



LEGISLATIVE COVER MEMO

Meeting Date: May 6, 2024

Agenda Item: **Resolution 2024-32**

CONSENTING TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE FRANKLIN NEW COMMUNITY AUTHORITY AND PROVIDING RELATED AUTHORIZATIONS

Submitted by: Karisa Steed, Assistant City Manager

Scope/Description: The City of Franklin, as statutory developer of the Franklin New Community Authority (the “NCA”) under Ohio Revised Code chapter 349, by and through its City Manager, Jonathan Westendorf, has presented to council a proposed Declaration of Covenants and Restrictions (the “Declaration”) that will provide for “Community Development Charges” as that term is used in the Declaration for the benefit and use of the new community authority to cover all or part of the cost of the acquisition, construction, operation and maintenance of land, land development and community facilities, the debt service thereof and any other cost incurred by the authority in the exercise of the powers granted by Chapter 349 of the Ohio Revised Code. The Declaration will be recorded on the ground that is currently owned by the City and within the boundaries of the NCA. The Community Development Charges will not be activated on property owned by the City for public purposes, but the Community Development Charges will activate once property is sold or used by private parties for private business or residential activities. New property that is added to the NCA will become subject to the Declaration by providing for a supplemental declaration approved by the property owner, the City, and the NCA upon the property’s formal addition to the NCA district.

Exhibit: Exhibit A: Declaration of Covenants and Restrictions

Budget Impact: None

Recommendation: Approval

CITY OF FRANKLIN, OHIO
RESOLUTION 2024-32

CONSENTING TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE FRANKLIN NEW COMMUNITY AUTHORITY AND PROVIDING RELATED AUTHORIZATIONS

WHEREAS, the City of Franklin, Ohio (the "City") established the Franklin New Community Authority (the "Authority") pursuant to Ordinance 2023-10, adopted by City Council on April 17, 2023; and

WHEREAS, the City, as the statutory developer of the Authority as that term is defined in Ohio Revised Code Section 349.01(E), has submitted to the City Council (the "Council") a Declaration of Covenants and Restrictions for the Franklin New Community Authority (the "Declaration") attached hereto as **Exhibit A**, incorporated by reference; and

WHEREAS, in accordance with Ohio Revised Code Chapter 349, it is necessary for the City to consent to the Declaration and authorize its execution and recordation in the land records of the Warren County Recorder, in order to perfect certain "Community Development Charges" for the benefit and use of the Authority to cover all or part of the cost of the acquisition, construction, operation and maintenance of land, land development and community facilities, the debt service thereof and any other cost incurred by the authority in the exercise of the powers granted by Chapter 349 of the Ohio Revised Code.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Franklin, Ohio, a majority of members present concurring, that:

Section 1. The Declaration, substantially in the form attached hereto as **Exhibit A**, is hereby approved and its execution is authorized with changes or amendments thereto not inconsistent with this Resolution and not substantially adverse to the City, as determined by the City Manager, or his or her designee executing the Declaration, and any other documents necessary to implement the Declaration, on behalf of the City. The City Manager, or his or her designee, is authorized to implement the Declaration on behalf of the City.

Section 2. This Council hereby finds and determines that all formal actions taken relative to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code and the Rules of Council.

Section 3. This Resolution shall be in full force and effect immediately upon its passage.

ADOPTED: May 6, 2024

ATTEST: _____
Khristi Dunn, Clerk of Council

APPROVED: _____
Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of a resolution passed by that body on May 6, 2024.

Khristi Dunn, Clerk of Council

DECLARATION
OF
COVENANTS AND RESTRICTIONS

FOR THE

FRANKLIN NEW COMMUNITY AUTHORITY
CITY OF FRANKLIN, OHIO

May 6, 2024

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DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE FRANKLIN NEW COMMUNITY AUTHORITY

This DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE FRANKLIN NEW COMMUNITY AUTHORITY is made on this 6 day of May, 2024, by the City of Franklin, Ohio (the “Developer”), a municipal corporation authorized and existing under the laws of the State of Ohio (the “State”) (with all terms used herein with initial capitalization when the rules of grammar would not so require and not otherwise defined herein having the meanings given to them in Article II hereof).

The Developer owns or controls certain real estate particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Initial Property”) and may from time to time, pursuant to Article III hereof, subject other real estate in the vicinity of the Initial Property (the “Additional Property” and, collectively with the Initial Property, the “Property”) to this Declaration. The Developer makes this Declaration for the purposes hereinafter set forth (the Initial Property being all of the Property unless and until any such other real estate is so added).

The Developer hereby declares that the Property shall be improved, held, sold, conveyed, encumbered, leased, occupied or otherwise transferred subject to the Restrictions which shall constitute covenants running with the Property and shall be binding upon all parties now or hereafter having any right, title or interest in the Property or any part thereof, and all such persons, including their respective heirs, personal and legal representatives and successors and assigns in acquiring any right, title or interest therein, and as a part of the consideration therefor, agree that their right, title and interest in the Property or any part therein shall be improved, held, sold, conveyed, encumbered, leased, occupied or otherwise transferred subject to the Restrictions.

ARTICLE I PURPOSE AND INTENT

The Property comprises a new community district that has been formed in accordance with Chapter 349 of the Revised Code (“Chapter 349”). The District and the Authority (both as defined herein) have been established for the purposes of encouraging the orderly development of a well-planned, diversified and economically sound New Community of approximately 10.34 acres in the area described in Exhibit A and depicted on Exhibit B through the implementation of a New Community Development Program (as defined herein) and other Authorized Purposes. The Developer anticipates that the costs of implementing the New Community Development Program and any other Authorized Purposes, including the provision of services under Chapter 349, paying Debt Service on Obligations (as defined herein) and any other cost incurred by the Authority in the exercise of its powers under Chapter 349, will be covered by the payment of the Community Development Charges by each Owner of a Chargeable Parcel (each as defined herein).

In order to provide for the District, the implementation of the Authority’s New Community Development Program, and for the establishment and payment of the Community Development Charges, this Declaration is made for the purpose of creating covenants running with the land pursuant to which all persons now or hereafter having any right, title or interest in the Property or any part thereof (including, without limitation, any Tenants), including their respective heirs, personal and legal representatives and their respective successors and assigns, shall acquire and

hold such right, title or interest subject to the Restrictions, including, but not limited to, the obligation of the Owner and the Tenant of each Chargeable Parcel to pay the Community Development Charges applicable thereto. All Owners, Tenants, successors and assigns to any of the Property shall take such Property subject to the Restrictions for so long as such Restrictions are in effect. The Restrictions and this Declaration are imposed for the benefit of the District and the Authority.

ARTICLE II DEFINITIONS

In addition to the terms defined elsewhere in this Declaration and unless the context otherwise requires, the following words, as used in this Declaration, including the preambles, shall mean respectively:

“Additional Property” means real property and interests in real property added to and included in the District, pursuant to Section 349.03(B) of the Revised Code and in accordance with Article III hereof, and subjected to this Declaration and the Restrictions after the date that this Declaration is initially Recorded.

“Administrative Expenses” means any or all of the costs and expenses set forth below: (i) the fees and reasonable expenses of any Bond Trustees and any Administrators employed by the Authority; (ii) the expenses of the Authority in carrying out its duties under one or more Trust Agreements with respect to any Obligations, including, but not limited to, imposing and collecting the Community Development Charge, complying with arbitrage rebate requirements, and obligated persons disclosure requirements associated with applicable federal and state securities law, including the costs and fees of any professionals retained by the Authority to provide services for such purposes; (iii) all other costs and expenses of any Bond Trustees or any Administrators incurred in connection with the discharge of their respective duties herein or under one or more Trust Agreements with respect to any Obligations or otherwise, including legal expenses associated with such duties; (iv) all costs and expenses of the Authority incurred in connection with the discharge of its duties herein, including legal expenses associated with such duties; (v) all costs and expenses of the Authority or the City in any way related to the administration of the District and the Authority including, but not limited to, bonds for Trustees, insurance, costs of audits, legal expenses, and compensation of Trustees and professionals retained by the Authority or the City in furtherance of such duties; and (vi) all other costs and expenses of the Authority or the City including, but not limited to, any costs of any Authorized Purposes.

“Administrator” means any designee of the Authority for purposes of (i) calculating the Community Development Charge to be imposed and collected relating to any Chargeable Parcel, (ii) administering revenues in connection with the issuance or servicing of any Obligations, and (iii) providing other services as designated by the Authority in an agreement or one or more Trust Agreements.

“Assessed Valuation” means, as to any Chargeable Parcel with respect to any year’s budget for which the Community Development Charges are levied, an amount equal to the assessed valuation thereof (including the buildings, structures and improvements thereon) listed on the tax

duplicate prepared by the Auditor for the preceding year and disregarding any reductions pursuant to any applicable law for the purpose of reducing real estate taxes for certain persons in the State of Ohio (including but not limited to reductions for persons sixty-five (65) years of age or older pursuant to Section 2, of Article XII, Ohio Constitution, as the same may be amended from time to time) other than those reductions specifically set forth in Section 5.05 below. If by reason of any change of law, rate or common level of assessment the assessed valuation for purposes of the tax duplicate is to be determined as an amount which is less or more than thirty-five percent (35%) of the true value of the real property assessed, then upon determination of the Board, and with City Council approval, Assessed Valuation shall mean the assessed valuation shown on the tax duplicate adjusted to equal thirty-five percent (35%) of the fair market value. If the true value listed on the tax duplicate for the preceding year does not reflect either of the following values: (i) the most recent purchase price for the Chargeable Parcel, or (ii) the value of the Chargeable Parcel plus the amount stated on a building permit issued by any governmental authority for improvements to that Chargeable Parcel, then, solely at the Board's discretion, Assessed Valuation shall mean thirty-five percent (35%) of the greater of (A) the true value listed on the tax duplicate, (B) the most recent purchase price for any Chargeable Parcel, or (C) if the buildings, structures, and improvements being constructed on such Chargeable Parcel are "substantially completed" as determined in the reasonable discretion of the Board, the true value of the Chargeable Parcel plus the cost of the buildings, structures and improvements stated on the building permit for such Chargeable Parcel.

If the Auditor and all officials authorized by Ohio law to assess real estate in the County shall ever cease to assess real estate, or if an assessed valuation has not yet been listed on the tax duplicate of the Auditor for the preceding year for a Parcel, or if there is no longer a tax duplicate, Assessed Valuation shall mean, as to any Chargeable Parcel for each year thereafter, the Assessed Valuation determined by the Board in its sole and absolute discretion using such criteria as the Board may establish from time to time subject to any applicable determinations to be made under subsection (A) of this definition of Assessed Valuation.

If any Chargeable Parcel is not separately listed on the Auditor's tax duplicate with respect to any year, Assessed Valuation shall be determined by the Board equitably apportioning to such Chargeable Parcel a portion of the Assessed Valuation of the Parcel or Parcels from which such Chargeable Parcel was subdivided or created.

"Auditor" means the Warren County Auditor.

"Authority" means the Franklin New Community Authority, a body corporate and politic established for the District as a new community authority pursuant to Chapter 349.

"Authorized Purposes" means Community Land Acquisition; Community Land Development; acquisition, construction, operation, and maintenance of Community Facilities; governmental, residential, industrial, commercial, distribution, research, recreational, educational, health, social, vocational, cultural, beautification, and amusement activities and related services primarily for Residents of the District or as may be authorized under Chapter 349 from time to time; purposes or activities authorized under agreements entered into by the Authority under Sections 349.06(I), 349.06(M), 349.06(S), and 349.13 of the Revised Code; purposes or activities

authorized under agreements with the Developer in furtherance of the New Community Development Program, including reimbursement of advances or expenditures made to or by the Developer or any Owner or Tenant for such purposes or activities; and services provided by the Authority or by the City on behalf of the Authority under Chapter 349; and any other purposes or activities of the Authority authorized under Chapter 349 from time to time.

“Board” means the Board of Trustees of the Authority.

“Bond Trustees” means any one or more trustees, fiscal agents, or paying agents appointed by the Authority for the District to carry out the duties of such trustees, fiscal agents, or paying agents specified in any Trust Agreement and includes any financial institutions appointed by the Authority to manage disbursement of Community Development Charges for Administrative Expenses and transfers of Community Development Charges to other Bond Trustees with respect to any Obligations.

“Budget” shall mean the annual financial budget of the Authority determined in accordance with Section 5.02 hereof, as approved by the Board pursuant to the requirements of Chapter 349 and this Declaration.

“Chapter 349” means Chapter 349 of the Revised Code.

“Charge Administrator” means (i) any designee of the Authority, which may include at the option of the Authority, the Administrator, for the purposes of calculating and collecting the Hotel Charge, the Sales Charge, or any other Community Development Charge identified by the Authority, or (ii) in the event that no such designation is then in effect, the Authority.

“Chargeable Parcel” means a Parcel, any portion of which constitutes Chargeable Property, including all buildings, structures, and improvements thereon.

“Chargeable Property” means all or any portion of the Property, together with all buildings, structures and improvements thereon for which the Completion Date has occurred, with the exception of the following:

(a) All lands, buildings, structures and improvements owned by, or leased to one of the following governmental entities: (i) the United States of America, (ii) the State, (iii) the Authority, or (iv) all other political subdivisions or governmental instrumentalities of the State; provided, that such governmental entity’s use of the land, building, structure, or improvement owned or leased is exempt from real estate taxation under the laws of the State; and

(b) All lands, buildings, structures and improvements exempt from real estate taxation under Ohio law, other than real property exempt by community reinvestment area exemptions or enterprise zone exemptions; provided, that an exemption from the Community Development Charges has been determined by the Board to be consistent with the Authorized Purposes and needs of the Authority and not inconsistent with any commitments made with respect to any Obligations of the Authority.

“City” means the City of Franklin, Ohio, an Ohio municipal corporation and political subdivision duly organized and validly existing under the constitution and laws of the State and under its Charter.

“Community Development Charge” or “Community Development Charges” means, as applicable to any Chargeable Parcel, the community development charge, or community development charges, established in accordance with Chapter 349 and Articles IV and V herein, payable by an Owner or Tenant, including all applicable penalties, interest and costs pertaining to any unpaid amount and imposed in accordance with Section 5.02 hereof, including, without limitation, (i) the CRA Abatement Replacement Charge, (ii) the Additional Charge, (iii) the Sales Charge, (iv) the Hotel Charge, and (v) the Residential Charge, as each of those terms are defined in Section 5.02 hereof.

“Community Facilities” has the meaning given to such term in Section 349.01(I) of the Revised Code, or any successor provision of law, and includes all real property, buildings, structures, or other facilities, including related fixtures, equipment, and furnishings, to be owned, operated, financed, constructed, and maintained under Revised Code Chapter 349 or in furtherance of community activities, whether within or without the new community district, including public, community, City, neighborhood, or town buildings, centers and plazas, auditoriums, day care centers, recreation halls, educational facilities, health care facilities including hospital facilities as defined in Section 140.01 of the Revised Code, telecommunications facilities including all facilities necessary to provide telecommunications service as defined in Section 4927.01 of the Revised Code, recreational facilities, natural resource facilities including parks and other open space land, lakes and streams, cultural facilities, community streets and off-street parking facilities, pathway and bikeway systems, pedestrian underpasses and overpasses, lighting facilities, design amenities, or other community facilities, and buildings needed in connection with water supply or sewage disposal installations, or energy facilities including those for renewable or sustainable energy sources, and steam, gas, or electric lines or installation; provided, however, that without the prior approval of the City and the Developer, the Authority shall have no authority to own, operate, finance, construct, or maintain any Community Facility other than the Initial Community Facilities.

“Community Land Acquisition” means the acquisition of real property and interests in real property as part of the New Community Development Program of the Authority.

“Community Land Development” means the process of clearing and grading land, making, installing or constructing water distribution systems, sewers, sewage collection systems, steam, gas and electric lines, roads including by-pass highways, streets, curbs, gutters, sidewalks, bikeways and other riding trails, common fencing and monuments, storm drainage facilities and other installations or work whether within or without the District, and the acquisition, construction, operation, and maintenance of Community Facilities and any facilities subject to agreements entered into by the Authority under Sections 349.06(I), 349.06(M), 349.06(S), and 349.13 of the Revised Code, and the acquiring of real estate and interests in real estate for those purposes.

“Completion Date” means, with respect to a building located on a Parcel, the earliest of:

(a) the date that a certificate of occupancy is issued for such building; or

(b) the date when the Owner of such Parcel requests, in writing, that the Authority impose the Community Development Charge at a level consistent with the development of such Parcel.

“County” means the County of Warren, Ohio.

“Debt Service” means the principal, accreted amount, interest, any redemption premium, deposits into sinking funds and reserve funds, any scheduled Administrative Expenses related to any Obligations, and any other periodic costs payable on any Obligations.

“Declaration” means this Declaration of Covenants and Restrictions for the Franklin New Community Authority, made [____], 2024, as the same may from time to time be amended or supplemented in the manner prescribed in Articles III, VIII, or IX.

“Delinquent Charge” means a Community Development Charge that has been certified to the Auditor for collection in accordance with Section 5.03 hereof and, subsequently, has not been paid on or before the dates for payment of real property taxes prescribed by Chapter 323 of the Revised Code.

“Developer” means the City, in its capacity as the Developer, and its successors in interest. A person or entity shall be deemed a successor in interest of the Developer only if specifically so designated in a duly Recorded, written instrument as a successor in interest or assign of the Developer under this Declaration and/or under a supplemental Declaration and shall be deemed a successor in interest of the Developer only as to the particular rights or interests of the Developer under this Declaration or under such supplemental Declaration which are specifically designated in the Recorded, written instrument.

“District” means the Franklin New Community Authority District, a new community district created pursuant to Chapter 349.

“District Map” means the map attached hereto as Exhibit B, as the same may be amended, from time to time, through the expansion of the District pursuant to Section 349.03(B) of the Revised Code and in accordance with Article III hereof, generally identifying the areas and boundaries of the District, as the same may be amended, from time to time, to reflect the addition of Additional Property.

“Fiscal Meeting” means the annual meeting of the Board described in Article VI.

“Gross Receipts Charge” means, together, the Hotel Charge and any Sales Charge.

“Hotel” means every establishment, and, as applicable, every Place of Business, kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which three (3) or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures or any other establishment constituting a “hotel”

as defined in Section 3731.01 of the Revised Code, or Title III of the municipal code of the City as the same may be amended or superseded from time to time.

“Hotel Charge” a percentage of the gross receipts of any transactions by which lodging is or is to be furnished by a Hotel to guests from the operations of any Place of Business, as the same may be adjusted by the Board at its Fiscal Meeting (in increments of .05%), as provided in Section 5.11 hereof, as may be required from time to time provided, however, that in no event shall the Hotel Charge exceed five percent (5.0%) of the gross receipts of from the operations of any Place of Business by which lodging is or is to be furnished by a Hotel to guests. For the avoidance of doubt, no portion of the Hotel Charge shall apply to rentals received from leases of real property for the purposes of Section 349.01(L)(2) of the Revised Code.

“Initial Community Facilities” means the Community Facilities identified in Exhibit C hereto.

“Initial Property” means the real property described in Exhibit A hereto at the time this Declaration is initially Recorded.

“Late Payment Rate” means (i) the “federal short-term rate” determined pursuant to Section 5703.47(A) of the Revised Code, rounded to the nearest whole number percent, plus (ii) three percent (3%).

“New Community” has the meaning given to such term in Section 349.01(A) of the Revised Code.

“New Community Development Program” has the meaning given to such term in Section 349.01(B) of the Revised Code.

“Obligations” means any bonds, notes, loans, obligations or other debt, including refunding bonds, whether in one or more series, issued or incurred by the Authority, or another governmental issuer of bonds under a contract or cooperative agreement with the Authority to pay the costs of any Authorized Purposes, including any such Obligations issued for the purpose of financing the Community Facilities.

“Owner” means, with respect to any Chargeable Parcel, the owner of record from time to time, whether one or more persons or entities, of an interest in: (i) fee simple, (ii) reversion, (iii) remainder, (iv) life estate, or (v) leasehold estate of seventy-five (75) years or more, but shall not include the Authority.

“Parcel” means each such parcel of the Property which has a separate listing on the tax duplicate prepared by the Auditor, or on the records of any other official authorized by State law to assess real estate in the County.

“Petition” means the petition filed by the Developer with the City on March 6, 2023 to organize the Authority, as amended by any application to add Additional Property to the District approved by the City or any other amendments thereto, all pursuant to Section 349.03 of the Revised Code.

“Place of Business” means any location on the Property on or in which an Owner or Tenant (including any subsidiary or other entity controlled directly or indirectly by such Owner or Tenant) is conducting a professional, commercial or industrial activity or any other activity permitted by law and conducted for profit or by a non-profit organization. A contractor who is an Owner or Tenant shall have a Place of Business at each of his construction or work sites on the Property. Each landlord of any Parcel or any part thereof or interest therein, including each sublandlord and each assignee of such landlord, shall have a Place of Business at the Parcel.

“Place of Residence” means the place on the Property in which a person’s habitation is fixed, and to which, whenever he or she is absent, he or she has the intention of returning. A person shall not be considered to have lost his or her Place of Residence by leaving it temporarily with the intention of returning.

“Price” shall have the meaning given in Section 5739.01 of the Revised Code, as the same may be amended or superseded from time to time.

“Property” means the Initial Property plus Additional Property, if any.

“Recorded” means filed for record in the office of the Recorder of the County, or in such other office as may be provided by law for the recordation of instruments conveying lands in the County.

“Resident” means any person who has a Place of Residence or any person or entity who has a Place of Business, including, without limitation, a partnership or limited liability company taxed as a partnership for federal tax purposes, each within the meaning of section 7701 and subchapter K of the Internal Revenue Code of 1986, as amended, or an S corporation within the meaning of subchapter S of the Internal Revenue Code of 1986, as amended.

“Restrictions” means all covenants, conditions, restrictions, charges, liens and other obligations provided for in this Declaration.

“Revised Code” means the Ohio Revised Code.

“Sales Charge” means a Charge equal to a percentage of the gross receipts of any Sale from the operations of any Place of Business, as the same may be adjusted by the Board at its Fiscal Meeting (in increments of .05%), as provided in Section 5.10 hereof, as may be required from time to time; provided, however, that in no event shall the Sales Charge exceed three percent (3.0%) of the gross receipts of any Sale from the operations of any Place of Business. For the avoidance of doubt, no portion of the Sales Charge shall apply to rentals received from leases of real property for the purposes of Section 349.01(L)(2) of the Revised Code.

“Sale” shall have the meaning given in Section 5739.01 of the Revised Code, as the same may be amended or superseded from time to time.

“Secretary” means the person or entity serving as the secretary of the Board, or any other person or entity designated by the Board in the Secretary’s place to receive service of process.

“State” means the State of Ohio.

“Tenant” means any person or entity occupying any Parcel (including any part thereof and any structure or any part of any structure thereon) (a) pursuant to a written or oral lease, rental or license agreement with the Owner, (b) by permission of the Owner or by permission of or with any other person or entity claiming under the Owner, or (c) under a tenancy at will or sufferance.

“Trust Agreement” means any trust agreement, indenture, or fiscal agent agreement relating to any Obligations, as modified, amended, or supplemented from time to time.

“Trustee” means a member of the Board of Trustees of the Authority.

ARTICLE III EXPANSION

3.01. The Developer may, from time to time, subject Additional Property to this Declaration and the Restrictions by causing to be Recorded one or more supplemental Declarations describing such Additional Property and subjecting it to the Restrictions and this Declaration.

3.02. The Developer may, from time to time, subject Additional Property owned by an Owner other than the Developer to this Declaration and the Restrictions by causing to be Recorded, with the consent of such Owner, one or more supplemental Declarations describing such Additional Property and subjecting it to the Restrictions and this Declaration of such Additional Property.

3.03. Each supplemental Declaration described in Section 3.01 and 3.02 hereof shall be filed by the Developer and shall not require compliance with the provisions of Article IX hereof. A supplemental Declaration described in Section 3.01 hereof shall not require the consent of any Owners. A supplemental Declaration described in Section 3.02 hereof shall not require the consent of any Owners other than the Owner of the Additional Property then being subjected to this Declaration. Any such expansion shall be effective upon such supplemental Declaration being Recorded unless otherwise provided therein, and any expansion may be accomplished in stages by a series of successive supplemental Declarations or in one supplemental Declaration.

ARTICLE IV COVENANT FOR THE COMMUNITY DEVELOPMENT CHARGES

4.01. The Community Development Charge Covenant. The Developer hereby covenants, and each subsequent Owner of any Parcel, by acceptance of a deed or other instrument or conveyance therefor, shall covenant and be deemed to covenant, to pay or secure the payment of the Community Development Charges applicable to the Owner’s Chargeable Parcel to the Authority as provided in Articles IV and V hereof. Each Owner agrees that every purchase agreement for a Chargeable Parcel entered into after this Declaration is Recorded shall, in compliance with Section 349.07 of the Revised Code, specifically refer to the Community Development Charges and identify the volume and number of the deed records in which this Declaration is Recorded, but no failure to include such reference shall affect the validity or legal

effect of this Declaration. In addition, each Owner agrees that every lease agreement for a Parcel intended by any supplemental Declaration to be subject to a Sales Charge or a Hotel Charge shall specifically refer to the Community Development Charges and shall require the sublessee thereunder to cooperate in providing such information as the Owner shall reasonably require in order to comply with Section 5.09(g) hereunder with respect to the certification of gross receipts to the Authority for purposes of confirming the amount of the Sales Charge or the Hotel Charge.

4.02. Purpose of the Community Development Charge. The Community Development Charges are established for the benefit and use of the Authority to cover all or part of the cost of any Authorized Purposes, Administrative Expenses, Debt Service, and all other costs or expenses incurred by the Authority in the exercise of its powers pursuant to Chapter 349 of the Revised Code (including, without limitation, the reimbursement of loans, advances, or expenditures made to or by the Developer or any Owner or Tenant for such purposes), and shall not be used for any other purposes. Notwithstanding any other provision of this Declaration to the contrary, unless the contract of purchase and sale expressly states otherwise, none of the Community Development Charges shall constitute an “assessment” for purposes of determining any prepayment of assessments that may be required in the contract of purchase and sale of all or any part of the Property.

4.03. Creation of Lien and Personal Obligation of the Community Development Charges. The Community Development Charges, collectively, shall be a charge and continuing lien on each Chargeable Parcel and, subject to and only to the extent provided in Section 5.06 hereof, shall also be the personal obligation of the Owner of each Chargeable Parcel and, if applicable, any Tenants or any Residents, all to the extent and for the period provided in Article V.

4.04. Collection of the Community Development Charges and Enforcement of Lien. Any Community Development Charges may be collected by the Authority or may, in accordance with Section 349.07, be certified to the Auditor if not paid when due. Community Development Charges not paid when due pursuant to Section 5.03 hereof shall be certified to the Auditor not later than the second Monday in September of each year (or by such other date as may be authorized for the preparation of the general tax list by the Auditor), to be collected in the same manner and paid by the Owner at the same time as real property taxes, in accordance with Chapter 323 of the Revised Code, including any delinquency procedures, penalties, and interest provided for therein. The Authority may cause the collection of any Community Development Charge by certifying that Community Development Charge to the Auditor for collection on the tax duplicate or by some other manner as agreed to by the Auditor and the Authority.

If the Owner fails to pay the amount of the Community Development Charges when due, then the Authority, at the Authority’s option and in the Authority’s sole discretion, upon notice to the Owner, may make such appearances, disburse such sums and take such action as is necessary to protect the Authority’s interest in the Chargeable Parcel, including, but not limited to, disbursement of reasonable attorneys’ fees and entry upon the Chargeable Parcel to make repairs. Any amounts disbursed by the Authority pursuant to this Section 4.04, with interest thereon, shall be recoverable by the Authority as additional amounts under the Delinquent Charge. Nothing

contained in this Section 4.04 shall require the Authority to incur any expense or do any act hereunder.

Any costs of the Auditor charged in connection with the collection of a Delinquent Charge shall be in addition to the amount of the Community Development Charges and shall not reduce the amount of the Community Development Charges otherwise paid to the Authority. In addition to any enforcement of a Delinquent Charge pursued by the County, any Community Development Charge or lien established under this Declaration may be enforced by the Authority, or by a third-party appointed by the Authority to act for and on behalf of the Authority, in the same manner and to the same extent and subject to the same procedures as in the case of foreclosure of a real property mortgage under the laws of the State. In any such enforcement proceeding, the amount that may be recovered by the Authority shall include all costs of such proceeding, including reasonable attorneys' fees.

In connection with any such enforcement proceeding, the Authority shall be entitled as a matter of right without notice and without giving bond, to apply for the appointment of a receiver to take control of the Chargeable Parcel and to collect rents, issues, and income in the same manner and with the same authority as a county treasurer under Sections 323.49 and 323.50 of the Revised Code. The receiver shall be entitled to (i) collect the rents, issues, and income of any kind, (ii) manage the Chargeable Parcel so to prevent waste, (iii) pay all expenses for normal maintenance of the Chargeable Parcel, (iv) apply the rents, issues, income and profits to the costs and expenses of the receivership, including actual attorneys' fees, to the operation, maintenance, upkeep and repair of the Chargeable Parcel, and to premiums of insurance on the Chargeable Parcel, (v) satisfy the taxes and assessments upon the Chargeable Parcel, including the Delinquent Charge, and (vi) take any other actions as permitted by law. The Developer, as the Owner of the Initial Property, does hereby irrevocably consent to such appointment, and such consent shall be binding on any future Owner of any Chargeable Parcel.

In any foreclosure sale resulting from any enforcement proceeding, the Authority or its designee may become the purchaser of the Chargeable Parcel and shall be entitled to apply all or any part of Delinquent Charge as a credit against the purchase price. No remedy conferred upon or reserved to the Authority by this Declaration is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Authority or now or hereafter existing.

ARTICLE V THE COMMUNITY DEVELOPMENT CHARGES

5.01. Establishment of the Community Development Charges; Effective Date and Duration. There is hereby established for the benefit of the Authority, as a charge on each Chargeable Parcel, the Community Development Charges in the amount of (i) the number of mills (one mill equals 1/10 of 1%) as may be determined by the Board, with consent of the Owner, as outlined in subsections (a)(1) and (a)(2) of Section 5.02 hereof multiplied by each dollar of the Assessed Valuation thereof as determined in accordance with Section 5.02 hereof and (ii) a percentage as may be determined by the Authority, with the consent of the Developer, as outlined

in subsections (b) and (c) of Section 5.02 hereof. Such Community Development Charge shall be paid to the Authority by the Owner of each such Chargeable Parcel in the manner provided in this Article.

For the avoidance of doubt, and due to the status of the Owner of the Initial Property as a municipal corporation, none of the Initial Property, as of the date hereof, is considered a Chargeable Parcel during which time the City remains the Owner. The Initial Property shall become subject to the Community Development Charges, as Property, upon the transfer of such interests in any Parcel of the Initial Property that the subsequent holder of such rights would qualify as an Owner or a Tenant of a Place of Business as defined in Article I hereof.

Notwithstanding the provisions of this Article V, in accordance with Section 349.03(B) of the Revised Code and Article III hereof, the Developer may, from time to time, subject Additional Property to this Declaration and the Restrictions by causing to be Recorded a supplemental Declaration, or a series of successive supplemental Declarations, and such Additional Property may be subject to Community Development Charges in such amount, for such duration, and with such frequency, which Community Development Charges shall continue and shall be terminated, all as specified in such supplemental Declarations.

The Community Development Charges shall become effective with respect to a Parcel at the time that such Parcel becomes Chargeable Property and shall be due and payable as provided in Section 5.03 hereof and shall continue until such time as the Authority, with the consent of the City, shall terminate the Restrictions hereunder.

5.02. Amount of the Community Development Charges; Allocation of the Community Development Charges. Subject to waiver, reduction, increase, or termination of the Community Development Charges as provided in Sections 6.03 and 6.04 herein, and as more fully provided herein, the Board shall annually impose and collect the Community Development Charges in the amount of the number of mills calculated within subsections (a)(1), and (a)(2) of this Section 5.02 multiplied by each dollar of Assessed Valuation, and the Board shall annually impose and collect the Community Development Charges, as applicable, in the amount of the percentages of the gross receipts of commercial and hotel uses not to exceed those amounts outlined within subsections (b) and (c) of this Section.

The Community Development Charges applicable to each Chargeable Parcel are anticipated to equal the following::

- (a) General Community Development Charges Based On Assessed Valuation:
 - (1) Property Located within a Community Reinvestment Area:
 - (i) Community Reinvestment Area Charge; Additional Charge. For Property located within any of the City's Community Reinvestment Areas:

a) a Community Development Charge amount equal to the total effective millage of the real property taxes attributable to the increase in assessed valuation of the real property that would have been payable upon such real property but for the applicable Community Reinvestment Area abatement (the “CRA Abatement Replacement Charge”); and

b) an amount, upon the request of the Owner and approval by the City of such request, in addition to the amount of the CRA Abatement Replacement Charge (the “Additional Charge”), but in no event shall the Additional Charge exceed five (5) mills;

(2) Property Not Located within a Community Reinvestment Area: For Property that is not located within any of the City’s Community Reinvestment Areas and is devoted to commercial, multi-family, or office space purposes, an Additional Charge not to exceed five (5) mills.

For Property that is not located within any of the City’s Community Reinvestment Areas and is devoted to residential purposes, an Additional Charge in the amount of five (5) mills or, upon the request of the Owner of such Chargeable Parcel and approval by the Board and the Developer of such request, an amount not to exceed ten (10) mills (the “Residential Charge”).

(b) Sales Charge. For Property that is devoted to commercial retail purposes, in addition to any Community Development Charge applicable pursuant to subsection (a) of this Section 5.02, a Community Development Charge consisting of an amount equal to a certain percentage of the gross receipts generated by the Sales of any business in the District, as agreed upon by the Owner of such Chargeable Parcel, or the Tenant of such Chargeable Parcel, as applicable, and the Board, and in an amount not to exceed [three] percent ([3.00]%) of the gross receipts generated by Sales of the businesses operating within the District (the “Sales Charge”) as further outlined in Section 5.10 herein; provided, that for the avoidance of doubt, no portion of the Sales Charge shall apply to rentals received from leases of real property for the purposes of Section 349.01(L)(2) of the Revised Code; and

(c) Hotel Charge. For Property that is devoted to commercial hotel purposes, in addition to any Community Development Charge applicable pursuant to subsection (a) of this Section 5.02, a Community Development Charge consisting of an amount equal to a certain percentage of the gross receipts from transactions by which lodging is, or is to be, furnished by a Hotel within the District, as agreed upon by the Owner of such Chargeable Parcel, or the Tenant of Such Chargeable Parcel, as applicable, and the Board, and in an amount not to exceed [five] percent ([5].00%) of the gross receipts from transactions by which lodging is, or is to be, furnished by a Hotel within the District (the “Hotel Charge”) as further outlined in Section 5.11 herein; provided, that for the avoidance of doubt, no portion of the Hotel Charge shall apply to rentals received from leases of real property for the purposes of Section 349.01(L)(2) of the Revised Code; and

Except as expressly prohibited by this Article V, the Community Development Charges may be different than the amounts stated in subsections (a) through (c) for specific Property within the District if so requested by the Owner of such Property, agreed upon by the Board and the City, and identified in a supplemental Declaration Recorded with respect to such Property.

The amount of the Community Development Charges collected shall be allocated and applied as follows:

- (1) First, payment of any costs of the City that are incurred on behalf of the Authority to pay Administrative Expenses of the Authority in an amount not to exceed five thousand dollars (\$5,000.00) annually; and
- (2) Second, payment of any additional Administrative Expenses of the Authority; and
- (2) Second, the balance, after payment of Administrative Expenses as provided in paragraphs "First" and "Second" above, to the City to (i) pay the costs of Community Facilities as selected by the City, (ii) to pay the Debt Service on any outstanding Obligations, or (iii) pay the cost of any other Authorized Purposes, Administrative Expenses, Debt Service, and all other costs or expenses incurred by the Authority in the exercise of its powers pursuant to Chapter 349.

Pursuant to Pursuant to Chapter 349, including Section 349.13 of the Revised Code, the City may provide by legislation or by agreement that any Community Development Charges available to the City under this Declaration may be paid directly to the Authority or to a designee of the Authority.

5.03. Payment. The Community Development Charges for each Chargeable Parcel shall be due for all purposes of this Declaration and Section 349.07 of the Revised Code beginning on the first day of the month immediately after the applicable Completion Date and each January 1st thereafter, and shall be payable on the date or dates (in case of installment payments) as determined by the Board; provided that the first payment date shall occur no later than six (6) months after the due date; provided, further, that payments due in the year of the applicable Completion Date shall be pro-rated based on the number of months occurring after the Completion Date (by way of illustration, if the Completion Date occurs on March 31st of a year, nine-twelfths of the annual Community Development Charge will be levied on the property, due on April 1st of that year and payable as determined by the Board. Thereafter, the full Community Development Charge will be collected annually); and provided, further, that the Board may determine to waive such monthly pro-rate allocation at its discretion.

The Community Development Charges outlined in Sections 5.02 (a)(1), (a)(2) and (d) shall be certified to and collected by the Auditor and paid by the Owner as provided in Section 4.04 hereof on due dates coinciding with the collection of real property taxes in the County, or as otherwise determined by the Board; provided that, if permitted by law, the Board may provide for

or require such payment to be made on other dates so as to permit the certification of a Community Development Charge not paid when due to the Auditor in accordance with Section 4.04 hereof. Each installment shall be paid within the time prescribed by the Board; provided, further, that the Board may provide for or require such payment to be made directly the Authority. With respect to the Community Development Charges, no Owner shall be required to prepay any installment to the Authority, but nothing herein shall preclude an Owner from agreeing with the Authority to prepay all or any part of the semiannual installments on a monthly or other basis. If Chapter 349 shall hereafter be amended to allow the payment of the Community Development Charges at more frequent intervals, the Board shall have the power to increase the frequency of such installments accordingly.

Notwithstanding the foregoing, (a) the Authority may enter into an agreement with any mortgage lender for the escrowing of Community Development Charge installments with such lender with respect to any Chargeable Parcel and for the periodic payment of the escrowed installments to the Authority, and (b) so long as such agreement continues, the Owner of any Chargeable Parcel on which such lender holds a mortgage shall, if such Owner so consents, pay the Community Development Charge installments with respect thereto directly to the lender; provided, however, that the obligation to pay the Community Development Charges shall remain that of the Owner and is not satisfied until and unless full payment of the Community Development Charges is received by the Authority, and provided further that no such agreement with a mortgage lender shall adversely affect the Authority's ability to enforce the payment of the Community Development Charges.

5.04. Penalty and Interest. For each Chargeable Parcel as to which any installment of the Community Development Charge becomes a Delinquent Charge, there shall be added to the installment (A) a penalty of ten percent (10%) thereof (imposed at the same time that penalties for delinquent real property taxes are imposed pursuant to Chapter 323 of the Revised Code), (B) interest at the greater of (i) the Late Payment Rate or (ii) eighteen percent (18%) per year (or the maximum rate permitted under Ohio's usury laws, whichever is lower), on the sum of the amount of such installment plus the interest that has accrued thereon for more than six (6) months plus the penalty until paid (imposed at the same time that interest on delinquent real property taxes is imposed pursuant to Chapter 323 of the Revised Code), and (C) any costs of the Authority incurred in connection with the enforcement of the Community Development Charge, including reasonable attorneys' fees. To the extent any of such penalties, interest and costs are not collected by the Auditor, the Authority shall add such amounts to the amount of the Community Development Charge imposed with respect to such Chargeable Parcel in the following year. Any payments of less than the full amount shall be credited first against the penalty and second against the interest accrued to the date of payment. The applicable penalties, interest, and costs are part of the Community Development Charge. Notwithstanding anything contained herein to the contrary, no Owner shall be permitted to enter into an agreement pursuant to Section 323.31 of the Revised Code with respect to a Delinquent Charge without the prior written consent of the Authority.

5.05. Refund and Reduced Assessed Valuation. If the official valuation of any Chargeable Parcel (by which the Assessed Valuation thereof is determined pursuant to the terms

hereof) is reduced for any year pursuant to Revised Code Sections 5715.11 through 5715.16, upon application of the Owner to the Board, the Assessed Valuation shall be reduced in the same amount, and the Community Development Charges based upon Assessed Valuation for such year shall be proportionately reduced. If any installment of such Community Development Charges based on Assessed Valuation has been paid before the date of such reduction, the Board shall credit the same against any other amounts due or to become due and owed to the Authority with respect to the Chargeable Parcel, and the Owner shall not be entitled to any other refund of any overpayment.

5.06. Personal Obligation. Each Owner, or as applicable each Tenant or Resident, shall be and remain personally obligated for the payment of the Community Development Charges with respect to his or her Chargeable Parcel or with respect to his or her use that become due and owed during the period of that Owner's ownership thereof, that Tenant's operations at such Chargeable Parcel thereof, or that Resident's use thereof, including any penalties, interest thereon, and costs associated therewith.

5.07. Community Development Charge Lien. The Community Development Charges with respect to each Chargeable Parcel, including any penalty, and interest thereon, and costs thereof, shall constitute a continuing lien in favor of the Authority on such Chargeable Parcel. If an installment or any part of an installment of a Community Development Charge on any Chargeable Parcel is not paid when due, the lien with respect to such delinquent installment or part thereof shall be enforceable in any manner provided in Section 4.04 herein. Such lien shall be prior to all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments and liens of the United States of America, the State and all other political subdivisions or governmental instrumentalities of the State to the extent that such liens, taxes, or assessments are made equal or superior to the Community Development Charge lien by the laws of the State.

5.08. Evidence of Payment. Upon the request of the Owner or any mortgagee or lessee of any Chargeable Parcel or any prospective purchaser, mortgagee or lessee thereof, the Authority shall furnish written evidence of the amounts of the Community Development Charges with respect thereto for the current year and the amount of any unpaid Community Development Charges including any penalty and interest owed for the current or any previous year. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Chargeable Parcel.

5.09. Gross Receipts Charge.

(a) Charge Administrator. Pursuant to Section 349.06 of the Revised Code, the Authority may in its discretion enter into one or more agreements with one or more Charge Administrators to calculate and collect the Gross Receipts Charge, and the costs of any such agreement shall constitute Administrative Expenses hereunder. The Charge Administrator shall be the primary contact for any Owner or Tenant with respect to the Gross Receipts Charge, as applicable, and shall accept all filings and payments required by any Owner or Tenant under Article V. At the discretion of the Authority, the Charge Administrator may be retained to calculate

any Community Development Charges other than Gross Receipts Charges identified by the Authority.

(b) **Petition for Reassessment.** With respect to any Community Development Charges or interest levied by the Authority under this Section 5.09, Section 5.10, or Section 5.11, the party assessed may file with the Charge Administrator within sixty (60) days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts. In the event that the assessed party does not file an objection within that period of time, the assessment becomes final and the amount of the assessment is due from the party assessed and payable to the Authority. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the Charge Administrator within such sixty-day period. The Authority may correct or cancel any assessment to which the assessed party makes an objection.

(c) **Audit.** The Charge Administrator, at the direction of the Authority, may conduct an audit of the books and records, including, without limitation, any state sales tax returns or any records required to be maintained under Title III of the City's municipal code of any Owner or Tenant to the extent necessary to determine compliance with this Article. In the event an audit reveals a discrepancy between the applicable Gross Receipts Charge submitted and the Gross Receipts Charge due, and such discrepancy is greater than three percent (3.0%) of the total Gross Receipts Charge due, the Authority, in its sole discretion, may require that the applicable Owner or Tenant pay for the cost of such audit.

(d) **Lien and Release of Lien.** The Gross Receipts Charge with respect to a Parcel and any additional charges, interest, and costs thereon shall constitute a continuing lien in favor of the Authority on such Parcel except as released pursuant to this Section 5.09(d) and Section 5.09(e). If an installment of the Gross Receipts Charge on any Parcel is not paid within the applicable period provided in Sections 5.10(b) and 5.11 hereof, the lien with respect to such delinquent installment shall be enforceable in the manner provided in Section 4.04 hereof. Such lien shall be prior to all other liens and encumbrances, whenever perfected, on such Parcel except real estate taxes and assessments and liens of the United States of America, the State of Ohio and all other political subdivisions or governmental instrumentalities of the State of Ohio to the extent such other liens are made equal to or superior to such delinquent installment by applicable law. Such lien shall continue until paid or released as provided in this Article.

In the event of sale or mortgaging of any Parcel subject to the Gross Receipts Charge, by an Owner, the Board may release all or a portion of the lien thereon attributable to the applicable Gross Receipts Charge for the current month. Such release shall be given only if such Owner (i) signs and delivers to the Charge Administrator a written agreement of the Owner of the Parcel subject to the Gross Receipts Charge, to pay any Gross Receipts Charge payable with respect to the Parcel (including any amounts payable by the Owner and any Tenants of the Chargeable Parcel) for that month, and (ii) makes such payments of that Gross Receipts Charge into an escrow account as the Charge Administrator may reasonably require. Such release of lien shall not impair the personal obligation of such Owner to the Authority as provided herein.

To the extent that any portion of any Gross Receipts Charge lien on a Parcel is attributable to (i) gross receipts with respect to transactions by which lodging by a Hotel is or is to be furnished or (ii) Sales conducted by a Tenant thereof, the Owner may obtain a release or such portion of the lien and a release of its obligations for the Gross Receipts Charge due with respect thereto by: (i) including in the lease those lease provisions described in Section 5.09(f) hereof and (ii) delivering a fully executed copy of the lease to the Charge Administrator. The Gross Receipts Charge lien will not be released, and will be retroactively reinstated, if and to the extent that any lease provisions included by an Owner in a lease for purposes of complying with Section 5.09(f) are found by a court of competent jurisdiction to be unenforceable by the Authority against a Tenant.

(e) Tenants' Remittance of Gross Receipts Charge. In the event that any Owner has leased all or any portion of its Chargeable Parcel that is subject to a Gross Receipts Charge to a Tenant: (i) if and to the extent that such Owner has complied with Section 5.09(d), such Owner shall be relieved of its personal obligation to remit filings or Gross Receipts Charges required hereunder or otherwise comply with the requirements of this Article with respect to that portion of the Chargeable Parcel leased by any Tenant during the term of such Tenant's lease and (ii) such Tenant(s) shall be obligated to comply with all the terms and provisions of this Article, including, without limitation, the requirement to make all filings required hereunder and to remit all payments of the Gross Receipts Charge and any amounts required under this Article directly to the Charge Administrator.

(f) Required Lease Provisions. Each Owner shall include in every lease of its Chargeable Parcel or any part thereof, for the benefit of the Authority as a third-party beneficiary, covenants whereby the Tenant acknowledges and agrees to its obligations under this Declaration. The lease must include specific reference to this Declaration, including the instrument number or other recording information for this Declaration, including as this Declaration may be subsequently amended, or supplemented, from time to time, available at the time the lease is executed.

(g) Records and Other Evidence; Service of Process. Each Owner and Tenant shall keep accurate records of all Sales and any records required to be maintained under Title III of the municipal code of the City of any Owner or Tenant conducted on its portion of the Property, as well as all sales tax, lodging tax, Hotel Charges, or Sales Charges collected thereon. All records required hereunder shall be kept for a period of at least four years.

Each Owner of any Chargeable Parcel and each Tenant thereof hereby (i) personally obligates itself to make available to the Charge Administrator such records and other evidence, including applicable state sales tax and lodging tax returns, as the Charge Administrator may reasonably request solely to verify the information contained in any Gross Receipts Charge return required to be filed hereunder, and (ii) appoints and designates the Secretary of the Board as its agent for the service of process in any action brought by the Authority to enforce or collect the payment of any Gross Receipts Charge payable by such Owner or Tenant; provided, however, that such appointment and designation shall become effective only if the Owner or Tenant has ceased to be an Owner or Tenant, conceals its whereabouts, or otherwise makes it impossible for the Charge Administrator to personally serve process upon such Owner or Tenant on the Property.

(h) **Personal Obligation.** Each Owner and Tenant shall comply with this Article and, except as otherwise provided by Sections 5.09(d) and (e), shall be and remain personally obligated for the payment of that portion of all Gross Receipts Charges with respect to its Chargeable Parcel or portion thereof, together with charges and interest thereon and costs of collection as provided herein, which is attributable to its Sales or transactions by which lodging by a Hotel is or is to be furnished occurring on its Chargeable Parcel or portion thereof during its period of ownership or tenancy.

(i) **Returns; Confidentiality.** All returns and other documents described in or required by this Article shall be in such form as may be prescribed by the Authority. The failure of any Owner or Tenant to receive or procure a return, declaration or other required form shall not excuse it from filing such form or from paying its Gross Receipts Charge. All information contained in any return or other document or otherwise obtained by the Charge Administrator pursuant to this Section 5.09 shall be treated in a confidential manner and as a “trade secret” and, except pursuant to subpoena, as may be necessary in connection with any action for the collection of any individual Owner’s or Tenant’s Gross Receipts Charge or the enforcement of any lien relating thereto, or as otherwise required by law, no such information with respect to any Owner’s or Tenant’s individual Gross Receipts Charge shall be disclosed by the Charge Administrator to any other party except the Developer without the consent of the applicable Owner or Tenant. Nothing contained in this Section shall be deemed to preclude disclosure on a statistical or other basis not permitting identification of such information with particular persons or entities, nor the disclosure of any reports to the Authority as to the non-payment or delinquency in payment of any Gross Receipts Charges.

(j) **Evidence Regarding Liens.** Upon the request of the Owner or any mortgagee or lessee of any Chargeable Parcel or any prospective purchaser, mortgagee, or lessee thereof, the Authority shall furnish written evidence of the existence or absence of Gross Receipts Charge liens and, to the extent known on the basis of available data, the amount thereof. Absent the existence of any recorded evidence of unpaid Gross Receipts Charge liens, such statement by the Authority may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Chargeable Parcel.

5.10. Sales Charge.

(a) **Establishment of Sales Charge.** The Sales Charge for each applicable Place of Business engaged in Sales shall be due for all purposes of this Declaration and Section 349.07 of the Revised Code. The Sales Charge shall be calculated based on the gross receipts from operations of the Owner and any Tenant engaged in Sales and shall equal the aggregate amount of gross receipts reported to the State of Ohio with respect to the same time period for the purposes of determining sales tax liability with respect to the operations of such Place of Business on such Parcel which generate sales tax liability under Ohio law. Each Owner or Tenant of a Place of Business engaged in Sales, as applicable, shall file all required returns and pay any Sales Charge that is due and payable with respect to Sales occurring during the period of time during which the Owner is an Owner or the Tenant is a Tenant of the applicable Parcel, and said obligation shall survive and continue after the Owner is no longer an Owner or the Tenant is no longer a Tenant,

as applicable. Annually, the Authority shall set the Sales Charge (between 0% and 3.00%, in increments of .05%) for the next succeeding year, as determined to be necessary by the Board in accordance with Section 5.01 hereof.

(b) **Collection of Sales Charge.** The Charge Administrator shall notify each Owner or Tenant of a Parcel subject to the Sales Charge not later than December 1 in the year prior to any year in which the Authority has established a Sales Charge in excess of 0%. During each month on and after the Owner or Tenant has engaged in Sales at a Place of Business at a Parcel, and no later than the 23rd day of each month, each Owner or each Tenant with respect to operations of a Place of Business engaged in Sales on a Parcel, as applicable, shall file with the Charge Administrator a return on a form provided by the Charge Administrator stating the amount of the Sales Charge payable with respect to all Sales conducted at the portion of the Property owned by the Owner (subject to the exemption from filing as provided in Section 5.09(d) hereunder) or leased by the Tenant during the immediately preceding month; provided, however, that no Owner or Tenant shall be obligated to file said return with respect to any period of time during which the Sales Charge equals 0%. The Charge Administrator may extend the time for making and filing returns and paying the Sales Charge, and may require that the return for the last month of any annual or semiannual period, as determined by the Charge Administrator, be a reconciliation return detailing the Sales activity for the preceding annual or semiannual period. Any reconciliation return shall be filed by the last day of the month following the last month of the annual or semiannual period.

Overpayments of previous Sales Charges by an Owner or a Tenant for any semi-annual or annual period, as reflected in a semi-annual or annual reconciliation return filed with the Charge Administrator, may be deducted from Sales Charges payable by that Owner or Tenant in the following six-month period or calendar year, respectively.

Notwithstanding anything to the contrary contained in this Declaration, the Authority, with the consent of the Developer, may amend any of the requirements set forth in this Section 5.10(b) with respect to the required filings, penalties, and collection of the Sales Charge at any time to reduce the administrative burden on any Owner or its Tenants by conforming its procedures for collecting the Sales Charge to procedures for collecting sales taxes under Chapter 5739 of the Revised Code.

(c) **Failure to File.** If an Owner or Tenant who is required to file a return hereunder fails to do so, or fails to cooperate in an audit of the Owner's or Tenant's books and records pertaining to that Owner's or Tenant's Sales and Prices charged to Consumers, the Authority may estimate the amount of Sales Charge owed by that Owner or Tenant by any reasonable means. Upon the remittance of the monthly return required hereunder, each Owner and Tenant shall simultaneously pay all Sales Charges due and payable by it to the Authority by making payments to, or at the direction of, the Charge Administrator for such month. Upon notification of any estimated Sales Charge owed as described in the previous paragraph, each Owner and Tenant shall pay all Sales Charges due and payable by it to the Authority by making payments to, or at the direction of, the Charge Administrator for such month within five (5) business days of receiving the notification.

(d) **Charges and Interest.** Any Owner or Tenant that fails to file a return, fails to pay the full amount of the Sales Charge shown on the return to be due, or fails to cooperate in an audit of the Owner's or Tenant's books and records pertaining to that Owner's or Tenant's Sales and Prices charged to Consumers, all in the manner prescribed under this Article, may be required by the Authority to pay a charge not exceeding fifty dollars (\$50.00) or fifteen percent (15.0%) of the Sales Charge required to be paid for the applicable reporting period, whichever is greater. Sales Charges that are not paid when due shall constitute Delinquent Charges hereunder. If any installment of any Sales Charge is not paid on the date provided in Section 5.10(b) hereof, the Authority may add to the delinquent installment (as of the due date of such installment) interest calculated at a rate of ten percent (10.0%) per annum. In addition, and to the extent that the Owner or Tenant has collected the Sales Charge from Consumers but has failed to remit such Sales Charge to the Authority, the Authority may assess an additional charge of up to fifty percent (50.0%) of the delinquent Sales Charge amount.

In addition to the other remedies set forth in this Section 5.10, if any Owner or Tenant required to file monthly returns hereunder fails, for two consecutive months or on three or more months within a twelve-month period, to file such returns when due or to pay the Sales Charge thereon, the Authority may require the Owner or Tenant to furnish security in an amount equal to the average Sales Charge liability of the Owner or Tenant for a period of one year, as determined by the Charge Administrator from a review of returns or other information pertaining to such Owner or Tenant, which amount shall in no event be less than one thousand dollars (\$1,000.00). The security may be in the form of a corporate surety bond, satisfactory to the Authority, with the release of the security conditioned upon timely filing of monthly returns and payment of the Sales Charge due for twelve consecutive monthly reporting periods. The security shall be filed within ten days of the Owner's or Tenant's receipt of the notice from the Authority of its requirements.

In addition to the other remedies set forth herein, the Authority may collect from any delinquent Owner or Tenant all costs of the Authority, including, without limitation, costs of the Charge Administrator, incurred in connection with the enforcement of any delinquent Sales Charge or any charges, interest or costs thereon, including reasonable attorneys' fees. Any payments by any Owner or Tenant of less than the full amount of the Sales Charge due will be credited first against any charges, second against the interest accrued to the date of payment and third to the balance of the Sales Charge due. The applicable charges, interests and costs are part of the Sales Charge. To the extent any of such charges, interest and cost owing with respect to the Sales Charge are not collected by the Charge Administrator, such amounts will be added to the amount of the Sales Charge payable by the Owner or Tenant in the following month.

5.11 Hotel Charge.

(a) **Collection of Hotel Charge.** The Hotel Charge for each Hotel shall be due for all purposes of this Declaration and Section 349.07 of the Revised Code. During each month beginning in the first month after the applicable Hotel begins business operations, and no later than the 15th day of each month, each Owner of a Hotel Parcel or each Tenant with respect to a Hotel, as applicable, shall file with the Charge Administrator a return on a form provided by the Charge

Administrator stating the amount of the Hotel Charge payable with respect to gross receipts earned from transactions by which lodging by a Hotel is or is to be furnished and conducted at the portion of the Property owned by the Owner (subject to the exemption from filing as provided in Section 5.09(d) hereunder) or leased by the Tenant during the immediately preceding month, which amount shall equal the aggregate amount of gross receipts reported to the City and the State of Ohio with respect to the same time period for the purposes of determining lodging tax liability with respect to the Hotel operations on such Hotel Parcel which generate lodging tax liability under Ohio law. Hotel Charges that are not paid when due shall constitute Delinquent Charges hereunder.

Each Owner or Tenant of a Parcel containing a Hotel, as applicable, shall file all required returns and pay any Hotel Charge that is due and payable with respect to a Hotel Parcel occurring after the Completion Date and during the period of time during which the Owner is an Owner or the Tenant is a Tenant of the applicable Parcel containing a Hotel, and said obligation shall survive and continue after the Owner is no longer an Owner or the Tenant is no longer a Tenant, as applicable. Annually, the Authority shall set the Hotel Charge (between 0% and 5.00%, in increments of .05%) for the next succeeding year, as determined to be necessary by the Board in accordance with Section 5.01 hereof

(b) Administration of Hotel Charge. The Charge Administrator may extend the time for making and filing returns and paying the Hotel Charge, and may require that the return for the last month of any annual or semiannual period, as determined by the Charge Administrator, be a reconciliation return detailing gross receipts earned from transactions by which lodging by a Hotel is or is to be furnished for the preceding annual or semiannual period. Any reconciliation return shall be filed by the last day of the month following the last month of the annual or semiannual period. Overpayments of previous Hotel Charges by an Owner or a Tenant for any semi-annual or annual period, as reflected in a semi-annual or annual reconciliation return filed with the Charge Administrator, may be deducted from Hotel Charges payable by that Owner or Tenant in the following six-month period or calendar year, respectively.

Notwithstanding anything to the contrary contained in this Declaration, the Authority, with the consent of the Developer during the Developer Period, may amend any of the requirements set forth in this Section 5.11(b) with respect to the required filings, penalties, and collection of the Hotel Charge at any time to reduce the administrative burden on any Owner or its Tenants by conforming its procedures for collecting the Hotel Charge to procedures for collecting sales taxes under Chapter 5739 of the Revised Code or lodging taxes under Title III of the municipal code of the City.

(c) Failure to File. If an Owner or Tenant who is required to file a return hereunder fails to do so, or fails to cooperate in an audit of the Owner's or Tenant's books and records required to be maintained by the Owner or Tenant, as applicable, under Title III of the municipal code of the City, the Authority may estimate the amount of Hotel Charge owed by that Owner or Tenant by any reasonable means.

Upon the remittance of the monthly return required hereunder, each Owner and Tenant shall simultaneously pay all Hotel Charges due and payable by it to the Authority by making payments to, or at the direction of, the Charge Administrator for such month. Upon notification of any estimated Hotel Charge owed as described in the previous paragraph, each Owner and Tenant shall pay all Hotel Charges due and payable by it to the Authority by making payments to, or at the direction of, the Charge Administrator for such month within five (5) business days of receiving the notification.

(d) Charges and Interest. Any Owner or Tenant that fails to file a return, fails to pay the full amount of the Hotel Charge shown on the return to be due, or fails to cooperate in an audit of the Owner's or Tenant's books and records required to be maintained by the Owner or Tenant, as applicable, under Title III of the municipal code of the City, all in the manner prescribed under this Article, may be required by the Authority to pay a charge not exceeding fifty dollars (\$50.00) or fifteen percent (15.0%) of the Hotel Charge required to be paid for the applicable reporting period, whichever is greater. Hotel Charges that are not paid when due shall constitute Delinquent Charges hereunder.

If any installment of any Hotel Charge is not paid on the date provided in Section 5.11(a) hereof, the Authority may add to the delinquent installment (as of the due date of such installment) interest calculated at a rate of ten percent (10.0%) per annum. In addition, and to the extent that the Owner or Tenant has collected the Hotel Charge from guests but has failed to remit such Hotel Charge to the Authority, the Authority may assess an additional charge of up to fifty percent (50.0%) of the delinquent Hotel Charge amount.

In addition to the other remedies set forth in this Section 5.11, if any Owner or Tenant required to file monthly returns hereunder fails, for two consecutive months or on three or more months within a twelve-month period, to file such returns when due or to pay the Hotel Charge thereon, the Authority may require the Owner or Tenant to furnish security in an amount equal to the average Hotel Charge liability of the Owner or Tenant for a period of one year, as determined by the Charge Administrator from a review of returns or other information pertaining to such Owner or Tenant, which amount shall in no event be less than one thousand dollars (\$1,000.00). The security may be in the form of a corporate surety bond, satisfactory to the Authority, with the release of the security conditioned upon timely filing of monthly returns and payment of the Hotel Charge due for twelve consecutive monthly reporting periods. The security shall be filed within ten days of the Owner's or Tenant's receipt of the notice from the Authority of its requirements.

In addition to the other remedies set forth herein, the Authority may collect from any delinquent Owner or Tenant all costs of the Authority, including, without limitation, costs of the Charge Administrator, incurred in connection with the enforcement of any delinquent Hotel Charge or any charges, interest or costs thereon, including reasonable attorneys' fees. Any payments by any Owner or Tenant of less than the full amount of the Hotel Charge due will be credited first against any charges, second against the interest accrued to the date of payment and third to the balance of the Hotel Charge due. The applicable charges, interests and costs are part of the Hotel Charge. To the extent any of such charges, interest and cost owing with respect to the

Hotel Charge are not collected by the Charge Administrator, such amounts will be added to the amount of the Hotel Charge payable by the Owner or Tenant in the following month.

ARTICLE VI
PROCEDURE FOR WAIVER, REDUCTION, INCREASE OR
TERMINATION OF THE COMMUNITY DEVELOPMENT CHARGES

6.01. Fiscal Meeting. At least annually, the Board shall hold a Fiscal Meeting to determine whether any of the Community Development Charges should be imposed, determine whether any of the Community Development Charges should be waived, reduced, increased or terminated (but only as provided herein), and to make any other findings and determinations which may be required by this Declaration. A Fiscal Meeting may occur at any Board meeting. A Fiscal Meeting shall be held on such date as the Board shall determine.

6.02. Notice of Meeting. Notice of the Fiscal Meeting shall be given by the Board in compliance with Section 121.22 of the Revised Code. Such notice shall specify the place, date, and hour of the meeting and state that it is a Fiscal Meeting required by this Article VI.

6.03. Waiver, Reduction, Increase, or Termination. Subject to Article V hereof, at any Fiscal Meeting the Board may waive, reduce, or terminate all or a portion of the Community Development Charges for one or more years or to a stated date; provided, that, except upon dissolution of the Authority under Section 8.03 hereof, the Community Development Charges may not be less than an amount sufficient to pay the costs of the Administrative Expenses of the Authority and an amount sufficient to meet Debt Service and the payment obligations of the Authority under the terms of any outstanding Obligations. The reduction or waiver of a portion of the Community Development Charges authorized by this Section 6.03 may include, but is not limited to, an additional reduction or waiver, separate and distinct from any other reduction or waiver, for the early payment of any Community Development Charges by an Owner. Notwithstanding any other provision of this Declaration, no waiver, reduction or termination of the Community Development Charges shall be effective if it is inconsistent with this Section 6.03 or the express payment obligations of the Authority under the terms of any outstanding Obligations or would otherwise adversely affect the ability of the Authority to pay principal of and interest on any Obligations, any Administrative Expenses of the Authority, and any other expenses required to be paid under any Trust Agreement.

Except as otherwise provided in this Declaration: (a) every action taken by the Board pursuant to this Article VI shall be governed by, and taken with reference to, the fiscal requirements of the Authority for the year for which the Community Development Charges are to be collected as reflected in the budget for that year adopted by the Board, which budget may provide for reasonable reserves and the development of funds for future uses and contingencies; and (b) any action taken by the Board relating to the waiver, reduction or termination of all or any portion of any Community Development Charge shall be taken only after the Board has determined that such Community Development Charge to be waived, reduced or terminated is not needed for any of the purposes for which such Community Development Charge has been established as set forth in Section 4.02 hereof.

6.04. Discretion of the Board. Subject to the provisions of this Declaration and all applicable provisions of valid agreements of the Authority, the decision to waive, reduce, increase or terminate the Community Development Charge as provided herein shall be solely within the discretion of the Board; provided that, the Board shall not so waive, reduce, increase or terminate any applicable Community Development Charges without the prior written consent of the Developer.

ARTICLE VII
COMMUNITY FACILITIES AND COMMUNITY LAND ACQUISITION

7.01. Rights of Enjoyment in Community Land Acquisition, Community Land Development, and Community Facilities. Each Owner (and any Owner's Tenants) shall have the same rights of use and enjoyment of the Community Land Acquisition, Community Land Development, and Community Facilities within the District as do members of the general public, and such rights shall be appurtenant to, and shall pass with the title of, the Owner's Parcel. Each Resident shall have a nontransferable privilege to use and enjoy the Community Land Acquisition, Community Land Development, and Community Facilities. Such rights and privileges, and any other use thereof, shall be subject, however, to the following:

(a) The right of the Board to issue or incur Obligations, including, without limitation, issuing bonds or assigning Community Development Charges to pay debt service on bonds issued for Community Facilities, Community Land Acquisition, and Community Land Development, taking out loans under Section 349.06(J) of the Revised Code, maintaining capital and operating reserves under Section 349.06(L) of the Revised Code, or otherwise borrowing for any Authorized Purposes and in aid thereof to mortgage or to otherwise encumber the Community Facilities, Community Land Acquisition, and Community Land Development.

(b) The right of the Board to adopt, modify and enforce, and from time to time amend, reasonable rules and regulations pertaining to the use of the Community Facilities and Community Land Development that it owns including but not limited to the right of the Board to adopt regulations requiring use and regarding the mode of use, and limiting the number of guests of Owners and Residents who may use the Community Facilities and Community Land Development, and prescribed changes, conditions and requirements with respect to the Community Facilities and Community Land Development.

(c) The right of the Board to charge reasonable admission, use and other fees for the use or availability of any of the Community Facilities and Community Land Development that it owns, including the right of the Board to fix, alter, impose, collect and receive reasonable service and user fees, rentals and other charges (including deposits, penalties and interest). In establishing any such fee, the Board may establish reasonable classifications. Each fee must be uniform within each class of users but need not be uniform between classes of users. The Board reserves the right to waive otherwise applicable facility rental fees of users in the Board's sole discretion.

(d) The right of the Board to suspend (i) for a reasonable period of time, the right of any Owner or the privilege of any Resident to use the Community Facilities and Community Land Development for any infraction of the rules and regulations relating to the Community Facilities and Community Land Development, and (ii) the right of any Owner and the privilege of each Resident claiming through such Owner to use the Community Facilities and Community Land Development for any period during which the Community Development Charge against such Owner's Parcel or other user fees, rentals or other charges payable by such Owner or by the Resident remains unpaid and delinquent; provided that each such right of suspension shall not, in itself, prevent ingress to or egress from such Owner's or Resident's Place of Residence or Place of Business or threaten the life, safety or health of a Resident.

(e) Such rights as the Board may have to grant easements in or rights-of-way over Property owned by the Authority, Community Facilities or Community Land Development to any public utility corporation or public agency.

(f) Such rights as the Board may have to convey or lease all or any part of the Community Facilities and Community Land Development.

(g) All applicable provisions of valid agreements of the Authority relating to the Community Facilities and Community Land Development including, without limitation, any agreements entered into by the Authority under Sections 349.06(I), 349.06(M), 349.06(S), and 349.13 of the Revised Code.

The foregoing rights of the Board stated in clauses (a) through (g) are hereby established as part of the authority of the Board and, through it, of the Authority and are in addition to any other authority they may exercise. In addition, the foregoing rights of the Board stated in clauses (a) through (g) may be exercised by any governmental entity other than the Authority that is the owner of any of the Community Facilities subject to any agreements between such governmental entity and the Authority.

7.02. Subordination to Mortgage or Other Lien Granted by Authority. The rights and privileges provided in this Article shall be subordinate to any mortgage or other lien given by the Authority for the purposes of acquiring, improving or maintaining the Community Facilities or Community Land Development.

ARTICLE VIII DURATION, AMENDMENT AND TERMINATION

8.01. Effective Date. The Restrictions shall be effective and shall be and be deemed covenants running with the land when this Declaration is Recorded; provided, however, that no Community Development Charge shall be collected and the Authority shall have no rights or obligations hereunder until the Authority executes and there is Recorded an instrument by which the Authority joins in this Declaration for the purposes of accepting the duties, responsibilities and benefits imposed and conferred on it by the Restrictions. Resolution No. 2024-[] of the Authority, approved by the Board on [], 2024, and by which the Authority joins in this

Declaration for the purposes of accepting the duties, responsibilities and benefits imposed and conferred on it by the Restrictions, is attached hereto as Exhibit D and is incorporated herein by this reference.

8.02. Duration and Effect. The Restrictions (a) shall be, and shall be construed as, covenants running with the land; (b) shall be binding upon the Developer, the Authority, and each Owner, Tenant, and Resident; and (c) shall inure to the benefit of and be enforceable by (i) the Authority or the Developer (regardless of whether or not any such beneficiary owns an interest in any Parcel), (ii) each Owner as to its interest in any Parcel, (iii) each Tenant as to its interest in or use of any Parcel; and (iv) each Resident as to its use of any Parcel. Unless amended or terminated as provided in this Article, the Restrictions shall continue in full force and effect, without reduction of the Community Development Charge other than as provided in Article VI hereof, until the later of (A) the date when any Obligations plus any interest thereon and any expenses and Administrative Expenses related thereto are paid in full; notwithstanding the foregoing provisions of this Section 8.02, in accordance with Section 349.03(B) of the Revised Code and Article III hereof, the Developer may, from time to time, subject Additional Property to this Declaration and the Restrictions by causing to be Recorded a supplemental Declaration, or a series of successive supplemental Declarations, and the Restrictions on such Additional Property shall continue for such period specified in such supplemental Declarations as may be approved; or (B) the date mutually agreed upon by the Developer and the Authority in a Recorded written instrument.

8.03. Termination of Restrictions. The Restrictions shall be in effect until such time as the Authority incurs Obligations in furtherance of its new community development program, and shall terminate and shall be null and void automatically on the later of (a) if and on the date when there occurs a dissolution of the Authority pursuant to Chapter 349 or (b) on such date that is six (6) months following the payment in full of all principal of and interest on any Obligations that have been incurred by the Authority, unless, prior to such date, the Board determines to continue its existence for a defined period and the City and the Owners of all Parcels approve, in writing, to such continuation. Notwithstanding any other provision of this Declaration, no waiver, reduction or termination of the Community Development Charge shall be effective if it is inconsistent with Section 6.03 herein or the express obligations of the Authority under the terms of any outstanding Obligations or would otherwise adversely affect the ability of the Authority to pay principal of and interest on any Obligations, any Administrative Expenses of the Authority, and any other expenses required to be paid under any Trust Agreement.

If a final judicial adjudication is rendered or lawful executive or legislative action is taken by the government of the State that effectively enjoins or prevents the Authority from (i) implementing or collecting the Community Development Charge or (ii) carrying out any other substantial or important duty or responsibility imposed on it under this Declaration or receiving or accepting any other substantial or important benefit granted to it by this Declaration, the Authority and the Developer shall, within thirty (30) days after the rendition of such adjudication or the taking of such action (or such longer period that they may agree upon) attempt to agree upon a course of action that will remedy any defect identified in such adjudication or created by such action, and if within such thirty (30) day (or extended) period no course of action is agreed upon by the Authority and the Developer, subject to any applicable Restrictions pertaining to

outstanding Obligations, the Restrictions may be terminated on such date as shall be designated in a written declaration of termination signed by the Developer and the Authority.

If the Restrictions are required or permitted to be terminated pursuant to this Section 8.03, such termination shall become effective when a certificate or other document stating the authority for such termination and signed by the person or entity or entities empowered to effect such termination is Recorded. If the Restrictions terminate automatically, the Authority shall promptly cause a certificate or other document to be Recorded which shall state the authority for such termination and the effective date thereof.

All rights and obligations which had accrued under the Restrictions prior to the date of termination shall survive such termination, including without limitation, all personal obligations and liens established under this Declaration.

ARTICLE IX AMENDMENTS AND SUPPLEMENTS

9.01. Amendments or Supplements Not Requiring Consent of Owners. Without the consent of or notice to any of the Owners, the Authority may amend or supplement this Declaration (i) to cure any ambiguity, inconsistency or formal defect or omission or eliminate any typographical or other inadvertent error; (ii) to make or accommodate adjustments in the manner or method for billing and collecting the Community Development Charge; (iii) to conform this Declaration to any amendment permitted by Section 349.03 of the Revised Code to the Petition or any application to add Additional Property to the District; or (iv) to make any other amendment which, in the judgment of the Authority, is not to the prejudice of the Owners.

Additionally, without the consent of or notice to any of the Owners, the Developer may amend or supplement this Declaration as provided in Article III with respect to Additional Property. Further, any Owner or Owners may, without the consent of the other Owners, but with the approval of the Authority and the City, supplement the Declaration solely with respect to the Parcels then owned by such Owner or Owners, to increase the amount of the Community Development Charge, to add an additional Community Development Charge with respect to the applicable Parcels, or in any other particular; provided that no such amendment shall reduce or eliminate any existing Community Development Charge with respect to such Parcels under the Declaration.

9.02. Amendments or Supplements Requiring Consent of Owners. Except as provided in and subject to Article III and Sections 6.03, 8.03, or 9.01 herein, no provision of this Declaration may be amended or supplemented in whole or in part or terminated without the written consent of the City and not less than sixty-six percent (66%) of the number of Owners of all Parcels (provided that, for purposes of this calculation, there shall be deemed to be only one Owner with respect to each Parcel).

For the purposes of this Section 9.02, "Parcel" shall mean such Chargeable Parcel which has a separate listing on the tax duplicate of the Auditor or on the records of any other official

authorized by State law to assess real estate in the County, and all Owners of a Parcel shall be deemed to constitute one Owner and together shall have only one consent for the Parcel.

In connection with any Obligations authorized by the Authority under Chapter 349, the Authority may agree that no amendment may be made to this Declaration and no waiver, reduction or termination of the Community Development Charge may be made without the consent of or on behalf of the holders of such Obligations or without the consent of any provider of a “credit facility” as defined in Section 9.98(G) of the Revised Code.

The Secretary shall determine (a) whether the City has consented to any amendment or supplement of this Declaration (as provided in Section 9.04 below), (b) whether the Owners have consented to any amendment or supplement of this Declaration, if necessary, and (c) whether, if their consent is necessary, the Developer, the holders of any outstanding Obligations, or a provider of a “credit facility” as defined in Section 9.98(G) of the Revised Code have consented to any such amendment or supplement of this Declaration. Such determinations of the Secretary shall be conclusive against all Owners.

9.03. Reserved.

9.04. Consent of City for Certain Amendments. Notwithstanding anything herein to the contrary, without the prior written consent of the City, the Authority shall not amend or supplement this Declaration in any way that affects (a) the addition or removal of Property from the District, (b) the methodology for imposing or collecting the Community Development Charge, or (c) the Community Land Acquisition authorized by this Declaration, the Community Land Development authorized by this Declaration, and the Community Facilities authorized to be acquired, constructed, installed, or improved by this Declaration.

9.05. Recording of Amendments. Promptly after any amendment or supplement of this Declaration, the Secretary shall cause to be Recorded a written instrument certified by the Secretary setting forth such amendment or supplement and stating that any required written consents were obtained.

ARTICLE X MISCELLANEOUS

10.01. Priority. The Restrictions contained in this Declaration shall take priority over all other covenants, conditions, restrictions or easements applicable to any Parcel whatsoever, to the extent permitted by law and except as otherwise provided herein.

10.02. No Reverter. No covenant, condition, restriction, or reservation contained in this Declaration is intended to create, or shall be construed as creating, a possibility of reverter.

10.03. Severability. In case any section or provision of this Declaration, or any Restriction, agreement, obligation, act or action, or part thereof, made, assumed, entered into, done or taken under this Declaration or a Restriction, or any application thereof, is held to be illegal or

invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder of this Declaration or any other section or provision of this Declaration or any other Restriction, agreement, obligation, act or action, or part thereof, made, assumed, entered into, done or taken under this Declaration, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein. Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, Restriction, agreement, obligation, act, action, part, or application, all of which shall be deemed to be effective, operative, made, assumed, entered into, done or taken in the manner and to the fullest extent permitted by law from time to time.

10.04. Construction. The Board, where specifically authorized herein to act, shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

10.05. Governing Law. This Declaration shall be governed by, construed under and enforced in accordance with the laws of the State of Ohio. The venue for any disputes arising under the Declaration will be the Warren County Common Pleas Court.

10.06. Headings. The headings of the Articles and Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

10.07. Interpretation and References. Any reference in this Declaration to a section or provision of the Revised Code or to the laws of the State shall include that section or provision and those laws as from time to time amended, modified, revised, supplemented or superseded. However, no such amendment, modification, revision, supplementation or supersession, or further action by the General Assembly, shall alter the obligation to pay the Community Development Charge in the amount and manner, and at the times provided in this Declaration, or otherwise impair the application of the Restrictions, except to the extent that the Restrictions cannot be sustained by reason of such amendment, modification, revision, supplementation or supersession.

Unless the context otherwise indicates, the masculine gender shall be deemed to include the feminine and neuter, and the singular shall be deemed to include the plural, and vice versa.

References in this Declaration to sections and articles, unless otherwise stated, are to sections and articles of this Declaration. The terms “hereof,” “herein,” “hereby,” “hereto,” and “hereunder,” and similar terms, mean and refer to this Declaration.

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EXHIBIT A

Description of Initial Property

The District shall include the following parcels in the City of Franklin identified by the Warren County Auditor as parcel numbers for tax year 2023, including as the parcels may be split or combined from time to time:

[INSERT PARCEL INFORMATION]

EXHIBIT B

District Map

The District appears as the parcels in the City of Franklin outlined in the map below in blue, identified by the Warren County Auditor as parcel numbers for tax year 2023, including as the parcels may be split or combined from time to time:

[INSERT MAP FROM PETITION]

EXHIBIT C

Initial Community Facilities

The proposed community facilities, as defined in Section 349.01(I) of the Revised Code, will include the following facilities:

- Biking and hiking trails, pedestrian trails and sidewalks designed to make the entire City easily accessible by foot or bike;
- Roadway construction and improvements necessary to support the District;
- Construction of sanitary sewer, storm sewer, and water improvements;
- Water, storm water, and sewer improvement costs;
- Street lighting;
- Excavation and grading;
- Common area gathering park benches;
- Park and recreational improvement costs;
- Municipal facilities;
- Child care centers;
- Recreation halls;
- Education facilities;
- Healthcare facilities including hospital facilities;
- Telecommunications facilities, including all facilities necessary to provide telecommunications service as defined in section 4927.01 of the Revised Code;
- Recreational facilities, natural resource facilities, including parks and other open space land, lakes and streams;
- Cultural facilities;
- Off-street parking facilities;
- Energy facilities including those for renewable or sustainable energy sources, and steam, gas, or electric lines or installation;
- Landscaping of public property;
- Tree removal;
- Land acquisition necessary in connection with the Community Facilities; and
- Other costs of the new community development program within the meaning of Section 349.01(J) of the Revised Code, including inspection costs, testing, water, storm water, and waste water connection fees, contractor fees, general contractor fees, legal fees, property taxes, appraisals and market studies, civil engineering and staking fees, development fee, environmental engineering, geotechnical engineering, and permitting; and costs of issuance of, debt service reserve funding of, and capitalized interest relating to any debt issued pursuant to Section 349.05 of the Revised Code, all costs related to land acquisition and land development, the acquisition, construction, maintenance, and operation of community facilities and offices of the community authority, and of providing furnishings and equipment therefor, financing charges including interest prior to and during construction and for the duration of the new community development program, planning expenses, engineering expenses, administrative expenses including working capital, and all other expenses necessary and incident to the carrying forward of the community development program and necessary contingency amounts.

- The costs of financing the community facilities listed above, including specifically any “costs of permanent improvements” to the facilities as set forth in Ohio Revised Code Section 133.15(B), and incurred with respect to the community facilities, which “costs” specifically include any reimbursement payments for the reimbursement of the costs of the community facilities and the debt service on, and other expenses relating to the issuance of, any bonds, notes, or other obligations issued to finance the community facilities.

EXHIBIT D

Resolution No. 2024-[]