

ORDINANCE NO. 25-2015

Authorizing the City Manager to Execute a Lease Agreement with Worthington Lodge, LLC for Vehicular and Pedestrian Access from East New England Avenue to the Methodist Church Parking Lot.

WHEREAS, the City approved a rezoning at 634 High Street and 41 East New England Avenue for a PUD residential development; and

WHEREAS, the developer has agreed to enter into a lease agreement for the access drive connecting East New England Avenue and the Worthington United Methodist Church parking lot, consistent with the terms of a lease agreement between the City and the Church for public parking purposes in that lot.

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

SECTION 1. That the City Manager is hereby authorized and directed to execute and deliver on behalf of the City the Lease Agreement with Worthington Lodge, LLC, substantially in the form of the Lease Agreement attached hereto as Exhibit "A" and made a part hereof.

SECTION 2. 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 July 6, 2015

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

Introduced June 15, 2015
P.H. July 6, 2015
Effective July 29, 2015

LEASE AGREEMENT

This Lease Agreement (the "Agreement") is made and entered into this ____ day of _____, 2015 by and between WORTHINGTON LODGE, LLC, an Ohio limited liability company ("Worthington Lodge"), with offices at 45 N. 4th Street, Ste. 200, Columbus, Ohio 43215, and the CITY OF WORTHINGTON, OHIO, an Ohio municipal corporation (the "City"), with offices at 6550 N. High Street, Worthington, Ohio 43085.

Background Information

- A. Worthington Lodge is the owner of a parcel of real property located within the City, which is described on Exhibit "A" attached hereto and made a part hereof, which parcel Worthington Lodge intends to develop or cause to be developed with residential housing (the "Development Parcel").
- B. A portion of the Development Parcel abuts East New England Avenue and currently serves as a private access drive from East New England Avenue to a parking lot owned by the Worthington United Methodist Church ("WUMC").
- C. The City has entered into a lease agreement with WUMC for the use of WUMC's parking lot for public parking purposes to serve the businesses located in the Old Worthington business district (the "WUMC Lease").
- D. In conjunction with its development, Worthington Lodge has agreed to enter into this Agreement to provide public vehicular access from East New England Avenue to the WUMC parking lot over and through the Development Parcel and substantially consistent with the existing access drive (the "Access Drive"), and pedestrian access along an adjacent sidewalk (described more fully herein) (the "Sidewalk"), as an extension of the City's use of the WUMC parking lot pursuant to the WUMC Lease.
- E. In exchange for this lease by Worthington Lodge, the City agrees to provide maintenance of the Access Drive and appurtenances thereto in accordance with the terms and conditions of this Agreement.

Statement of Agreement

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows with the intent of being legally bound.

§1. Grant of Lease. Worthington Lodge hereby leases to the City the non-exclusive right to the Access Drive and Sidewalk (collectively the "Leased Land", which is more particularly described on Exhibit B) for the purpose of public ingress, egress and access to and from the public roadway known as East New England Avenue and the parking lot owned by WUMC immediately to the south, subject to the terms set forth herein. City agrees that no part of the Leased Land will be used for parking, or obstruct access to East New England Avenue, the Development Parcel or the WUMC parking lot.

§2. Construction of the Access Drive and Related Improvements. Consistent with zoning approval, Worthington Lodge shall resurface the Access Drive with a width of 19 feet, from East New

England Avenue south to the point where Worthington Lodge's property abuts the WUMC property, in general conformance with the standard requirements of the City's building code. Also consistent with zoning approval, Worthington Lodge shall construct the Sidewalk 5 feet in width on the west side of the Access Drive with sidewalk lighting, in general conformance with the standard requirements of the City's building code. The total longitudinal width of the Leased Land shall be 25 feet.

§3. Use of the Access Drive and Sidewalk. The general public shall have the right to use the Access Drive for vehicular ingress, egress and access to and from the WUMC parking lot for public parking purposes, and to use the Sidewalk for pedestrian purposes to and from East New England Avenue and the WUMC parking lot. Worthington Lodge shall retain all rights of private property limited only by the terms of this Agreement.

§4. Maintenance. Upon completion of the construction of the Access Drive and the Sidewalk (including the Sidewalk lighting) the City shall be responsible for operation, maintenance and repair of the Access Drive, Sidewalk and any associated lighting, unless otherwise covered by the builder's warranty. The City shall not be responsible for snow and ice removal on the Sidewalk. Electricity costs for the Sidewalk lighting shall be the responsibility of the City. Maintenance of the Access Drive under this Agreement shall include sealing and striping and repairing potholes on a regular basis, consistent with the manner in which the City provides those maintenance services to its own parking facilities. To the extent necessary, as determined by the City Engineer, and for so long as the City maintains a lease agreement with WUMC for public parking purposes, maintenance of the Access Drive shall coincide with maintenance activities on the WUMC property. As part of Worthington Lodge's contribution to the maintenance of the Access Drive, Worthington Lodge shall pay to the City an annual amount of \$130, with the first payment due and owing by December 31 of the year in which the Access Drive and Sidewalk construction is completed. Under the terms of the WUMC Lease and subject to City Council appropriations, the City shall resurface the WUMC parking lot once prior to March 2017; however, it is the expectation that the Access Drive will not require a resurfacing during that time period.

§5. Term of Lease. It is the intention of the Parties to this Agreement that for such time as the City is under lease with WUMC for public parking in the WUMC parking lot, the City will have the right to use the Leased Land under mutually agreeable terms. Notwithstanding the foregoing, this Agreement shall remain in full force and effect under the terms and conditions stated herein, beginning with the date inscribed above, and shall end co-terminously with the WUMC Lease currently in effect as stipulated in Exhibit "C".

The City shall notify Worthington Lodge of the terms and conditions of any renewal or extension of the WUMC Lease, or expiration thereof as the case may be. In the event of a renewal of the WUMC Lease, the City shall have the option to renew this Agreement on terms and conditions substantially consistent with this Agreement, with such other changes by written amendment signed by both parties. In the event of the termination of the WUMC Lease, all maintenance obligations of the City (including electricity costs) and payment obligations of Worthington Lodge under §4 hereof shall terminate, effective co-terminously with the WUMC Lease.

§6. Insurance. Each party to this Agreement shall maintain in full force and effect during the term of this Agreement a policy of general liability insurance for any loss, personal injury, damage or costs that may arise from the use of, in or on the Access Drive and Sidewalk. Each party shall be

responsible for its own costs and expenses that may rise as a result of such party's failure to comply with its obligations under this Agreement.

§7. Assignment. This Agreement may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld.

§8. Notices. Any notice required to be given under this Agreement shall be given in writing and shall be deemed given when delivered personally, delivered electronically (with receipt of confirmation), or mailed first class, postage prepaid, addressed to the party to whom the notice is to be given at the address first set forth above.

§9. Entire Agreement. This document (with its exhibits) contains the entire agreement between the parties and supersedes any prior discussions, representations, understandings or agreements between them respecting the subject matter. No changes, alterations, modifications, additions or qualifications to this agreement shall be made or be binding unless made in writing and signed by each of the parties.

§10. Successors. All provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective personal representatives, successors and assigns of each party to this agreement. This agreement may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld.

§11. Memorandum of Lease. This Agreement shall not be recorded; however, at the request of either party, the other party shall execute, and deliver a memorandum of this Agreement pursuant to §5301.251 of the Ohio Revised Code, for purposes of giving public notice of the rights and obligations of the parties hereunder.

In witness whereof, the parties hereto have caused this Lease to be executed by the duly authorized representatives as of the day and year first written above.

CITY OF WORTHINGTON

WORTHINGTON LODGE, LLC

By _____
Matthew H. Greeson
City Manager

By _____
Kevin M. Showe, its Manager

Approved as to form:

Pamela A. Fox
Director of Law

[Acknowledgements contained on the following page.]

STATE OF OHIO,

COUNTY OF FRANKLIN, SS:

The foregoing instrument was sworn to and acknowledged before me on _____, 2015 by Matthew H. Greeson, the City Manager of the City of Worthington, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public

STATE OF OHIO,

COUNTY OF FRANKLIN, SS:

The foregoing instrument was sworn to and acknowledged before me on _____, 2015 by Kevin M. Showe, the Manager of Worthington Lodge, LLC, an Ohio limited liability company, on behalf of the company.

Notary Public