

ORDINANCE NO. 07-2015

Amending Ordinance Nos. 47-2010 And 03-2013; Approving And Authorizing The Execution Of An Acknowledgement Of Termination Of A Compensation Agreement; Authorizing The Execution Of A Second Amended Development Agreement; And Providing For Related Authorizations Pursuant To Ohio Revised Code Sections 5709.41, 5709.42, And 5709.43

WHEREAS, the Shops at Worthington Place project (the “Project”) entailed the redevelopment of an existing facility as a mixed use retail and entertainment development on certain parcels of real property (the “Property”), as more fully described and depicted on Exhibit A to Ordinance No. 47-2010 and as such property description was amended under Ordinance No. 14-2013 (the “TIF Ordinance”); and therefore, the Project represents a substantial economic development opportunity to the City and serves as a keystone in the City’s larger redevelopment of the Wilson Bridge Road Corridor; and,

WHEREAS, the City provided substantial financial assistance to the Project in the form of an urban redevelopment tax increment financing exemption (the “TIF Exemption”) under Ohio Revised Code (“R.C.”) Section 5709.41, as part of the TIF Ordinance; and,

WHEREAS, the TIF Ordinance, among other things, approved a 100-percent, 30-year TIF Exemption on the value of improvements made to the Property, and authorized the City Manager of the City (the “City Manager”) to enter into a development agreement (the “Development Agreement”) with Worthington Square Venture, LLC (the “Developer”) and to enter into a school district compensation agreement (the “School District Compensation Agreement”) by and among the City, the Developer and the Worthington City School District (the “School District”); and,

WHEREAS, as required by R.C. Section 5709.41, the City Council passed Ordinance No. 45-2010, which authorized the City Manager to accept, and immediately transfer back, fee title to the Property, with such transfers having occurred on January 10, 2011; and,

WHEREAS, the City Manager and the Developer entered into the Development Agreement on January 11, 2011, which set forth the various terms and conditions for the TIF Exemption, provided for the construction of the Project and for the financing of certain Designated Improvements, as defined in the Development Agreement; and,

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WHEREAS, the TIF Ordinance and the Development Agreement provide for the payment of service payments in lieu of taxes (“Service Payments”), as defined in the TIF Ordinance and the Development Agreement, by the current and future owners of the Property (each an “Owner,” and collectively, the “Owners”) with respect to the Improvements, as defined in the TIF Ordinance and the Development Agreement, pursuant to R.C. 5709.42; and,

WHEREAS, the City Manager, the Developer, and the Board of Education of the School District (the “Board”) entered into the School District Compensation Agreement on January 11, 2011, which set forth the amount and manner by which the School District would be compensated as required by R.C. Section 5709.41; and,

WHEREAS, pursuant to Ordinance No. 03-2013, the Development Agreement was amended by the First Amendment to the Development Agreement, dated April 7, 2014; and,

WHEREAS, the School District Compensation Agreement was amended by the First Amendment to the School District Compensation Agreement, dated April 7, 2014; and,

WHEREAS, the First Amendment to the Development Agreement and First Amendment to the School District Compensation Agreement made adjustments with respect to the updated base valuation of the Property and finalized the scope of redevelopment costs for which the Developer would be reimbursed by this City; and,

WHEREAS, the Developer has requested further changes to the Development Agreement, as amended by the First Amendment to the Development Agreement, the termination of the School District Compensation Agreement, as amended by the First Amendment to the School District Compensation Agreement, and certain amendments to TIF Ordinance to specify, pursuant to R.C. Section 5709.41(C)(1), that Service Payments shall be paid to the School District in the amount of taxes that would have been payable to the School District if the Improvements had not been exempted from taxation; and,

WHEREAS, the Council desires to continue to make the TIF Exemption available to the Property and to further the economic development created by the Project by: (i) approving the termination of the School District Compensation Agreement, as amended, and the execution of an acknowledgement of such termination; (ii) amending the TIF Ordinance to specify, pursuant to R.C. Section 5709.41(C)(1), that Service Payments shall be paid to the School District in the amount of taxes that would have been payable to the School District if the Improvements had not been exempted from taxation; and (iii) authorizing the execution of a Second Amendment to the Development Agreement.

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

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SECTION 1. This Council hereby approves the termination of the School District Compensation Agreement, as amended by the First Amendment to the School District Compensation Agreement. The City Manager is hereby authorized to execute the Acknowledgement of Termination of the Amended School District Compensation Agreement (the "Acknowledgement") in substantially the form attached hereto as Exhibit "A", together with such revisions approved by the City Manager as are consistent with the objectives and requirements of this Ordinance, which approval shall be conclusively evidenced by the signing of the Acknowledgement. Such termination shall be effective as of the effective date of the Acknowledgment.

SECTION 2. The City Manager is hereby authorized to execute a Second Amendment to the Development Agreement on behalf of the City substantially in the form attached hereto as Exhibit "B", which Second Amendment to the Development Agreement includes provisions regarding the payment of Service Payments with respect to the Property, together with such revisions or additions thereto approved by the City Manager as are consistent with the objectives and requirements of this Ordinance, which approval shall be conclusively evidenced by the signing of said Second Amendment to the 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 Second Amendment to the Development Agreement.

SECTION 3. This Council hereby amends the TIF Ordinance as follows:

(A) Section 2 of the TIF Ordinance is hereby DELETED in its entirety and REPLACED with the following:

Section 2. As provided in R.C. 5709.42, the Owner of each parcel of 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, but less payments made to the School District pursuant to Section 4 of this Ordinance, to the City for deposit in the Worthington Square Urban Redevelopment Tax Increment Equivalent Fund established in Section 4 hereof. Each Service Payment shall 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 Improvements (after credit for any other payments received by the City under R.C. 319.302) had the exemption from taxation not been granted pursuant to this Ordinance, 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 R.C. 323.121(B)(1) and R.C. 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

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time (the payment of penalties and interest and any related amounts received by the City under R.C. 319.302 shall be considered part of the Service Payments). The Service Payments shall be allocated and deposited in accordance with Section 4 of this Ordinance.

- (B) Section 4 of the TIF Ordinance is hereby DELETED in its entirety and REPLACED with the following:

Section 4. This Council hereby authorizes and directs the Director of Finance to establish pursuant to and in accordance with the provisions of R.C. 5709.43, the Worthington Square 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, but less payments made to the School District as described below, which are received by the City from the County Treasurer in accordance with this Ordinance.

The County Treasurer shall make payments to the School District from Service Payments received, in the amount equal to the real property tax payments that would have been payable to the School District from the Improvements exempted pursuant to this Ordinance had such Improvements not been exempted pursuant to this Ordinance, in accordance with R.C. Sections 5709.41(C)(1), and 5709.42.

The Service Payments received by the City (that is, after amounts are paid to the School District as described above) and deposited in the TIF Fund shall be used (i) first, to pay the City’s customary and reasonable costs related to the exercise of its rights and the discharge of its obligations under the TIF Statutes, this Ordinance, the Development Agreement, and all other related laws, agreements and undertakings, (ii) second, to pay the costs of the construction of the Designated Improvements as described in the Development Agreement, as amended from time to time, and (iii) third, if any Service Payments remain in the TIF Fund after the payments described in (i) – (ii) above, to make payments to the City to be used 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 R.C. 5709.43(D). Upon such dissolution, any incidental surplus remaining in the TIF Fund shall be disposed as provided in R.C. 5709.43(D).

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SECTION 4. This Council hereby amends Ordinance No. 03-2013 by deleting Sections 3, 4, 5 and 6 thereof.

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. 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 March 2, 2015

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

Introduced February 17, 2015
P.H. March 2, 2015
Effective March 25, 2015

EXHIBIT A

ACKNOWLEDGMENT OF TERMINATION OF THE AMENDED SCHOOL DISTRICT COMPENSATION AGREEMENT

This Acknowledgment of Termination of the Amended School District Compensation Agreement (this “Acknowledgment”) is made and entered into by and among the CITY OF WORTHINGTON (the “**City**”), an Ohio municipal corporation with its offices at 6550 North High Street, Worthington, Ohio 43085, the WORTHINGTON CITY SCHOOL DISTRICT (the “**District**”), a public school district with its principal offices at 200 East Wilson Bridge Road, Worthington, Ohio 43085 and WORTHINGTON SQUARE VENTURE, LLC, an Ohio limited liability company with its principal place of business at 775 Yard Street, Suite 325, Columbus, Ohio 43212 (the “**Owner**”).

WITNESSETH:

WHEREAS, the City, the District, and the Owner entered into a School District Compensation Agreement, executed as of January 11, 2011 and amended by a First Amendment to the School District Compensation Agreement, executed as of April 7, 2014 (the “**Amended School District Compensation Agreement**”); and

WHEREAS, the City and the Owner entered into a Development Agreement, effective as of January 11, 2011 and amended by a First Amendment to the Development Agreement, dated as of April 7, 2014 (the “**Amended Development Agreement**”); and

WHEREAS, pursuant to the Amended Development Agreement, the Owner developed certain parcels of real property (the “**Property**”), as more fully described and depicted on Exhibit A to the Amended Development Agreement, as a mixed-use retail and entertainment development (the “**Project**”); and

WHEREAS, the City, desiring to encourage the Project, passed Ordinance No. 47-2010 (the “**TIF Ordinance**”), which declared improvements to certain parcels of real property to be a public purpose (the “**Improvements**”) thereby exempting those Improvements from real property taxation, provided for payments in lieu of taxes by the Owner and future owners with respect to the parcels (the “**Service Payments**”), and established an urban redevelopment tax increment equivalent fund to pay a portion of the cost of the construction of certain Designated Improvements, as defined in the Amended Development Agreement and the TIF Ordinance; and

WHEREAS, the Owner invested in and redeveloped the Property and completed the Project as contemplated by the Amended Development Agreement and Amended School District Compensation Agreement; and

WHEREAS, as a result of continuing uncertainty regarding the valuation of the Property and other economic considerations, the City, the Owner and the District have

each reevaluated its desire to continue the Amended School District Compensation Agreement, and each has concluded that the Amended School District Compensation Agreement should be terminated; and

WHEREAS, the City Council of the City passed Ordinance No. 07-2015 (the “**District Hold Harmless Amendment Ordinance**”) (i) amending the TIF Ordinance to specify, pursuant to Ohio Revised Code Section 5709.41(C)(1), that Service Payments shall be paid directly by Franklin County to the District in the amount of taxes that would have been payable to the District if the Improvement had not been exempted from taxation, (ii) approving the termination of the Amended School District Compensation Agreement, and (iii) authorizing the execution of this Acknowledgment; and

WHEREAS, the District passed Resolution No. _____ on February 9, 2015, approving the termination of the Amended School District Compensation Agreement and authorizing the execution of this Acknowledgment; and

WHEREAS, the City, the District, and the Owner agree that each has fulfilled its obligations under the Amended School District Compensation Agreement as of the effective date of this Acknowledgement or that any such obligations are excused; and

WHEREAS, the City, the District and the Owner desire to execute this Acknowledgment to document the termination of the Amended School District Compensation Agreement and of all of the rights and obligations contained therein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the parties from the termination of the Amended School District Compensation Agreement, the parties hereby agree to the following:

Section 1. The City, the District, and the Owner hereby acknowledge and agree that the Amended School District Compensation Agreement is terminated effective upon the date of this Acknowledgment, and that no provision of the Amended School District Compensation Agreement shall remain in effect after such effective date.

Section 2. The City, the District, and the Owner each agrees that the Amended School District Compensation Agreement has been fully satisfied by the parties thereto and each waives any and all rights it had or may have had under the Amended School District Compensation Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Acknowledgment to be executed by their duly authorized representatives, effective as of March 15, 2015.

CITY OF WORTHINGTON

By: _____

Print Name: _____

Title: _____

WORTHINGTON CITY SCHOOL DISTRICT

By: _____

Printed Name: _____

Title: _____

WORTHINGTON SQUARE VENTURE, LLC

By: _____

Print Name: _____

Title: _____

Approved as to form:

Pamela A. Fox, Director of Law
City of Worthington

EXHIBIT B

SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT

Between

THE CITY OF WORTHINGTON

And

WORTHINGTON SQUARE VENTURE, LLC

This Second Amendment to the Development Agreement (this “**Second Amendment**”) has been made and entered into as of the ___ day of _____, 2015 (the “**Effective Date**”) between the CITY OF WORTHINGTON, OHIO, an Ohio municipal corporation, through its City Council (the “**City**”), acting pursuant to the authority of Ordinance No. 07-2015 passed by the City Council on March 2, 2015; and WORTHINGTON SQUARE VENTURE, LLC, an Ohio limited liability company (the “**Developer**”).

WITNESSETH:

WHEREAS, the Developer owns all of the real property described and/or depicted in Exhibit A to the Development Agreement by and between the City and the Developer, dated January 11, 2011, (the “**Agreement**”) located in the City (collectively, the “**Property**”), except for such portion of the Property later conveyed by the Developer, as further described herein; and

WHEREAS, the Developer has redeveloped the Property as a mixed-use retail and entertainment development (the “**Project**”); and

WHEREAS, the City, desiring to encourage the Project, passed Ordinance No. 47-2010 (the “**TIF Ordinance**”), which declared improvements to certain parcels of real property to be a public purpose (the “**Improvements**”) thereby exempting those Improvements from real property taxation, provided for payments in lieu of taxes by the Developer and future owners with respect to the parcels (the “**Service Payments**”), and established an urban redevelopment tax increment equivalent fund to pay a portion of the cost of the construction of certain Designated Improvements, as defined in the TIF Ordinance; and

WHEREAS, in the Agreement, the Developer agreed to construct the Designated Improvements, and the City agreed to reimburse the Developer for certain costs associated with those Designated Improvements, subject to the terms contained in the Agreement; and

WHEREAS, pursuant to Ordinance No. 03-2013, adopted February 4, 2013 by the Worthington City Council, the Agreement was amended by the First Amendment to the Development Agreement, dated April 7, 2014, between the City and the Developer (the “**First Amendment**”), which First Amendment provided for a change to the compensation structure for the Worthington City School District (“**the District**”), as more fully described therein; and

WHEREAS, in order to facilitate the subdivision and sale of a portion of the Property to an unrelated third party purchaser, the City passed Ordinance No. 14-2013 to remove from the Property constituting this Project, and therefore to remove any exemption thereof under the TIF Ordinance, that portion of the Property set forth as Lot 2 in Exhibit A of Ordinance No. 14-2013; and

WHEREAS, the Franklin County Auditor properly recognized the City’s revision to the Property under Ordinance No. 14-2013; and

WHEREAS, because of continuing uncertainty regarding the valuation of the Property and other economic factors associated with the Project, the City and the Developer desire to execute this Second Amendment to allow the Developer and the City to obtain the benefits contemplated under the Agreement and First Amendment and to restructure the compensation received by the District; and

WHEREAS, it is contemplated by the parties hereto that this Second Amendment will further the purpose of the Agreement to create and retain jobs in the City and will enhance the City’s current economic development efforts; and

WHEREAS, the City Council of the City passed Ordinance No. 07-2015, dated March 2, 2015, amending the TIF Ordinance to specify that Service Payments shall be paid directly by Franklin County to the District in the amount of taxes that would have been payable to the District if the Improvements had not been exempted from taxation and authorizing the execution of this Second Amendment (the “**District Hold Harmless Amendment Ordinance**”);

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 with the other as follows:

Section 1. Unless otherwise noted herein, all capitalized terms in this Second Amendment have the same definition as noted in the Agreement, as amended by the First Amendment.

Section 2. DELETE the fifth recital of the Agreement, as amended by the First Amendment, and REPLACE with the following:

WHEREAS, the City passed an ordinance (the “**TIF Ordinance**”) to implement Ohio Revised Code (“R.C.”) Sections 5709.41, 5709.42 and

5709.43 (the “**TIF Statutes**”) with respect to the Property. As used in this Agreement, the TIF Ordinance includes subsequent amendments thereto, including but not limited to the District Hold Harmless Amendment Ordinance; and

Section 3. DELETE the seventh recital of the Agreement, as amended by the First Amendment, and REPLACE with the following:

WHEREAS, the City Council of the City finds that the TIF Ordinance includes provisions providing for compensation to be made, solely from the Service Payments, to the Worthington City School District (the “**School District**”), in accordance with the terms of the TIF Ordinance, as amended by the District Hold Harmless Amendment Ordinance; and

Section 4. DELETE Section 2(B) of the Agreement, as amended by the First Amendment, in its entirety, and REPLACE with the following:

If the Developer constructs or causes to be constructed the Designated Improvements, the Developer may elect to finance such Designated Improvements and be repaid over time by the City using Service Payments, subject to the terms and limitations contained in the TIF Ordinance. In such a case, subject to the provisions of the TIF Ordinance, the Developer shall be reimbursed for any and all costs incurred by the Developer in connection with the construction of the Designated Improvements (the “**Cost of the Designated Improvements**”). The Cost of the Designated Improvements shall include any and all costs incurred in order to construct or finance the construction of, or to provide financial assistance for, the Designated Improvements, including the items of “costs of permanent improvements” set forth in R.C. Section 133.15(B). Those costs include, but are not necessarily limited to: (i) cash paid; (ii) interest on cash paid by the Developer from the date of such payment until the date of reimbursement by the City, at the interest rate per annum equal to the interest rate determined by the Ohio Tax Commissioner for each year pursuant to R.C. Section 5703.47(B), less one percentage point (that is, one percentage point less than the interest rate determined for tax purposes by the Ohio Tax Commissioner [see http://tax.ohio.gov/divisions/ohio_individual/individual/interest_rates.stm] – a reduced interest rate that, for calendar year 2011, would be equal to 3%); (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.

Section 5. DELETE Section 2(C) of the Agreement, as amended by the First Amendment, in its entirety, and REPLACE with the following:

(C) From time to time after commencement of construction 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 Fund (as defined in the TIF Ordinance), 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 Cost of the Designated Improvements, or part thereof, as shown in the Certified Statements, or (ii) the funds available at that time in the Fund, subject to the terms and limitations of the TIF Ordinance. Should insufficient funds exist in the Fund at the time of submission of a Certified Statement to reimburse the Developer for the Cost of the Designated Improvements, 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 Fund, provided that such payment shall not exceed the available balance in the Fund. The City shall submit an accounting or record of all amounts paid to Developer out of the 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 Fund with respect to any unpaid amounts, but subject to the limitations described in this Section 2(C).

Section 6. DELETE Sections 2(D) of the Agreement, as amended by the First Amendment, in its entirety.

Section 7. RENUMBER Section 2(E) to be Section 2(D).

Section 8. DELETE Section 12(b) in its entirety and REPLACE with the following:

(b) Notices to the Developer:

Tom Carter
Worthington Square Venture, LLC
775 Yard Street, Suite 325
Columbus, Ohio 43212

With a copy to:

Scott J. Ziance, Esq.
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215-1008

Section 9. Except as otherwise noted in this Second Amendment, all other terms and provisions contained in the Agreement, as amended by the First Amendment, are unchanged, and remain in full force and effect as stated in the Agreement, as amended by the First Amendment.

IN WITNESS WHEREOF, the City and the Developer have each caused this Agreement to be executed after due authorization as of the Effective Date.

CITY OF WORTHINGTON, OHIO

By: _____
Name: _____
Title: _____

WORTHINGTON SQUARE VENTURE, LLC

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Pamela A. Fox, Law Director
City of Worthington