

**EXHIBIT A**  
**ORDINANCE 63-2024**

DEVELOPMENT AGREEMENT

*between the*

CITY OF SPRINGDALE,

*and*

SPRINGDALE - CINEMA, LLC  
an Indiana limited liability company

Project Name: Springdale Cinema Project

Dated: \_\_\_\_\_, 2024

DEVELOPMENT AGREEMENT  
(Springdale Cinema Project)

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into effective as of the Effective Date (as defined on the signature page hereof) among the CITY OF SPRINGDALE, an Ohio municipal corporation, 11700 Springfield Pike, Springdale, Ohio 45246 (the “City”), SPRINGDALE – CINEMA LLC, 550 E. Washington Street, Indianapolis, Indiana 46204, an Indiana limited liability company (“**Developer**”), and, solely for purposes of providing the indemnity required under Section 7(C) of this Agreement, MILHAUS, LLC, 550 E. Washington Street, Indianapolis, Indiana 46204, a Delaware limited liability company (sometimes referred to herein as “**Indemnitor**”).

RECITALS

A. Developer, through its affiliate Milhaus Properties, LLC, has entered into a contract (the “**Purchase Agreement**”) to purchase approximately 30 acres of real property located at 505 West Crescentville Road, as depicted and described more particularly on Exhibit A (*Site Plan; Legal Description; Parcel List*) hereto (the “**Property**” or “**Project Site**”).

B. Developer seeks to develop the Property into approximately 216 market-rate apartment units, approximately 90 for-rent townhome units, and appurtenant parking and amenities at a total project cost (including property acquisition, construction, financing and other hard and soft costs) of approximately \$70,000,000.00 (as described more particularly in Exhibit B (*Scope of Work, Budget and Source of Funds*) hereto (the “**Private Project**”). In connection with the Private Project, the Developer will intends to undertake certain “public infrastructure improvements” (within the meaning of O.R.C. § 5709.40(A)(8)) benefiting the Private Project, as more fully set forth in the TIF Ordinance and in Exhibit C (*Public Infrastructure Improvements*) attached hereto (the “**Public Infrastructure Improvements**” and together with the Private Project, the “**Project**”).

C. Developer expects to commence construction on the Project by February 28, 2025 (the “**Commencement Deadline**”) and to substantially complete construction by June 30, 2027 (the “**Completion Deadline**”).

D. In order to provide for the timely development of the Project, the Developer has requested that the City authorize certain tax incentive programs in connection with such development.

E. City Council of the City (“**Council**”) has previously passed Ordinance No. 45-2018 on September 19, 2018 (“CRA Ordinance”), which designated an area that includes the Property as a “**Community Reinvestment Area**” commonly known as Springdale Community Reinvestment Area (“**CRA**”) pursuant to Chapter 3735 of the Ohio Revised Code.

F. The CRA was later expanded in accordance with Council Ordinance No. 05-2021 which was passed on March 17, 2021 and that certain Amended Confirmation – Area No. 061-74104-202 from the Ohio’s Community Reinvestment Area Program.

G. To facilitate the Project and promote its economic feasibility, the City intends to provide the following assistance to Developer, in each case on, and subject to, the terms of this Agreement:

- (i) one hundred percent (100%) exemption from real estate taxation on improvements to the Property under O.R.C. § 5709.40 for thirty (30) years by ordinance (the “**TIF Exemption**” and the “**TIF Ordinance**”, respectively), whereby (a) Developer, as owner of the Property, and all subsequent owners, will pay (or cause to be paid) statutory service payments (“**Service Payments**”) to the Hamilton County Treasurer in the same manner and amount as real property taxes on the Property would be paid had the TIF Exemption not been established, and (b) the Service Payments will be distributed by the Hamilton County

Treasurer to the City and placed in the Tax Increment Equivalent Fund established by the City for such purpose;

- (ii) pledge Net Service Payments (defined herein) received by the City to the Port Authority (defined herein), pursuant to a cooperative agreement (“**Cooperative Agreement**”) for the payment of debt service on TIF Bonds (defined herein); and
- (iii) pursuant to an exemption agreement in accordance with O.R.C. § 3735.671(A) (the “**CRA Exemption Agreement**”), which shall be in a form that is mutually agreeable to the parties hereto, a fifty percent (50%) exemption from real estate taxation on improvements to the Property under O.R.C. § 3735 for fifteen (15) years which shall commence the first year for which said improvements to the Property would first be taxable were the improvements not exempted from taxation under the CRA, which exemption shall be prioritized ahead of the exemption referred to in (i) above by ordinance of the City Council, if determined to be necessary under O.R.C. § 5709.911.

H. The Board of Education of the Princeton City School District (the “School Board”) has approved the TIF Exemption by its Resolution No. \_\_\_\_\_ and has entered into a School Compensation Agreement dated as of December 9, 2024 (the “**School Compensation Agreement**”) with the City and the Great Oaks Institute of Technology and Career Advancement (the “**JVSD**”) pursuant to which the City has agreed to compensate the School Board and JVSD, for taxes foregone as a result of the TIF Exemption, from Service Payments received by the City (such compensation being the “**School Board Payments**”).

I. Prior to any pledge or distribution of Service Payments as described herein, a portion of the applicable Service Payments will (i) first, be retained by the Hamilton County, Ohio Auditor as a collection fee, and (ii) second, be paid to the School Board and JVSD as School Board Payments under the School Compensation Agreement. The proceeds of any Service Payment actually received by the City, net of the payments described in this Paragraph I, are referred to in this Agreement as the “**Net Service Payments**”.

J. It is anticipated that the Port of Greater Cincinnati Development Authority will partner with an additional to-be-determined Ohio port authority (together, the “**Port Authority**”) and will act as issuer of Tax Increment Financing Bonds (“**TIF Bonds**”), the sole source of revenue for which will be the pledge of the Net Service Payments. The proceeds of the TIF Bonds will be expended on the costs of the Public Infrastructure Improvements.

K. Developer anticipates that the Project will result in (i) the creation of approximately 5 full-time equivalent jobs with an estimated annual payroll of \$400,000 and (ii) the creation of approximately 200 temporary construction jobs with an estimated total payroll of \$29,800,000 for the duration of the construction period of the Project.

L. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

M. Section 16 of Article VIII of the Ohio Constitution provides that, to enhance the availability of adequate housing in the state and to improve the economic and general welfare of the people of the state, it is in the public interest and a proper public purpose for the state or its political subdivisions, directly or through a public authority, agency, or instrumentality, to provide grants, loans or other financial assistance for housing in the state, for individuals and families, by the acquisition, financing, construction, leasing, rehabilitation, remodeling, improvement, or equipping of publicly- or privately-owned housing.

N. As used herein, the term “**Project Documents**” shall mean this Agreement, the Service Agreement (defined *infra*), the Cooperative Agreement (defined *infra*), the CRA Exemption Agreement, and

any and all other agreements pertaining to the Project entered into by the City, on the one hand, and Developer, on the other hand, or any instruments or other documents pertaining to the Project made by the City in favor of Developer or by Developer in favor of the City.

O. In addition to the Service Payments, the Developer will be required as a condition to the issuance of any TIF Bonds to enter into an agreement (the “**Service Agreement**”), which agreement shall be mutually agreeable to the parties hereto, pursuant to which the Developer and all future owners of the Property will agree to, among other things, make certain payments in excess of the Service Payments, to the extent such Service Payments are insufficient, for the purpose of making TIF Bond Service Charges (as defined herein) (the “**Minimum Service Payments**”).

R. The execution of this Agreement and the Project Documents was authorized by Springdale City Council by Ordinance No. \_\_\_\_\_, passed by City Council on December 18, 2024. Notwithstanding anything to the contrary in this Agreement, the City and Developer’s obligations hereunder are each conditioned upon the passage of the TIF Ordinance.

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

1. PUBLIC PURPOSE

The City is entering into this Agreement and intends to authorize the TIF Ordinance all in furtherance of the public purposes of the City to advance economic development and housing within the City in accordance with the provisions of Sections 13 and 16 of Article VIII of the Ohio Constitution, and Council has determined that undertaking such actions is in the best interests of the City.

2. DUE DILIGENCE INVESTIGATIONS.

(A) Developer’s Delivery of Due Diligence Materials to the City. Following the parties’ execution of this Agreement and at such time as such documents become available, Developer, at its sole expense, shall obtain and deliver to the City the following items, to the extent that the same have not yet been provided to the City (the “**Due Diligence Materials**”):

- (i) *Title:* A copy of Developer’s Owner’s Policy of or Commitment for Title Insurance;
- (ii) *Survey:* An ALTA survey of the Property showing all easements and other matters of record that can be shown on a survey;
- (iii) *Site Plan:* A detailed site plan;
- (iv) *Environmental:* A copy of whatever environmental reports Developer may obtain in connection with the Project, including, at a minimum, a Phase I environmental site assessment under current ASTM standards;
- (v) *Engineering Studies:* Geotechnical and other engineering studies for the Property, if obtained by Developer;
- (vi) *Construction Schedules:* A preliminary construction timeline showing anticipated commencement and completion dates for the Project;
- (vii) *Budget:* A preliminary development budget for the Project (the “**Budget**”);
- (viii) *Acquisition Costs:* a copy of the Purchase Agreement or any other documentation acceptable to the City evidencing Developer’s acquisition costs;
- (ix) *Financing:* Evidence satisfactory to the City that Developer has obtained sufficient financial resources (e.g. a letter of assurance) in order to commence and complete the Project, including the net proceeds of any TIF Bonds;
- (x) *Appraisal:* A projected “as built” appraisal of the Project (but only if such an appraisal is required by Developer’s lender);
- (xi) *Service Payment Projections:* A detailed analysis showing the projected Service Payments that will be generated from the Project; and,
- (xii) *Port Authority Documents:* Such other information and documentation as may be required by the Port Authority.

(B) Copies of Due Diligence Materials to be Provided to the City. Without limitation of Developer's other obligations under this Agreement, Developer shall promptly provide to the City, any updates or supplements to the Due Diligence Materials.

(C) Contingency for Closing of Purchase Agreement. All reports and the like obtained by Developer from third parties and delivered to the City shall be recent (i.e., prepared or updated, as the case may be, within twelve (12) months from the date that the item is delivered to the City), and prepared by properly licensed and qualified companies or individuals reasonably acceptable to the City. In addition to the above Due Diligence Materials, Developer and the City may conduct whatever other investigations concerning the Project as they deem necessary, including without limitation investigations into the feasibility and likelihood of Developer obtaining all building, zoning and other approvals. If, during or at the conclusion of the due diligence investigations, any party determines that the Project is not feasible or desirable for any reason, then, notwithstanding anything in this Agreement to the contrary, such party may terminate this Agreement by giving the other party written notice thereof, whereupon this Agreement shall terminate and neither party shall thereafter have any rights or obligations hereunder. In the event that the Purchase Agreement is terminated pursuant to its terms prior to the acquisition of the Property by Developer (the "**Closing**"), then this Agreement shall automatically terminate and neither party shall thereafter have any rights or obligations hereunder. Upon issuance of the TIF Bonds, the termination rights of the parties under this Section 1(C) shall automatically terminate.

3. RESERVED.

4. PREPARATION OF PLANS AND SPECIFICATIONS; CONSTRUCTION BIDS.

(A) Preparation of Plans and Specifications. Promptly following the Effective Date, Developer shall prepare plans and specifications for the Project and shall submit the same to the City's Building Department for review and approval, consistent with the City's building permit approval process. The approved plans and specifications for the Project (including any and all changes thereto, subject to the City's review and approval solely on the criteria provided in the immediately preceding sentence) are referred to herein as the "**Final Building Plans**" with respect to the Project.

(B) Construction Bids. Following Closing, Developer shall obtain construction bids for the Project based on the Final Building Plans. Upon Developer's selection of the bids, Developer shall submit to the City an updated Budget for the Project.

5. CONSTRUCTION.

(A) Completion and Commencement of Construction. Developer shall (i)(a) apply for and receive the required building permits from the City's Building Department for construction of the Project and (b) commence construction of the Project in accordance with the Final Building Plans no later than the Commencement Deadline and (ii) complete construction of the Project (as evidenced by a final certificate of occupancy for the Project) in accordance with the Final Building Plans and no later than the Completion Deadline, unless either date is extended in writing by the City (such completion of construction shall hereinafter be known as "**Substantial Completion**"). The foregoing notwithstanding, the City may, upon Developer's request and at the City's sole discretion, permit the Commencement Deadline to be extended for up to one (1) year, in which event the Completion Deadline will be automatically extended a like period of time. Notwithstanding anything to the contrary herein, the Developer shall not be required to commence construction of the Project until such time as the City Council of the City has approved the Project Documents and the TIF Bonds have been issued.

(B) Inspection of Work. During construction of the Project, the City, its employees and agents shall have the right at all reasonable times, and upon reasonable notice, to enter upon the construction site to examine and inspect the progress of construction to determine whether Developer is complying with the requirements of this Agreement; provided, however, such entry shall not unreasonably interfere with ongoing construction activities related to the Project.

(C) Mechanics Liens. Developer shall not permit any mechanics' or other liens to be filed against the Project Site during construction. If a mechanics' lien shall at any time be filed, Developer shall within thirty (30) days after notice of the filing thereof, cause the same to be either discharged of record or bonded over.

(D) Fees Payable to the City. Without limitation of the foregoing, Developer acknowledges that, if applicable, (i) obtain all necessary permits and pay all necessary fees for the closure of any sidewalks and curb lanes of the adjacent streets if and when demolition or construction necessitates closing the adjoining streets or portions thereof, and (ii) perform construction of the Project in compliance with applicable laws.

## 6. CITY'S FINANCIAL SUPPORT.

(A) Statement of Intent Regarding TIF Bonds. It is the intention of the parties that the Net Service Payments will be pledged as security for the repayment of TIF Bonds to be issued by the Port Authority, the proceeds of which will be used to pay for or reimburse the costs of the Public Infrastructure Improvements. The foregoing pledge of Net Service Payments is not effected by this Agreement, but will instead be the subject of a mutually satisfactory cooperative agreement (the "**Cooperative Agreement**") to be negotiated by and among the City, the Port Authority, and the Developer, setting forth, among other things, the conditions for the issuance of the TIF Bonds, the timing of transfers of Net Service Payments from the City to the Port Authority, and the final budget for the Public Infrastructure Improvements. The City's funding commitment under this Agreement shall be limited to providing the Net Service Payments to the Port Authority for payment of the principal, interest, and administrative expenses due on the TIF Bonds from time to time (the "**TIF Bond Service Charges**"), all in accordance with the Cooperative Agreement. To the extent the Net Service Payments provided by the City are insufficient to satisfy the TIF Bond Service Charges, the City shall not be responsible for any shortfall.

(B) Statement of Intent Regarding Excess Net Service Payments. It is the intention of the parties that the Cooperative Agreement will include provisions to the effect that if Net Service Payments transferred to the Port Authority in any given bond year are in excess of the amount necessary to pay TIF Bond Service Charges and School Board Payments in that year, at the end of each year, such surplus payments will be transferred to the City and the City may retain such excess Net Service Payments for any lawful purpose, at its discretion (such excess Net Service Payments being hereinafter the "**Residual Service Payments**").

(C) Acknowledgment Regarding Residual Service Payments. Developer acknowledges and agrees that notwithstanding anything to the contrary in this Agreement or any other Project Document, (1) Developer shall have no right or standing to dispute or contest the City's use of the Residual Service Payments, and Developer hereby expressly waives any such right or standing, (2) as it respects Developer, the City may use the Residual Service Payments in any manner whatsoever, and (3) as it respects Developer, any description of what the City may or may not do with the Residual Service Payments, including any description in the TIF Ordinance, is for informational purposes only and is not enforceable by Developer at law or in equity, whether as a taxpayer, as a party to this Agreement, or otherwise.

(D) No Other City Assistance. Except for the City's agreement to provide the financial assistance as described in this Agreement and the Cooperative Agreement (if such agreement is executed), the City shall not be responsible for any costs associated with the Project or the Public Infrastructure Improvements.

## 7. INSURANCE; INDEMNITY.

(A) Insurance during Construction. From the time that construction associated with the Project commences, until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General

Liability insurance of at least \$2,000,000 per occurrence, combined single limit/\$2,000,000 aggregate, naming the City as an additional insured with respect to the Project, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed as part of the Project, (iii) worker's compensation insurance in such amount as required by law, and (iv) all insurance as may be required by Developer's construction lenders, if any. Developer's insurance policies shall (a) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, that are authorized to do business in Ohio, and that have an A.M. Best rating of A VII or better, and (b) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Prior to commencement of construction of the Project, Developer shall send proof of all such insurance to the City at such address as may be specified by the City from time to time.

(B) Waiver of Subrogation. Developer hereby waives all claims and rights of recovery, and on behalf of its insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered by the insurance required under this Agreement, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Developer shall at all times protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) Indemnity. Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify and hold the City, its officers, council members, employees and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation reasonable attorneys' fees), demands, judgments, liability and damages suffered or incurred by or asserted against the Indemnified Parties as a result of or arising from the acts of Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Developer in connection with the Project. The obligations of Developer under this paragraph shall survive termination of this Agreement. As used herein, "**Claims**" means, collectively, any and all actions, suits, claims, losses, costs (including without limitation attorneys' fees), demands, judgments, liability and damages.

8. Casualty; Eminent Domain. Except as otherwise provided in the Service Agreement, if the improvements are damaged or destroyed by fire or other casualty during construction, or if any portion of the Property is taken by exercise of eminent domain (federal, state or local), Developer may elect to repair and restore the affected property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Property was in immediately prior to such occurrence, subject to (a) receipt of sufficient insurance proceeds, or (b) receipt of funds from Developer's lender, as applicable. To the extent the City's participation is required, the City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the proceeds are insufficient to fully repair and restore the affected property, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth herein, including without limitation obtaining the City's approval of the plans and specifications if they deviate from the original Final Building Plans. Developer shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Property is being repaired or restored.

## 9. DEFAULT; REMEDIES.

(A) Default. The occurrence of any of the following shall be an "event of default" under this Agreement:

(i) Prior to the Substantial Completion of the Project:

(a) the dissolution of Developer, the filing of any bankruptcy or insolvency proceedings by any such entity, or the making by any such entity of an assignment for the benefit of creditors which remains unstayed or undismitted for a period of sixty (60) days following filing thereof, or

(b) the filing of any bankruptcy or insolvency proceedings by or against Developer, the appointment of a receiver (temporary or permanent) for any such entity, the attachment of, levy upon, or seizure by legal process of any property of any such entity, or the insolvency of any such entity, unless such appointment, attachment, levy, seizure or insolvency is cured, dismissed or otherwise resolved to the City's satisfaction within sixty (60) days following the date thereof; or

(ii) The occurrence of a Specified Default (as defined below), or a failure of Developer to perform or observe (or cause to be performed or observed) any obligation, duty, or responsibility under this Agreement or any other Project Document, and failure by such defaulting party to correct such default within thirty (30) days after the receipt by Developer of written notice thereof from the City (the "**Cure Period**"), other than a Payment Default (as described below), in which case there shall be a Cure Period of 5 business days after such entity's receipt of written notice thereof from the City; *provided, however*, that if the nature of the default (other than a Payment Default) is such that it cannot reasonably be cured during the Cure Period, Developer shall not be in default under this Agreement so long as the defaulting party commences to cure the default within such Cure Period and thereafter diligently completes such cure within sixty (60) days after receipt of the City's initial notice of default. Notwithstanding the foregoing, if Developer's failure to perform or observe any obligation, duty, or responsibility under this Agreement creates a dangerous condition or otherwise constitutes an emergency as determined by the City in good faith, an event of default shall be deemed to have occurred if such entity fails to take reasonable corrective action immediately upon discovering such dangerous condition or emergency. As used in this section, "**Specified Default**" means the occurrence of any of the following:

- (a) Payment Default. Any payment due to the City under this Agreement is not made when due, subject to the 5 business day Cure Period described above (a "**Payment Default**").
- (b) Development Default. Developer (1) fails to comply with Section 4 or Section 5 of this Agreement or (2) abandons the Project.
- (c) Misrepresentation. Any representation, warranty or certification of Developer made in connection with this Agreement or any other Project Document shall prove to have been false or materially misleading when made.

(B) Remedies. Upon the occurrence of an event of default under this Agreement which is not cured or corrected within any applicable Cure Period, the City shall be entitled to (i) terminate this Agreement with respect to a defaulting party by giving the defaulting party written notice thereof and, without limitation of its other rights and remedies, and with or without terminating this Agreement, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such event of default, all at the sole expense of the defaulting party, or (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including without limitation pursuing an action for specific performance. The defaulting party shall be liable for all costs and damages, including without limitation attorneys' fees, suffered or incurred by the City as a result of a default or event of default under this Agreement or the City's termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty, or to pursue any remedy, under this Agreement or any other Project Document shall not constitute a waiver of the breach of such covenant or of such remedy. Notwithstanding the foregoing, or any termination of this Agreement, if the TIF Bonds are issued, then any remedies taken by the City under this Agreement will not adversely affect any pledge of the Net Service Payments made to the Port Authority under the Cooperative Agreement (if any) to secure payment of the TIF Bond Service Charges.

(C) Permitted Mortgagees – Notice & Opportunity to Cure. Notwithstanding the foregoing provisions of this Section, the City acknowledges and agrees that: (i) Developer will or may obtain one or more loans in connection with the construction and/or future ownership of the Project, (ii) following the parties' execution of this Agreement, Developer may grant to its lenders one or more mortgages and other



security instruments with respect to Developer's interests in the Property as security for the repayment of such loans (each a "**Permitted Mortgage**", with the holder of each such Permitted Mortgage being referred to herein as a "**Permitted Mortgagee**"), (iii) if the City sends a notice of default to Developer under this Agreement and intends to exercise any right it may have under this Agreement by reason of such default, the City shall, prior to exercising any right (but not necessarily concurrently with the delivery of a notice of default), send a copy of such notice of default to each Permitted Mortgagee (but only if the Permitted Mortgagee shall have previously provided the City with the address to which such notices to the Permitted Mortgagee shall be sent), and (iv) the City shall permit each Permitted Mortgagee a reasonable opportunity to cure Developer's default; *provided, however*, that if the Permitted Mortgagee has not notified the City in writing, within sixty (60) days after receiving a copy of the notice of default, that the Permitted Mortgagee has commenced to cure the default (by way of instituting foreclosure proceedings or otherwise), or if the Permitted Mortgagee notifies the City in writing, within sixty (60) days after receiving a copy of the notice of default, that the Permitted Mortgagee has commenced to cure the default but the Permitted Mortgagee fails to completely cure the default to the City's reasonable satisfaction within one hundred twenty (120) days after receiving a copy of the notice of default, the City shall be free to exercise its rights pursuant to this Agreement, including, without limitation, termination of this Agreement. Nothing in this Agreement shall be construed as requiring any Permitted Mortgagee to cure defaults of Developer under this Agreement or any Project Document. If the nature of the default is such that the Permitted Mortgagee determines that, in order to cure such default, it is necessary to hire a contractor or other third party to do work on-site, all such persons and companies shall be subject to the City's prior written approval and shall perform such work in accordance with the terms and conditions of this Agreement and the other Project Documents.

10. **NOTICES.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City Administrator  
City of Springdale  
11700 Springfield Pike  
Springdale, Ohio 45246

*with a copy to:*

Strauss Troy Co., LPA  
Attn: Joseph. J. Braun, Esq.  
150 E. 4<sup>th</sup> Street, Suite 400  
Cincinnati, Ohio 45202

Keating Muething & Klekamp, PLL  
Attn: P. Andrew Spoor, Esq.  
1 E. 4<sup>th</sup> Street, Suite 1400  
Cincinnati, Ohio 45202

To Developer:

Milhaus, LLC  
Attention: Tadd M. Miller  
550 E. Washington Street  
Indianapolis, IN 46204

*with a copy to:*

Dinsmore & Shohl LLP  
Attn: Samantha R. Hargitt, Esq.  
Attn: E. Joseph Kremp, Esq.  
One Indiana Square, Suite 1800  
Indianapolis, IN 46204

11. **REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Developer is a limited liability company duly organized and validly existing under the laws of the State of Indiana and is qualified to do business in Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the States of Ohio and Indiana, and it is not in violation of any laws of the States of Ohio or Indiana relevant to the transactions contemplated by this Agreement or any other Project Document.

(ii) Developer has full power and authority to execute and deliver this Agreement and every other Project Document to which it is or will be a party and to carry out the transactions provided for herein and therein. This Agreement and each other Project Document to which Developer is a party has by proper action been duly authorized, executed and delivered by Developer and all actions necessary have been taken to constitute this Agreement and the other Project Documents to which Developer is a party, when executed and delivered, valid and binding obligations of Developer.

(iii) The execution, delivery and performance by Developer of this Agreement and each other Project Document to which it is a party and the consummation of the transactions contemplated hereby and thereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or the organizational documents of Developer, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is it in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting it, at law or in equity or before or by any governmental authority, which would materially adversely affect Developer's ability to perform the Developer's obligations set forth under this Agreement.

(v) Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting it that could reasonably be expected to interfere substantially with operations of the Project or materially and adversely affect the financial condition of the Project.

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of it or the Project have been reviewed by it and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vi) There are no known circumstances existing, and no known events have occurred, which with the lapse of time or action by a third party could result in Developer's being unable to perform its obligations hereunder (including any pending or threatened legal proceedings);

(vii) Developer will obtain any and all permits, authorizations or consents, or applications therefore, required to be filed with or obtained from the City or any other necessary governmental entity relating to construction of the Project and the commencement of the use thereof for the purposes intended arising under any laws, statutes, ordinances, rules or regulations of the City or any other necessary governmental entity, including without limitation laws, statutes, ordinances, rules or regulations relating to environmental protection, recognizing that the Developer has the same rights and remedies as any other governmental applicant and may utilize any administrative, judicial, legislative or other process (appeal or otherwise) without prejudice with respect to its development, construction or use of the Project; and

(viii) Developer will at all times during the life of this Agreement act in good faith and cooperate with the City in the pursuit of the objective of this Agreement which is the completion of construction and commencement of use of the Project as contemplated herein.

## 12. REPORTING REQUIREMENTS.

(A) Submission of Records and Reports; Records Retention. Developer shall collect, maintain, and furnish to the City upon City's request such accounting, financial, business, administrative, operational and other reports, records, statements and information pertaining to the Project, or this Agreement, including without limitation audited financial statements, bank statements, income tax returns, information pertinent to the determination of financing of the Project, and such other information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (collectively, "**Records and Reports**"). All Records and Reports compiled by Developer and furnished to the City shall be in such form as required by the jurisdictional agency requesting such information. Developer shall retain all Records and Reports until the date that is 3 years following expiration of the Development Agreement Term, or such later time as may be required by applicable law (the "**Retention Termination Date**").

(B) City's Right to Inspect and Audit. During construction of the Project and thereafter until the Retention Termination Date, Developer shall permit the City and its designees and auditors to have full access to and to inspect and audit its Records and Reports no more frequently than once every calendar year. In the event any such inspection or audit discloses a material discrepancy with information previously provided by Developer to the City, Developer shall reimburse the City for its out-of-pocket costs associated with such inspection or audit.

(C) Annual Jobs & Investment Report. Developer shall provide an annual report no later than March 1 of each calendar year and, in a form mutually agreeable to the parties hereto, (each a "**Jobs and Investments Report Form**"), regarding total real property, personal property, and employment, including jobs created and retained, at the Project Site.

13. GENERAL PROVISIONS.

(A) Assignment; Change of Control.

(i) Assignment. Prior to the Substantial Completion of the Project, Developer shall not assign its rights or interests under this Agreement without the prior written consent of the City; *provided* that (i) the collateral assignment of Developer's rights under this Agreement or the Project Documents to its lenders for the Project and/or to the Authority in connection with the issuance of the TIF Bonds, and (ii) the assignment of its rights or interests under this Agreement to an affiliated entity, which shall mean any entity that is owned or controlled by Developer, or by a parent of Developer, or any entity in which Developer or the current principal(s) of Developer is/are a general or managing partner/member (collectively, "**Permitted Transferee**"), shall each be permitted without any further consent or approval of, but only after ten (10) days prior written notice to, the City so long as it is not otherwise inconsistent with the terms and conditions of this Agreement or any of the Project Documents. Notwithstanding anything herein to the contrary, Developer shall remain jointly and severally liable with such assignee for all of its obligations hereunder notwithstanding such assignment unless and until City agrees to such assignment in writing and to a release of Developer in City's sole discretion. After Substantial Completion of the Project, the Developer may assign its rights and interests under this Agreement, but only after ten (10) days prior written notice to the City, and so long as such assignment is not otherwise inconsistent with the terms and conditions of this Agreement or any of the Project Documents.

(ii) Change of Control. Prior to the Substantial Completion of the Project, Developer shall not permit a Change of Control (as defined below). As used herein, "**Change of Control**" means a change in the ownership of Developer such that either Tadd M. Miller or Milhaus, LLC, a Delaware limited liability company, lacks the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of ownership interests in Developer, by contract, or otherwise.

(iii) City Approval of Assignment. In the event that the consent of the City is required under clauses (i) and (ii) above, prior to the date of Substantial Completion, so long as no event of default has occurred and is continuing under this Agreement or any other Project Document, the City may, in good faith, withhold consent to a Change of Control or an assignment only if (a) the proposed transfer is prohibited by applicable law, or (b) the proposed transferee is, in the City's reasonable judgment, not capable of

performing the obligations of Developer under this Agreement and the other Project Documents, which judgment shall exclusively be based on the following factors: (1) the experience of the proposed transferee in operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Project and performing other projects, and (2) the past performance history and reputation of the proposed transferee and its direct or indirect controlling beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective affiliates (including the absence of criminal, civil or regulatory claims or actions against any such entity or person). The City Administrator shall have 30 days from the date on which he or she receives written notice in accordance with this Agreement of the proposed assignment or Change of Control (the “**City Administrator Review Period**”) to determine whether he or she intends to consent thereto. The City Administrator shall provide written notice to Developer of any decision to refuse to consent, including all material supporting information (the “**Rejection Notice**”), within the City Administrator Review Period. In the event the City Administrator fails to do so, he or she shall be deemed to have consented to such assignment or Change of Control. Notwithstanding anything herein or elsewhere to the contrary, no assignment of this Agreement shall relieve Indemnitor of its obligations under Sections 5(E) and 7(C) of this Agreement without the written consent of the City, which consent may be withheld in the City’s sole discretion.

(B) Entire Agreement; Conflicting Provisions. This Agreement, together with the other Project Documents, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. In the event that any of the provisions of this Agreement purporting to describe specific provisions of other Project Documents are in conflict with the specific provisions of such other Project Documents, the provisions of such other Project Documents shall control.

(C) Amendments. This Agreement may be amended only by a written amendment signed by the parties hereto. The signature of the Indemnitor shall only be required insofar as such amendment affects Sections 5(E), 7(C), or 13(A)(iii) (with respect to the non-assignability of the Indemnitor’s obligations).

(D) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. Developer hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(F) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(G) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(H) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The parties represent that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties’ execution of this Agreement.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(L) Counterparts. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original, and all of which shall, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Agreement in the presence of the other parties.

(M) Permits. Developer shall obtain and maintain all necessary City and other governmental permits, licenses and other approvals and shall comply with all applicable federal, state and local laws, codes, ordinances and other governmental requirements that are applicable to the Project. By executing this Agreement, the City makes no representations or other assurances to any party that Developer will be able to obtain whatever variances, permits or other approvals from the City's Buildings Department, City Planning Commission, or City Council that may be required in connection with the Project.

(N) Contingency for Legislative Authorization from City Council. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council does not pass any and all additional ordinances as may be necessary for the City to carry out the terms of this Agreement, including but not limited to the TIF Ordinance.

(O) Transfer of Interest to Port Authority. Nothing in this Agreement shall be construed to prohibit Developer from entering into or as requiring the Developer to enter into a ground lease and leaseback (or sale and leaseback) arrangement with respect to the Property (the "**Port Authority Transaction**") in which fee title or ground leasehold title to the Property is held by an Ohio port authority formed and operating pursuant to Ohio Revised Code Chapter 4582; *provided, however*, that (a) the purpose for the Port Authority Transaction is to take advantage of the sales tax exemption on the purchase of Project building materials and (b) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port Authority Transaction, at least 10 business days prior to any conveyance of the Property to such a port authority. Developer may not assign its rights, obligations, or any other interest under this Agreement to any other party except as in accordance with the terms of this Agreement, but at any time, subject to the provisions of this paragraph, once Developer has obtained the fee interest in the Property, Developer may convey the same fee interest, or a ground leasehold interest therein, to the Port Authority, in the manner, and subject to the terms described, above. It is also understood and agreed that the Port Authority may convey such interest back to Developer pursuant to the terms governing the Port Authority Transaction.

(P) Applicable Laws. Developer shall comply with all applicable local, state, and federal laws, including, but not limited to, compliance with State of Ohio Prevailing Wage requirements.

(Q) Term of Development Agreement. The term of this Development Agreement shall commence on the Effective Date and shall end on the date that is one year (1) year after the Substantial Completion date (such term being the "**Development Agreement Term**"). Upon the conclusion of the Development Agreement Term, and except for those provisions herein that expressly survive termination, this Agreement shall be of no further force and effect. Notwithstanding anything herein or elsewhere to the contrary, the termination of this Agreement for whatever reason, whether by default or otherwise, shall in no way affect the efficacy of the Cooperative Agreement, the Service Agreement, or the CRA Agreement, all which documents have terms and efficacy periods independent of this Agreement.

(R) Recitals. The parties acknowledge the truth and accuracy of the foregoing Recitals in this Agreement, which are hereby incorporated herein by this reference and made a part of this Agreement in their entirety.

14. FEES AND EXPENSES. The Developer agrees to pay, from time to time, the City's outside counsel fees and costs incurred in the drafting of this Agreement and the Project Documents within ten business days of the presentation of such fees and costs by the City to the Developer for payment (collectively, the "**Outside Counsel Fees**"). Notwithstanding anything herein or elsewhere to the contrary, the City will agree in the Cooperative Agreement that the Outside Counsel Fees may be included for reimbursement from proceeds of the TIF Bonds, provided the Authority has no objection.

15. FORCE MAJEURE. Except with respect to the obligations set forth in Section 7(C) of this Agreement, in any case where any party hereto is required to do any act, delays caused by or resulting from Acts of God, war, civil commotion, fire, flood, or other casualty, labor difficulties, shortage of labor, materials or equipment, government regulations, pandemic, unusually severe weather or other causes beyond such party's reasonable control, shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time, or a "reasonable time", and such time shall be deemed to be extended by the period of such delay. Notwithstanding the foregoing, the preceding sentences shall not apply to obligations to pay money hereunder.

16. EXHIBITS. The following Exhibits are attached to this Agreement and made a part hereof:  
*Exhibit A - Site Plan; Legal Descriptions*  
*Exhibit B - Scope of Work, Budget and Source of Funds*  
*Exhibit C – Public Infrastructure Improvements*

*[SIGNATURES ON FOLLOWING PAGE]*

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF SPRINGDALE, OHIO

SPRINGDALE - CINEMA, LLC,  
an Indiana limited liability company

By: \_\_\_\_\_  
Brian C. Uhl, City Administrator

By: \_\_\_\_\_  
Tadd M. Miller, Manager

Date: \_\_\_\_\_, 2024

Date: \_\_\_\_\_, 2024

Authorized by resolution dated \_\_\_\_\_, 2024

APPROVED AS TO FORM:

\_\_\_\_\_  
Joseph J. Braun, Law Director

SOLELY FOR PURPOSES OF ACKNOWLEDGING ITS  
GUARANTY OBLIGATIONS SET FORTH IN SECTION  
7(C) HEREOF:

MILHAUS, LLC

By: \_\_\_\_\_  
Tadd M. Miller, CEO

Date: \_\_\_\_\_

CITY FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the City of Springdale, Ohio, hereby certifies that the moneys required to meet the obligations, if any, of the City during the year 2024 under the foregoing Development Agreement have been lawfully appropriated by the Council of the City of Springdale, Ohio for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

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Finance Director  
City of Springdale, Ohio

Dated: \_\_\_\_\_, 2024



EXHIBIT A  
to  
Development Agreement

SITE PLAN; LEGAL DESCRIPTION



Situated in the City of Springdale, County of Hamilton, State of Ohio, described as follows:

Situated in Section 7, Town 2, Entire Range 2 Between the Miamis, Springfield Township, The City of Springdale, Hamilton County, Ohio and being part of the NAI Entertainment Holdings, LLC (29.7446 acres) as recorded in Official Record 11594, Page 1208 and in Prior Registered Land Certificate #227725 of the Hamilton County, Ohio Recorder's Office, containing 18.0377 acres being further described as follows:

Begin at a found monument box with an iron pin at the northwest corner of said Section 7, said monument box being on the north line of said Hamilton County/City of Springdale and in the centerline of Crescentville Road; thence, with said Section line, the north line of said Hamilton County/City of Springdale and the centerline of said Crescentville Road, North  $86^{\circ} 12' 23''$  East, 280.05 feet to the northeast corner of Budgetel Subdivision as recorded in Plat Book 252, Page 1, said corner being the True Point of Beginning;

thence, from the True Point of Beginning, thus found departing said Budgetel Subdivision and continuing with said Section line, the north line of said Hamilton County/City of Springdale and the centerline of said Crescentville Road, North 86° 12' 23" East, 1040.00 feet;

thence, departing said Section line, the north line of said Hamilton County/City of Springdale and the centerline of said Crescentville Road, South 04° 43' 23" West, passing the south right of way of said Crescentville Road at a set iron pin at 70.81 feet and with the west right of way of Northwest Boulevard, a total distance of 808.57 feet to the northeast corner of Lot A of Northwest Business Center as recorded in Prior Registered Land Plat Book 71, Page 82, said corner being referenced by a found 5/8"iron pin with no cap being North 66° 03'00"East, 0.41 feet;

thence, departing the west right of way of said Northwest Boulevard and with the north line of said Lot A, South 85° 41' 53" West, 143.81 feet, being referenced by a found 1"iron pin with no cap being North 24° 59'21"East, 0.78 feet;

thence, with and departing said Lot A, South 86° 02' 23" West, 776.45 feet to a found 1"iron pipe at the southeast corner of ATL Properties LLC as recorded in Official Record 10628, Page 1460;

thence, with said ATL Properties LLC and with Lot 3 of Budgetel Subdivision as recorded in Plat Book 252, Page 1, North 03° 47' 37" West, passing a set 5/8"iron pin at the south right of way of said Crescentville Road at 763.19 feet a total distance of 803.19 feet to the True Point of Beginning containing 18.0377 acres of land more or less subject to all legal highways, easements, restrictions and agreements of record.

EXHIBIT B  
to  
Development Agreement

SCOPE OF WORK, BUDGET AND SOURCE OF FUNDS

I. SCOPE OF WORK

New construction of approximately 23 buildings totaling approximately 216 apartment units and approximately 90 for-rent townhome units, and associated common areas such as a clubhouse and leasing center, pool and amenity deck, and parking.

II. SOURCES AND USES OF FUNDS

<b>SOURCES</b>	<b>Closing Budget</b>	<b>Change Orders</b>	<b>% Complete</b>	<b>Remaining</b>
Debt Financing	\$40,295,788	\$0	0%	\$40,295,788
Equity	\$21,883,843	\$0	0%	\$21,883,843
Other/Equity Sources	\$7,900,000	\$0	0%	\$7,900,000
<b>Total Sources</b>	<b>\$70,079,631</b>	<b>\$0</b>	<b>0%</b>	<b>\$70,079,631</b>
<b>USES</b>	<b>Closing Budget</b>	<b>Change Orders</b>	<b>% Complete</b>	<b>Remaining</b>
Land Purchase	\$3,700,000	\$0	0%	\$3,700,000
Construction	\$53,608,834	\$0	0%	\$53,608,834
Construction Management	\$90,000	\$0	0%	\$90,000
Furniture, Fixtures & Equipment	\$585,000	\$0	0%	\$585,000
Due Diligence	\$118,900	\$0	0%	\$118,900
Applications & Permits	\$821,645	\$0	0%	\$821,645
Legal	\$466,500	\$0	0%	\$466,500
Engineering	\$298,200	\$0	0%	\$298,200
Architectural	\$989,448	\$0	0%	\$989,448
Accounting	\$13,937	\$0	0%	\$13,937
Finance	\$2,089,824	\$0	0%	\$2,089,824
Tax, Insurance & Utilities	\$1,114,897	\$0	0%	\$1,114,897
Marketing	\$213,570	\$0	0%	\$213,570
Other Development Costs	\$127,500	\$0	0%	\$127,500
General Overhead	\$2,814,464	\$0	0%	\$2,814,464
Contingency	\$3,026,913	\$0	0%	\$3,026,913
<b>Total Uses</b>	<b>\$70,079,631</b>	<b>\$0</b>	<b>0%</b>	<b>\$70,079,631</b>

EXHIBIT C  
to  
Development Agreement

PUBLIC INFRASTRUCTURE IMPROVEMENTS

(Preliminary and subject to finalization in Cooperative Agreement)

Acquisition of Land	\$3,700,000
Demolition	735,791
Stormwater and Flood Remediation	1,016,249
Gas & Electric Utilities	363,600
Parking Facilities	2,361,928
Administration	392,348
Financing Costs	314,931
<b>TOTAL</b>	<b>\$8,884,847</b>