); and,

WHEREAS, the City has determined that the development by the Developer of the Property by undertaking the Designated Improvements, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and will advance the health, safety, and welfare of its residents; and,

WHEREAS, in consideration of actions to be undertaken by the City, the Developer has determined to undertake the Designated Improvements, subject to the conditions in this Agreement and the Development Agreement.

NOW THEREFORE, in consideration of these premises and the mutual covenants and obligations of the Parties hereto set forth, each of them does hereby covenant and agree as follows:

§1. Covenant to Make Payments in Lieu of Taxes. The Developer agrees, for itself and its successors and assigns to or of the Property or any part thereof (the Developer and each successor or assign is individually referred to as an "**Owner**" and collectively as the "**Owners**"), that the Owners shall pay all Service Payments with respect to the Exempted Portion of the Improvement pursuant to and in accordance with the TIF Statutes, the TIF Ordinance and this Agreement. All such Service Payments as are levied and assessed from time to time shall be made semiannually to the Treasurer of Franklin County (or to the Treasurer's designated agent for collection of the Service Payments) on or before the date on which the semi-annual payment in respect of real property taxes would otherwise be due and payable for the Exempted Portion of the Improvement. Each semiannual payment of Service Payments shall be in the same amount as the real property taxes that would have

been charged and payable against the Exempted Portion of the Improvement had an exemption from taxation not been granted, and otherwise shall be in accordance with the requirements of the TIF Statutes, including any interest assessed on any late payment of the Service Payments (currently established under ORC §§323.121(B)(1) and 5703.47 of the ORC, as the same may be amended from time to time). The payment of penalties and interest referred to herein, with the service payments in lieu of taxes, collectively comprise the "**Service Payments**". The Service Payments, and any other payments in respect of the Property that are received by the County Treasurer in connection with the reduction required by ORC §319.302, as may be amended from time to time, or any successor provisions thereto as may be amended from time to time (the **"Property Tax Rollback Payments"**), shall be allocated and distributed in accordance with §5 of this Agreement.

The exemption provided in the TIF Ordinance commences on the effective date of the TIF Ordinance and ends when the City can no longer use the Service Payments for any lawful purpose under the TIF Statutes or on the thirtieth (30^{th}) anniversary of such commencement date, whichever is first to occur.

No Owner shall, under any circumstances whatsoever, be required for any period of any tax year to pay, whether pursuant to ORC §5709.42 or this Agreement, (i) both real property taxes with respect to the Exempted Portion of the Improvement and Service Payments with respect to the Exempted Portion of the Improvement, or (ii) an amount of Service Payments in excess of that amount of real property taxes that would otherwise be payable during such period had the Exempted Portion of the Improvement not had an exemption from taxation.

Notwithstanding the current configuration of the Property, the Parties acknowledge for all purposes of this Agreement that, without affecting or changing the area comprising the Property, the Parcel(s) within the Property may change from time to time in number, area and designation. The City acknowledges that the Owner may subdivide the Property in accordance with the Development Agreement and all applicable laws and regulations. Notwithstanding any other provision of this Agreement, the City agrees (i) that each subsequent Owner's responsibility under this Agreement, including but not limited to responsibility for payment of Service Payments, is limited to that part or parts of the Property owned by such Owner and the Service Payments applicable to such part or parts of the Property, and (ii) that upon conveyance of the Property or any part thereof, provided that the Owner includes in all recorded or recordable documents conveying said Property or in the Declaration (defined hereinafter), the legal responsibility and obligation of the new Owner to make Service Payments (as required herein) as a condition of ownership, the prior Owner shall then have no responsibility for Service Payments applicable to the period after the date of conveyance with respect to the conveyed property. Notice of sale, and copies of all recorded documents related to transferring the obligations hereunder, shall timely be provided to the City by the Owner (transferor).

It is intended and agreed, and it shall be so provided by the Developer, as Owner, in the deed conveying any portion of the Developer**'**s Property to any other individual or entity, or in a Declaration filed and of record in the Franklin County Recorder's Office (the

"Declaration"), that the covenants provided in this §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, as Owner, in any succeeding deed to the Developer's successors and assigns. It is further intended and agreed that these agreements and covenants in this §1 shall remain in effect for the full period of exemption permitted in accordance with the requirements of the TIF Statutes and the TIF Ordinance.

§2. Priority of Service Payments. By its execution hereof, the Developer, as Owner, on behalf of itself and subsequent Owners, hereby grants to the City a continuing lien on the Property as security for the timely payment of the Service Payments in accordance with the TIF Statutes, the TIF Ordinance and this Agreement, which lien shall have the priority stated in ORC §5709.91.

§3. Exemption Applications. In respect of portions of the Property owned by the Developer at the time of the filing described in this §3, the Developer agrees and consents to the City preparing and filing all necessary applications and supporting documents to obtain the exemption from real property taxation for the Exempted Portion of the Improvement authorized by the TIF Statutes and the TIF Ordinance (including, but not limited to, the Developer signing the Ohio Department of Taxation DTE Form 24P, filed with the County Auditor, making the City its attorney in fact to submit said documentation). The Developer, on behalf of itself and each subsequent Owner, agrees that it shall assist and cooperate with the City, and that it shall cause each subsequent Owner by deed or declaration to assist and cooperate with the City, in the preparation and filing by the City of such applications and supporting documents that are necessary to enable the City to collect Service Payments thereunder (including, but not limited to, the Developer signing and timely filing the Ohio Department of Taxation DTE Form 24), and the Developer and each Owner shall cooperate with the City in connection with the preparation and filing of the initial and any further applications required to accomplish that purpose, and will not undertake any acts which would prohibit, prevent, delay or hinder the City from obtaining the Service Payments hereunder.

§4. Covenants to Run with the Land. It is intended and agreed that the covenants of the Developer as Owner in §§1, 2 and 3 hereof 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 against the Property, the Project and the Owners. It is further intended and agreed that such covenants shall remain in effect for the full period of exemption provided in accordance with the requirements of the TIF Statutes, the TIF Ordinance enacted pursuant thereto and this Agreement. It is further agreed by the Developer, as Owner, that all such covenants, whether or not such provisions are included by any Owner in any deed to such Owner's successors and assigns, shall be binding upon each Owner and shall be enforceable by the City in the manner provided herein.

In amplification of, and not in restriction of, the provisions of this §4, it is intended and agreed that the City and its respective successors and assigns shall be deemed a beneficiary of the covenants provided herein. Such covenants shall run in favor of the City for the entire period of the exemption provided by the TIF Ordinance and the TIF Statutes, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein, to which such covenants relate. The City shall have the right in the event of any breach of any covenant herein contained, to exercise all of the rights and remedies, and to maintain all actions or suits at law or in equity or in other proper proceedings, to cure such breach, to which it or any other beneficiaries of such covenant may be entitled.

The Developer further agrees for itself and any Owners, that all agreements, covenants, rights, duties, remedies and obligations of the Developer and of the City, and their respective successors and assigns, set forth in this Agreement, shall be binding upon them and their respective successors and assigns, which Agreement shall survive any recording and shall be valid and enforceable by and against the Parties referred to in this Agreement, in accordance with the terms and provisions contained therein. Any agreement or covenant referred to in this Agreement as being a covenant running with the land, shall run with the land and be valid and enforceable by and against the Parties referred to herein, in accordance with the terms and provisions thereof.

The City agrees that upon expiration of the period of exemption as that period is defined in this Agreement and the TIF Ordinance, and fulfillment of the obligations of the Developer and any subsequent Owner(s) under this Agreement with respect to each portion of the Property owned by such Owner, the City will, upon request by an Owner, execute and deliver to the Owner a recordable instrument evidencing that the obligations under this Agreement (and under any deed or Declaration) with respect to the portions of the Property owned by the Owner are fully satisfied and that the Owner and such property are released from all further obligations under this Agreement (and under any deed or Declaration).

§5. Order of TIF Payments. The Developer and the City agree that all Service Payments and Property Tax Rollback Payments related to the Exempted Portion of the Improvement when received by the City shall be deposited in the TIF Fund, as required by ORC §5709.43. The TIF Fund shall be an account maintained in the custody of the City and shall receive all distributions required to be made to the City. All Service Payments and Property Tax Rollback Payments shall first be used by the City to pay the City's customary and reasonable costs related to the discharge of its obligations under the TIF Statutes (to the extent related to this Agreement and the TIF Ordinance), the TIF Ordinance and all other related laws. Second, the City shall then use Service Payments and Property Tax Rollback Payments to fully reimburse the City for the City's reasonable Project related expenses, including but not limited to legal, engineering, and inspection costs, prior to reimbursing the Developer for costs of the Designated Improvements incurred by the Developer. Third, the City shall then use Service Payments and Property Tax Rollback Payments deposited in the TIF Fund to reimburse the Developer for the costs of the Designated Improvements, as provided under §6 below. Fourth, after all such previous payments have been made, then the City shall use Service Payments and Property Tax

Rollback Payments deposited in the TIF Fund to reimburse the City for the cost of any additional public infrastructure improvements as permitted under the TIF Ordinance and the TIF Statutes, and then fifth, for any lawful purpose. The TIF Fund shall remain as an account in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund shall be dissolved and any surplus funds remaining therein shall be transferred to the City's general fund, all in accordance with ORC §5709.43.

§6. Undertaking of the Designated Improvements and Reimbursement of the Developer.

A. If the Developer determines it to be financially feasible, the Developer intends to undertake or cause to be undertaken the Designated Improvements. If the Developer undertakes the Designated Improvements, the City hereby agrees to reimburse the Developer for a portion of the costs required in connection with the Designated Improvements using Service Payments and Property Tax Rollback Payments paid by Owners pursuant to the TIF Ordinance, as more fully described below in (B), (C), and (D), in the order set forth in §5 above, and subject to the terms and limitations contained in the TIF Ordinance.

B. The cost of the improvements eligible for reimbursement (the "Eligible Costs") shall include any and all costs incurred in order to undertake the Designated Improvements, including the items of "costs of permanent improvements" set forth in ORC §133.15(B). Those costs include, but are not necessarily limited to: (i) cash paid; (ii) interest on the reimbursable portion of the amount paid by Developer for the Off-Site Improvements (as defined and identified in the Development Agreement) from the date of such payment until the date of reimbursement by the City, at the annual rate of four percent (4%); (iii) review and inspection fees incurred in connection with the construction of the Designated Improvements; (iv) professional fees; and (v) construction management and supervisory costs and fees.

C. The portion of the Eligible Costs subject to reimbursement shall not exceed Three Million, Four Hundred Thousand Dollars ($3,400,000), plus interest on the Off-Site Improvements at the annual rate of four percent (4%) and shall be further limited by and in accordance with Section 13 of the Development Agreement (the "Reimbursable Portion"). Designated Improvements will consist of two categories of improvements: "Off-Site Improvements" and "On-Site Improvements," which are used herein as those terms are defined and as those improvements are identified in the Development Agreement.

D. From time to time after commencement of the Designated Improvements, the Developer shall provide a certified statement to the City setting forth and providing reasonable evidence concerning the Cost of the Designated Improvements (each a "**Certified Statement**", and collectively, the "**Certified Statements**"). At least twice each year, subsequent to submission of the first Certified Statement by the Developer, and contingent upon the City having received funds in the TIF Fund, the City shall pay to Developer, within thirty (30) business days following the

City's receipt of a Certified Statement, the lesser of (i) the Reimbursable Portion, or part thereof, as shown in the Certified Statements, or (ii) the funds available at that time in the TIF Fund, subject to the terms and limitations of this Agreement. Should insufficient funds exist in the TIF Fund at the time of submission of a Certified Statement to reimburse the Developer for the Reimbursable Portion, then the City shall maintain a record of such unpaid amounts, and the City shall pay to Developer such amounts within thirty (30) business days after such funds exist in the TIF Fund, provided that such payment shall not exceed the available balance in the TIF Fund. The City shall submit an accounting or record of all amounts paid to Developer out of the TIF Fund along with each payment to Developer, including payments made by the City within thirty (30) business days of the receipt of a Certified Statement and payments made by the City within thirty (30) business days of sufficient funds being deposited into the TIF Fund with respect to any unpaid amounts, but subject to the limitations described in this §6(D).

E. Unless the Project is rendered otherwise exempt by the form, structure and/or source of the financing obtained by the Developer to complete the Project, the Developer and the City acknowledge that for purposes of this Agreement, the Off-Site Improvements are subject to the prevailing wage requirements of ORC Chapter 4115, and all wages paid to laborers and mechanics employed on the construction of the Off-Site Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Off-Site Improvements, which wages shall be determined in accordance with the requirements of ORC Chapter 4115. Notwithstanding any exemption that may apply thereto, the Developer shall otherwise comply with all applicable requirements of ORC Chapter 4115 including, without limitation, (i) obtaining from the Ohio Department of Commerce its determination of the prevailing rates of wages to be paid for all classes of work required for the construction of the Off-Site Improvements; and (ii) ensuring that all subcontractors for the Off-Site Improvements receive notification of changes in prevailing wage rates as required by ORC Chapter 4115.

§7. Agreement Binding on Parties; No Personal Liability. All covenants, obligations and agreements of the Developer and the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law, and shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto. No such covenants, 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 in other than their official capacity or of any individual person who is an officer, member, director or shareholder of the Developer other than in their capacity as an officer, member, director or shareholder, and neither the members of the City Council nor any City official executing this Agreement or any individual person executing this Agreement on behalf of the Developer, shall be liable personally by reason of the covenants, obligations or agreements of the Developer or the City contained in this Agreement.

§8. Notices. All notices, requests, demands and other communications between the Parties required or permitted to be given under this Agreement shall be deemed to have been duly

given if in writing and (i) delivered personally, (ii) deposited in the U.S. Mail by registered or certified mail, postage prepaid, or (iii) sent by any nationally recognized courier delivery service, and addressed as follows:

If to the City:

City Manager
City of Worthington
6550 North High Street
Worthington, Ohio 43085

with a copy to:

Director of Law
City of Worthington
370 Highland Avenue
Worthington, Ohio 43085

If to the Developer:

The Witness Group
Attn. Ohm Patel
600 Enterprise Drive
Lewis Center, OH 43035

with a copy to:

Scott J. Ziance
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215

Any party may change the address and/or persons to which notices are to be addressed by giving the other party notice in the manner stated herein.

§9. Complete Agreement. All present negotiations, considerations, representations and understandings between the Parties as to the implementation of the exemptions authorized by the TIF Ordinance and the subject matters of this Agreement are incorporated herein and in the Development Agreement. This Agreement may only be amended by a written instrument duly authorized and executed by the Parties hereto, and subject to authorization by the Worthington City Council, if required.

§10. No Third Party Beneficiaries. None of the provisions of this Agreement or any document contemplated hereby is intended to grant any right or benefit to any person or entity that is not a party to this Agreement.

§11. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio.

§12. Severability. If any provision in this Agreement or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other provision or portion thereof. To the extent an interpretation of a provision or a portion thereof can be made which will make it valid or enforceable, the Parties agree that the interpretation making it valid or enforceable should be chosen.

§13. Notice and Cure. A party shall be in default of this Agreement if the party fails to perform any material obligation under this Agreement and such failure continues uncured for more than thirty (30) days after receiving a written notice of default from any other party, unless more than thirty (30) days shall be required because of the nature of the default, in which case the party shall be in default if the party shall have failed to proceed diligently to commence to cure within such thirty (30)-day period.

The City and Developer, each by a duly authorized representative, have executed this Agreement to be effective as of the date last written below.

CITY OF WORTHINGTON

By: _____
Matthew H. Greeson Date
City Manager

HE HARI, INC.

By: _____
Date

Approved as to form:

By_____
Tom Lindsey, Director of Law

EXHIBIT C

DEVELOPMENT AGREEMENT

He Hari, Inc. (Worthington Gateway Project)

THIS DEVELOPMENT AGREEMENT ("Agreement") is between HE HARI, INC., an Ohio corporation, having an address at [_____] (the "Developer") and the CITY OF WORTHINGTON, OHIO, a municipal corporation organized under the laws of the State of Ohio and its Charter, having an address at 6550 North High Street, Worthington, Ohio 43085 (the "City").

RECITALS

A. The Developer is the fee owner of the property located at 7007 North High Street, Worthington, Ohio, 43085, and described more fully as Franklin County permanent parcel number 100-001218-00 (the "Project Site") a description of which real property is attached hereto as Exhibit A and incorporated herein by reference, with each parcel of real property within the Project Site referred to herein as a "Parcel" (whether as presently appearing on county tax duplicates or as subdivided or combined and appearing on future tax duplicates). The Project Site contains a building, a parking lot, and other improvements formerly utilized as the Holiday Inn. In addition, as described herein, the Developer intends to create a new Parcel along the North High Street frontage of the Project Site (the "North High Street Parcel") and to convey the North High Street Parcel to a third party in accordance with the terms of this Agreement.

B. Developer desires to redevelop the Project Site into a mixed-use development featuring an approximately one hundred five (105)-key hotel, approximately thirty thousand (30,000) square feet of restaurant or retail space, and approximately eighteen thousand (18,000) square feet of Class A office space, including certain Designated Improvements (as defined herein) in support thereof (collectively, the "Project"). The estimated aggregate construction cost of the Project is approximately thirty six million dollars ($36,000,000).

C. Developer anticipates that the Project will create approximately (i) sixty (60) full-time employment positions with annual payroll and benefits of approximately two million, five hundred thousand dollars ($2,500,000), and (ii) thirty (30) part-time employment positions with annual payroll and benefits of approximately five hundred thousand dollars ($500,000).

D. The City intends to create a so-called project-based TIF for the Project Site under Ohio Revised Code ("R.C.") 5709.41, as the Project will be in furtherance of the City's urban redevelopment activities. The City intends to establish the TIF for thirty (30) years and with respect to one hundred percent (100%) of the incremental value on the Project Site; provided that the City will establish the TIF on a non-school basis. The owner of each Parcel (with each such current or future owner referred to herein individually as an "Owner" and collectively as the "Owners") will pay the statutory service payments generated from the Project (the "Project TIF Revenue") to the Franklin County Treasurer pursuant to a Service Payment Agreement entered into by and between the City and the Developer dated as of [___], 2019 (the "Service Agreement"),

in the same manner and amount as if the project-based TIF with respect to the Project Site had not been established in accordance with the Service Agreement. The Project TIF Revenue will be distributed by the Franklin County Treasurer to an urban redevelopment tax increment equivalent fund (the "TIF Fund"). The Service Agreement will provide, among other things, for the application of the Project TIF Revenue to pay a portion of the costs of improvements required in connection with the Project and identified on Exhibit C attached hereto (the "Designated Improvements") in an amount not to exceed Three Million, Four Hundred Thousand Dollars ($3,400,000), plus interest as described below. In accordance with the Service Agreement, and subject to (i) the Incentive Contingencies provided in Section 2 of this Agreement (ii) the provisions of Section 4.10 of this Agreement and (iii) the valuation requirements provided in Section 12 of this Agreement, the City shall use the Project TIF Revenue in the TIF Fund to reimburse the Developer the costs of the Designated Improvements incurred by the Developer and eligible for reimbursement as provided for in this Agreement, plus interest on the Off-Site Improvements (defined herein) at the annual rate of four percent (4%), before the City may utilize the Project TIF Revenue for other uses at its discretion. Designated Improvements will consist of two categories of improvements: "Off-Site Improvements" and "On-Site Improvements". Off-Site Improvements shall consist of improvements that are currently in the public right-of-way or are expected to be in the public right-of-way and that will be dedicated to the City upon completion. All other Designated Improvements, which generally are expected to be on the Project Site, shall be On-Site Improvements.

E. The Developer and the City agree that the Service Agreement will provide that the Project TIF Revenue will be allocated to pay a portion of the costs of the Designated Improvements as specified in the ordinance establishing the project-based TIF with respect to the Project (the "TIF Ordinance"). The City and the Developer further agree that the Service Agreement will provide that the Project TIF Revenues will be used to fully reimburse the City for the City's reasonable Project related expenses, including but not limited to legal, engineering, and inspection costs, prior to reimbursing the Developer for costs of the Designated Improvements incurred by the Developer.

F. In order to create a project-based TIF for the Project under R.C. 5709.41, the City must have held fee title to the Project Site prior to the enactment of the TIF Ordinance. Accordingly, the Developer will convey fee title to the Project Site to the City for $1.00 following the date this Agreement is executed, and the City will re-convey the Project Site to the Developer thereafter for the same amount, in each case subject to, the terms of this Agreement.

G. The City has determined that re-conveying the Project Site to the Developer for $1.00 is appropriate because the City will receive the Project Site for the same amount, and the conveyance of the Project Site back to the Developer is necessary to facilitate the Project.

H. The City has determined that eliminating competitive bidding in connection with the re-conveyance of the Project Site to the Developer is appropriate because the Project Site is currently owned by the Developer, and the Developer's willingness to initially convey the Project Site to the City is contingent upon the City's agreement to promptly re-convey the Project Site to the Developer and to no other party.

NOW, THEREFORE, the parties, intending to be legally bound, agree to the following terms and conditions:

1. General Agreement and Term

The Developer agrees that the Project will be constructed in a manner which is consistent with generally accepted construction industry standards and guidelines applicable to similar projects. If any portion of the Project does not meet the requirements of the City's zoning regulations, the Developer must obtain the applicable City approvals for the portion(s) of the Project through the appropriate reviewing body or reconstruct the noncomplying portion of the Project.

Except as provided herein and in the Service Agreement, the costs of the Project shall be paid solely and exclusively from funding obtained by the Developer; provided, however, that the City will provide certain incentives for the Project, which are based on the improvements to be made and conditioned on the satisfaction of certain Incentive Contingencies for the Project, as provided herein.

This Agreement shall become effective as of the Effective Date and terminate (a) three years after the Effective Date if the Incentive Contingencies, as defined below, have not been met, upon written notice delivered by the City to the Developer, or (b) on such earlier date as may be determined pursuant to Section 8 or mutually agreed by the Parties; provided, however, the following provisions shall survive any termination of this Agreement: Sections [6, 8.2, 8.4, 8.7, 8.8, 8.9, 11, 16 - 27].

2. Incentive Contingencies

The obligation of the City to provide the Project TIF Revenue (collectively, the "Incentives") for the Project in accordance with the Service Agreement is contingent upon the satisfaction of all of the following contingencies with respect to the Project (collectively, the "Incentive Contingencies"). Each of the agreements, evidence, or other documents required to be submitted to satisfy an Incentive Contingency must be in form and substance reasonably acceptable to the City in order for the Incentive Contingency to be satisfied. The Parties will proceed diligently and in good faith to pursue the satisfaction of the Incentive Contingencies in a timely and coordinated manner intended to result in the timely development of the Project in accordance with the provisions of this Agreement. The Parties will coordinate their efforts to pursue the satisfaction of the Incentive Contingencies as soon as practical. From time to time, at the request of the Developer, the City shall confirm the satisfaction, waiver, or failure of any of the Incentive Contingencies which have been satisfied, waived, or not been met.

2.1 Plans. The Developer shall have caused the plans for the Project (the "Project Plans") to be prepared and submitted to the City, and the City shall have approved such plans.

2.2 Completion of Project. The Developer shall have

substantially completed or caused the completion of the Project, including all of the Designated Improvements, with such modifications thereto that are acceptable to the City in its reasonably exercised discretion based on a consideration of generally accepted industry standards, costs, and guidelines applicable to similar projects.

2.3 Environmental Reports. Developer shall have submitted such environmental reports for the Project Site to the City as have been requested by the City and evidencing there are no violations of environmental laws that would prevent development of the Off-Site Improvements in accordance with the Project Plans. Developer shall have delivered a reliance letter from the preparer of the environmental reports authorizing reliance on those reports by the City.

2.4 Completion Guaranty. The Developer and the Principals, as defined in the Completion Guaranty, shall have executed and delivered to the City the Completion Guaranty substantially in the form of the Completion Guaranty attached as Exhibit B.

2.5 Permits. The Developer shall have obtained the required permits for construction of the Project, including the Designated Improvements.

2.6 Transfer of North High Street Parcel. If the Developer conveys the North High Street Parcel to another entity, the Developer shall have provided evidence satisfactory to the City in its reasonable discretion that the Developer has conveyed the North High Street Parcel to an entity obligated by the terms of such conveyance to comply with the obligations of the Developer hereunder as they pertain to the North High Street Parcel, including specifically those set forth in Sections 4, 7, 8.1.7, 9, and 14 of this Agreement.

2.7 Service Agreement. The Service Agreement shall be effective and shall have been recorded against the Project Site.

3. Property Conveyance.

3.1 The Developer's transfer of the title to the Project Site to the City (the "Initial Conveyance") shall take place on [_____], 201_, or such other date as the parties may agree upon (the "Initial Conveyance Date"); provided, however that the Initial Conveyance shall occur prior to the passage of the TIF Ordinance. On the Initial Conveyance Date, the Developer shall convey the Project Site to the City for $1.00, by Quitclaim Deed. Developer shall pay all customary closing costs relating to the Initial Conveyance. The City agrees to neither make, nor permit to be made, any material changes to the condition of the Project Site during the period in which it owns the Project Site. During the period in which City owns the Project Site, the Developer, its employees, and its agents are permitted to enter upon the Project Site for the purpose of conducting activities associated with the Project at no cost to the City, provided that such entry shall be

at the sole risk of the Developer, its employees, and its agents, and provided, further that the activities described in this Section 3 are subject to the indemnification provision of Section 6 of this Agreement.

3.2 On the Initial Conveyance Date, immediately after conveyance to the City, the City shall re-convey the Project Site to the Developer (the "Re-conveyance"), for $1.00, by Quitclaim Deed. Developer shall pay all customary closing costs relating to the Re-conveyance.

3.3 Notwithstanding anything to the contrary herein, the Developer shall not transfer the North High Street Parcel or any other portion of the Project Site to a third party unaffiliated with the Developer until after the Re-conveyance shall be complete.

4. Construction of the Project

4.1 At such time as Developer has obtained all building permits, zoning approvals, and other governmental approvals required for the Project, Developer shall commence and thereafter complete the construction of the Project as reflected in the Project Plans, in compliance with all applicable laws. Developer shall be responsible for acquiring and paying for all State, local, or Federal permits required for the Project.

4.2 The Developer shall cooperate in good faith with the City to construct the Designated Improvements in such sequencing with respect to the Project as listed in Exhibit D attached hereto, with such modifications thereto that are acceptable to the City in its reasonably exercised discretion based on a consideration of generally accepted industry standards, costs, and guidelines applicable to similar projects.

4.3 The Designated Improvements contemplated by this Agreement shall be performed and completed by the Developer, its contractors and subcontractors, or any successors thereof, in a good and workmanlike manner using first-class materials in accordance with all applicable laws, ordinances, rules and regulations and related safety standards, including the specifications and standards of the City. Upon the commencement of any construction undertaken pursuant to this Agreement, the Developer must diligently pursue such construction to completion.

4.4 If at the time of the execution of this Agreement, the City and the Developer have not yet finalized plans for the Designated Improvements for which City approval is required, the Developer agrees to submit such plans to the City Engineer for review, and the City reserves the right to review and approve the design and engineering of the Designated Improvements for consistency with City standards and specifications prior to the issuance of permits. The City covenants that it shall approve or reject such submissions within twenty (20) business days of submittal.

4.5 The Developer agrees to permit duly authorized agents and employees of the City, upon reasonable notice, to inspect and review the construction of any Designated Improvement that is to be located in City right-of-way or to connect into any existing or planned City public infrastructure, including that such Designated Improvement is being constructed in substantial conformance with the approved Project Plans, and to attend any onsite construction meetings pertaining to such Designated Improvement.

4.6 The Developer shall provide a warranty to the City (the "Warranty") that all such Designated Improvements are in conformity with the approved Project Plans and free from defects in workmanship, materials and equipment for a period of one (1) year. The warranty shall remain in effect until the expiration of that period unless the Developer shall provide a maintenance bond satisfactory to the City in form and substance.

4.7 This Warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by others, or abuse.

4.8 To the extent any products, equipment, systems, or materials incorporated in the work are specified and purchased by the City, they shall be covered exclusively by the warranty of the manufacturer or supplier. There are no warranties of the Developer which extend beyond the description on the face of any such warranty.

4.9 The Developer's liability for the Warranty shall be limited to the one-year correction period referred to in Section 4.11, as such period may be extended in accordance with Section 4.11.

4.10 The Warranty time period shall commence on the date of the City's acceptance of the dedication of such Designated Improvements, unless otherwise provided in writing. The City shall have the right, to be exercised reasonably, to inspect, or to hire a third-party to inspect, the dedicated Designated Improvements during construction and during the Warranty time period. The City and the Developer agree that the Project TIF Revenues in the TIF Fund will be used to fully reimburse the City for the City's reasonable costs incurred from such inspection prior to reimbursing the Developer for costs of the Designated Improvements incurred by the Developer.

4.11 If the Developer, after receipt of detailed written notice, does not promptly repair or replace defective work during the period of one (1) year after the City's acceptance, the City may repair or replace such defective work and charge the cost thereof to the Developer or the Developer's surety. Defective work that is repaired or replaced by the Developer shall be inspected by the City Engineer. The repaired or replaced work shall be guaranteed by the Developer for the remainder of the warranty one (1) year period or for one (1) additional year from the date of the City Engineer's acceptance of the corrective work, whichever is later.

4.12 ALL OTHER WARRANTIES OF THE DEVELOPER AS PERTAINS TO THE DESIGNATED IMPROVEMENTS, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

5. Security for Performance. The Developer shall execute, and provide to the City, a bond, equal to the estimated construction costs of the total **Off-Site Improvements shown in the Project Plans**, as approved by the City Engineer, as security for performance of all of Developer's obligations related to **Off-Site Improvements** set forth in this Agreement. All forms of financial guarantees must be acceptable to the City to insure faithful performance of the terms and conditions under this Agreement and to ensure completion of the **Off-Site Improvements** in accordance with all applicable State and local laws and regulations, and in the absence of applicable State and local laws and regulations, best practices of the engineering and construction industry.

If the surety of any bond so furnished by the Developer or a contractor declares bankruptcy, becomes insolvent or its right to do business is terminated in Ohio, the Developer shall within ten (10) business days thereafter cause the substitution of another bond or surety.

6. Indemnification. Developer shall, at its cost and expense, defend, indemnify and hold the City and any officials, employees, agents and representatives of the City, its successors and assigns (collectively the "Indemnified Parties" and each an "Indemnified Party"), harmless from and against, and shall reimburse the Indemnified Party for, any and all loss, cost, claim,

liability, damage, judgment, penalty, injunctive relief, expense or action (collectively the "Liabilities" and each a "Liability"), other than Excluded Liabilities, as defined below, whether or not the Indemnified Party shall also be indemnified as to any such claim by any other person, the basis of which claim (a) was caused by or results from the actions or failures to act of Developer or its affiliates, agents, employees, contractors, subcontractors and material suppliers while in possession or control of the Project, whether or not such action or inaction was negligent or reckless, or is in any way related to the construction of the Project or the selection of contractors, subcontractors or material suppliers relating thereto; (b) is based, in whole or in part upon failure or alleged failure of Developer or its affiliates to satisfy their obligations under this Agreement or any other agreement by and between the City and the Developer with respect to the Project (each, a "Project Agreement"); (c) relates to fraud, misapplication of funds, illegal acts, or willful misconduct on the part of Developer or its affiliates; or (d) relates to the bankruptcy or insolvency of Developer or its affiliates. The indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under any Project Agreement.

"Excluded Liability" means each Liability to the extent it is attributable to the gross negligence or willful misconduct of any Indemnified Party or the failure of any Indemnified Party that is a third party beneficiary of this Agreement to perform any obligation required to be performed by the Indemnified Party as a condition to being indemnified hereunder, including without limitation, the settlement of any Liability without the consent of the Developer, or, to the extent the Developer's ability to defend a Liability is prejudiced materially, the failure of an Indemnified Party to give timely written notice to the Developer of the assertion of a Liability.

Upon notice of the assertion of any Liability, the Indemnified Party shall give prompt written notice of the same to the Developer. Upon receipt of written notice of the assertion of a Liability, the Developer shall have the duty to assume, and shall assume, the defense thereof, with power and authority to litigate, compromise or settle the same; provided that, the Indemnified Party shall have the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest, which approval may be withheld in its sole discretion.

At Developer's expense, an Indemnified Party may employ separate counsel and participate in the defense of any Liability; provided, however, that any such fees and expenses must be reasonable and necessary to protect the interests of the Indemnified Party. The Developer shall not be liable for any settlement of any Liability made without its written consent, but if settled with the written consent of the Developer, or if there is a final judgment for the plaintiff in an action, the Developer agrees to indemnify and hold harmless the Indemnified Party, except only to the extent of any Excluded Liability.

7. Time for Performance. The intent and understanding of the parties is for the Developer to have the Project constructed and completed within forty-eight (48) months of the latter of (i) executing this Agreement, or (ii) the date the PUD becomes effective.

The time for performance indicated immediately above is subject to any approved

extensions by the City for delays beyond the reasonable control of the Developer that prevent the Developer from timely performing its obligations under this Agreement. **A request for extension must be in writing and may be granted at the discretion and approval of the City.**

At all times during construction of the **Project, the Developer** shall have on-site a competent representative who is knowledgeable and familiar with the Project. The representative shall be capable of reading plans and specifications related to the Designated Improvements and shall have the authority to execute those plans and specifications and any alterations required by the City. The representative shall be replaced by the Developer when, in the opinion of the City, reasonably determined, his/her performance is deemed inadequate.

8. Events of Default and Remedies.

8.1 Developer Defaults. Any one or more of the following shall constitute a "Developer Default":

8.1.1 The Developer shall fail to observe or perform any agreement, term or condition stated in this Development Agreement, and such failure shall continue for a period of 10 business days (with respect to these failures which may be cured by the payment of money) or 30 days (with respect to any other failure) after the Developer has received a Default Notice (as defined herein) of such failure **unless more than thirty (30) days shall be required because of the nature of the default, in which case if the Developer shall have failed to proceed diligently to commence to cure such failure within such 30-day period after notice and thereafter fails to cure such failure**;

8.1.2 Any representation or warranty made by Developer in this Agreement or in any other Project Agreement is false or misleading in any material respect as of the time made;

8.1.3 Any report, certificate, or other document furnished by the Developer to the City pursuant to this Agreement or any other Project Agreement is false or misleading in any material respect as of the time furnished and has been relied upon by the City to its material detriment prior to correction by the Developer;

8.1.4 The filing by the Developer of a petition for the appointment of a receiver or trustee;

8.1.5 The making by the Developer of a general assignment for the benefit of creditors;

8.1.6 The entry of an order for relief pursuant to any Chapter of

Title 11 of the U.S. Code, as the same may be amended from time to time, with the Developer as debtor;

8.1.7 The Developer shall develop, or permit to be developed, any portion of the Project Site as a Parcel that is used or will be used for residential purposes, as defined in Ohio Revised Code Section 5709.41(B);

8.1.8 The filing by the Developer of an insolvency proceeding with respect to the Developer or any proceeding with respect to the Developer for compromise, adjustment, or other relief under the laws of any country or state relating to the relief of debtors; or

8.2 Remedies for Developer Default. At any time as of which a Developer Default exists, the City at its option, may, but shall not be obligated to, exercise any one or more of the following remedies:

8.2.1 By written notice to the Developer, terminate this Agreement, provided that such termination shall not affect the obligations of the Developer that have then accrued;

8.2.2 By written notice to the Developer, cease disbursements of proceeds from the TIF Fund;

8.2.3 (i) recover from the Developer any sums of money that are due and payable by the Developer to or for the benefit of the City under this Agreement; (ii) solely with regard to a failure of Developer to complete the Off-Site Improvements once the Developer has commenced construction of the Off-Site Improvements (the parties agreeing that this remedy is not available to the City with regard to any On-Site Improvements), commence an action for specific performance or other equitable relief against the Developer with respect to the defaulted obligations as provided in Section 8.6; and (iii) exercise the City's rights under Section 8.7 with respect to the Developer Default; and

8.2.4 Enforce, or avail themselves of, any other remedies available to them at law or in equity.

8.3 City Default. Any one or more of the following shall constitute a "City Default":

8.3.1 The City shall fail to observe or perform any agreement, term or condition stated in this Development Agreement, and such failure shall continue for a period of 10 business days (with respect to these failures which may be cured by the payment of money) or 30 days (with respect to any other failure) after the City has received a Default Notice of such failure unless more than thirty (30) days shall be required because of the nature of the default, in which case if the City shall have failed to proceed diligently to commence to cure such failure within such 30-day period after notice and

thereafter fails to cure such failure;

8.3.2 Any representation or warranty made by City in this Agreement or any other Project Agreement is false or misleading in any material respect as of the time made and has been relied upon by the recipient to its material detriment prior to correction by City; or

8.3.3 Any report, certificate or other document furnished by City to the Developer pursuant to this Agreement or any other Project Agreement is false or misleading in any material respect as of the time made and has been relied upon by the recipient to its material detriment prior to correction by City.

8.4 Remedies for City Default. At any time as of which a City Default exists, the Developer, at its option, may, but shall not be obligated to, exercise any one of more of the following remedies, provided, however, that in no event shall the City be obligated hereunder to pay amounts to the Developer from sources other than the Project TIF Revenue:

8.4.1 By written notice to the City, terminate this Agreement, provided that such termination shall not affect the obligations of the City that have then accrued;

8.4.2 (i) recover from City any sums of money that are due and payable by City to or for the benefit of the Developer under this Agreement; (ii) except for obligations requiring City Council approval, commence an action for specific performance or other equitable relief against City with respect to the defaulted obligations as provided in Section 8.6; and (iii) exercise the Developer's rights under Section 8.7 with respect to the City Default; and

8.4.3 Enforce, or avail itself of, any other remedies available to it at law or in equity.

8.5 Default Notices. At any time when there exists a default by the Developer in the due and punctual payment, performance or observance of any obligation of the Developer under this Agreement or any other Project Agreement, City shall give the Developer a written notice, indicated as being a "Default Notice" under this Section. At any time when there exists a default by City in the due and punctual payment, performance or observance of any obligation of City under this Agreement or any other Project Agreement, the Developer shall give the City a written notice, indicated as being a "Default Notice" under this Section. Any notice given in accordance with this Section is called a "Default Notice."

8.6 Enforcement. Except as expressly provided otherwise in this Agreement (specifically, with regard to the construction or completion of the On-Site Improvements or the Developer's Failure to Complete the On-Site Improvements), as the remedy at law for the breach of any of the terms of this

Agreement may be inadequate, each enforcing Party has a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy.

8.7 Self-Help. Without limiting the provisions of Section 8.6, solely with respect to Off-Site Improvements, (i) should any defaulting Party fail to remedy any default identified in a Default Notice within the reasonable cure period specified in the Default Notice, or (ii) should any default under this Agreement exist which (A) constitutes or creates an immediate threat to health or safety or (B) constitutes or creates an immediate threat of damage to or destruction of property, then, in any such event, the non-defaulting Party has the right, but not the obligation, to enter upon the property of the defaulting Party to take such steps as the non-defaulting Party may elect to cure, or cause to be cured, the default or violation. If a non-defaulting Party cures, or causes to be cured, a default as provided above in this Section, then there will be due and payable by the defaulting Party to the non-defaulting Party upon demand the amount of the reasonable costs and expenses incurred by the non-defaulting Party in pursuing the cure, plus interest thereon from the date of demand at the rate set forth in Section 8.8. For avoidance of doubt, this section shall apply only to defaults associated with Off-Site Improvements.

8.8 Interest. Except as otherwise expressly provided herein, amounts that are due and payable by the Developer to City under this Agreement will bear interest if not paid when due, until paid, (a) at the prime rate published in the "Money Rates" section of the Wall Street Journal from time to time for the first 30 days after due, and (b) at the higher of the rate provided for in clause (a) or 8% per annum beyond the first 30 days after due.

8.9 Costs of Enforcement. If an action is brought by the City for the enforcement of any provision of this Agreement, the Developer, and only to the extent that the Developer is found to be in default or breach of this Agreement or another Project Agreement, will pay to the City all costs and other expenses that become payable as a result thereof, including without limitation, reasonable attorneys' fees and expenses.

8.10 **Notwithstanding any other provision of this Agreement, the above-described notification and cure provisions shall not apply when (i) the City's Director of Planning and Building issues a stop work order for local, county or state code violations related to construction defects that present an imminent risk of serious injury or seriously threatens public safety, or (ii) the City Engineer issues a stop work order for local, county or state construction code violations that present an imminent risk of serious injury or seriously threatens public safety.**

9. Plan Review and Inspection Cost.

9.1 P**rior to receiving all permits required to commence construction of the Project,** the Developer shall deposit a non-refundable amount estimated to be necessary to pay the City's cost of plan review. The Developer shall also pay for all inspection fees incurred by the Developer.

9.2 The Developer shall permit the City or its agents to inspect the Project upon one full business day's notice at any time during business hours and shall provide the City or its agents such information as they shall reasonably require in order to perform inspections of the Project from time to time.

10. Completion. Notwithstanding anything to the contrary in this Agreement, it shall not be an event of default under this agreement if Developer elects not to commence construction of the Project However, if the Developer commences construction of the Project, the Developer agrees to substantially complete the construction of the Off-Site Improvements, whether or not it completes the On-Site Improvements. The Developer shall, within 30 days following the completion of the Off-Site Improvements, furnish to the City, as required, "as built" drawings of the **Off-Site Improvements**, which drawings shall become the property of the City and remain in the office of the City Engineer.

The Developer shall, within 30 days of completing **the Designated Improvements**, furnish to the City an itemized statement showing the cost of the Designated Improvements and a notarized affidavit stating that all material and labor costs have been paid. The Developer shall indemnify and hold harmless the City from all expenses and claims for labor and/or material related to construction by the Developer of the **Project.** In its contracts with agents, subcontractors, and subconsultants, the Developer shall require each entity to indemnify and hold harmless the City from all expenses and claims for labor and/or material related to construction of the Project. The Developer shall provide the City with evidence satisfactory to it that all liens affecting the Designated Improvements, including but not limited to liens for delinquent taxes, the lien of any mortgage, and any mechanic's liens, have been released.

The Developer shall comply with all rules and regulations and conform to all reasonable procedures established by the City regarding submission of shop drawings, construction schedules, operation of facilities, and other matters **related** hereto.

The Developer shall obtain all necessary utility services **necessary** for the construction of the Designated Improvements and for its continued operation. The Developer shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Developer.

11. Prevailing Wage. The Developer and the City acknowledge and agree that construction of the Off-Site Improvements is subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 and all wages paid to laborers and mechanics employed in constructing the Off-Site Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Off-Site Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The Developer shall require compliance by all contractors, and shall require all contractors to require

all subcontractors working on the (reimbursable) aspects of the Off-Site Improvements, to comply with all applicable requirements of that Chapter 4115. The Developer acknowledges and agrees that, regardless of the parties' efforts, desires, or intentions, in the event that the Ohio Department of Commerce or a court of law may ultimately determine that the prevailing wage law applies to other portions or all of the Project, then the City shall not be responsible for and Developer shall hold the City harmless for any increased cost to Developer or the City, including but not limited to increased labor costs, attorney fees, or litigation costs, as a result of such determination. The provisions of this Section 11 shall survive the termination of this Agreement.

12. Minimum Property Value. The City and the Developer agree that the real property valuation of the Project as established by the Franklin County Auditor shall be equal to or exceed six million, five hundred sixty-five thousand dollars ($6,565,000) by the earlier of (i) the first tax year that begins at least twelve (12) months after the date of issuance of the Certificate of Occupancy or (ii) January 1, 2023 and shall remain at or above that amount during the remaining life of the TIF. Absent manifest error by the Franklin County Auditor, which the Developer and City shall work together to have fixed, failure to meet such valuation shall be considered a Developer Default under Section 8.1 of this Agreement.

13. TIF Project Revenue Cap. The City and the Developer agree that the amount of TIF Project Revenue provided to the Developer to pay for the Designated Improvements shall be capped ("TIF Project Revenue Cap") based on certain real property valuation threshholds the Project must meet ("Valuation Threshold") by certain dates ("Target Dates") according to the schedule below:

Valuation Threshold	Target Date	TIF Project Revenue Cap
$12,500,000 for at least five consecutive tax years	Tax year 2030	$1,500,000
$15,000,000 for at least five consecutive tax years	Tax year 2035	$2,150,000
$17,500,000 for at least five consecutive tax years	Tax year 2040	$2,750,000
$20,000,000 for at least five consecutive tax years	Tax year 2045	$3,400,000

Should the Project fail to meet a Valuation Threshold by the applicable Target Date, the Project shall still be eligible to meet the subsequent Valuation Thresholds by the applicable Target Dates. For example, if the Project does not meet the initial two Value Thresholds in the table above, but the Project does meet the third Value Threshold ($17,500,000 for at least five consecutive tax years) by the applicable Target Date (Tax Year 2040), the Developer shall receive TIF Project Revenues from the City up to the applicable TIF Project Revenue Cap ($2,750,000), plus interest on the Off-Site Improvements at an annual rate of 4%.

The Developer shall be eligible to receive TIF Project Revenue from the City after the initial tax year for which the real property valuation of the Project meets or exceeds a Valuation Threshold. If the Valuation Threshold is not maintained for the next four (4) consecutive tax years, the City may require the Developer to refund TIF Project Revenue received in excess of the applicable TIF Project Revenue Cap, plus interest on the Off-Site Improvements at an annual rate of 4%. Should the Developer meet a Valuation Threshold for five consecutive tax years by the required Target Date, and the valuation of the Project subsequently falls below such Valuation Threshold, the City shall still be obligated to pay to the Developer the TIF Project Revenue up to the amount of the TIF Project Revenue Cap associated with the Valuation Threshold that was met, plus interest on the Off-Site Improvements at an annual rate of 4%. However, if the Developer or an owner of a Parcel contests or files a complaint (including, without limitation a complaint filed in accordance with Ohio Revised Code Sections 5715.13 or 5715.19) against the real property tax valuation of a Parcel that results in the valuation of the Project falling below such Valuation Threshold, then the City shall only be obligated to pay the Developer the TIF Project Revenue up to the amount of the TIF Project Revenue Cap associated with the Valuation Threshold of the new lower valuation, plus interest on the Off-Site Improvements at an annual rate of 4%. In addition, the City may require the Developer to refund TIF Project Revenue received in excess of the new lower TIF Project Revenue Cap, plus interest on the Off-Site Improvements at an annual rate of 4%; provided, however, if the Valuation Threshold has been met for at least the five (5) prior tax years, then no refund shall be due from Developer.

14. Zoning. The City and the Developer acknowledge and agree that (i) the Caren Parcel is currently zoned R-10, "Low Density Residential", and that (ii) the balance of the Project Site is currently zoned C-4, "Highway and Automotive Services," each in accordance with the Planning and Zoning Code of the City. The Developer is requesting that the City rezone the Project Site as part of the [[___] PUD] in accordance with the Planning and Zoning Code of the City. The Developer shall ensure that the Development will at all times comply with the zoning that applies to it from time to time. Insurance. Prior to the commencement of construction of the Designated Improvements, the Developer or its contractor shall take out and maintain, and shall require all contractors to require all subcontractors to take out and maintain, insurance in such amounts as provided below. The Developer or its contractor shall provide sufficient evidence to the City, prior to construction, that such insurance exists and is in effect.

- Public Liability Insurance in the amount of $1,000,000.00 for bodily injuries including those resulting in death of any one person and on account of any one accident or occurrence.

- Property Damage Insurance and Builders Risk Insurance in an amount of $1,000,000.00 from damages on account of any one accident or occurrence.

- Valuable Papers Insurance (when applicable to the type of work undertaken by the contractor or subcontractor) in an amount sufficient to assure restoration of any plans, drawings, field notes, or other similar data relating to the work covered by this Agreement, in the event of their loss or destruction, until such time as the plans and field and design data are delivered to the City.

- Professional Liability Insurance in the sum of not less than $1,000,000.00 annual aggregate, on a claims-made basis.

The Developer agrees, on behalf of itself and its agents, subcontractors, and subconsultants that the insurance policies required herein (excluding the professional liability insurance) shall require the insurer to name the City as an additional insured, and to provide the City with 30 days' prior written notice before the cancellation of a policy.

16. Representations. The Developer represents and warrants that the execution and delivery by the Developer of this Agreement and the compliance by the Developer with all of the provisions herein (i) are within the authority and powers of the Developer; (ii) will not conflict with or result in any breach of any of the provisions of, or constitute default under, any agreement, its articles of organization or operating agreement, or other instrument to which the Developer is a party or by which it may be bound, or, to the Developer's knowledge, any license, judgment, decree, law, statute, order, rule or regulation or any court or governmental agency or body having jurisdiction over the Developer or any of its activities or properties; and (iii) have been duly authorized by all necessary action on the part of the Developer.

The City hereby represents and warrants that (i) execution of this Agreement has been approved and authorized by Ordinance No. [ ], passed by City Council on [ ], 2019; and (ii) the City has full power and authority to enter into this Agreement, to carry out its terms and to perform its obligations hereunder.

17. Waiver. In the event that any covenant, agreement, or obligation under this Agreement shall be breached by either the Developer or the City and the breach shall have been waived thereafter by the Developer or the City, as the case may be, the waiver shall be limited to the particular breaches so waived and shall not be deemed to waive any other or any subsequent breach thereunder.

17. Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

(a) that illegality or invalidity shall not affect the remainder hereof or thereof; any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and

(c) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

18. Assignment. **Except as otherwise provided in this Section 16, this** Agreement may not be assigned by any party hereto without the written consent of the other party, not to be unreasonably withheld. **Notwithstanding any provisions to the**

contrary in this Section 16, the Developer may assign its interest in this Agreement to an Affiliate (defined herein) or in connection with any merger, reorganization, sale of all or substantially all of the Developer's assets or any similar transaction **without the prior written consent of the City, conditioned upon an assignment including the assignment of both the rights and obligations of the Developer hereunder, and a copy of such assignment being timely provided to the City.** "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the Developer. All representations and warranties of the Developer and the City herein shall survive the execution and delivery of this Agreement.

19. Notices. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of either party to this Agreement shall be made in writing addressed as follows and sent by registered or certified mail, return receipt requested, and shall be deemed delivered when the return receipt is signed, refused or unclaimed:

If to the City to:

City of Worthington, Ohio
Attn: Law Director
6550 North High Street
Worthington, Ohio 43085

and

Bricker & Eckler LLP
Attn: Robert F. McCarthy
100 South Third Street
Columbus, Ohio 43215

If to the Developer to:

The Witness Group
Attn: Ohm Patel
600 Enterprise Drive
Lewis Center, OH 43035

and

Scott J. Ziance
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215

or to any such other persons or addresses as may be specified by either party, from time to time, by prior written notification.

20. Administrative Actions. To the extent permitted by law, and except as otherwise provided in this Agreement, all actions taken or permitted to be taken by the City under or in furtherance of this Agreement (excepting the TIF Ordinance and related legislative approvals) may be taken by the City Manager and will not require legislative action of a City Council beyond the legislative actions authorizing this Agreement. The City Manager, on behalf of the City, is authorized to make all approvals and consents that are contemplated by this Agreement and other Project Agreements, without the separate approval by the City Council, including reviews, approvals, and consents (including but not limited to, such actions with respect to the Incentive Contingencies) and any and all such other approvals contemplated herein. All actions, approvals, and consents of City required under this Agreement must be given in writing in order to be effective.

21. Jurisdiction. 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 arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

22. Confidentiality. Unless otherwise directed by court order, City will treat the any equity or loan documents provided to it by the Developer, the commitments of any tenants or purchasers to the Project, the expected or actual tenant and ownership mix of the Project, any proformas, and any other information provided to the City and clearly marked "trade secret" as trade secrets and not as public records or information, and will not disclose such documents or information to any third party without the written consent of the Developer. The City will promptly notify the Developer within three (3) business days of (a) any public records request made to it that seeks disclosure of such documents or information and (b) any court action filed against it to compel the disclosure of such documents or information. The City will reasonably cooperate with the Developer in defending any such court action. The Developer will defend City against any third-party claim related to the Developer's designation of certain records as exempt from public disclosure, and will hold harmless the City for any liability or award to a plaintiff for damages, costs and reasonable attorney's fees, incurred by the City by reason of such claim.

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

24. Time is of the Essence. Time is of the essence in this Agreement.

25. Diligent Performance. With respect to any duty or obligation imposed on a Party by this Agreement, unless a time limit is specified for the performance of such duty or obligation, it is the obligation of that Party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of that obligation as soon as reasonably practicable after commencement of performance.

26. 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 in this Agreement.

27. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Electronic or facsimile signatures shall be acceptable.

28. Construction Easement. The City will grant to the Developer a temporary construction easement in, over, through, under and across all public right-of-way to the extent reasonably necessary to complete the Off-Site Improvements for so long as is reasonably necessary to complete the Off-Site Improvements.

29. Third Party Easements. The Developer's obligations under this Agreement shall be contingent upon the Developer obtaining construction easements for the benefit of the Developer or the City, in form and substance reasonably acceptable to the City, from all third parties as are necessary for the Developer to complete the Off-Site Improvements (collectively, the "Third Party Easements") no later than [_____] (the "Outside Date"). In the event the Developer is unable to obtain all the Third Party Easements on or before the Outside Date, the Developer shall have the right to terminate this Agreement by written notice thereof to the City.

30. Force Majeure. Any delay in the performance of any of the duties or obligations of either party (the "Delayed Party") shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of a Force Majeure Event (as defined below). A Force Majeure Event pauses a party's performance obligation for the duration of the event, but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party and prevents a party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Project or over a party's operations. The Delayed Party shall give prompt notice to the other party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as promptly as possible.

31. Financing Contingency. The Developer's obligations under this Agreement shall be contingent upon the Developer securing financing for purposes of funding the

Project on terms and conditions reasonably satisfactory to the Developer (the "Financing Contingency"), no later than no later than _____ ("Financing Contingency Period"). In the event the Developer is unable to obtain the Financing Contingency on terms and conditions reasonably satisfactory to the Developer within the Financing Contingency Period, the Developer shall have the right to terminate this Agreement by written notice thereof to the City.

32. Recording. Upon execution of this Agreement, an original counterpart of this Agreement shall be placed of record in the real estate records of the Recorder of the County of Franklin, Ohio with respect to each parcel comprising the Project Site, and each and every term and provision of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and any successors and assigns of the parties.

33. City Obligation Limited. Notwithstanding anything to the contrary herein, the financial obligation of the City hereunder is expressly limited to Project TIF Revenue actually received by the City.

IN WITNESS WHEREOF, the City and Developer, each by a duly authorized representative, have caused this Agreement to be executed on this __ day of _____, 2019.

CITY OF WORTHINGTON	HE HARI, INC.
By:	By:
_____	_____
Matthew H. Greeson, City Manager	Its:
	_____

Approved as to Form:

_____

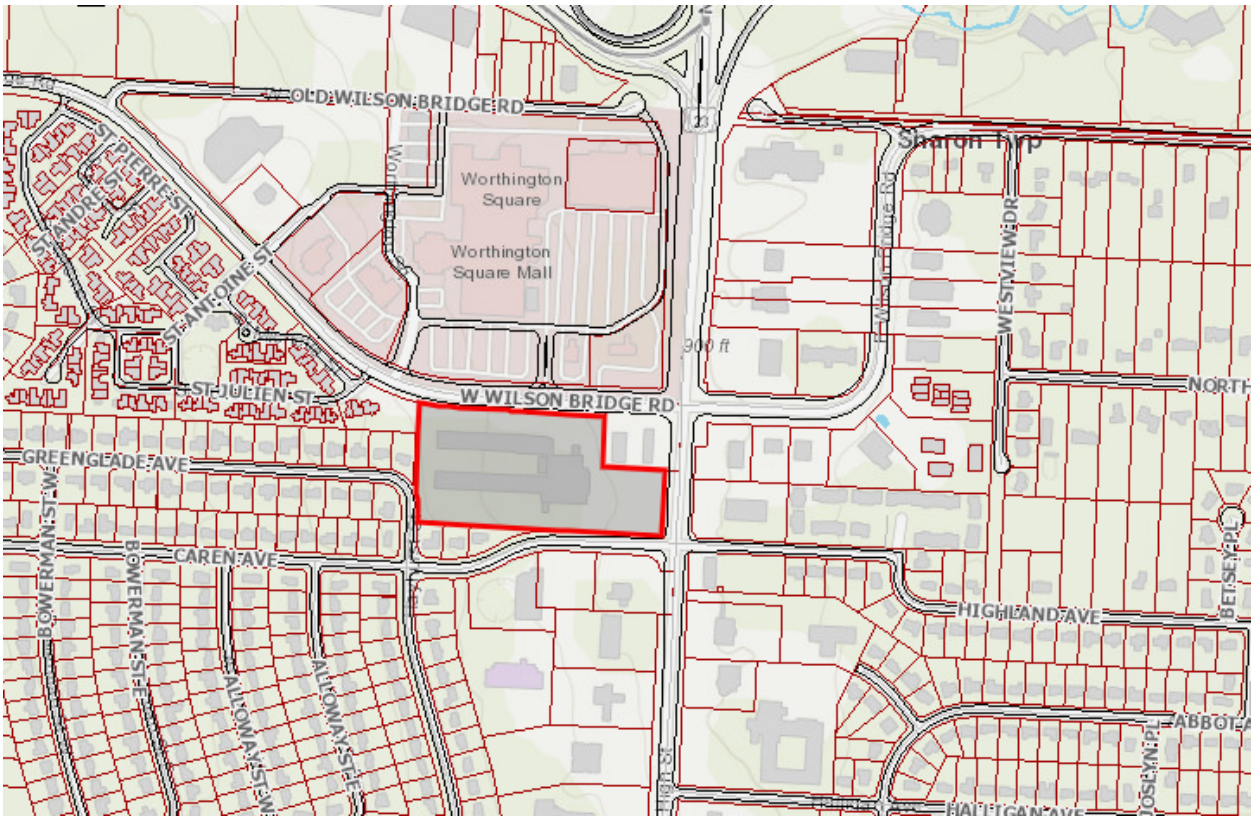
Tom Lindsey, Law Director

DEVELOPMENT AGREEMENT - EXHIBIT A

PROJECT SITE

Real property located at 7007 North High Street, Parcel Number 100-001218-00, as that real property is located in the City of Worthington, Franklin County.

The parcels enumerated herein and any subsequent purported subdivisions and/or re-assigned parcel number identifications or street addresses shall constitute the "**Project Site**."



DEVELOPMENT AGREEMENT - EXHIBIT B

GUARANTY

THIS PROJECT COMPLETION GUARANTY (this "Guaranty") is dated as of [_____], by **He Hari, Inc.,** an Ohio corporation having an address at [_____] ("Developer"), (sometimes referred to herein individually as "Guarantor" or collectively as "Guarantors"), [___] and [___] (each, a "Principal" and together, the "Principals") to and for the benefit of the **CITY OF WORTHINGTON, OHIO**, a municipal corporation and political subdivision of the State of Ohio, having an address at 6550 North High Street, Worthington, Ohio 43085, Attn: City Manager (the "City"). Capitalized words and terms used herein and not otherwise defined herein shall have the meaning assigned to them in the Development Agreement (as hereinafter defined).

BACKGROUND

A. The Developer and the City have executed a Development Agreement, dated [___], 2019 (the "Development Agreement"), pursuant to which the Developer has agreed to construct the Project and the City has agreed to provide public support for the Project in the form of the Incentives described in the Development Agreement;

B. It is a condition precedent to the City's provision of the Incentives for the Project that the Guarantors execute and deliver this Guaranty; and

C. In order to provide assurance to the City that the Developer's obligations under the Development Agreement with respect to the Project will be timely completed as required under the Development Agreement, the Developer has agreed, pursuant to the Development Agreement, to execute and deliver, and to cause the Principals to execute and deliver, this Guaranty.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors hereby agree as follows:

1. **Completion of Project.** Guarantors hereby, jointly and severally, unconditionally guarantee:

1.1 The performance of all obligations of the Developer under the Development Agreement with respect to the Project, including, without limitation, (a) the satisfactory and timely completion of the construction of the Project in a good and workmanlike manner, free from any and all liens or claims of any persons or entities performing labor thereon or furnishing materials therefor, or both, subject to Force Majeure (as defined in the Development Agreement), on or before the date that is 48 months after satisfaction of the Incentive Contingencies for the Project and in substantial accordance with the Development Agreement and all applicable legal requirements; (b) payment by the Developer when due of all amounts due under the Development Agreement incurred in connection with the Project; (c) if any chattel mortgages, vendor, mechanics' or materialmen's liens should be filed, or should attach, with respect to the Project, to promptly cause the removal of such mortgages or liens, or post or have posted a bond or other security against the consequences of their possible foreclosure and procure an endorsement(s) to the title policy insuring the City against the consequences of the foreclosure or enforcement of such lien(s); and (d) the prompt and full payment, and not merely the collectability, when due, of all costs and expenses including, to the fullest extent not prohibited by law, court costs and attorneys' fees paid or incurred by the City in realizing any of the obligations or payments hereby guaranteed or in enforcing this Guaranty.

2. **Direct Obligation.** The liability of the Guarantors under this Guaranty shall be primary, direct, joint and several, and immediate and not conditional or contingent upon pursuit by the City of any remedies it may have against the Developer or any other party. No exercise or non-exercise by the City of any right given to it hereunder or under the Development Agreement, and no change, impairment or suspension of any right or remedy of the City shall in any way affect the Guarantors' obligations hereunder or give the Guarantors any recourse against the City. Without limiting the generality of the foregoing, the City shall not be required to make any demand on Developer, and/or any other party, or otherwise pursue or exhaust its remedies against Developer, or any other party, before, simultaneously with or after, enforcing its rights and remedies hereunder against the other Guarantors.

3. **Unconditional and Absolute Guaranty.** This Guaranty is an unconditional and absolute guaranty, irrespective of the validity, regularity or enforceability of the Development Agreement or any other document or agreement executed in connection therewith or any circumstances which might otherwise constitute a legal or equitable discharge or defense of any Guarantor. No counterclaim, setoff, reduction of an obligation, or defense of any kind which the Developer or any Guarantor may have or assert against the City or which any Guarantor may have or assert against the Developer shall affect, modify or impair any Guarantor's unconditional and absolute obligations hereunder. THIS IS AN UNCONDITIONAL GUARANTY OF PAYMENT AND NOT OF COLLECTION AND EACH GUARANTOR FURTHER IRREVOCABLY WAIVES ANY RIGHT TO REQUIRE THAT ANY ACTION BE BROUGHT AGAINST THE DEVELOPER OR ANY OTHER PERSON OR TO REQUIRE THAT RESORT BE HAD TO ANY SECURITY PRIOR TO THE ENFORCEMENT OF THIS GUARANTY.

4. **Affirmative Covenants of the Guarantors**. Throughout the term of this Guaranty, each Guarantor shall:

4.1 Deliver Notice. Immediately upon learning of any of the following, deliver written notice thereof to the City describing the same and the steps being taken by the Guarantor with respect thereto:

4.1.1 the occurrence of any event of default or an event or circumstance which would constitute such an event of default under the Development Agreement or any other document or agreement executed in connection therewith, but for the requirement that notice be given, time elapse or otherwise, or

4.1.2 any action, suit or proceeding against the Guarantor at law or in equity, or before any governmental instrumentality or agency, is instituted or threatened in writing which, if adversely determined, would materially and adversely affect the Guarantor's businesses, operations, properties, assets or condition (financial or otherwise).

5. **Negative Covenants of Guarantor**. Throughout the term of this Guaranty, no Guarantor shall enter into any agreement containing any provision which would be violated or breached by the performance of the Guarantor's obligations hereunder or under any instrument or document delivered or to be delivered by the Guarantor hereunder or in connection herewith.

6. **Waivers**. The Guarantors waive any and all defenses to any action or proceeding brought to enforce this Guaranty. Without limiting the foregoing, the Guarantors specifically waive the following defenses:

6.1 Waivers of Suretyship Defenses. The Guarantors agree that the City, in its sole and absolute discretion, without notice to or further assent of any Guarantor and without in any way releasing, affecting, or impairing the obligations and liabilities of the Guarantors hereunder, may deal with the Developer as if this Guaranty were not in effect. Without limiting the generality of the foregoing, the City may: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, the Development Agreement or any other document or agreement executed in connection therewith, (ii) modify, amend, or change any provisions of the Development Agreement or any other document or agreement executed in connection therewith, (iii) grant extensions or renewals of (or with respect to) the Development Agreement or any other document or agreement executed in connection therewith and/or effect any release, compromise, or settlement in connection with the Development Agreement or any other document or agreement executed in connection therewith, (iv) agree to the substitution, exchange, release, or other disposition of all or any part of any collateral, (v) and assign or otherwise transfer this Guaranty, the

Development Agreement or any other document or agreement executed in connection therewith this Guaranty or any interest therein or herein.

6.2 Waivers of Notices. The Guarantors waive (i) presentment and demand for payment, notice of dishonor, and protest of non-payment, (ii) notice of acceptance of this Guaranty, (iii) notice of any default hereunder (but without waiving any notice of default which may be required under the Development Agreement), (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty, the Development Agreement or any other document or agreement executed in connection therewith, and (v) all other notices and demands otherwise required by law which the Guarantors may lawfully waive.

6.3 Changes to Project. Each Guarantor consents and agrees that Developer may, to the extent permitted under the Development Agreement, alter, extend, change or modify any of the development plans for the Project or any terms or conditions contained in any contract or subcontract or surety bond related to the Project, or may approve any change, or may release or waive or compromise the obligations of any such contractor or subcontractor or surety, and that no such action by the Developer shall in any manner affect this Guaranty or release the obligations of the Guarantors hereunder, regardless of whether the Guarantors have received notice of the same or have further consented thereto and regardless of whether the City has approved the action of the Developer in question, and the Guarantors hereby waive and relinquishes any claim or defense against the City based on any of the foregoing.

6.4 Other Guarantors. The Guarantors waive all defenses arising from the fact that there may now or hereafter be other guarantors or sureties liable for all or any part of the obligations under this Guaranty, or that solvent entities or persons other than the Developer or a Guarantor may have undertaken the performance of all or any part of said obligations.

6.5 Waiver of Certain Other Possible Defenses. The Guarantors waive (i) all defenses based on suretyship or impairment of collateral, and (ii) any defenses that the Developer may assert on the underlying debt, including failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations and usury.

7. **No Waiver**. No failure by the City to insist upon the strict performance by a Guarantor of any provision hereof shall constitute a waiver of the City's right to strict performance, and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by a Guarantor to observe or comply with any provision hereof.

8. **Financial Condition**. Each of the Guarantors represents and warrants that such Guarantor is not now insolvent and the Guarantor's obligations under this Guaranty do not render the Guarantor insolvent; the Guarantor is not contemplating either the filing of a petition by

the Guarantor under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of the Guarantor's property; and the Guarantor has no knowledge of any person contemplating the filing of any such petition against the Guarantor.

9. **Reliance by the City**. Each Guarantor acknowledges that the City is providing the Incentives in reliance upon this Guaranty and the representations, warranties, covenants and agreements of each Guarantor made herein.

10. **Notices**. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the party to receive such Notice at its address set forth above, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused.

11. **Events of Default**. Each of the following shall be an event of default (an "Event of Default") with respect to each Guarantor hereunder:

    11.1 Any Guarantor shall: (i) admit in writing any inability to pay any of the Guarantor's debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against the Guarantor under the federal bankruptcy laws, as now or hereafter in effect; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against the Guarantor and either have an order of insolvency or reorganization entered against the Guarantor or have the proceeding remain undismissed and unstayed for 90 days; (iv) except in connection with financing the Project, make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed by a court for the Guarantor or for all or substantially all of the Guarantor's assets or property.

    11.2 Any Guarantor shall fail to observe or perform any agreement, term or condition stated in this Guaranty, other than as required or described in subsection (11.1) above, and such failure shall continue for a period of 10 business days (with respect to these failures which may be cured by the payment of money) or 30 days (with respect to any other failure) after the Guarantor has received written notice of such failure **unless more than thirty (30) days shall be required because of the nature of the default, in which case if the any Guarantor shall have failed to proceed diligently to commence to cure such failure within such 30-day period after notice and thereafter fails to cure such failure**.

12. **Remedies for Default**. Upon the occurrence of an Event of Default, the City shall have the right to pursue, in the City's sole discretion, all available remedies at law or in equity, including without limitation, specific performance. All remedies available to the City hereunder shall be in addition to and shall not limit the remedies available to the City under

the Development Agreement and any document executed in connection therewith. Without limiting the generality of the foregoing, if a Guarantor fails to perform timely any of its obligations under this Guaranty, the City shall have the right (but not the obligation) to perform them by or through any agent, contractor or subcontractor of its selection, and the Guarantors shall indemnify and hold the City free and harmless from and against any and all actual loss, damage, cost, expense, injury, or liability the City may suffer or incur in connection with the exercise of its rights under this Guaranty or the performance of any obligations under this Section. During the course of any exercise of rights undertaken by the City or any other party on behalf of the City in accordance with the terms of this Section, the Guarantors shall, jointly and severally, pay within 30 days after demand therefore any amounts due to contractors, subcontractors, and material suppliers and for permits and licenses necessary or desirable in connection therewith. The Guarantors' obligations in connection with such work shall not be affected by any errors or omissions of any party in the design, supervision, and performance of the work; it being understood that such risk is assumed by the Guarantors. Neither the completion of the construction of the Project nor failure of said party to complete the construction of the Project shall relieve the Guarantors of any liabilities hereunder; rather, such liability shall be continuing and may be enforced by the City to the end that the construction of the Project shall be timely completed, lien-free, without loss, cost, expense, injury or liability of any kind to the City in accordance with the Development Agreement.

13. **Termination of Guaranty**. This Guaranty shall terminate and the Guarantors shall thereupon be released from any further liability, obligation or responsibility hereunder upon the completion of the Project, as evidenced by issuance of all necessary certificates of occupancy for those improvements, and discharge of all liens and claims of any persons or entities performing labor thereon or furnishing materials therefor, or both, provided, however, any such release shall not affect the Developer's obligations under the Development Agreement.

14. **Governing Law**. This Guaranty shall be construed in accordance with the laws of the State of Ohio.

15. **Consent to Jurisdiction**. EACH OF THE GUARANTORS, TO THE EXTENT THAT IT MAY LAWFULLY DO SO, HEREBY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURTS LOCATED WITHIN FRANKLIN COUNTY, OHIO AS WELL AS TO THE JURISDICTION OF ALL COURTS FROM WHICH AN APPEAL MAY BE TAKEN FROM THE AFORESAID COURTS, FOR THE PURPOSE OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF ANY OF THE GUARANTORS' OBLIGATIONS UNDER OR WITH RESPECT TO THIS GUARANTY.

16. **Waiver of Jury Trial**. THE GUARANTORS AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE ACCEPTANCE OF THIS GUARANTY BY THE CITY AND THAT THE ACCEPTANCE OF THIS GUARANTY BY THE CITY IS MADE IN

RELIANCE UPON SUCH WAIVER. EACH OF THE GUARANTORS FURTHER WARRANTS AND REPRESENTS THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE BY EACH GUARANTOR, FOLLOWING CONSULTATION WITH THEIR RESPECTIVE LEGAL COUNSEL.

17. **Recitals**. The facts and circumstances as described in the Background section hereto are an integral part of this Guaranty and as such are incorporated herein by reference.

18. **Entire Guaranty**. This Guaranty cannot be changed or terminated orally. This Guaranty contains the entire understanding between the parties with respect to the subject matter. This Guaranty shall not be amended or terminated without the written consent of the City.

19. **Successors**. This Guaranty shall inure to the benefit of, and be enforceable by, the City and its respective successors and assigns, and shall be binding upon, and enforceable against, each of the Guarantors and their respective successors, heirs and assigns, in accordance with its terms.

20. **Severability**. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been included.

21. **Execution of Counterparts**. This Guaranty may be executed in any number of counterparts, each of which shall be deemed to be an original hereof, and all of which shall constitute but one and the same instrument, it not being necessary in proving this Guaranty to produce or account for more than one such counterpart. Signatures transmitted by facsimile or electronic means are deemed to be original signatures.

22. **Section Headings**. The section headings in this Guaranty are inserted for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Guaranty.

23. **Financing Contingency**. The Guarantors' obligations under this Agreement shall be contingent upon the Developer (as defined in the Development Agreement) securing financing for purposes of funding the Project on terms and conditions reasonably satisfactory to the Developer (the "Financing Contingency"), no later than no later than __ _____ ("Financing Contingency Period"). In the event the Developer is unable to obtain the Financing Contingency on terms and conditions reasonably satisfactory to the Developer within the Financing Contingency Period, the Developer shall have the right to terminate this Agreement by written notice thereof to the City.

Attorney Review. The terms and conditions of this Guaranty were reviewed by the attorneys for each of the Guarantors, and said terms and conditions explained to the appropriate officers/representatives of the Guarantors who, by their execution hereof, hereby acknowledge that they fully understand them.

IN WITNESS WHEREOF, the Guarantors have executed this Guaranty as of the day and year first above written.

Guarantors:
He Hari, Inc., an Ohio corporation
By:___
Its:___

[PRINCIPAL]

_____

[PRINCIPAL]

_____

STATE OF OHIO :
: ss.
COUNTY OF FRANKLIN :

BE IT REMEMBERED, that on this ___ day of _____, 2019, before me, the subscriber, a Notary Public in and for said state, personally appeared_____, duly authorized signer for He Hari, Inc., and acknowledged the signing hereof to be his voluntary act on behalf of said company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

_____
Notary Public

STATE OF OHIO :
: ss.
COUNTY OF FRANKLIN :

BE IT REMEMBERED, that on this ___ day of _____, 2019, before me, the subscriber, a Notary Public in and for said state, personally appeared [___], and acknowledged the signing hereof to be his voluntary act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

_____
Notary Public

STATE OF OHIO :
: ss.
COUNTY OF FRANKLIN :

BE IT REMEMBERED, that on this ___ day of _____, 2019, before me, the subscriber, a Notary Public in and for said state, personally appeared [Principal], and acknowledged the signing hereof to be his voluntary act.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

_____
Notary Public

Acknowledged and accepted this ____ day of _____ 2019:

Approved as to form for the City:

_____
Tom Lindsey, Law Director

CITY OF WORTHINGTON, OHIO

By:_____
Matthew H. Greeson, City Manager

DEVELOPMENT AGREEMENT - EXHIBIT C

DESIGNATED IMPROVEMENTS

Off-Site Improvements: The Off-Site Improvements consist of the following list of improvements, which may be amended by the mutual consent of the City and the Developer:

- Signalization Part 1
  - Relocation of the existing signal on Wilson Bridge Road and the mall. Signal will include:
    - Traffic signal mast arm supports non-decorative to replace in kind which is standard mast arm signals with black finish
    - Signal appurtenances including vehicular signals, pedestrian signals, cable/wire, pushbutton, detection (video assumed), pullboxes and controller for a complete signal installation consistent with the current signal design
    - Material from the existing signal will be reused if feasible and practical. This may include poles, signal heads and controller
- Signalization Part 2
  - Upgrade of the signal at High Street and Caren Avenue:
    - Removal of the span wire signal Decorative mast arm signal supports to match those at the High Street and Wilson Bridge
    - Road intersection
    - Signal appurtenances including vehicular signals, pedestrian signals, cable/wire, pushbutton, detection (video assumed), pull boxes and controller for a complete signal installation consistent

- Road Construction [Wilson Bridge Road, Mall Drive and Site Drive Intersection]
  - Realignment of ~165 feet of the mall drive including removal of the existing drive pavement and associated paving items for the new drive
  - Wilson Bridge Road Drainage revisions as needed to adjust catch basins and underdrains for the drive relocation
  - Pavement markings (stop lines, crosswalks and westbound left turn lane revision) and ground mounted signs (lane use control and No Turn On Red currently installed) as needed for the intersection
  - ADA Ramps and sidewalk at the corners to make the intersection complete.

- Street Lighting
  - Street lighting on both sides of Wilson Bridge Road and High Street (10 poles total)
  - Poles and bases to match ODOT lights on High Street north of Wilson Bridge Road

- ROW Compensation
  - Compensation to property owners for acquisition (Cost to cure property, easements and other amenities
  - ROW Appraisal - Cost for Professional Services for a Certified Real Estate MAI Appraiser. Appraisal scope includes the Ville Charmante Condominium Access Drive Easement; and Worthington Mall Drive Entry Temporary Work Easement for Entry Drive Re-Configuration.

- Professional Fees
  - Cost for Professional Services: Attorneys, Architects, Engineers or other Professional fee
    - Attorney / Legal Assistance
    - Construction Management
    - Architectural
    - Engineering
    - Road Construction Offsite
    - Signalization
    - Streetscaping LA of Caren/High
    - Streetscaping LA = Wilson Bridge, Caren, High; tree lawns
    - Street Lighting
    - Survey (Topo & Boundary)
    - Right-of-Way Plan Documents
    - Plan Document preparation for dedication Plats of real estate
    - Survey Boundary drawings, descriptions and easements
    - Survey (Staking) Public ROW
    - TIS = Traffic extras beyond std scope, Retaining walls
    - Foundations / Brick
    - Flood & Drainage
    - Bioretention / pavers / WQv
    - Grading change / sitework
    - CEI & CMT

- Streetscaping
  - Intersection corner treatments
  - Construction of brick paver landing at all quadrants of the intersection of Caren Avenue and N. High Street, including brick knee-wall with precast concrete cap, landscaping behind the wall, and ADA ramps with modified crosswalk striping
- Streetscaping (off-site public on periphery of site)
  - Removal of existing and installation of new access drives plus associated repairs to curb and sidewalks
  - Removal and replacement of sidewalks along all 3 streets (High, Wilson Bridge, Caren)

- Decorative walls/planter boxes at pedestrian access points to development along Wilson Bridge Road o Street trees along all 3 streets spaced approximately 40’ center-to-center
- Groundcover and shrubs along the Wilson Bridge Road frontage

On-Site Improvements: The On-Site Improvements consist of the following list of improvements, which may be amended by the mutual consent of the City and the Developer:

- Building Demolition and Asbestos remediation
  - Demolition
  - Asbestos Remediation

- Flood & Drainage - Detention requirements
  - Upgrades to On-Site Storm Water Management System to account for existing downstream public infrastructure capacity/conditions.
  - Underground Detention (Based on 30,000 CF storage @ $10/CF). The Proposed onsite development is reducing amount of impervious area from current conditions; therefore, runoff volumes are less and no detention would be required. Due to existing conditions and city infrastructure, we have been forced to detain 30,000 CF of runoff.

DEVELOPMENT AGREEMENT - EXHIBIT D

LIST OF SEQUENCING FOR DESIGNATED IMPROVEMENTS

Sequence 1

- Engineering approval for both On-Site Improvements and Off-Site Improvements (to include the intersection on Wilson-Bridge Road). This is subject to an efficient approval process in working with City's Engineer and the City's third-party engineering firm
- Building drawing approval for the structures on Wilson-Bridge parcels

Sequence 2

- Site work for all parcels to ensure all parcels are pad ready in terms of utilities, storm water, grading, etc.
- Realignment of Wilson-Bridge intersection
- Establish new curb cuts for the site
- Initiate the ARB and Planning Commission approvals for the North High Street Parcel

Sequence 3

- Construction of the buildings on the Wilson-Bridge Road parcel subject to timely building approval
- Installation of Off-Site Improvements on Wilson-Bridge Road
- Continue the ARB and Planning Commission approvals for the North High Street Parcel

Sequence 4

- Building drawing approval of the North High Street Parcel subject to timely ARB and Planning Commission approvals
- Construction of the North High Street Parcel building subject to timely building approval.
- Installation of the North High Street frontage off-site improvements
- Installation of the Off-Site Improvements at the North High Street and Caren Ave. intersection

Sequence 5

- Building drawing approval of the back parcel
- Construction of the back-parcel building subject to building approval

Sequence 6

- Tie all three parcels together aesthetically
- Project clean up and closeout