



**CITY OF HUBER HEIGHTS
STATE OF OHIO**

City Council Work Session

**October 8, 2024
6:00 P.M.**

City Hall - Council Chambers - 6131 Taylorsville Road - Huber Heights, Ohio

1. **Call Meeting To Order/Roll Call**
2. **Approval Of Minutes**
 - A. September 17, 2024
3. **Work Session Topics Of Discussion**
 - A. City Manager Report
 - B. Culture And Diversity Citizen Action Commission Update
 - C. New Huber Heights Senior Center - Interior Furnishings Purchase
 - D. MEMI Consulting Agreement
 - E. Vacating Utility Easements - Former Marian Meadows Site
 - F. Homestead Development - Carriage Park Development Agreement

G. Board And Commission Appointments

* Military And Veterans Commission - Appointment

H. Liquor Permit #7058551 - Tandoor India & Pizza - 7695 Old Troy Pike

I. City Code - Supplement 18 - Adopting Ordinance

4. **Adjournment**

AI-10390

Topics Of Discussion **A.**

Council Work Session

Meeting Date: 10/08/2024

City Manager Report

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 10/08/2024

Audio-Visual Needs: SmartBoard **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:** N/A

Agenda Item Description or Legislation Title

City Manager Report

Purpose and Background

A copy of the presentation given with the City Manager Report has been attached (see attached).

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-10406

Topics Of Discussion **B.**

Council Work Session

Meeting Date: 10/08/2024

Culture And Diversity Citizen Action Commission Update

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 10/08/2024

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:** N/A

Agenda Item Description or Legislation Title

Culture And Diversity Citizen Action Commission Update

Purpose and Background

Representatives of the Culture and Diversity Citizen Action Commission will give an update presentation on the activities and work of the Culture and Diversity Citizen Action Commission.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-10385

Topics Of Discussion C.

Council Work Session

Meeting Date: 10/08/2024

New Huber Heights Senior Center - Interior Furnishings Purchase

Submitted By: Sarah McPherson

Department: Assistant City Manager - Public Services

Council Committee Review?: Council Work Session

Division: Parks/Recreation

Date(s) of Committee Review: 10/08/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

New Huber Heights Senior Center - Interior Furnishings Purchase

Purpose and Background

This legislation authorizes the City Manager to purchase interior furnishings from a local dealer, Elements IV Interiors, for the new Huber Heights Senior Center located on Shull Road. The new Huber Heights Senior Center is slated to open in December, 2024. Elements IV Interiors is a dealer for multiple furniture companies partnered with the OMNIA cooperating purchasing agreement. Discounted prices through that contract membership will be applied to this purchase.

In total, these funds will furnish over 15,000 sq.ft. of space, including space for needle craft, cards, table tennis, social areas, and more. This furniture is anticipated to assist in getting the facility up and running quickly and may be evaluated and supplemented in future budgets. These funds also cover the office furnishings for the Parks and Recreation Department.

Expediency is required for this agreement in order to receive and install the furniture in time for opening.

Fiscal Impact

Source of Funds: Senior Improvements Fund/Parks Operating Fund

Cost: \$150,000

Recurring Cost? (Yes/No): No

Funds Available in Current Budget? (Yes/No): Yes

Financial Implications:

The purchase will be funded through the use of funds currently allocated to the Senior Improvement Fund and Parks and Recreation Fund for improvements and contract services.

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH ELEMENT IV FOR FURNISHING SERVICES FOR THE NEW HUBER HEIGHTS SENIOR CENTER IN AN AMOUNT NOT TO EXCEED \$150,000 AND WAIVING THE COMPETITIVE BIDDING REQUIREMENTS.

WHEREAS, the City of Huber Heights desires to purchase furnishing for use at the newly renovated Huber Heights Senior Center at 7301 Shull Road; and

WHEREAS, the renovation includes all programmatic areas, lounge areas, reception, and administrative offices, which require new furnishings to ensure functional and modern workspaces for members of the Huber Heights Senior Center and City Staff housed within and

WHEREAS, Element IV specializes in the procurement of commercial furniture and projects of all sizes and scope that possesses the necessary expertise, experience, and qualifications to provide such services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager and/or his designee is hereby authorized to purchase furnishings and services with Element IV at a cost not to exceed \$150,000.00.

Section 2. Consistent with the provisions of the City Charter and the Huber Heights Codified Ordinances, the competitive bidding requirements are hereby waived.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council _____

Mayor _____

Date _____

Date _____

AI-10404

Topics Of Discussion **D.**

Council Work Session

Meeting Date: 10/08/2024

MEMI Consulting Agreement

Submitted By: Rachael Dillahunt

Department: City Manager

Council Committee Review?: Council Work Session

Division: City Manager

Date(s) of Committee Review: 10/08/2024

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

MEMI Consulting Agreement

Purpose and Background

This agreement will allow the City Manager to enter into a consulting agreement with Music Event Management, Inc. (MEMI).

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSULTING
AGREEMENT WITH MUSIC EVENT MANAGEMENT, INC.

WHEREAS, the City desires to engage Music Event Management, Inc. (the “Consultant”) as an independent contractor to perform certain services for the City of Huber Heights (the “City”); and

WHEREAS, the Consultant desires to be engaged as a consultant and independent contractor by the City on the terms and subject to the conditions set forth in the Consulting Agreement (the “Agreement”).

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The services to be performed by Music Event Management, Inc. (MEMI) as defined in the Consulting Agreement attached hereto as Exhibit A shall be as requested by the City as part of its project design in developing an indoor performing arts music center for the City (collectively, the “Services”).

Section 2. The term of the Consultant’s engagement as a consultant to the City hereunder shall commence on the date first set forth in the Agreement and shall continue until either the issuance of a Certificate Of Occupancy or the execution of a mutually agreeable Management Agreement between Music Event Management, Inc. and City, whichever comes first (the “Consulting Period”).

Section 3. The City agrees to pay the Consultant, as full compensation for Consultant's performance of the Services, covenants, and agreements provided for herein, consulting fees in the amount of \$5,000.00 per month (the “Consulting Fee”). Such amount shall be paid monthly until the end of the Consulting Period and prorated for any partial month.

Section 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 5. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is made and entered as of this day of _____, by and between City of Huber Heights, Ohio (the "City") and Music Event Management, Inc. ("MEMI") an Ohio not-for-profit Corporation ("Consultant").

WHEREAS the City desires to engage Consultant as an independent contractor to perform certain services for the City; and

WHEREAS Consultant desires to be engaged as a consultant and independent contractor by the City on the terms and subject to the conditions. set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. CONSULTING

1.1 Engagement as Consultant. The City does hereby engage Consultant, and Consultant does hereby accept the engagement, to be a consultant to the City, in accordance with and subject to the terms and conditions set forth in this Agreement.

1.2 Consulting Services. The services to be performed by Consultant shall be as requested by the City as part of its project design in developing an indoor performing arts music center for the City (collectively, the "Services").

- (a) Consultant agrees to use Consultant's best efforts in providing services under this Agreement.
- (b) Except as provided in this Agreement, Consultant shall have sole discretion and responsibility for the selection of procedures, processes, materials, working hours, and other incidents of performance of services under this Agreement.
- (c) Consultant agrees, and will ensure, that Consultant's performance of services under this Agreement will comply with all legal requirements of any kind, including, but not limited to, compliance with all applicable federal, state and/or local laws and regulations. Consultant further agrees to exercise the highest degree of professionalism and care in rendering services under this Agreement.
- (d) During the Consulting Period, Consultant shall devote as much of Consultant's time, energy and abilities to the performance of the Services as is necessary to perform them in a timely and productive manner and as directed by the City.

1.3 Consulting Period. The term of Consultant's engagement as a consultant to the City hereunder shall commence on the date first set forth above and shall continue until either the issuance of a Certificate of Occupancy or the execution of a mutually agreeable Management Agreement between MEMI and City, whichever comes first ("Consulting Period").

1.4 Compensation. The City agrees to pay Consultant, as full compensation for Consultant's performance of the Services, covenants and agreements provided for herein, consulting fees in the amount of Five Thousand Dollars (\$5,000.00) ("Consulting Fee") per month. Such amount shall be paid monthly until the end of the Consulting Period and prorated for any partial month.

1.5 Independent Contractor.

(a:) The parties mutually acknowledge that Consultant is not an employee of the City for any purpose whatsoever but is and shall be at all times an independent contractor. The City shall not have control over Consultant as to the location of Consultant's place of business, the employment of any personnel by Consultant or the manner or means of the performance of Consultant's duties and responsibilities hereunder (except as otherwise may be specifically provided in the Agreement). Consultant does not have, nor shall Consultant hold itself out as having any right, power or authority to create any contract or obligation, expressed or implied, on behalf of, in the name of, or binding on the City unless a duly authorized officer of the City shall consent thereto in writing. Consultant acknowledges and agrees that Consultant is not eligible to participate any employee benefit plans or programs of the City.

(b) Except as may otherwise be specifically provided herein, as an independent contractor, all expenses incurred by Consultant in performing the Services or for the operation of Consultant's activities including, without limitation, insurance, employees (including the withholding and payment of applicable taxes with respect to employees), office rent, supplies, lights, clerical assistance, telephone, facsimile and telegrams, agency licenses and taxes, all local traveling expenses, etc., shall be borne exclusively by Consultant. The parties agree that extraordinary expenses (such as non-local travel) shall be paid by the City, provided such expenses are approved by the City in advance.

(c) The parties acknowledge and agree that Consultant will be solely and completely responsible for any and all taxes due and owing to any governmental entity or agency (federal, state and/or local) on any monies or compensation received by Consultant from the City under this Agreement.

1.6 Management Agreement: Consultant and the City recognize that there are multiple efficiencies and other economic and industry advantages to the dual management of Rose Music Center and the new indoor performing arts music center by MEMI. During the Consulting Period MEMI and the City will enter into good faith discussions regarding the terms of such Management Agreement.

2. WORK PRODUCT

2.1 Rights and Work Product.

(a) Consultant acknowledges and agrees, except for any Pre-Existing Rights (as hereinafter defined), any and all programs, policies, procedures, strategies, advice, reports, studies, surveys, letters, documents, drawings, designs, sketches, processes, computer software, code, hardware, inventions, discoveries, formulas and other useful information, know-how and the like developed, implemented or otherwise provided by Consultant to the City that relate in any way to the

Services (collectively, "Work Product"), shall be the exclusive property of the City, as and when any of the foregoing are created and developed.

(b) All Work Product shall be deemed works made for hire and as such the City owns all copyrights, patent rights, trade secrets, trademarks and all other rights and protections with respect thereto, and to the extent that any Work Product may not constitute works made for hire. Consultant hereby conveys, assigns and sets over to the City all rights, title and interests in, to and under such Work Product, including, without limitation, copyrights, patent rights, trade secrets, trademarks and all other rights and protections with respect thereto, that the City may perfect in its own name as the City may desire, in perpetuity or for the longest period otherwise permitted by law.

(c) Consultant agrees from time to time, without further consideration, to execute such documents and otherwise cooperate with the City as necessary in order for the City to perfect its right, title and interest in, to and under such Work Product and any copyrights, patent rights, trade secrets, trademarks and all other rights and protections with respect thereto, provided that the City shall bear all reasonable out-of-pocket expenses relating to the same.

(d) The City claims no rights title or interest in, to or under any copyrights, patents, trade secret, trademarks or other rights or protections owned or licensed by Consultant prior to the date of this Agreement and/or any other useful information or know-how developed by Consultant prior to the date of this Agreement (collectively "Pre-Existing Rights"). To the extent that any Pre-Existing Rights are embodied in any Work Product, the City shall acquire no rights, title or interests thereto; provided, however that Consultant hereby grants to the City an irrevocable, perpetual, world-wide, royalty-free, non-exclusive license to utilize such Pre-existing Rights, and no such item or Work Product shall be, or be deemed to be a joint work or compilation of any type or nature.

3. MISCELLANEOUS

3.1 Notices. Any notices provided for under this Agreement shall be in writing and shall be deemed given and effective if delivered personally or sent by facsimile, nationally recognized overnight courier (such as Federal Express), or registered or certified mail, return receipt requested, with postage prepaid, at the following respective address (or to such other address as a party may hereafter designate by like notice):

If to Consultant:

Music Event Management, Inc.
1241 Elm Street
Cincinnati, OH 45202
Attn: Richard Freshwater

If to City:

City of Huber Heights
6131 Taylorsville Road
Huber Heights, Ohio 45424
Attn:

A notice delivered personally will be deemed delivered and effective as of the date of delivery. A notice sent by facsimile will be deemed delivered on the date transmitted by facsimile with a confirmation receipt. A notice sent by overnight courier or overnight express mail will be deemed delivered and effective one (1) day after it is deposited with the postal authority or commercial carrier. A notice sent by certified or registered mail will be deemed delivered and effective (2) days after it is deposited with the postal authority.

- 3.2 Successors and Assigns.** This Agreement shall inure to the benefit of and may be enforced by the City's successors and/or assigns. Consultant's rights and obligations under this Agreement are personal and are not assignable by Consultant.
- 3.3 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio without regard to conflicts of law principles.
- 3.4 Submission to Jurisdiction.** EACH OF THE PARTIES HEREBY AGREES AND CONSENTS TO THE PERSONAL JURISDICTION AND VENUE OF ANY COURT LOCATED IN HAMILTON COUNTY, OHIO IF LITIGATION IS INITIATED BY MEMI AND MONTGOMERY COUNTY, OHIO IF INITIATED BY THE CITY, AND WAIVES ANY OBJECTION BASED ON PERSONAL JURISDICTION VENUE OR FORUM NON CONVENIENS WITH RESPECT TO ANY ACTION INSTITUTED IN SUCH COURTS BY THE PARTY FIRST TO INITIATE ANY ACTION AND AGREES THAT ANY DISPUTE CONCERNING THIS AGREEMENT OR ANY OF THE TRANSACTIONS DESCRIBED HEREIN SHALL BE HEARD ONLY IN THE COURTS LOCATED IN THE RESPECTIVE JURISDICTION OF THE PARTY FIRST TO INITIATE ANY ACTION. EACH OF THE PARTIES HEREBY CONSENTS TO THE SERVICE OF ANY PROCESS IN ANY SUCH ACTION BY DELIVERY OF SUCH PROCESS BY CERTIFIED U.S. MAIL TO THE ADDRESSES OF THE PARTIES DETERMINED IN ACCORDANCE WITH SECTION 3.1 AS WELL AS BY ANY OTHER MEANS OF SERVICE PERMITTED BY APPLICABLE LAW. PRIOR TO EITHER PARTY PROSECUTING ANY LITIGATION, ONCE FILED HEREUNDER THE ACTION IN DISPUTE BETWEEN THE PARTIES SHALL BE SUBMITTED TO MEDIATION FOLLOWING THE AMERICAN ARBITRATION ASSOCIATION RULES OF MEDIATION, OR BY AGREEMENT OF THE PARTIES.
- 3.5 Partial Invalidity and Severability.** All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary to render this Agreement legal, valid and enforceable. If any term of this Agreement, or part thereof, not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms hereof, or part thereof shall constitute their agreement with respect to the subject matter here of and all such remaining terms, or parts thereof shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision

that will implement the commercial purpose of the illegal, invalid or unenforceable provision.

- 3.6 Amendment and Waiver.** This Agreement (including exhibits hereto) shall not be altered or amended except by an instrument in writing signed by both Consultant and a duly authorized representative of the City. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but only if such waiver is evidenced by a writing signed by such party. No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or remedy created hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by any such party preclude any other or further exercise thereof the exercise of any other right, power or remedy. No waiver by any party hereto of any breach of or default in any term or condition of this Agreement shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition hereof.
- 3.7 Negotiated Agreement.** This Agreement is the result of negotiations between the parties, and no party will be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any party. This Agreement shall be interpreted without any presumption or inference based upon or against the party causing this Agreement to be drafted.
- 3.8 Headings.** The headings of particular provisions of this Agreement are inserted for convenience only and shall not be construed as a part of this Agreement or serve as a limitation or expansion on the scope of any term or provision of this Agreement.
- 3.9 Number and Gender.** Where the context requires, the use of the singular form herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include any and all genders.
- 3.10 Survival of Provisions.** Except as otherwise provided therein, the provisions of Sections 1.4 and 2 hereof shall survive any termination of this Agreement.
- 3.11 Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof and contains the sole and entire agreement between the parties with respect to the matters covered hereby.
- 3.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. This Agreement shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that the parties need not sign the same counterpart. Signatures transmitted by facsimile or other electronic means are acceptable the same as originals for the execution of this Agreement.

(Signature page follows]

IN **WITNESS WHEREOF**, the undersigned parties have executed and delivered this Consulting Agreement as of the date first set forth. above.

THE CITY:

CITY OF HUBER HEIGHTS, OHIO

By: _____

Name: _____

Title: _____

CONSULTANT:

MUSIC AND EVENT MANAGEMENT, INC.

By: _____

Name: Ed Morrell

Title: Chief Business Officer

AI-10382

Topics Of Discussion E.

Council Work Session

Meeting Date: 10/08/2024

Vacating Utility Easements - Former Marian Meadows Site

Submitted By: Aaron Sorrell

Department: Assistant City Manager - Public Services

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 10/08/2024

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

Vacating Utility Easements - Former Marian Meadows Site

Purpose and Background

The ordinance will vacate an abandoned sanitary sewer easement at the former Marian Meadows site. This easement vacation is necessary for the construction of the Richard F. Shomper City Governance Center.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Ordinance/Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2024-O-

VACATING AND EXTINGUISHING CERTAIN UTILITY EASEMENTS AT THE FORMER
MARIAN MEADOWS SITE.

WHEREAS, the City of Huber Heights desires to facilitate the redevelopment of the former Marian Meadows site; and

WHEREAS, the City of Huber Heights has determined certain utility easements are no longer necessary for municipal purposes in this location; and

WHEREAS, Section 723.121 of the Ohio Revised Code authorizes the City Council to extinguish an easement in whole or in part based upon a determination that the easement is not needed for municipal purposes; and

WHEREAS, the City Council has determined that there is good cause to vacate the easements; that the easements are no longer needed for public purposes; and that vacation of the easements will not be detrimental to the general interest, public health and welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The City Council hereby determines that the easement to the Ohio Suburban Water Company as filed on July 24, 1989 as recorded in Deed MF 89-0393 B09 as recorded in the Montgomery County, Ohio Recorder’s Office and depicted as “15’ Sanitary Sewer Easement” on Exhibit A attached hereto and made a part hereof, is not needed for municipal purposes.

Section 2. The City Manager is authorized to take all actions, including the execution and recording of any plats, deeds, or other documents, necessary to accomplish the vacation and extinguishment of these easements.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
Yeas; _____ Nays _____.

Effective Date:

AUTHENTICATION:

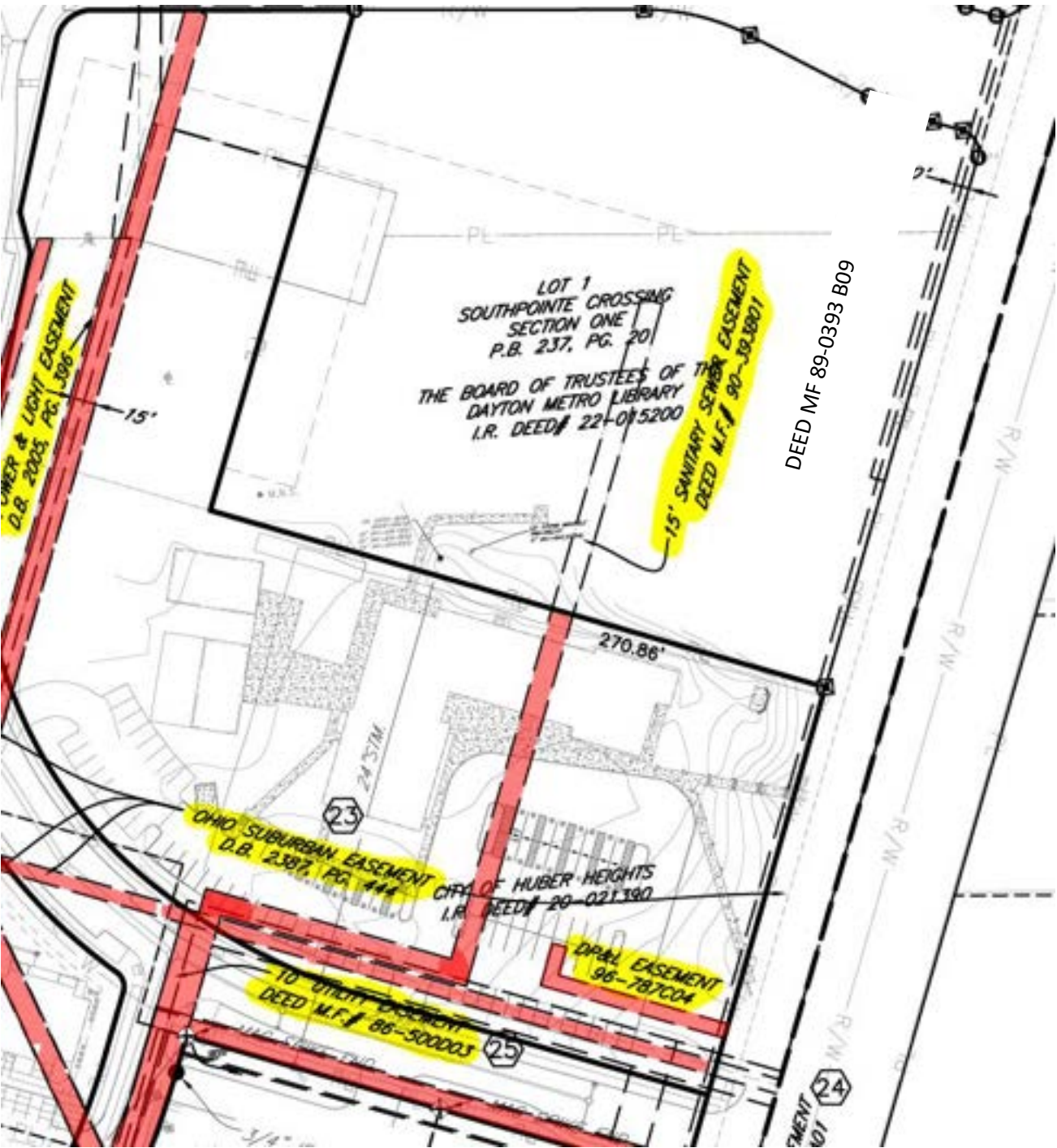
Clerk of Council

Mayor

Date

Date

EXHIBIT A



AI-10389

Topics Of Discussion F.

Council Work Session

Meeting Date: 10/08/2024

Homestead Development - Carriage Park Development Agreement

Submitted By: Aaron Sorrell

Department: Assistant City Manager - Public Services

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 10/08/2024

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

Homestead Development - Carriage Park Development Agreement

Purpose and Background

This resolution authorizes the City Manager to execute a Development Agreement (Exhibit A) with Homestead Development, LLC to facilitate the sale of approximately 8 acres of property and the subsequent construction of a 168-unit market-rate multi-family development. Homestead Development, LLC will purchase the City-owned land for \$1,600,000. Additionally, the developer will pay Minimum Service Payments to the City totaling \$1,205,295 over the 15-year CRA period. Completion and occupancy of the units is targeted for January, 2027.

Fiscal Impact

Source of Funds: Sales Proceeds
Cost: 2,805,295 (revenue)
Recurring Cost? (Yes/No): No
Funds Available in Current Budget? (Yes/No): Yes
Financial Implications:
Total estimated revenue to the City: \$2,805,295

Attachments

Resolution
Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2024-R-

AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH
HOMESTEAD DEVELOPMENT, LLC.

WHEREAS, the City of Huber Heights (the “City”) and Homestead Development, LLC (the “Developer”) intend to enter into a development agreement (the “Agreement”); and

WHEREAS, the Agreement provides for the development of approximately 8 acres of real property located at the southwest corner of Brandt Pike (State Route 201) and Carriage Trails Parkway, identified as Miami County Parcel Number P48-000414; and

WHEREAS, the Developer proposes to construct approximately 168 units of market-rate multi-family housing (the “Project”); and

WHEREAS, the City and Developer have agreed to enter into the Agreement, attached hereto as Exhibit A, to facilitate the construction of the Project, including the provision of development incentives such as real property tax exemptions; and

WHEREAS, the City and Developer previously entered into a Purchase and Sale Agreement on April 22, 2024, pursuant to Resolution No. 2024-R-7416, in furtherance of the Project; and

WHEREAS, the City Council finds that executing and delivering the Agreement is in the best interest of the City, as it will foster economic development, create new jobs, and improve the overall economic welfare of the residents of the City of Huber Heights and the State of Ohio.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio, that:

Section 1. The Development Agreement between the City and Homestead Development, LLC, attached hereto as Exhibit A, providing for the construction of the Project and the associated development incentives, including real property tax exemptions, is hereby approved. The City Manager is authorized to make any changes to the Agreement that are consistent with this Resolution and not substantially adverse to the City. Such changes shall be approved by the City Manager and reviewed by the Law Director.

Section 2. The City Manager is hereby authorized, on behalf of the City, to execute the Agreement. Any changes made to the Agreement that are not substantially adverse to the City, as determined by the City Manager and approved by the Law Director, shall be conclusively evidenced by the execution of the Agreement.

Section 3. The City Manager, the Finance Director, the Law Director, the Clerk of Council, and any other appropriate City officials are hereby authorized and directed to prepare, execute, and sign all necessary agreements and documents, and to take any actions required to implement this Resolution.

Section 4. It is hereby determined that all formal actions of this Council concerning and related to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and its committees that resulted in such formal actions were conducted in meetings open to the public, in accordance with Ohio law, including Section 121.22 of the Ohio Revised Code.

Section 5. This Resolution shall take effect immediately upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

DEVELOPMENT AGREEMENT

by and between

CITY OF HUBER HEIGHTS, OHIO

and

HOMESTEAD DEVELOPMENT LLC

relating to

MARKET-RATE MULTI-FAMILY HOUSING DEVELOPMENT

dated as of

_____, 2024

TABLE OF CONTENTS

	Page
RECITALS	1
ARTICLE I DEFINITIONS	
Section 1.1 Use of Defined Terms	4
Section 1.2 Definitions.....	4
Section 1.3 Interpretation.....	8
ARTICLE II GENERAL AGREEMENT AND TERM	
Section 2.1 General Agreement Among Parties	9
Section 2.2 Term of Agreement.....	9
Section 2.3 Declaration of Covenants.....	9
ARTICLE III REPRESENTATIONS AND COVENANTS OF THE PARTIES	
Section 3.1 Representations and Covenants of the City	11
Section 3.2 Representations and Covenants of the Developer	12
ARTICLE IV MULTIFAMILY PROJECT	
Section 4.1 General	14
Section 4.2 Multifamily Project.....	14
Section 4.3 Submittal of Plans for Development Project	15
Section 4.4 Installation of Utilities, Roadways, Sidewalks and Streetlights	15
Section 4.5 Developer Obligations	18
Section 4.6 Permits	19
Section 4.7 Fees, Charges and Taxes.....	19
Section 4.8 Provision of City Services	19
Section 4.9 Insurance and Bonds	20
Section 4.10 Compliance with Laws	20
Section 4.11 Expeditious Completion of Multifamily Project.....	20
Section 4.12 Waiver of Unpaid Special Assessments	21
ARTICLE V COMMUNITY REINVESTMENT AREA	
Section 5.1 General	22
Section 5.2 Community Reinvestment Area # 7.....	22
Section 5.3 Compliance and Remedies Relating to the CRA Exemption	23
Section 5.4 Priority of Tax Exemptions.....	24
ARTICLE VI TAX INCREMENT FINANCING	
Section 6.1 General	25
Section 6.2 Statutory Service Payments	25

TABLE OF CONTENTS

(continued)

	Page
Section 6.3	Minimum Service Payment Obligation 25
Section 6.4	Information Reporting 28
Section 6.5	Non-Discriminatory Hiring Policy 29
ARTICLE VII	
EVENTS OF DEFAULT; REMEDIES	
Section 7.1	Developer Default 30
Section 7.2	City Default 30
Section 7.3	Remedies 31
Section 7.4	Other Rights and Remedies; No Waiver by Delay 33
Section 7.5	Force Majeure 34
ARTICLE VIII	
MISCELLANEOUS	
Section 8.1	Assignment 35
Section 8.2	Binding Effect 36
Section 8.3	Captions and Headings 36
Section 8.4	Day for Performance 36
Section 8.5	Developer Mortgagee Rights 36
Section 8.6	Document Submissions to the City 37
Section 8.7	Entire Agreement 37
Section 8.8	Executed Counterparts 38
Section 8.9	Extent of Covenants; Conflict of Interest; No Personal Liability 38
Section 8.10	Governing Law 39
Section 8.11	Limits on Liability 39
Section 8.12	No Third-Party Beneficiary 39
Section 8.13	Notices 40
Section 8.14	Recitals and Exhibits 40
Section 8.15	Severability 40
Section 8.16	Survival of Representations and Warranties 41
Exhibit A -	Legal Description of the Property
Exhibit B -	Depiction of Multifamily Project
Exhibit C -	Form of Developer Declaration of Covenants

(END OF TABLE OF CONTENTS)

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (this “*Agreement*”) is made and entered into this _____ day of _____, 2024 (the “*Effective Date*”) by and between the **CITY OF HUBER HEIGHTS, OHIO** (the “*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “*State*”) and its Charter and **HOMESTEAD DEVELOPMENT LLC**, an Ohio limited liability company (the “*Developer*” and together with the City, the “*Parties*” and each of the Parties individually referred to herein as a “*Party*”), under the circumstances summarized in the following recitals (terms used but not defined in the Recitals shall have the meaning set forth in Section 1.2):

RECITALS

WHEREAS, the Developer has entered into an Agreement to Purchase Real Estate with the City, dated May 6, 2024, as such purchase agreement may hereafter be reasonably modified, extended or amended (the “*Purchase Agreement*”) for the purpose of acquiring approximately 8.1 contiguous acres of real property located within the City (which real property is described on **EXHIBIT A** attached hereto and is collectively referred to herein as the “*Property*”); and

WHEREAS, the Developer and City propose to create a market-rate multi-family housing project on the Property, and following Developer’s acquisition of the Property, the Developer proposes to construct, or cause to be constructed, on the Property, an approximate 168+/- unit apartment development project (as further defined and described in Section 1.2, the “*Multifamily Project*”), a sample depiction of which appears on **EXHIBIT B** attached hereto; and

WHEREAS, the City has determined that the construction of the Multifamily Project is expected to result in the creation of employment opportunities within the City as well as the creation of various types of housing for its residents; and

WHEREAS, City Council heretofore passed Ordinance No. 2005-O-1589 on August 22, 2005 (the “*TIF Ordinance*”), pursuant to TIF Statutes, Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 thereby exempting from taxation any Improvements to the real property subject to the TIF Ordinance (which includes the Property) and requiring the current and future property owners of such real property to make service payments in lieu of taxes (those payments, and any other payments received by the City in connection with the TIF Ordinance under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time, are collectively referred to as the “*TIF Payments*”); and

WHEREAS, City Council heretofore adopted Resolution No. 92-R-1139 on September 14, 1992, declaring a certain area within the City to be a Community Reinvestment Area (“CRA #5” which is also referred to as a Pre-1994 CRA), which CRA #5 was modified by Resolution No. 93-R-1319, adopted on September 28, 1993, as amended by Resolution No. 95-R-1653, adopted on June 26, 1995, and Resolution No. 2015-R-6232, adopted on September 28, 2015, and as modified by Resolution No. 2022-R-7210, adopted on December 15, 2022 (collectively, the “*CRA Legislation*”); and

WHEREAS, the entire Property is located within CRA #5; and

WHEREAS, pursuant to the CRA Legislation, the City granted tax exemptions within CRA #5 for improvements to real property, as authorized by the CRA Statute, as follows: (i) a ten (10) year, 100% exemption for the remodeling of any dwelling containing not more than two family units upon which the cost of remodeling is at least two thousand five hundred dollars (\$2,500.00), as described in Section 3735.67 (D)(1) of the Ohio Revised Code, (ii) a twelve (12) year, 100% exemption for every dwelling containing more than 2 units, commercial or industrial properties, upon which the cost of remodeling is at least five thousand dollars (\$5,000.00) as described in

Section 3735.67(D)(2) of the Ohio Revised Code, and (iii) a fifteen (15) year, 100% exemption for the construction of every commercial or industrial structure as described in Section 3735.67(D)(4) of the Ohio Revised Code (collectively, the “*CRA Exemption*”); and

WHEREAS, the CRA Exemption is applicable to a multi-family development on the Property, which the Parties acknowledge would include the construction of the Multifamily Project, including but not limited to its approximate 168+/- unit apartment development contained in multiple dwellings (with each such structure having more than two residential units) and located collectively on one parcel with amenity building(s), and accessory structure(s); and

WHEREAS, the City and Developer wish to confirm that the Multifamily Project proposed to be constructed upon the Property is eligible for the CRA Exemption so as to allow the Developer to acquire the Property and to develop the Multifamily Project in reliance on the availability of the CRA Exemption under the terms set forth in the CRA Legislation and subject to the CRA Statute; and

WHEREAS, the Parties have determined to enter into this Agreement to provide for the construction of the Multifamily Project, to confirm the availability of the CRA Exemption to support the Multifamily Project and to provide for the payment of Minimum Service Payments; and

WHEREAS, the City, by Resolution No. _____ passed by City Council on _____, 2024 authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the premises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree and obligate themselves as follows:

(END OF RECITALS)

ARTICLE I

DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

Section 1.2 Definitions. As used herein:

“*Agreement*” means this Development Agreement dated as of the Effective Date, by and between the City and the Developer.

“*City*” means the City of Huber Heights, Ohio, an Ohio municipality.

“*City Attorney*” means the City Attorney of the City or any person serving in an interim or acting capacity with respect to that office.

“*City Codified Ordinances*” means the Codified Ordinances of the City, as amended and supplemented from time to time.

“*City Council*” means the City Council of the City.

“*City Default*” shall have the meaning set forth in Section 7.2.

“*City Manager*” means the City Manager of the City or any person serving in an interim or acting capacity with respect to that office.

“*County*” means the County of Miami, Ohio.

“*County Auditor*” means the County Auditor of the County or any person serving in an interim or acting capacity with respect to that office.

“*County Recorder*” means the County Recorder of the County or any person serving in an interim or acting capacity with respect to that office.

“*CRA #5*” shall have the meaning set forth in the Recitals.

“CRA Exemption” shall have the meaning set forth in the Recitals.

“CRA Legislation” shall have the meaning set forth in the Recitals.

“CRA Statute” means, collectively, Sections 3735.65 through 3735.70 of the Ohio Revised Code, and those sections as each may hereafter be amended from time to time, as and to the extent those sections and amendments thereto apply to the Property (including the “pre-Senate Bill 19 (1994)” versions of those sections to the extent applicable).

“Declaration” means the Declaration of Covenants (which shall be substantially in the form attached hereto as **EXHIBIT C**).

“Developer” means Homestead Development LLC, an Ohio limited liability company.

“Developer Default” shall have the meaning set forth in Section 7.1.

“Developer Mortgage” shall have the meaning set forth in Section 8.5.

“Developer Mortgagee” shall have the meaning set forth in Section 8.5.

“First Annual MSP Invoice Deadline” shall have the meaning set forth in Section 6.3(b).

“Improvements” shall have the same meaning as set forth in Ohio Revised Code Section 5709.40(A)(4).

“Minimum Service Payment” means each payment required to be made to the City pursuant to Section 6.3(c).

“Minimum Service Payment Obligation” shall have the meaning set forth in Section 6.3.

“MSP Invoice Deadline” shall have the meaning set forth in Section 6.3(b).

“MSP First Payment Year” means the calendar year immediately following the calendar year in which any type of certificate of occupancy is issued for the last structure containing the last apartment unit of the Multifamily Project, provided that the structure is exempted from real property taxation for that tax year pursuant to the CRA Resolution and in accordance with this

Agreement. For example, if the last certificate of occupancy issued is a temporary certificate of occupancy for the Multifamily Project and that certificate of occupancy is issued in December 2025, the MSP First Payment Year will be calendar year 2026, provided the Multifamily Project is subject to the CRA Exemption for tax year 2026 (property tax payment year 2027).

“*MSP Last Payment Year*” means the 14th year after the MSP First Payment Year. For example, if the MSP First Payment Year is calendar year 2026, the MSP Last Payment Year is calendar year 2040.

“*Multifamily Project*” means collectively all of the buildings and structures, or any portion thereof, occupied or constructed as apartments or living units within one or more dwellings or multi-unit housing structures, to be occupied by multiple families or occupants, and located on the Property, or a subdivided portion thereof. It shall also include any building and other improvements constructed as a dedicated amenity or accessory used to support and sustain the operation of an apartment housing community on the Property.

“*Multifamily Project Site*” shall have the meaning set forth in Section 2.3.

“*Notice Address*” means:

as to the City:

City of Huber Heights, Ohio
Attention: City Manager
6131 Taylorsville Road
Huber Heights, Ohio 45424
Email: jrussell@hhoh.org

With a duplicate to:

Coolidge Wall Co., LPA
Attn: Christopher R. Conard
33 W. First Street, Suite 200
Dayton, Ohio 45402
Email: conard@coollaw.com

as to the Developer: Homestead Development LLC
Attn: Doug Falor, VP of Acquisitions
369 E. Livingston Ave.
Columbus, OH 43215
Email: dfalor@homesteadcos.com

With a duplicate to: Kephart Fisher LLC
Attn: Robert S. Ryan
207 N. Fourth Street
Columbus, OH 43215
Email: robryan@kephartfisher.com

“*Owner*” shall have the meaning set forth in Section 2.3.

“*Parties*” means, collectively, the City and the Developer and “*Party*” shall mean either one of the Parties. .

“*Purchase Agreement*” shall have the meaning set forth in the Recitals.

“*Real Property Tax Exemption Recipient*” shall have the meaning set forth in Section 5.3.

“*Second Annual MSP Invoice Deadline*” shall have the meaning set forth in Section 6.3(b).

“*State*” means the State of Ohio.

“*TIF Exemption*” means the exemption from real property taxation for the Improvements as authorized by the TIF Statute and the TIF Ordinance.

“*TIF Ordinance*” means Ordinance No. 2005-O-1589 passed by the City Council on August 22, 2005.

“*TIF Payments*” means those monies distributed by the County to the City in respect of the TIF Exemption and which will include service payments in lieu of taxes remitted by owners of real property subject to the TIF Exemption and any other payments received by the City in connection with the TIF Ordinance under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time.

“*TIF Statute*” means, collectively, Sections 5709.40, 5709.42, 5709.43 and 5709.51 of the Ohio Revised Code, and those sections as each may hereafter be amended from time to time.

Section 1.3 Interpretation. Any reference in this Agreement to the City or to any officers of the City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

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

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “*hereof*”, “*hereby*”, “*herein*”, “*hereto*”, “*hereunder*” and similar terms refer to this Agreement; and the term “*hereafter*” means after, and the term “*heretofore*” means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

(END OF ARTICLE I)

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1 General Agreement Among Parties. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements between the Parties, the Parties intend to and shall cooperate in the manner described herein to facilitate the zoning, design, financing, construction, acquisition and installation of the Multifamily Project.

Section 2.2 Term of Agreement. This Agreement shall become effective as of the Effective Date and will continue until the Parties' respective obligations set forth herein have been fulfilled, unless earlier terminated in accordance with this Agreement.

Section 2.3 Declaration of Covenants.

(a) Filing. It is intended and agreed, and it will be so provided by the Developer in the Declaration relating to the Property upon which the Multifamily Project is constructed (the "*Multifamily Project Site*") to be recorded promptly upon Developer's acquisition of the Multifamily Project Site that certain covenants set forth herein shall hereafter be binding upon owners of the Multifamily Project Site (each, including the Developer, during its period of ownership of the Multifamily Project Site, an "*Owner*"). Except as otherwise provided in the Declaration, the covenants set forth in the Declaration are hereby incorporated into this Agreement by this reference.

(b) Termination. Upon satisfaction of the obligations of the Developer related to the Multifamily Project to make the TIF Payments and the Minimum Service Payments, the City will, upon the request of the Developer or an Owner, execute an instrument in recordable form evidencing the termination of the Declaration with respect to the Property, or any applicable

portion thereof, and releasing the covenants running with the land as set forth in the Declaration with respect to the Developer's or that Owner's portion of the Property.

(END OF ARTICLE II)

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1 Representations and Covenants of the City. The City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to it, including its Charter, and does not and will not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound.

(d) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

(e) There is no litigation pending or threatened against or by it wherein an unfavorable ruling or decision would materially adversely affect its ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

(g) Resolution No. _____ passed by City Council on _____, 2024 authorizing the execution and delivery of this Agreement, has been duly passed and is in full force and effect as of the Effective Date.

Section 3.2 Representations and Covenants of the Developer. The Developer represents and covenants that:

(a) It is a for profit limited liability company duly organized and validly existing under the applicable laws of the State of Ohio.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the Developer and does not and will not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound.

(d) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

(e) It is not aware of any litigation pending or threatened against or by it wherein an unfavorable ruling or decision would materially adversely affect its ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(END OF ARTICLE III)

ARTICLE IV

MULTIFAMILY PROJECT

Section 4.1 General. The Developer agrees that it will proceed in good faith and with all reasonable dispatch to design, finance and construct, or cause to be designed, financed and constructed, the Multifamily Project and to perform any and all of its duties and obligations relating to the Multifamily Project in a manner consistent with this Agreement, subject to market conditions as they may exist from time to time during the term of this Agreement.

Section 4.2 Multifamily Project. Subject to economic conditions supporting the development of the Multifamily Project and the Developer securing adequate approvals, including, but not limited to, approvals from any jurisdiction to which the Multifamily Project is subject, including any zoning changes or variance, as each are determined by the Developer in its sole and complete discretion, the Parties acknowledge and agree that the Multifamily Project that will be developed, or caused to be developed, by the Developer and is expected to be approved by the City (which approval will not be unreasonably conditioned, delayed or withheld) as follows:

(a) The Developer will construct an approximate 168+/- unit market-rate multi-family housing use on the Multifamily Project Site. The Multifamily Project is targeted for completion and available for occupancy on January 1, 2027, or as may be reasonably economically feasible to complete at any time before or after that estimated date. The Developer estimates that the Multifamily Project will have a total fair market value of approximately Twenty-Five Million Two Hundred Thousand Dollars (\$25,200,000.00) upon completion.

(b) The Developer anticipates that approximately 100 temporary jobs will be created in connection with the construction of the Multifamily Project and approximately 2 permanent jobs will be created at the Multifamily Project when it is fully completed and occupied.

Section 4.3 Submittal of Plans for Development Project. For the Multifamily Project, the Developer shall prepare and submit a site plan, architectural rendering(s), project zoning and design standards, and related development plans to the City, in such detail as is reasonably necessary for review and approval by appropriate City Boards or Commissions in accordance with the ordinary exercise of their respective rights and duties, all pursuant to and in accordance with the pertinent City Codified Ordinances.

Section 4.4 Installation of Utilities, Roadways, Sidewalks and Streetlights. To support the development of the Multifamily Project, including the installation of utilities, roadways, sidewalks and streetlights, each Party shall have the responsibilities set forth below:

(a) Water. Except as otherwise provided herein, at no cost to the City, it shall be the obligation of the Developer to construct the water lines, hydrants, valves, and related appurtenances within the Multifamily Project Site which water lines, hydrants, valves, and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with the City's standard requirements. The City hereby confirms that it will supply water services to the Multifamily Project under the terms and conditions that it supplies such services to similarly situated customers and that it has, and will have, sufficient capacity to supply such services to the Multifamily Project from and after full completion and at full occupancy.

(b) Sanitary Sewer. Except as otherwise provided herein, at no cost to the City, it shall be the obligation of the Developer to construct the sanitary sewer lines and related appurtenances within the Multifamily Project Site, which sanitary sewer lines and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with the City's standard requirements and will be dedicated by an easement granted to

the City. The City hereby confirms that it will supply sanitary sewer services to the Multifamily Project under the terms and conditions that it supplies such services to similarly situated customers and that it has, and will have, sufficient capacity to supply such services to the Multifamily Project from and after full completion and at full occupancy.

(c) Storm Sewer. Except as otherwise provided herein, at no cost to the City, it shall be the obligation of the Developer to construct a storm sewer collection system and related onsite detention and/or retention ponds to service the Multifamily Project. The exact location and size of such storm sewer collection system and on-site ponds shall be determined by (i) the detailed development plan(s) as approved by the City and Developer, consistent with the zoning thereof, as herein provided, (ii) engineering standards and (iii) all other applicable rules and regulations. Except for underground storm sewer pipes (which will be dedicated to and maintained by the City), the Developer shall be responsible for all maintenance of the storm sewer management system (including but not limited to the onsite detention and/or retention ponds) located within the Property and servicing the Multifamily Project.

Each Party covenants and agrees that all roadway, utility and other construction and development work undertaken by that Party (or any third-party upon the direction of that Party) will be designed and performed in such a manner as not to disrupt or otherwise interfere with any existing storm sewer drainage systems (surface, field tile or other) on or off of the Property.

(d) Roadways.

(i) Private Roads. Except as otherwise provided herein, all private drives and internal roads on the Property servicing the Multifamily Project shall be constructed by the Developer, at no cost to the City, as needed for its intended use of the Multifamily Project. All private drives and internal roads shall be (A) constructed in accordance with the

standards customarily employed by a multi-family developer for projects of a similar scope and size, (B) designed by a licensed professional engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of Ohio, and (C) located in accordance with final development plans and permits approved by the City.

(ii) Public Roads on Property. If the Parties agree that the construction of any public roads or public road modifications are required on the Property, all such public roads or public road modifications on the Property shall be constructed by the Developer, at no cost to the City, in accordance with City standards, and as may be applicable and appropriate to the type of road being constructed. Any such public roads or public road modifications constructed on the Property under this Agreement shall be (A) located within current or future dedicated right of way, and (B) reviewed, inspected and approved by the City.

(e) Cross Easements for Utility Services. The Parties agree among themselves to grant, without charge, reciprocal cross-easements or easements to public or private utilities, as appropriate, for construction of utilities described in this Section 4.4, or other public or private utilities to service the Multifamily Project; *provided, however*, that all easements shall be within or adjacent to the various proposed public roads or driveway rights-of-way, as set forth on the detailed development plan for the Multifamily Project, except as may otherwise be reasonably necessary to assure utility services to all parts of the Multifamily Project. Easements for surface drainage shall follow established water courses, unless otherwise agreed to by the affected Party. The Developer shall restore any easement areas to a condition which is reasonably satisfactory to the City promptly following any construction work by the Developer. The City shall restore any

easement areas following any construction work by the City in accordance with the City Codified Ordinances and as reasonably satisfactory to Developer.

(f) Dedication. All public utilities and public roadways (including related rights-of-way) installed and/or constructed within the Multifamily Project Site (except the utility cross easements described in Section 4.4(e)) shall be dedicated (free and clear of any liens, encumbrances and restrictions except as may be permitted in writing by the City) to the City, which agrees to accept such dedication, and recorded with the County Recorder at such time as is consistent with the City Codified Ordinances and the terms of this Agreement. Upon said dedication and Developer's completion of construction as required herein, City, at its cost, shall be responsible for the management, repair and replacement of the public utilities and public roadways unless otherwise expressly set forth in this Agreement.

(g) Cooperation. The City agrees to work cooperatively with the Developer to support the Multifamily Project and timely review and act on any requests for City approvals, permits or inspections.

Section 4.5 Developer Obligations.

(a) The Developer shall be responsible for developing the Multifamily Project in accordance with the detailed development plans, as may be modified from time to time, and as such plans are approved by the City as hereinbefore provided. Except as otherwise provided in this Agreement, the Developer shall provide all funds necessary to develop and to design, finance and construct the Multifamily Project. Unless a later date applies to a given obligation, as expressly set forth in this Agreement, the obligations under this Agreement of the Developer shall, as to the Multifamily Project, commence on the later of (i) the first date on which all titles to the parcel(s) upon which the Multifamily Project is to be constructed is/are transferred to the

Developer as evidenced by the recordation of the deed(s) to said parcel(s); or (ii) the Effective Date of this Agreement.

Section 4.6 Permits. Prior to commencing construction of the Multifamily Project, the Developer shall obtain all necessary permits from all levels of government having jurisdiction thereover to allow the Developer to build and develop the Multifamily Project consistent with the detailed development plan(s) for the Multifamily Project. Standards for permit approval shall comply with all applicable standards (as may be set forth in City Codified Ordinances or elsewhere) at the time of zoning permit application or, in the case of the City administrative plan review requirements, at the time of application for those predevelopment permits.

Section 4.7 Fees, Charges and Taxes. The Developer shall, as and when customarily payable to the City on projects comparable to the Multifamily Project, pay the then-current standard fees in connection with any construction of the Multifamily Project, which fees shall include, but not be limited to, fees for the provision of water, sanitary sewer and storm sewer services, and which fees, the City agrees, will be determined in a manner consistent and uniform with the manner of fee determination by the City on projects comparable to the Multifamily Project. The Developer acknowledges and agrees that the City reserves the right to adjust the standard fees described in this Section 4.7 from time to time in a manner consistent and uniform with the manner of fee determination by the City on projects comparable to the Multifamily Project. The Developer shall also ensure that any other standard fees, sales and use taxes, if any, and license and inspection fees necessary for the completion of the Multifamily Project shall be timely paid.

Section 4.8 Provision of City Services. The City agrees to provide to the Multifamily Project all City services usually and customarily provided by the City, including but not limited to, fire and police protection and road and utility maintenance on dedicated and accepted public

streets and utilities consistent with its City-wide street and utility maintenance program; provided *however*, the City shall not be required to construct and install improvements related to the provision of those services except as may be required as part of a general duty to provide a basic obligation of public service or otherwise provided herein.

Section 4.9 Insurance and Bonds. Insurance and bonds shall be provided by the Developer or its contractors and subcontractors during the course of development of the Multifamily Project only if, and as otherwise required by, the City Codified Ordinances and other applicable development regulations.

Section 4.10 Compliance with Laws. In connection with the construction of the Multifamily Project and in performing its obligations under this Agreement, the Developer agrees that it shall comply with, and require all of its employees, agents, contractors and consultants to comply with, all applicable federal, state, county, or municipal laws (including City Codified Ordinances) in all material respects; provided, however, that nothing in this Section shall prohibit Developer from contesting in good faith the application of any such laws in an appropriate forum.

Section 4.11 Expeditious Completion of the Multifamily Project. The Parties agree that the expeditious completion of the Multifamily Project will benefit both Parties. To that end, the Parties agree to act in good faith and in a cooperative manner to complete the Multifamily Project in accordance with the terms of this Agreement, subject in the case of Developer, however, to market conditions as they may exist from time to time. The City also agrees to act in good faith and diligently review the various applications and other matters which must be approved by the City as compliant with applicable laws and regulations in connection with the Multifamily Project; *provided, however*, the Developer acknowledges and agrees that the various approvals of the City relating to planning and zoning described in this Article IV shall not be effective until approved

by the appropriate body as contemplated hereby. The Parties each agree that the City shall have no responsibility relative to the marketing or sale of the real property or improvements thereto within the Multifamily Project.

Section 4.12 No Other Development Agreements; No Special Assessments. The City represents and warrants that the Property is not subject to or encumbered by that certain Development Agreement dated November 12, 2002, between the City of Huber Heights, Ohio, and the Kendall Group Limited (the “Kendall Group Development Agreement”) or any other prior development agreements or similar agreements. For clarity, the Property is, and will remain, free of any special assessments or similar obligations under the Kendall Group Development Agreement and any other prior development agreements or similar agreements. If it is ever determined that the Property is, or becomes, subject to or encumbered by the Kendall Group Development Agreement or any other prior development agreements or similar agreements or any assessments arising therefrom, the City will take all necessary steps to promptly terminate or release the Property from such encumbrances or assessments. (End of Article IV)

ARTICLE V

COMMUNITY REINVESTMENT AREA

Section 5.1 General. The Parties acknowledge that the provision of real property tax exemptions in respect of the Multifamily Project Site will be important to facilitate the construction of the Multifamily Project.

Section 5.2 Community Reinvestment Area #5. The Parties agree that:

(a) In accordance with the CRA Legislation, the City has provided for a CRA Exemption applicable to the Multifamily Project Site, which as set forth in the CRA Legislation, includes a fifteen (15) year, 100% real property tax exemption for the construction of every dwelling, commercial or industrial structure (which, for the avoidance of doubt, includes each structure that comprises a portion of the Multifamily Project) as described in Section 3735.67(D)(4) of the Ohio Revised Code for properties located within CRA #5.

(b) To facilitate the construction of the Multifamily Project, to create employment opportunities within the City as well as the creation of various types of housing for its residents, and in consideration for the Developer's covenants set forth herein, the City hereby confirms, represents and warrants that it has, through the CRA Legislation, provided for the aforementioned CRA Exemption, and that such CRA Exemption is available to Developer for the Multifamily Project Site under the terms of the CRA Legislation, the CRA Statute and this Agreement.

(c) The Developer agrees related to the Multifamily Project Site to file with the City one CRA real property tax exemption application, which application shall be filed no later than ninety (90) days following the issuance (which issuance will not be unreasonably conditioned, withheld or delayed) by the City of a certificate occupancy for the structure that contains the final living unit within the Multifamily Project. The application shall include (i) confirmation that

construction of the final unit in the Multifamily Project has been completed, and (ii) confirmation of the number of units included in the Multifamily Project. The Parties agree that the CRA Exemption shall commence for each structure that comprises the Multifamily Project with the tax year identified by the Developer in the CRA real property tax exemption application.

The City agrees that promptly following confirmation of the application filed in accordance with this Section 5.2(c), the City will approve a fifteen (15) year, 100% real property tax exemption in respect of each structure that comprises a portion of the Multifamily Project, all in accordance with the CRA Legislation. The City shall provide written notification to the County Auditor as to the tax year in which the CRA Exemption shall commence for the Multifamily Project, and the Parties will cooperate and work in good faith to maximize the value of the CRA Exemption for Developer's benefit, which efforts will include, if necessary, ongoing interaction with the County Auditor to ensure proper and timely implementation of the CRA Exemption for each structure that comprises a portion of the Multifamily Project in accordance with this Agreement and the CRA Statute (e.g., so that no structure will be considered an improvement on the land).

Section 5.3 Compliance and Remedies Related to the CRA Exemption.

(a) The City agrees that for so long as an Owner is the recipient of a real property tax exemption in accordance with Section 5.2(c) (each a "*Real Property Tax Exemption Recipient*") and that Real Property Tax Exemption Recipient is complying with the terms of Section 5.2(c), and then notwithstanding the occurrence of a Developer Default or any other default hereunder by actions or inactions of the Developer (provided that such default is not caused by the action or inaction of that Real Property Tax Exemption Recipient), the City shall not take action to reduce the exemption percentage and/or the term of the real property tax exemption as such would apply to the Real Property Tax Exemption Recipient.

(b) The Developer further agrees that if the City determines in good faith that an Owner fails to make any required Minimum Service Payment, the City may thereafter take action against the Owner, which shall be proportionate to the default to reduce the applicable exemption percentage and/or the term of the real property tax exemption and/or the City may increase the Minimum Service Payments applicable to the Owner under Section 6.3 to a higher amount but in no event higher than the amount that Owner would have paid in real estate taxes but for the CRA exemption.

Section 5.4 Priority of Tax Exemptions. The City agrees that the TIF Exemption shall be subordinate to the CRA Exemption. The Housing Officer shall designate in the Housing Officer's approval of the CRA real property tax exemption application that the CRA Exemption shall have priority with respect to the Multifamily Project Site over the TIF Exemption. For avoidance of doubt, no Owner will be required to make TIF Payments with respect to any increase in assessed value that is exempt from real property taxation pursuant to CRA Legislation because the TIF Exemption is subordinate to the CRA Exemption.

(END OF ARTICLE V)

ARTICLE VI

TAX INCREMENT FINANCING

Section 6.1 General. The Parties acknowledge that City Council heretofore passed the TIF Ordinance which provides for, among other terms, the application of the TIF Exemption to the Multifamily Project Site and identification of certain public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, the Multifamily Project Site.

Section 6.2 Statutory Service Payments. The Developer, on behalf of itself and each Owner, agrees, subject to Section 5.4, to make TIF Payments attributable to its respective period of ownership of the Multifamily Project Site, all pursuant to and in accordance with the requirements of the TIF Statute, and any subsequent amendments or supplements thereto, the TIF Ordinance and this Agreement, and as further set forth in the Declaration.

Section 6.3 Minimum Service Payment Obligation.

(a) General. The Developer, on behalf of itself and each Owner, acknowledges and agrees that, provided the Multifamily Project receives the benefit of the CRA Exemption, the Multifamily Project Site is also subject to a minimum service payment obligation (the "*Minimum Service Payment Obligation*"), which constitutes a minimum service payment obligation under Ohio Revised Code Section 5709.91. The Minimum Service Payment Obligation shall begin in the MSP First Payment Year and continue through and including the MSP Last Payment Year. Notwithstanding any other provision of this Agreement, the Minimum Service Payment Obligation shall cease after the MSP Last Payment Year.

(b) Invoices and Timing. The City shall send invoices to collect the Minimum Service Payments as follows:

(i) No later than January 15 in each year in which the Minimum Service Payment is due, the City shall send an invoice to each Owner (at the registered address for purpose of receiving real property tax statements) stating the amount due which shall equal 50% of the applicable Minimum Service Payment for that year, and state that payment is due the later of: (i) thirty (30) days after the date the invoice is delivered to the Owner or (ii) February 15 of the year for which the Minimum Service Payment is being collected (the “*First Annual MSP Invoice Deadline*”), and

(ii) No later than June 15 in each year in which the Minimum Service Payment is due, the City shall send an invoice to each Owner (at the registered address for purpose of receiving real property tax statements) stating the amount due which shall equal 50% of the applicable Minimum Service Payment for that year, and state that payment is due the later of: (i) thirty (30) days after the date the invoice is delivered to the Owner or (ii) July 15 of the year for which the Minimum Service Payment is being collected (the “*Second Annual MSP Invoice Deadline*” and collectively with the First Annual MSP Invoice Deadline, the “*MSP Invoice Deadline*”).

(c) Annual Minimum Service Payment Obligations. The aggregate annual amount of the Minimum Service Payments for the Multifamily Project Site shall equal:

<u>Year</u>	<u>Annual Amount</u>
MSP Payment Years 1-15	\$80,353.00

(d) Apportionment of Minimum Service Payment Obligation Among Multiple Owners. In the event the Multifamily Project Site is owned by more than one Owner, the City shall collect the Minimum Service Payments on a pro rata basis among such Owners based on the then-assessed

value of each such Owner's property in proportion to the assessed value of all such Owners' property.

(e) Delinquencies, Administrative Fees and Interest. If a Minimum Service Payment is not received by the City within thirty (30) days after the applicable MSP Invoice Deadline, the City may assess a non-paying Owner with a 10% administrative fee together with interest accruing at an annual rate of 10% on the portion of any Minimum Service Payment that remains unpaid from that Owner. The City may certify delinquent Minimum Service Payments, fees and interest to the County Auditor for collection on real property tax bills. Any late payments of amounts so certified will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time. In no event shall the Minimum Service Payment Obligation for the Multifamily Project Site equal less than zero dollars. The Developer, on behalf of itself and the Owners, acknowledges that the provisions of Ohio Revised Code Section 5709.91, which specify that the TIF Payments and the Minimum Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11 including, but not limited to, the priority of the lien and the collection of TIF Payments and Minimum Service Payments, apply to the Multifamily Project Site and any improvements thereon.

(f) Failure to Send Invoice. Failure by the City to send an invoice to an Owner for a Minimum Service Payment in accordance with this Section shall not invalidate Developer's/Owner's obligation to make such payment(s). However, such failure shall invalidate City's right to assess fees and interest as outlined in this Section for Developer's/Owner's failure to remit or timely remit Minimum Service Payments as required herein. The MSP Payment obligation contained herein shall not be subject to the Force Majeure provision of section 6.5,

unless the Force Majeure specifically affects either (i) the means by which the MSP Payment is transmitted, or (ii) the ability of the Owner to receive the invoice for the Minimum Service Payment.

(g) Foreclosure and Acceleration. In the event that any portion of the Multifamily Project Site is subject to an action that would impair or foreclose the lien created by the Declaration (such as a property tax foreclosure action), and provided that the Multifamily Project Site is still subject to the Minimum Service Payment Obligation at the time that such foreclosure becomes effective, the City may declare immediately due and payable all Minimum Service Payments projected to be due from that portion in the then-current year or any future year (through and including the Minimum Service Payment Last Payment Year). Except as set forth in this Section 6.3, no other Minimum Service Payment shall be owed for the Multifamily Project Site, or any portion thereof.

Section 6.4 Information Reporting. The Developer covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually during the term of this Agreement the Developer's compliance with the terms of this Agreement. Any information supplied to such tax incentive review council will be provided solely for the purpose of monitoring the Developer's compliance with this Agreement.

The Developer further covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Section 5709.40(I) to the Director of the Ohio Department of Development on or before March 31 of each year the exemption for the Multifamily Project Site

provided by the TIF Ordinance is in effect. Any information supplied to the City will be provided solely for the purpose of enabling the City to comply with this requirement.

Section 6.5 Non-Discriminatory Hiring Policy. With respect to operations within the City, the Developer will comply with the City's policies adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions (under the TIF Ordinance and the CRA Legislation) practice nondiscriminatory hiring in its operations. In furtherance of that policy, the Developer will agree that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

(END OF ARTICLE VI)

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1 Developer Default. Any one or more of the following shall constitute a Developer Default under this Agreement:

(a) Default by the Developer in the due and punctual performance or observance of any material obligation under this Agreement and such default is not cured within thirty (30) days after written notice from the City, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a Developer Default shall not be deemed to occur so long as the Developer commences to cure the default within the thirty-day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by the Developer in this Agreement is false or misleading in any material respect as of the time made;

(c) The filing by the Developer of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(d) The making by the Developer of a general assignment for the benefit of creditors;

(e) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with the Developer as debtor; or

(f) The filing by the Developer of an insolvency proceeding with respect to such party or any proceeding with respect to such party for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

Section 7.2 City Default. Any one or more of the following shall constitute a City Default under this Agreement:

(a) Default by the City in the due and punctual performance or observance of any material obligation under this Agreement and such default is not cured within thirty (30) days after written notice from the Developer, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a City Default shall not be deemed to occur so long as the City commences to cure the default within the thirty day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by the City in this Agreement is false or misleading in any material respect as of the time made;

(c) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with the City as debtor; or

(d) Any repeal of the CRA Legislation or the TIF Ordinance or reduction or elimination of the real property tax exemptions granted thereunder except as otherwise provided herein.

Section 7.3 Remedies.

(a) In the event that the Developer shall create or suffer a Developer Default under this Agreement which remains uncured as aforesaid, or in the event that the City shall create or suffer a City Default under this Agreement which remains uncured as aforesaid, or in the event of any dispute arising out of or relating to this Agreement which does not necessarily rise to the level of a default hereunder, then absent facts or circumstances which compel a Party's pursuit of immediate injunctive or other equitable relief, the Parties agree to and shall first proceed as follows prior to pursuit of any other remedies hereunder, in equity or at law:

(i) the complaining Party shall notify the other Party in writing of the dispute and/or claimed default, and thereafter the Parties shall undertake good faith discussions for the purpose of resolving the dispute and/or the issues giving rise to the claimed default.

(ii) If the dispute and/or the issues giving rise to the claimed default are not resolved by such good faith discussions within thirty (30) days after such notice is provided under foregoing clause (i), then, upon the request of either Party by written notice to the other Party, mediation shall be initiated through the use of a mutually-acceptable neutral mediator not affiliated with either of the Parties, and thereafter the Parties shall proceed in good faith with such mediation for the purpose of resolving the dispute and/or the issues giving rise to the claimed default. If the Parties are unable to agree upon a neutral mediator, then either Party may solicit the Administrative Judge of the Common Pleas Court of Montgomery County, Ohio to appoint the mediator. If the dispute and/or the issues giving rise to the claimed default are not resolved within thirty (30) days after the identification or appointment of the mediator, then the Parties may pursue their other remedies hereunder, in equity or at law. Each Party shall pay its own costs and one-half (1/2) of the mediator's fees and expenses in connection with any such mediation. The Developer acknowledges that before the Parties may proceed with mediation in accordance with this Section 8.3(a), City Council must first authorize and appropriate sufficient monies to pay the City's portion of the cost; provided, however, if the City fails to authorize and appropriate sufficient monies to pay the City's portion of the cost for mediation within sixty (60) days after the appointment of a mediator, the Developer may immediately, and without first being required to proceed to mediation under this Section, pursue its other remedies hereunder in equity or at law.

(b) In the event that the Developer shall create or suffer a Developer Default under this Agreement and the Parties are unable to resolve all issues arising out of such a Developer Default in accordance with the discussion and mediation provisions set forth in Section 7.3(a) above, then, in addition to any other rights or remedies available to the City hereunder, in equity or at law, the City, at its option, shall have the right to cancel and terminate this Agreement by written notice to the Developer.

(c) In the event that the City shall create or suffer a City Default under this Agreement and the Parties are unable to resolve all issues arising out of such a City Default in accordance with the discussion and mediation provisions set forth in Section 7.3(a) above, then, in addition to any other rights or remedies available to the Developer hereunder, in equity or at law, the Developer, at its option, shall have the right to cancel and terminate this Agreement by written notice to the City.

Section 7.4 Other Rights and Remedies; No Waiver by Delay. The Parties each have the further right to institute any actions or proceedings (including, without limitation, actions for specific performance, injunction or other equitable relief) as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; *provided*, that any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement will not operate as a waiver of those rights or to deprive it of or limit those rights in any way; nor will any waiver in fact made by either Party with respect to any specific default or breach by any other Party under this Agreement be considered or treated as a waiver of the rights of that Party with respect to any other defaults by the other Party or with respect to the particular default or breach except to the extent specifically waived in writing. It is the further intent of this provision that no Party should be constrained, so as to avoid the risk of being deprived of or limited

in the exercise of any remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise any remedy at a time when it may still hope otherwise to resolve the problems created by the default involved.

Section 7.5 Force Majeure. Except as otherwise provided herein, no Party will be considered in default in or breach of its obligations to be performed hereunder if delay in the performance of those obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God, acts of terrorism or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of obligations shall be extended for the period of the enforced delay; *provided, however*, that the Party seeking the benefit of the provisions of this Section must, within a reasonable period following commencement of the enforced delay, notify the other Party in writing of the delay and of the cause of the delay and of the duration of the delay or, if a continuing delay and cause, the estimated duration of the delay, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Parties in writing of the duration of the delay. Delays or failures to perform due to lack of funds shall not be deemed unforeseeable delays.

(END OF ARTICLE VII)

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning Party; *provided, however*, that the Developer may without the consent of the City assign its rights and responsibilities under this Agreement to any affiliate of Developer; *provided, further*, any assignment shall not have an effective date earlier than the date title to the parcel upon which such Multifamily Project is to be constructed is/are transferred to the affiliate as evidenced by the recordation of the deed(s) to said parcel(s).

For purposes of this Agreement, an “*affiliate*” of the Developer shall mean any entity controlled by or under common control with the Developer and, “*controlled by*” or “*under common control with*” will refer to the possession, directly or indirectly, of the legal power to direct or cause the direction of the management and policies of an entity, whether through the exercise of, or the ability to exercise, voting power or by contract.

Once the Multifamily Project has been completed and provided no Developer Default exists, in connection with the transfer of the Multifamily Project the Developer may assign this Agreement to an unrelated third party without the City’s consent so long as such third party assumes through written agreement the then-outstanding obligations of Developer hereunder, including, without limitation, the remaining obligations to make the Minimum Service Payments and TIF Payments. A copy of such executed agreement shall be promptly provided to the City, but in any event within thirty (30) days after the transfer of the Multifamily Project. Any other assignment of this Agreement shall require the written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

Section 8.2 Binding Effect. The provisions of this Agreement are binding upon the successors or permitted assigns of the Parties, including successive successors and assigns. The Parties acknowledge that all matters subject to the approval of City Council will be approved or disapproved in City Council's sole discretion. All rights, remedies, and interests held, created in, or received by Developer in this Agreement or in any agreement attached to or entered into pursuant to this Agreement, shall, unless the same are specifically and expressly reserved by this Agreement to Developer, be rights, remedies, and interests automatically transferred by Developer to an affiliate of Developer with, and at such time as, the deed to any parcel upon which Multifamily Project is to be constructed is executed and delivered by Developer; *provided, however,* that the automatic transfer of such rights, remedies, and interests described in this sentence are herein limited to the rights, remedies, and interests as they relate to and affect the Multifamily Project owned by the Developer.

Section 8.3 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 8.4 Day for Performance. Wherever herein there is a day or time period established for performance and the day or the expiration of the time period is a Saturday, Sunday or legal holiday, then the time for performance will be automatically extended to the next business day.

Section 8.5 Developer Mortgagee Rights. The City hereby acknowledges that, from time to time during the development, ownership and operation of the Multifamily Project, the Developer and its successors and assigns may obtain financing in connection with the Multifamily Project which will be secured in whole or in part by assignments, pledges or mortgages of the

Developer's interests in the Property (each a "*Developer Mortgage*"). In connection therewith, the City agrees to and shall cooperate with the Developer to provide to the holder of any such Developer Mortgage (each a "*Developer Mortgage*") such reasonable factual representations and/or consents regarding this Agreement and/or the Developer's rights hereunder as such Developer Mortgagee may request from time to time. By way of example, such reasonable factual representations and/or consents may take the form of: (a) estoppel certificates certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that it is in full force and effect as modified and stating the modifications), that neither the City nor the Developer is in default in the performance of any obligations under this Agreement (or specifying any such default of which the City has knowledge), and certifying as to other facts as reasonably requested by such Developer Mortgagee; and/or (b) consents to the collateral assignment of certain of the Developer's rights under or in respect of this Agreement. Any such requested assurance and/or consent shall be in a form reasonably approved by the City, and the City shall endeavor reasonably to respond to any such request in a prompt and timely manner. The Developer shall pay on behalf of the City any reasonable fees and expenses incurred by the City in connection with any request pursuant to this Section.

Section 8.6 Document Submissions to the City. Except as otherwise required by the City Codified Ordinances, any documents required to be submitted to the City pursuant to this Agreement shall be submitted to the City Manager or such other City department as may be directed by the City Manager.

Section 8.7 Entire Agreement. This Agreement, including the exhibits and the corollary agreements contemplated hereby, embodies the entire agreement and understanding of the Parties

relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 8.8 Executed Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It is not necessary in proving this Agreement to produce or account for more than one of those counterparts. The Parties may deliver executed versions of this Agreement and any amendments or addendums hereto by electronic means (e.g., PDF or similar format delivered by electronic mail), and such electronic versions shall be deemed to be original versions of this Agreement. The Parties agree that this Agreement may be electronically signed by one or more Parties. Any electronic signature used by a Party to sign this Agreement shall be treated the same as handwritten signatures for the purposes of validity, enforceability and admissibility. Without limiting the foregoing, nothing in this Agreement shall be construed to require a Party to sign this Agreement by electronic signature.

Section 8.9 Extent of Covenants; Conflict of Interest; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement are effective to the extent authorized and permitted by applicable law. No member, official or employee of the City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects his personal interest or the interests of any corporation, partnership, association or other entity in which he is, directly or indirectly, interested. No covenant, obligation or agreement may be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent, director, member or employee of the City or the Developer, or its successors or permitted assigns, other than in his or her official capacity, and neither the members of the legislative body of the City nor

any official executing this Agreement nor any present or future member, officer, agent, director or employee of the Developer, or its successors or permitted assigns, are liable personally under this Agreement or subject to any personal liability or accountability by reason of the execution hereof or by reason of the covenants, obligations or agreements of the City and the Developer contained in this Agreement.

Section 8.10 Governing Law. This Agreement is governed by and is to be 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 and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio or any appellate court therefrom.

Section 8.11 Limits on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event will the City or the Developer, or its successors or permitted assigns, be liable to each other for punitive, special, consequential or indirect damages of any type and regardless of whether those damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law unless otherwise expressly agreed by the Party against which the damages could be assessed.

Section 8.12 No Third-Party Beneficiary. Except relative to a permitted assignee pursuant to an assignment effected pursuant to Section 7.1, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the Parties, any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Parties hereto, as provided herein. With the

exception of the Parties and any assignee effected pursuant to Section 7.1, it is not intended that any other person or entity shall have standing to enforce, or the right to seek enforcement by suit or otherwise of any provision of this Agreement whatsoever.

Section 8.13 Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received by email, or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the recipient at the Notice Address, or to another address of which the recipient has previously notified the sender in writing, and the notice will be deemed received upon actual receipt, unless sent by certified mail, in which case the notice will be deemed to have been received when the return receipt is received, signed or refused.

Section 8.14 Recitals and Exhibits. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto and the information contained in the Exhibits hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 8.15 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination will not affect any other provision, covenant, obligation or agreement contained herein, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein. If any provision, covenant, obligation or agreement contained herein is subject to more than one interpretation, a valid and enforceable interpretation is to be used to make this Agreement effective. An invalidity or unenforceability of any provision of this Agreement will not affect any valid and enforceable application, and each provision, covenant,

obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.16 Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(END OF ARTICLE VII – SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its duly authorized representatives, all as of the date first written above.

CITY OF HUBER HEIGHTS, OHIO

By: _____

Printed: John W. Russell III

Title: City Manager

Approved as to Form and Correctness:

By: _____

Printed: Christopher R. Conard

Title: City Attorney

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

On this ____ day of _____, 2024, before me a Notary Public personally appeared Richard S. Dzik, the authorized representative of the City of Huber Heights, Ohio, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of the City of Huber Heights, Ohio and the voluntary act and deed of the City of Huber Heights, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

Notary Public

IN WITNESS WHEREOF, the Developer has caused this Agreement to be executed by its duly authorized representatives, all as of the date first written above.

HOMESTEAD DEVELOPMENT, LLC

By: _____

Printed: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2024, before me a Notary Public personally appeared _____, the _____ of Homestead Development, LLC, an Ohio limited liability company, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of Homestead Development, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

Notary Public

FISCAL OFFICER’S CERTIFICATE

The undersigned, Director of Finance of the City of Huber Heights, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2024 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 2024

James A. Bell
Director of Finance
City of Huber Heights, Ohio

EXHIBIT A LEGAL DESCRIPTION OF PROPERTY

PARCEL I:

SITUATED IN CITY OF HUBER HEIGHTS, INLOT 161 AND ALSO PART OF BETHEL TOWNSHIP SITUATE IN SECTION 13, TOWNSHIP 2, RANGE 9 M.R.S., CITY OF HUBER HEIGHTS, COUNTY OF MIAMI, STATE OF OHIO, AND BEING PART OF TRACTS OF LAND CONVEYED TO KENDALL GROUP LIMITED AS RECORDED IN DEED BOOK 732, PAGE 720, SHOWN ON MIAMI COUNTY ENGINEER'S RECORD OF LOTS SURVEYS VOLUME 24, PAGE 114, AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING FOR REFERENCE AT A MONUMENT BOX (FOUND) AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 13, SAID CORNER BEING THE CENTERLINE OF STATE ROUTE 201;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 13, NORTH EIGHTY-FOUR DEGREES THIRTY-EIGHT MINUTES NINE SECONDS WEST (N 84° 38' 09" W) FOR SEVENTY-FIVE AND 00/100 FEET (75.00') TO AN IRON PIN SET IN THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROUTE 201;

THENCE ALONG THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROUTE 201, NORTH FIVE DEGREES THIRTEEN MINUTES TWENTY-THREE SECONDS EAST (N 05° 13' 23" E) FOR SIX HUNDRED AND 00/100 FEET (600.00') TO AN IRON PIN FOUND AT THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND IN THE NORTH LINE OF A TRACT OF LAND CONVEYED TO THE CITY OF HUBER HEIGHTS AS RECORDED IN DEED BOOK 731, PAGE 579, SAID TRACT BEING CITY OF HUBER HEIGHTS INLOT NO. 162;

THENCE ALONG THE NORTH LINE OF SAID CITY OF HUBER HEIGHTS LAND, NORTH EIGHTY-FOUR DEGREES THIRTY-EIGHT MINUTES NINE SECONDS WEST (N 84° 38' 09" W) FOR SEVEN HUNDRED TEN AND 00/100 FEET (710.00') TO AN IRON PIN SET;

THENCE OVER SAID INLOT 161 ON A NEW DIVISION LINE FOR THE FOLLOWING NINE (9) COURSES:

1. NORTH FIVE DEGREES THIRTEEN MINUTES TWENTY-THREE SECONDS EAST (N 05° 13' 23" E) FOR SIX HUNDRED FORTY-SIX AND 38/100 FEET (646.38') TO AN IRON PIN SET;

2. NORTH FIFTY DEGREES THIRTEEN MINUTES TWENTY-THREE SECONDS EAST (N 50° 13' 23" E) FOR THIRTY-NINE AND 42/100 FEET (39.42') TO AN IRON PIN SET IN THE SOUTH LINE OF A PROPOSED RIGHT-OF-WAY;

3. ALONG SAID PROPOSED RIGHT-OF-WAY LINE ON A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF ONE HUNDRED TWO AND 00/100 FEET (102.00') FOR AN ARC DISTANCE OF ONE HUNDRED TWO AND 92/100 FEET (102.92'), (CHORD BEARING SOUTH SIXTY-EIGHT DEGREES FORTY-ONE MINUTES THREE SECONDS EAST (S 68° 41' 03" E) FOR NINETY-EIGHT AND 61/100 FEET (98.61'), DELTA ANGLE OF SAID CURVE BEING FIFTY-SEVEN DEGREES FORTY-EIGHT MINUTES FIFTY-TWO SECONDS (57° 48' 52"')) TO AN IRON PIN TO BE SET BY M-E COMPANIES AT A POINT OF REVERSE CURVATURE;

4. ALONG SAID PROPOSED RIGHT-OF-WAY LINE ON A CURVE TO THE RIGHT WITH A RADIUS OF ONE HUNDRED THIRTY-EIGHT AND 00/100 FEET (138.00') FOR AN ARC DISTANCE OF ONE HUNDRED THIRTEEN AND 34/100 FEET (113.34'), (CHORD BEARING SOUTH SEVENTY-FOUR DEGREES THREE MINUTES FORTY-THREE SECONDS EAST (S 74° 03' 43" E) FOR ONE HUNDRED TEN AND 18/100 FEET (110.18'), DELTA ANGLE OF SAID CURVE BEING FORTY-SEVEN DEGREES THREE MINUTES THIRTY-ONE SECONDS (47° 03' 31"')) TO AN IRON PIN TO BE SET BY M-E COMPANIES AT A POINT OF TANGENCY;

5. ALONG SAID PROPOSED RIGHT-OF-WAY LINE, SOUTH FIFTY DEGREES THIRTY-ONE MINUTES FIFTY-EIGHT SECONDS EAST (S 50° 31' 58" E) FOR SIXTY-ONE AND 99/100 FEET (61.99') TO AN IRON PIN TO BE SET BY M-E COMPANIES AT A POINT OF CURVATURE;

6. ALONG SAID PROPOSED RIGHT-OF-WAY LINE ON A CURVE TO THE LEFT WITH A RADIUS OF ONE HUNDRED EIGHTY-SEVEN AND 00/100 FEET (187.00') FOR AN ARC DISTANCE OF TWO HUNDRED THREE AND 64/100 FEET (203.64'), (CHORD BEARING SOUTH EIGHTY-ONE DEGREES FORTY-THREE MINUTES FORTY-EIGHT SECONDS EAST (S 81° 43' 48" E) FOR ONE HUNDRED NINETY-THREE AND 73/100 FEET (193.73'), DELTA ANGLE OF SAID CURVE BEING SIXTY-TWO DEGREES TWENTY-THREE MINUTES FORTY-ONE SECONDS (62° 23' 41"')) TO AN IRON PIN TO BE SET BY M-E COMPANIES AT A POINT OF TANGENCY;

7. ALONG SAID PROPOSED RIGHT-OF-WAY LINE, NORTH SIXTY-SEVEN DEGREES FOUR MINUTES TWENTY-TWO SECONDS EAST (N 67° 04' 22" E) FOR SEVENTY-SEVEN AND 72/100 FEET (77.72') TO AN IRON PIN TO BE SET BY M-E COMPANIES AT A POINT OF CURVATURE;

8. ALONG SAID PROPOSED RIGHT-OF-WAY LINE ON A CURVE TO THE RIGHT WITH A RADIUS OF EIGHTY-EIGHT AND 00/100 FEET (88.00') FOR AN ARC DISTANCE OF SIXTY-TWO AND 78/100 FEET (62.78'), (CHORD BEARING NORTH EIGHTY-SEVEN DEGREES THIRTY MINUTES FORTY-TWO SECONDS EAST (N 87° 30' 42" E) FOR SIXTY-ONE AND 46/100

FEET (61.46'), DELTA ANGLE OF SAID CURVE BEING FORTY DEGREES FIFTY-TWO MINUTES FORTY-ONE SECONDS (40° 52' 41") TO AN IRON PIN SET BY M-E COMPANIES AT A POINT OF COMPOUND CURVATURE;

9. ALONG SAID PROPOSED RIGHT-OF-WAY LINE ON A CURVE TO THE RIGHT WITH A RADIUS OF ONE HUNDRED EIGHTY-EIGHT AND 00/100 FEET (188.00') FOR AN ARC DISTANCE OF ONE HUNDRED THIRTY-ONE AND 57/100 FEET (131.57'), (CHORD BEARING SOUTH FIFTY-ONE DEGREES FIFTY-NINE MINUTES FIFTY-NINE SECONDS EAST (S 51° 59' 59" E) FOR ONE HUNDRED TWENTY-EIGHT AND 90/100 FEET (128.90'). DELTA ANGLE OF SAID CURVE BEING FORTY DEGREES FIVE MINUTES FIFTY-SIX SECONDS (40° 05' 56") TO AN IRON PIN TO BE SET BY M-E COMPANIES IN THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROUTE 201; THENCE ALONG THE WEST RIGHT-OF-WAY LINE OF SAID STATE ROUTE 201 FOR THE FOLLOWING TWO (2) COURSES:

1. SOUTH EIGHT DEGREES THIRTY-TWO MINUTES FORTY-EIGHT SECONDS WEST (S 08° 32' 48" W) FOR FIFTY-EIGHT AND 51/100 FEET (58.51') TO AN IRON PIN FOUND;

2. SOUTH FIVE DEGREES THIRTEEN MINUTES TWENTY-THREE SECONDS WEST (S 05° 13' 23" W) FOR FOUR HUNDRED NINETY-NINE AND 71/100 FEET (499.71') TO THE TRUE POINT OF BEGINNING.

CONTAINING 9.966 ACRES, MORE OR LESS.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

SITUATED IN THE STATE OF OHIO, COUNTY OF MIAMI, CITY OF HUBER HEIGHTS, BEING PART OF INLOT 161, 9.966-ACRE TRACT AS DESCRIBED IN DEED TO STATE ROUTE 201, LLC, OF RECORD IN DEED BOOK 741, PAGE 449, ALL REFERENCES HEREIN BEING TO THE RECORDS OF THE RECORDER'S OFFICE, MIAMI COUNTY, OHIO AS SHOWN IN VOLUME 57, PAGE 4, MIAMI COUNTY ENGINEER'S RECORDS OF LAND SURVEYS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A REBAR FOUND AT THE SOUTHEASTERLY CORNER OF INLOT 353, OF RECORD IN PLAT BOOK 22, PAGE 25, AT THE SOUTHWESTERLY CORNER OF SAID PART INLOT 161 AND AT THE NORTHWESTERLY CORNER OF INLOT 355, THE NORTHEASTERLY CORNER OF INLOT 356, OF RECORD IN PLAT BOOK 22, PAGES 37-37A;

THENCE NORTH 05° 13' 23" EAST, ALONG THE WESTERLY PERIMETER OF SAID PART OF INLOT 161, A DISTANCE OF 646.38 FEET TO A REBAR FOUND;

THENCE NORTH 50° 13' 23" EAST, CONTINUING ALONG SAID WESTERLY PERIMETER, A DISTANCE OF 39.25 FEET TO A REBAR FOUND AT THE NORTHWESTERLY CORNER OF SAID PART INLOT 161 AND IN THE SOUTHERLY RIGHT-OF-WAY LINE OF CARRIAGE TRAILS PARKWAY (WIDTH VARIES), OF RECORD IN PLAT BOOK 22, PAGE 25;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING COURSES:

1. WITH THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 102.00 FEET, A CENTRAL ANGLE OF 57° 43' 12", AN ARC LENGTH OF 102.76, THE CHORD OF WHICH BEARS SOUTH 68° 43' 53" EAST, A CHORD DISTANCE OF 98.46 FEET TO A REBAR FOUND AT A POINT OF REVERSE CURVATURE;

2. WITH THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 138.00 FEET, A CENTRAL ANGLE OF 47° 03' 31", AN ARC LENGTH OF 113.34 FEET, THE CHORD OF WHICH BEARS SOUTH 74° 03' 43" EAST, A CHORD DISTANCE OF 110.18 FEET TO A REBAR FOUND AT THE POINT OF TANGENCY;

3. SOUTH 50° 31' 58" EAST, A DISTANCE OF 61.99 FEET TO A REBAR FOUND;

THENCE THROUGH SAID PART INLOT 161 THE FOLLOWING COURSES:

1. WITH THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 97.46 FEET, A CENTRAL ANGLE OF 117° 15' 12", AN ARC LENGTH OF 199.44 FEET, THE CHORD OF WHICH BEARS SOUTH 72° 44' 13" WEST, A CHORD DISTANCE OF 166.41 FEET TO AN IRON PIN SET AT THE POINT OF TANGENCY;

2. SOUTH 14° 06' 38" WEST, A DISTANCE OF 15.66 FEET TO AN IRON PIN SET;

3. SOUTH 05° 13' 23" WEST, A DISTANCE OF 512.74 FEET TO AN IRON PIN SET IN THE SOUTHERLY LINE OF SAID PART INLOT 161 AND THE NORTHERLY LINE OF INLOT 355;

THENCE NORTH 84° 38' 09" WEST, ALONG SAID NORTHERLY AND SOUTHERLY LINES, A DISTANCE OF 125.71 FEET TO THE PLACE OF BEGINNING AND CONTAINING 2.024 ACRES OF LAND.

BEARINGS HEREIN ARE BASED ON NAD 83 OHIO STATE PLANE COORDINATE SYSTEM, GRID SOUTH ZONE. IRON PINS SET CONSIST OF A 5/8" REBAR, 30" LONG WITH A PLASTIC CAP INSCRIBED "IBI GROUP/S-6872/S7740". THIS DESCRIPTION WAS PREPARED BY IBI GROUP, INC. BASED ON RECENT FIELD SURVEYS OF THE PREMISES.

PARCEL II:

SITUATE IN THE CITY OF HUBER HEIGHTS, MIAMI COUNTY, STATE OF OHIO AND BEING INLOT NO. 1078 IN REPLAT PART INLOT 1075 CARRIAGE TRAILS, AS RECORDED IN PLAT BOOK 25, PAGE 75 OF PLAT RECORD OF MIAMI COUNTY, OHIO.

EXHIBIT C
FORM OF DEVELOPER DECLARATION OF COVENANTS
TAX INCREMENT FINANCING DECLARATION OF COVENANTS

This TAX INCREMENT FINANCING DECLARATION OF COVENANTS (this “Declaration”) is made by HOMESTEAD DEVELOPMENT, LLC an Ohio limited liability company having its address at _____ (the “Declarant”).

W I T N E S S E T H:

WHEREAS, the Declarant has acquired a certain parcel of real property located in the City of Huber Heights, Ohio (the “City”), a description of which real property is attached hereto as **ATTACHMENTS A-1 AND A-2** (the “Parcel”) and, having acquired such fee simple title by instrument No. _____ recorded in the Official Records of the Office of the Recorder of Miami County, Ohio (the “County Recorder”), as O.R. _____, Page _____; and

WHEREAS, the Declarant contemplates making private improvements to the referenced Parcels; and

WHEREAS, the City, by its Ordinance No. 2005-O-1589 (the “TIF Ordinance”), has declared that one hundred percent (100%) of the increase in the assessed value of the Parcel subsequent to the effective date of the TIF Ordinance (such increase hereinafter referred to as the “Improvement” as further defined in Ohio Revised Code Sections 5709.40, but which term, as specified in the TIF Ordinance, shall not include the increase in assessed value of any CRA Exempted Improvement (as defined therein) located upon the Parcel for so long and to the extent that such CRA Exempted Improvement is exempt from real property taxation pursuant to the CRA Statute (as defined therein) and the Agreement (defined below)) is a public purpose and is exempt from taxation (such exemption referred to herein as the “TIF Exemption”) for a period as set forth in the TIF Ordinance, commencing on the effective date and ending on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of Ohio Revised Code Sections 5709.40, 5709.42, 5709.43 and 5709.51 (collectively, the “TIF Statute”) and the TIF Ordinance; and

WHEREAS, it is necessary to acknowledge the construction of certain public infrastructure improvements (the “Existing Public Infrastructure Improvements”) which have heretofore been designated by the City as benefiting the Parcel and which Declarant agrees will directly benefit the Parcel; and

WHEREAS, the TIF Ordinance provides that the owner of the Parcel makes service payments in lieu of taxes with respect to any Improvement on that Parcel (the “TIF Payments”) which TIF Payments will be used to pay costs of the Public Infrastructure Improvements, all pursuant to and in accordance with the TIF Statute and the TIF Ordinance; and

WHEREAS, the Declarant and the City entered into a Development Agreement dated as of _____, 2024 (the “Agreement”), a copy of which may be obtained from the office of the City Manager of the City at 6131 Taylorsville Road, Huber Heights, Ohio 45424; and

WHEREAS, the Agreement creates an obligation on the owners of the Parcel containing the Multifamily Project (the “*Multifamily Project Site*”, as defined in the Agreement) to make certain minimum service payments with respect to the Parcel (the “*Minimum Service Payments*”); and

WHEREAS, this Declaration is being made and filed of record with respect to the Parcel comprising the Multifamily Project Site pursuant to Section 2.3 of that Agreement.

NOW, THEREFORE, the Declarant, for itself and its successors and assigns to or of each Parcel (collectively, the “*Owners*” and individually, each an “*Owner*”), hereby declares that the forgoing recitals are incorporated into this Declaration by this reference and that the Parcel and any improvements thereon will be held, developed, encumbered, leased, occupied, improved, built upon, used and conveyed subject to the terms and provisions of this Declaration:

Section 1. Defined Terms. Any terms which are used but not defined herein shall have the meaning as set forth in the Agreement.

Section 2. Provision of Real Property Tax Exemptions Pursuant to CRA Legislation. The Owners agree that the City shall not be required to provide any real property tax exemption with respect to the Parcel under the CRA Legislation until the conditions set forth in Article V of the Agreement are satisfied and for as long as the conditions set forth in Article V of the Agreement are satisfied. The TIF Exemption and the obligation to make TIF Payments are subject and subordinate to any real property tax exemptions granted pursuant to the CRA Legislation.

Section 3. TIF Payments. Each Owner will make the TIF Payments attributable to its period of ownership of the Parcel, all pursuant to and in accordance with the requirements of the TIF Statute, the TIF Ordinance and any subsequent amendments or supplements thereto. TIF Payments will be made semiannually to the County Treasurer of Miami County, Ohio (or to such Treasurer’s designated agent for collection of the TIF Payments) on or before the due dates for payment of real property taxes for the Parcel, until expiration of the TIF Exemption. Any late payments will bear penalties and interest at the then current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code or any successor provisions thereto, as the same may be amended from time to time. TIF Payments will be made in accordance with the requirements of the TIF Statute and the TIF Ordinance and, for the Parcel, will be in the same amount as the real property taxes that would have been charged and payable against the Improvement to the Parcel (after credit for any other payments received by the City under Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, or any successor provisions thereto, as the same may be amended from time to time, with such payments referred to herein as the “*Property Tax Rollback Payments*”) if it were not exempt from taxation pursuant to the TIF Exemption, including any penalties and interest. (For avoidance of doubt, the Owner will not be required to make TIF Payments with respect to any increase in assessed value that is exempt from real property taxation pursuant to CRA Legislation because the TIF Exemption is subordinate to the CRA Exemption.) No Owner will, under any circumstances, be required for any tax year to pay both real property taxes and TIF Payments with respect to any portion of the Improvement, whether pursuant to Section 5709.42 of the Ohio Revised Code or the Agreement; *provided, however*, this shall not preclude payment of any sum otherwise required to be paid under the Agreement.

The Owners acknowledge and agree that the Existing Public Infrastructure Improvements do, and will, directly benefit the Parcel.

Section 4. Minimum Service Payments. In addition to the obligation to make TIF Payments, the Owner of the Parcel agrees to a minimum service payment obligation (the “*Minimum Service Payment Obligation*”) for the Parcel owned by such Owner, pursuant to and in accordance with the Agreement. The Owner of the Parcel agrees that the Minimum Service Payment Obligation is intended to constitute a minimum service payment obligation under Ohio Revised Code Section 5709.91 and shall be supported by a first lien on the Parcel pursuant to Ohio Revised Code Sections 5709.91 and 323.11. The total Minimum Service Payment Obligation due for the Parcel for any calendar year will be equal to the amount set forth in the Agreement; *provided* that the Minimum Service Payment Obligation shall not equal less than zero dollars. The Minimum Service Payment Obligation for the Parcel shall be effective for the term as set forth in the Agreement.

Section 5. Preservation of Exemption. Notwithstanding anything to the contrary set forth in the Agreement, neither City nor any Owner, nor their respective successors, assigns or transferees, shall take any action that may endanger or compromise the status of or cause the revocation of the TIF Exemption.

Section 6. Failure to Make Payments. Should any Owner of the Parcel fail to make any payment required hereunder, such Owner shall pay, in addition to the payments it is required to pay hereunder, such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys’ fees) required by the City to enforce the provisions of the Agreement and this Declaration against that Owner.

Section 7. Provision of Information. The Owner agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually the compliance of the Owner with the terms of this Declaration during the term of the TIF Exemption for the Parcel.

The Owner further agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Sections 5709.40(I), as applicable, to the Director of the Ohio Development Services Agency on or before March 31 of each year following any year in which the TIF Exemption for the applicable Parcel remains in effect.

Section 8. Nondiscriminatory Hiring Policy. The Owners agree to comply with the City’s policies adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions practice nondiscriminatory hiring in its operations. In furtherance of that policy, the Owner agrees that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

Section 9. Covenants to Run With the Land. The Owner agrees that each of the covenants contained in this Declaration are covenants running with the land and that they will, 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 Parcel, as applicable, any improvements thereon and the owner of the Parcel, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. The City has the right in the event of any breach of any covenant herein contained to exercise all of the rights and remedies as set forth in Section 7.3 of the Agreement.

The Owner further agrees that all covenants herein, whether or not these covenants are included by any owner of the Parcel in any deed to that owner's successors and assigns, are binding upon each subsequent owner and are enforceable by the City, and that any future owner of that Parcel, or any successors or assigns of an Owner with respect to the Parcel, will be treated as a Declarant, with respect to that Parcel for all purposes of this Declaration.

The Owner further agrees that the covenants herein will remain in effect so long as the TIF Payments can be collected pursuant to the TIF Statute and the TIF Ordinance and the Minimum Service Payments can be collected pursuant to the Agreement, and in each case, unless otherwise modified or released in writing by the City in a written instrument filed in the Official Records of the County Recorder. At any time when this Declaration is no longer in effect, the City agrees to cooperate with any reasonable request by the Owner(s) to execute (for recording by such Owner(s)) an instrument to evidence this fact.

The Declarant acknowledges that the provisions of Ohio Revised Code Section 5709.91, which specify that the TIF Payments and the Minimum Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11 including, but not limited to, the priority of the lien and the collection of TIF Payments and Minimum Service Payments applies to the Parcels and any improvements thereon.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and effective as of _____, 2024.

HOMESTEAD DEVELOPMENT, LLC

By: _____

Printed: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2024, before me a Notary Public personally appeared _____, the _____ of Homestead Development, LLC, an Ohio

limited liability company, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of Homestead Development, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

Notary Public

(Exhibit C Continued)

Attachment A-1

DESCRIPTION OF PARCEL SUBJECT TO DECLARATION

(Exhibit C Continued)

Attachment A-2

DEPICTION OF PARCEL SUBJECT TO DECLARATION

Attachment A-3

**DESCRIPTION OF MULTIFAMILY PARCEL
(SUBJECT TO MINIMUM SERVICE PAYMENTS)**

AI-10405

Topics Of Discussion G.

Council Work Session

Meeting Date: 10/08/2024

Military And Veterans Commission Appointment - B. Johnson

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 10/08/2024

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

Board And Commission Appointments

* Military And Veterans Commission - Appointment

Purpose and Background

The City Council interview panel recommends the appointment of Bruce Johnson to the Military and Veterans Commission for a term ending December 31, 2025. A background check on Mr. Johnson has been processed through Human Resources.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Application - B. Johnson



6131 Taylorsville Road
Huber Heights, Ohio 45424
Phone: (937) 233-1423
Fax: (937) 233-1272
www.hhubh.org
An Equal Opportunity Employer

Application For City Boards And Commissions

Received - Clerk/Council
SEP 24 '24 4:47

Qualified applicants are considered for all positions without regard to race, color, religion, sex, national origin, marital or veteran status, or disability.

**PLEASE COMPLETE ALL SECTIONS AND EACH QUESTION
COMPLETELY AND ACCURATELY**

BOARD OR COMMISSION APPLIED FOR:

Military and Veterans Commission

DATE APPLIED:

24 Sep 2024

Last Name

Johnson

First Name

Bruce

Middle Name

G.

Address

City

State

Zip Code

6971 Breckenwood Drive, Huber Heights, OH 45424

Phone Number

(937) 684-2181

Email Address

bruce.g5962@gmail.com

EDUCATION

	SCHOOL	COURSE OF STUDY OR DEGREE EARNED
HIGH SCHOOL	<i>North Salem HS Salem, OR</i>	<i>High School Diploma</i>
COLLEGE	<i>Oregon State University</i>	<i>B.S. Management of Financial Institutions</i>
GRADUATE SCHOOL	<i>Webster University</i>	<i>M.A. Business Management</i>
OTHER (SPECIFY)		

COMMUNITY INVOLVEMENT

Please list all civic, community, or non-profit organizations to which you have belonged or currently do belong, and your dates of service.

ORGANIZATION	DATES OF SERVICE
<i>Oakwood Business Advisory Council</i>	<i>Sep 2010 - Sep 2016</i>

EMPLOYMENT HISTORY

NAME OF EMPLOYER	POSITION(S) HELD	DATES OF EMPLOYMENT
AFIT	Instructor	Sep 2009-Jan 2024
AFIT	Department Head	Jan 2004-Sep 2007
DFAS	Deputy Director, Accounting	Jun 2001 - Dec 2003
Air Force	Deputy Division Chief	May 1998-May 2001
Air Force	Logistics Career Broadener	May 1995-Apr 1998

STATEMENT OF INTEREST

Please tell us why you are interested in serving on this board or commission.

I retired this year, and have been looking for a way to serve the Huber Heights community. My previous service to the Air Force, as active duty enlisted and officer, civil service, and as a defense contractor affords me several perspectives through which to understand the community-based issues related to military members and veterans.

My prior community service experience with the City of Oakwood Business Advisory Council provides me with some background on local government process and procedure. While at Oakwood, I helped advise school district leadership on financial planning, business operations, audits, tax levies and bond issues, and I served on panels to interview candidates for administrative positions in the Oakwood school district.

The relationship between a municipality and the military members and veterans who live there is a two-way street; each serves and supports the other, and in doing so both benefit through building a stronger, more cohesive community. My hope is that I would be a useful addition to the Commission, and become a helpful liaison between the Huber Heights community and its military and veteran residents.

I look forward to discussing with you how I can contribute to the City of Huber Heights and the local military community through service on the Military and Veterans Commission.

Thank you.

REQUIREMENTS AND APPLICANT STATEMENT

Are you at least 18 years of age? ☒ Yes ☐ No

Do you currently reside in the City of Huber Heights? ☒ Yes ☐ No

Have you resided in the City of Huber Heights for at least one year prior to making this application? ☒ Yes ☐ No

Are you a registered voter? ☒ Yes ☐ No

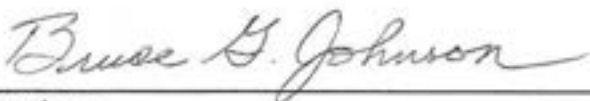
Are you willing to sign a release to allow the City of Huber Heights to perform a background screening and criminal records check? ☒ Yes ☐ No

I certify that all of the information furnished in this application and its addenda are true and complete to the best of my knowledge. I understand that the City of Huber Heights may investigate the information I have furnished and I realize that any omissions, misrepresentation or false information in this application and/or its addenda may lead to revocation of any volunteer appointment.

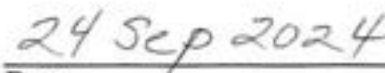
I hereby acknowledge that I, voluntarily and of my own free will, have applied for a volunteer position with the City of Huber Heights with the understanding that the City may use a variety of screening procedures to evaluate my qualifications and suitability for appointment. I have been advised that these screening procedures might include, but are not limited to, interviews, criminal record checks, driving records checks and reference checks. I also acknowledge that any such screening procedures, as reasonably required by the City of Huber Heights, are prerequisites to my appointment to a volunteer position with the City of Huber Heights.

In addition, I also hereby understand that the City of Huber Heights cannot guarantee the confidentiality of the results of, or information obtained through the aforementioned screening procedures. Decisions of the Ohio Supreme Court regarding the Ohio Public Records Act indicate that, with certain enumerated exceptions, records maintained by a governmental entity are a matter of public record and, should a proper request be made by a member of the public for such records, the governmental entity would be required to make such records available to that member of the public within a reasonable time. Additionally, all information furnished in this application is subject to disclosure under the Ohio Public Records Act.

Therefore, in consideration of my application being reviewed by the City of Huber Heights, under no legal disability, and on behalf of my heirs and assigns, hereby release and agree to hold harmless the City of Huber Heights and any of its agents, employees, or related officials from any and all liability, whatever the type and nature resulting from the administration of any such screening procedures and/or release of the results therefrom.



Signature



Date

For Administrative Use:

Applicant Interview Date/Time: _____

Application Status: _____

Topics Of Discussion H.

Meeting Date: 10/08/2024

Submitted By: Anthony Rodgers

Department: City Council

Type of	New
---------	-----

Liquor Permit:

Motion/Ordinance/

Agenda Item Description

Liquor Permit #7058551 - Tandoor India & Pizza - 7695 Old Troy Pike

The Police Division had no objections to this new liquor permit.

The Fire Division had no objections to this new liquor permit.

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Liquor Permit

Fire Division Inspection



Huber Heights Fire Division

TO: Anthony Rodgers, Clerk of Council

FROM: Keith Knisley, Fire Chief

DATE: October 1, 2024

RE: Liquor Permit #77058551 – Tandoor India – 7695 Old Troy Pike

I am writing to inform you that there are no outstanding Fire Code Violations with this occupancy.

NOTICE TO LEGISLATIVE
AUTHORITY

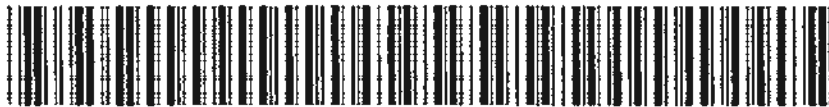
OHIO DIVISION OF LIQUOR CONTROL
8808 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)844-2380 FAX(614)844-3168

TO

7058551		N		PPA SINGH LLC	
PERMIT NUMBER		TYPE		DBA TANDOOR INDIA & PIZZA	
ISSUE DATE				7695 OLD TROY PK	
09 20 2024				HUBER HEIGHTS OH 45424	
FILING DATE					
D5					
PERMIT CLASSES					
57	083	A		E27631	
TAX DISTRICT				RECEIPT NO	

FROM 09/25/2024

PERMIT NUMBER		TYPE	
ISSUE DATE			
FILING DATE			
PERMIT CLASSES			
TAX DISTRICT			RECEIPT NO



MAILED 09/25/2024

RESPONSES MUST BE POSTMARKED NO LATER THAN. 10/28/2024

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL
WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES **A N 7058551**

(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT
THE HEARING BE HELD ☐ IN OUR COUNTY SEAT. ☐ IN COLUMBUS.

WE DO NOT REQUEST A HEARING. ☐

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature)

(Title) - ☐ Clerk of County Commissioner

(Date)

☐ Clerk of City Council

☐ Township Fiscal Officer

CLERK OF HUBER HGTS CITY COUNCIL
6131 TAYLORSVILLE RD
HUBER HGTS OHIO 45424

AI-10391

Topics Of Discussion I.

Council Work Session

Meeting Date: 10/08/2024

City Code - Supplement 18 - Adopting Ordinance

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 10/08/2024

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

City Code - Supplement 18 - Adopting Ordinance

Purpose and Background

This ordinance is to adopt Supplement 18 to the City Code for the period of January 1, 2024 to March 31, 2024. Appropriate legal notice of this ordinance has been advertised as required by the Huber Heights City Charter.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2024-O-

APPROVING THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AND/OR RESOLUTIONS AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CITY CODE OF HUBER HEIGHTS, OHIO; PROVIDING FOR THE ADOPTION AND PUBLICATION OF NEW MATTER IN THE UPDATED AND REVISED CITY CODE AS SUPPLEMENT 18; AND REPEALING ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH.

WHEREAS, Municipal Code Corporation has completed its updating and revision of the City Code of Huber Heights, Ohio within Supplement 18; and

WHEREAS, certain provisions within the City Code of Huber Heights, Ohio were changed to conform with current State law as required by the Ohio Constitution; and

WHEREAS, various resolutions and/or ordinances of a general and permanent nature have been passed by the City Council which should be included in the City Code of Huber Heights, Ohio.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The resolutions and/or ordinances of the City of Huber Heights, Ohio, of a general and permanent nature, as edited, revised, codified and re-codified, rearranged and consolidated into component codes, titles, chapters and sections within Supplement 18 to the City Code of Huber Heights, Ohio for the period of January 1, 2024 to March 31, 2024, a copy of which is available for copying and inspection in the Office of the Clerk of Council, and incorporated herein by this reference, are hereby approved and adopted.

Section 2. The provisions within the City of Huber Heights Code that mirror provisions as contained in the Ohio Revised Code as set forth within Supplement 18 to the City Code of Huber Heights, Ohio for the period of January 1, 2024 to March 31, 2024, a copy of which is available for copying and inspection in the Office of the Clerk of Council, and incorporated herein by this reference, are hereby approved and adopted to conform with current State law.

Section 3. All ordinances and resolutions or parts thereof that are in conflict or inconsistent with any provision of the new matter adopted in Section 1 or 2 of this ordinance are hereby repealed as of the effective date of this ordinance except as follows:

(a) The enactment of such sections shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full force notwithstanding its repeal for the purposes of revision and recodification.

(b) The repeal provided above shall not affect any legislation enacted subsequent to March 31, 2024.

Section 4. Pursuant to Section 5.08(B) of the Huber Heights City Charter, the Clerk of Council shall cause a notice of this proposed adopting Ordinance to be published one time in a newspaper of general circulation in the City at least seven days prior to adoption and no further publication shall be necessary. Such publication shall constitute sufficient notice of all new material contained therein.

Section 5. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 6. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2024;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date