

AN ORDINANCE DECLARING THE IMPROVEMENT OF CERTAIN REAL PROPERTY LOCATED IN THE VILLAGE OF WEST JEFFERSON, MADISON COUNTY, OHIO TO BE A PUBLIC PURPOSE; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; DESIGNATING SPECIFIC PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT, ONCE MADE, WILL DIRECTLY BENEFIT THE PARCELS FOR WHICH IMPROVEMENT IS DECLARED TO BE A PUBLIC PURPOSE; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; APPROVING THE EXECUTION OF A TIF AGREEMENT; CREATING A TAX INCENTIVE REVIEW COUNCIL; ESTABLISHING NONDISCRIMINATORY HIRING POLICIES; PROVIDING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40(B), 5709.42, 5709.43 AND 5709.85; AND DECLARING AN EMERGENCY.

WHEREAS, Ohio Revised Code ("R.C.") Section 5709.40(B) provides that this Council may, under certain circumstances, (i) declare improvement to parcels of real property located in the Village of West Jefferson (the "Village") to be a public purpose, thereby granting to that improvement an exemption from real property taxation, and (ii) designate specific public infrastructure improvements made, to be made, or in the process of being made that directly benefit, or that once made will directly benefit, the parcels for which improvement is declared to be a public purpose; and

WHEREAS, pursuant to R.C. Section 5709.40(D)(1), said exemption may be for up to one hundred percent (100%) of such improvement for up to thirty (30) years without approval of the board of education of the city, local or exempted village school district within the territory of which the improvement is or will be located if payments in lieu of taxes, as provided for in R.C. Section 5709.42, shall be paid to such school district in the amount of the taxes that would have been payable if the improvement had not been exempted from taxation; and

WHEREAS, the real property shown in Exhibit A hereto and incorporated herein by reference (the "Property") is located in the State of Ohio (the "State"), County of Madison (the "County"), and the Village, with each parcel of the Property referred to herein as a "Parcel" (whether as presently appearing on County tax duplicates or as subdivided or combined and appearing on future tax duplicates); and

WHEREAS, the current and future owners of the Property (each an "Owner" and collectively the "Owners") wish to develop the Property by constructing commerce distribution warehouse facilities and related improvements thereon and otherwise improving the Property (the "Project"), provided that the appropriate development incentives are available to support this development; and

WHEREAS, by separate ordinance, this Council is authorizing the execution of a Community Reinvestment Area Agreement (the "CRA Agreement") by and between the Village

and Duke Realty Ohio (the "Developer") to provide the Owners with one hundred percent (100%) real property tax exemptions for fifteen (15) years for the assessed value of structures constructed at the Property; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the Village to provide for service payments in lieu of real property taxes ("Service Payments," as further defined below) with respect to the Property pursuant to R.C. Section 5709.42; and

WHEREAS, this Council has determined that it is in the Village's best interest to enter into a tax increment financing agreement (the "TIF Agreement", a draft of which is attached hereto as Exhibit B) with the Developer pursuant to which the Developer would construct certain public infrastructure improvements identified in Exhibit C attached hereto and incorporated herein by reference (the "Developer Improvements") and be reimbursed for making the Developer Improvements; and

WHEREAS, to achieve cost and time efficiencies for the Village and to ensure proper coordination of construction of the public infrastructure improvements constituting the Developer Improvements with the Developer's construction of the Project, it is in the best interests of the Village that the construction of the Developer Improvements be performed by the Developer;

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of the Jefferson Local School District (the "School District") and the Board of Education of the Central Ohio Joint Vocational School District in accordance with and within the time period prescribed in R.C. Section 5709.83; and

WHEREAS, R.C. Section 5709.85(A) requires the legislative authority of any municipal corporation granting an exemption from taxation under R.C. Section 5709.40 to create a tax incentive review council ("TIRC"), which TIRC is required to perform an annual review of exemptions from taxation granted pursuant to R.C. Section 5709.40; and

WHEREAS, pursuant to R.C. Section 5709.832, the legislative authority of any municipal corporation that grants an exemption from taxation under R.C. Chapter 725 or 1728, or R.C. Sections 3735.67, 5709.40, 5709.41, 5709.62 or 5709.632 must develop policies that ensure that the recipient of the exemption practices nondiscriminatory hiring in its operations; and

WHEREAS, an emergency exists in the usual daily operations of the Village in that it is immediately necessary to approve tax exemptions for the Property for the preservation of the public health, peace, property and safety, that preservation being related to the need to proceed with public infrastructure improvements that directly benefit the Property immediately;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE OF WEST JEFFERSON COUNCIL, COUNTY OF MADISON, STATE OF OHIO:

Section 1. The Developer Improvements are hereby designated as public infrastructure improvements that, once made, will directly benefit the Property.

Section 2. The additional public infrastructure improvements listed on Exhibit D hereto (the "Public Infrastructure Improvements"), which may be, but are not required to be, constructed by the Village and/or private entities, are hereby designated as public infrastructure improvements that, once made, will directly benefit the Property.

Section 3. One hundred percent (100%) of the increase in the assessed value of the Property after the effective date of this Ordinance (which increase in assessed value is an "Improvement" as defined in R.C. Section 5709.40, but which Improvement shall not include the assessed value of any structures exempted under the CRA Agreement for the period and to the extent that the structures are exempt under the CRA Agreement) shall be a public purpose and shall be exempt from real property taxation commencing for each Parcel the earlier of the first day of (i) the tax year in which the Parcel (as it may be subdivided in connection with the acquisition of the Parcel by the Developer) is acquired by the Developer, or (ii) tax year 2028, and ending for each Parcel fifteen (15) years after such date.

Section 4. As provided in R.C. Section 5709.42, the Owner of any Parcel with an Improvement is required hereby to make annual payments in lieu of taxes to the County Treasurer on or before the final dates for payment of real property taxes. Each such payment (including interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not exempt from taxation (with the payments in lieu of tax, including any penalties and interest, the "Service Payments"). No Service Payments are required with respect to the assessed value of any structures exempted under the CRA Agreement for the period and to the extent that the structures are exempt under the CRA Agreement. The County Treasurer shall remit all Service Payments to the Village for deposit in the Duke Realty Municipal Public Improvement Tax Increment Equivalent Fund (the "Fund") established in Section 5 hereof, except for amounts paid directly to the School District as provided in Section 6 hereof. This Council hereby authorizes the Service Director (the "Director") or other appropriate officers of the Village to provide such information and certifications and execute and deliver, or accept delivery of such instruments as are necessary and incidental to collect those Service Payments and to make such arrangements as are necessary and proper for payment of the Service Payments. Any late payments shall be subject to penalty and bear interest at the then current rate established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time. The Service Payments shall be allocated and deposited in accordance with Sections 5 and 6 of this Ordinance.

No Owner shall, under any circumstances, be required in any tax year to both pay Service Payments with respect to an Improvement and reimburse local taxing authorities for the amount of real property taxes that would have been payable to local taxing authorities had the Improvement not been exempted from taxation pursuant to this Ordinance.

Section 5. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. Section 5709.43, the Fund, into which shall be deposited all of the Service Payments distributed to the Village with respect to the Improvement to the Property by or on behalf of the County Treasurer, as provided in R.C. Section 5709.42, except for amounts paid directly to the School District as provided in Section 6 hereof, and hereby appropriates all of the moneys deposited in the Fund from time to time to pay, semi-annually, any costs associated with the

Developer Improvements and costs of the Public Infrastructure Improvements, all as further specified in the TIF Agreement.

The Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, subject to the limits set forth in Section 3 hereof, after which said Fund shall be dissolved in accordance with R.C. Section 5709.43(D). Upon dissolution, any incidental surplus money remaining in the Fund shall be disposed of as provided in R.C. Section 5709.43(D).

Section 6. The County Treasurer shall make payments to the School District, solely from the Service Payments, in the amounts equal to the property tax payments that the School District would otherwise have received from the Improvement had the Improvement not been exempted pursuant to this Ordinance. No such payments to the School District shall be made with respect to the assessed value of any structures exempted under the CRA Agreement for the period and to the extent that the structures are exempt under the CRA Agreement. The Madison County Treasurer shall remit all remaining Service Payments to the Village for deposit in the Fund established in Section 5 hereof.

Section 7. The TIF Agreement between the Village and the Developer, substantially in the form attached to this Ordinance as Exhibit B, providing for construction of the Developer Improvements by the Developer and use of the Service Payments, including, but not limited to, for reimbursement to the Developer for costs of the Developer Improvements, is hereby approved and authorized, with changes or amendments thereto not inconsistent with this Ordinance and not substantially adverse to the Village as determined by the Mayor and which are approved by the Director. The Director, for and in the name of the Village, is hereby authorized to execute the TIF Agreement and any amendments thereto deemed by the Director to be necessary. The approval of changes or amendments by the Director, and the character of the changes or amendments as not being inconsistent with this Ordinance and not being substantially adverse to the Village, shall be evidenced conclusively by the execution thereof by the Director with the concurrence of the Mayor. Village ordinances, resolutions, and regulations, and State laws and regulations, that may be applicable to advertisement and competitive bidding for contracts of the Village, are declared inoperative with respect to the TIF Agreement and the construction of the Developer Improvements.

Section 8. This Council hereby authorizes the Director or other appropriate officers of the Village to take such actions as are necessary or appropriate to implement the transactions contemplated by this Ordinance, including the filing of one or more applications for exemption and any related forms in accordance with R.C. Section 5709.911.

Section 9. This Council hereby creates the TIRC pursuant to R.C. Section 5709.85(A). The TIRC shall meet annually to determine the increase in the true value of the Property on which there has been Improvement as a result of the exemption granted by this Ordinance, the value of the Improvement exempted pursuant to this Ordinance, the number of new employees or retained employees at the site of the Improvement as a result of the exemption granted by this Ordinance, and the exemption recipient's compliance with the nondiscriminatory hiring policies developed by the Village. This Council directs the Director to appoint two (2) members to serve on the TIRC, and hereby concurs in the appointments of such TIRC members by the Director.

This Council hereby authorizes the Director, or other appropriate officers of the Village, to take any and all actions necessary to assist in the appointment of the remaining members of the TIRC, including providing to the appropriate officials of the County, township (if any) and School District a copy of this Ordinance.

Section 10. The Village hereby establishes the following nondiscriminatory hiring policies for application to recipients of exemptions granted pursuant to this Ordinance and all other past and future tax exemptions granted by the Village pursuant to R.C. Chapter 725 and 1728, and R.C. Sections 3735.67, 5709.40, 5709.41, 5709.62, 5709.63 and 5709.632:

a. No tax exemption recipient may deny employment to an individual solely on the basis of race, color, religion, sex, national origin, age, disability, ancestry, or other non-job related criteria.

b. The TIRC shall review each exemption recipient's compliance with the foregoing nondiscrimination requirement and, if necessary, may submit to the Council written recommendations for enhancing compliance with the nondiscrimination requirement.

Section 11. The Director, or any other official, as appropriate, are each authorized and directed to sign any other documents, instruments or certificates and to take such actions as are necessary or appropriate to consummate or implement the actions described herein or contemplated by this Ordinance.

Section 12. Pursuant to R.C. Section 5709.40, the Director is hereby directed to deliver a copy of this Ordinance to the Director of the Department of Development of the State within fifteen (15) days after its passage. On or before March 31 of each year that the exemption set forth in Section 3 hereof remains in effect, the Director or other authorized officer of this Village shall prepare and submit to the Director of the Department of Development of the State the status report required under R.C. Section 5709.40(I).

Section 13. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision making bodies of the Village that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements.

Section 14. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of this Village and for the other reasons set forth in the preamble to this Ordinance is required to be immediately effective to allow for the completion of the Project and the construction of the Developer Improvements and the Public Infrastructure Improvements, which are necessary to provide the desired redevelopment in the Village.

WHEREFORE, this Ordinance shall be in full force and effect from and immediately after the passage and approval by the Mayor.

Deleena Ottales 5/23/07
President of Council Date

Date Received by Mayor 5/23/07

Thomas C. Phillips 5/23/07
Thomas C. Phillips, Mayor Date Approved

ATTEST:

Jack R. Hand 5/23/07
Clerk of Council Date

Approved as to Form:

Ronald C. Parsons _____
Date
Director of Law

EXHIBIT A to TIF Ordinance

DESCRIPTION OF PARCELS AFFECTED BY THE IMPROVEMENT

The Property is the real estate situated in the Village of West Jefferson, County of Madison and State of Ohio consisting of the parcel numbers listed below.

Parcel Numbers:

10-02010.000

10-02011.000

EXHIBIT B to TIF Ordinance

DRAFT TAX INCREMENT FINANCING AGREEMENT

This Tax Increment Financing Agreement (this "Agreement") is made and entered into as of _____, 2007 by and between the VILLAGE OF WEST JEFFERSON, Madison County, Ohio (the "Village"), an Ohio municipal corporation, and DUKE REALTY OHIO (the "Developer"), an Ohio general partnership with its principal office located at 5600 Blazer Parkway, Suite 100, Dublin, Ohio 43017.

RECITALS:

A. On various dates, the Developer has acquired or intends to acquire fee title to certain real property situated in the Village, a collective depiction of which real property is attached hereto as Exhibit A (the "Project Area") and incorporated herein by reference, with each parcel of real property within the Project Area referred to herein as a "Parcel" (whether as presently appearing on county tax duplicates or as subdivided or combined and appearing on future tax duplicates). The increase in assessed value of each Parcel subsequent to the adoption of the "TIF Ordinance" (as defined below) shall be referred to herein as the "Improvement"; provided, however, the Improvement shall not include the assessed value of any structures exempted under the "CRA Agreement" (defined below) for the period and to the extent that the structures are exempt under the CRA Agreement (i.e., the Village and the Developer intend for the CRA Agreement exemptions to take priority over the TIF Ordinance exemptions).

B. Provided appropriate economic development incentives are available, the Developer desires to develop a commerce center, including but not limited to large distribution center warehouse buildings and related improvements (the "Commerce Center") within the Project Area.

C. In connection with the development of the Commerce Center, the Developer intends to cause certain public infrastructure improvements to be constructed that will directly benefit the Project Area, as described in Exhibit B attached hereto (the "Developer Improvements").

D. In connection with the development of the Commerce Center, the Village intends to cause, but is not required to cause, certain additional public infrastructure improvements to be constructed that also will directly benefit the Project Area, as described in Exhibit C attached hereto (the "Public Infrastructure Improvements").

E. In connection with the development of the Commerce Center, one hundred percent real property tax exemptions for fifteen (15) years for the assessed value of structures shall be granted by the Village pursuant to the Community Reinvestment Area Agreement by and between the Village and the Developer, dated _____, 2007 (the "CRA Agreement").

F. In connection with the development of the Commerce Center, the Developer intends to cause certain other improvements, in addition to the Developer Improvements, to be

made to the Project Area at a total cost of approximately \$100,000,000 that shall be subject to the tax exemptions set forth in the CRA Agreement.

G. Pursuant to Ohio Revised Code ("R.C.") Section 5709.40, Improvement to parcels of real property may be declared by a municipal corporation to be a public purpose.

H. Pursuant to Ordinance No. _____, passed _____, 2007 (the "TIF Ordinance"), the Village of West Jefferson Village Council (the "Council") declared that the Improvement is a public purpose pursuant to R.C. Section 5709.40 and that 100% of the Improvement is exempt from real property taxation for a period of fifteen (15) years.

I. The TIF Ordinance requires the Developer and all future owners of the Project Area (each individually an "Owner" and collectively the "Owners") to make annual service payments in lieu of real property taxes (the "Service Payments", as defined below) equal to the real property taxes that would have been payable had the Improvement not been exempt from real property taxation pursuant to the TIF Ordinance.

J. The Village has determined and the TIF Ordinance provides that a portion of the Service Payments shall be used to pay the Jefferson Local School District (the "School District"), pursuant to R.C. Section 5709.42, amounts equal to the real property taxes that the School District would have received if the Improvement had not been exempted from real property taxation pursuant to the TIF Ordinance.

L. The TIF Ordinance authorizes the Service Payments to be used (i) to make payments to the School District; (ii) to make payments to the Developer for the Developer Improvements, (iii) to pay for all or any portion of the Public Infrastructure Improvements, and (iv) pursuant to R.C. Section 5709.43(D), for deposit into a general fund of the Village.

M. The TIF Ordinance has approved the terms of this Agreement and authorized its execution on behalf of the Village.

N. The parties desire to enter into this Agreement on the terms and conditions hereinafter set forth to provide for the collection of and disbursement of the Service Payments and to enable the construction of the Developer Improvements within the Project Area.

NOW, THEREFORE, in consideration of the premises and covenants contained herein and to induce the Developer to proceed with the construction of the Developer Improvements, the Developer and the Village hereto agree as follows:

Section 1. Construction of Developer Improvements.

A. Authorization, Cooperation, Dedication, and Maintenance. The Developer is not obligated to design and construct or cause to be constructed the Developer Improvements. The Developer, at its option, may choose to design and construct or cause to be constructed within and/or adjacent to the Project Area acquired by the Developer the Developer Improvements. Construction of the Developer Improvements is estimated, but not required, to commence by December 31, 2000 and is estimated, but not required, to be substantially complete

by December 31, 2009. The Village hereby authorizes the design and construction of the Developer Improvements by the Developer or its representatives for the Village. The Village agrees to provide timely cooperation in connection with the design and construction of the Developer Improvements, including, without limitation, completing inspections, providing reasonable approvals, and granting permits.

The Village agrees that it will accept the Developer Improvements dedicated to the Village, when and as constructed and dedicated by the Developer. The Village further agrees that it shall accept any additional public infrastructure improvements (even though not Developer Improvements), when and as constructed and dedicated by the Developer to the Village.

The Village also agrees to maintain, operate, repair, and replace as necessary the Developer Improvements and any additional public infrastructure improvements dedicated by the Developer to the Village in a commercially reasonable manner after dedication to the Village.

B. Prevailing Wages. The Developer and the Village acknowledge and agree that the Developer Improvements are subject to the prevailing wage requirements of R.C. Chapter 4115, and all wages paid to laborers and mechanics employed on the development of the Developer Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Developer Improvements, which wages shall be determined in accordance with the requirements of R.C. Chapter 4115. The Developer and the Village shall comply, and the Developer shall require compliance by all contractors developing the Developer Improvements, with all applicable requirements of R.C. Chapter 4115 including, without limitation, (i) obtaining from the Ohio Department of Industrial Relations its determination of the prevailing rates of wages to be paid for all classes of work required for the construction of the Developer Improvements; and (ii) ensuring that all subcontractors receive notification of changes in prevailing wage rates as required by R.C. Chapter 4115. The Village, and not the Developer, shall be responsible to designate and appoint a prevailing wage coordinator for the Developer Improvements, as provided in R.C. Section 4115.071; the Village has designated _____ as the prevailing wage coordinator.

C. Approval of Plans. The Developer Improvements shall be constructed in accordance with construction plans approved by the Village prior to commencement of construction. The Developer shall submit proposed construction plans to the Village. Within ten business days following such submission or any resubmission, the Village shall either provide written approval of the plans, or written comments detailing any needed changes. If such written response by the Village is not provided within such ten business-day period, then the Village shall be deemed to have approved the submitted or resubmitted plans.

D. Selection of Contractors. Contractors for construction of the Developer Improvements shall be selected by the Developer in a manner determined by the Developer, provided that for all contracts in excess of \$50,000, and whenever practicable for contracts of \$50,000 or less, at least three bids shall be obtained prior to letting such contracts. The TIF Ordinance provides that Village and State of Ohio requirements as to advertisement and competitive bidding are not applicable to the Developer Improvements. Construction contracts

shall be entered into in the name of the Developer or the Developer's construction manager/general contractor.

E. Reimbursement from Service Payments. The Village shall use the Service Payments in the "Fund" (as defined below) to reimburse the Developer for the cost of constructing the Developer Improvements (the "Cost of Developer Improvements"). The Cost of Developer Improvements shall include any and all costs the Developer incurred in order to construct the Developer Improvements, including the items of "costs of permanent improvements" set forth in R.C. Section 133.15(B). Those costs include but are not necessarily limited to: (i) cash paid; (ii) interest on cash paid by the Developer from the date of such payment until the date of reimbursement by the Village, at the interest rate per annum equal to the current interest rate determined under R.C. Section 5703.47(B) as of the date of expenditure, less three percentage points (that is, the federal short-term rate determined by the tax commissioner rounded to the nearest whole number); (iii) review and inspection fees incurred in connection with the construction of the Developer Improvements; (iv) professional fees; and (v) construction management and supervisory fees.

F. From time to time after the Developer substantially completes the Developer Improvements, the Developer shall provide a certified statement to the Village setting forth and providing reasonable evidence concerning Costs of the Developer Improvements (each a "Certified Statement", and collectively, the "Certified Statements"). At least twice each year, subsequent to submission of the first Certified Statement by the Developer, and contingent upon the Village having received funds in the Fund, the Village shall pay to Developer, within fourteen (14) business days following the Village's receipt of a Certified Statement, the lesser of (i) the Costs of the Developer Improvements, or part thereof, as shown in the Certified Statements, or (ii) the funds available at that time in the Fund. Should insufficient funds exist in the Fund at the time of submission of a Certified Statement to reimburse the Developer for the Costs of the Developer Improvements, then the Village shall maintain a record of such unpaid amounts, and the Village shall pay to Developer such amounts within fourteen (14) business days after such funds exist in the Fund, provided that such payment shall not exceed the available balance in the Fund. The Village shall submit an accounting or record of all amounts paid to Developer out of the Fund along with each payment to Developer, including payments made by the Village within fourteen (14) business days of the receipt of a Certified Statement and payments made by the Village within fourteen (14) business days of sufficient funds being deposited into the Fund with respect to any unpaid amounts, but subject to the limitations described in this Section 1(F). Funds paid to the Developer by the Village in accordance with this Agreement shall be applied first by the Developer for interest components of the Costs of the Developer Improvements, prior to being used by the Developer for non-interest components of the Costs of the Developer Improvements.

Section 2. Priority of Lien; Exemption Applications. The provisions of R.C. Section 5709.91, which specify that Service Payments will be treated in the same manner as taxes for all purposes of the lien described in R.C. Section 323.11, including, but not limited to, the priority of the lien and the collection of Service Payments, apply to this Agreement and to the Project Area. The provisions of R.C. Section 5709.911 apply to exemption applications filed pursuant to the TIF Ordinance and this Agreement.

Section 3. TIF Exemption and Agreements Related Thereto.

A. In connection with the construction of the Developer Improvements by the Developer, the Village, through the TIF Ordinance, has granted, among other things, with respect to the Improvement, a one hundred percent (100%) exemption from real property taxation, commencing for each Parcel the earlier of the first day of (i) the tax year in which the Parcel (as it may be subdivided in connection with the acquisition of the Parcel by the Developer) is acquired by the Developer, or (ii) tax year 2028, and ending for each Parcel fifteen (15) years after such date.

B. In accordance with R.C. Sections 5715.27 and 5709.911, the Village shall file or cause to be filed a completed application for an exemption from real property taxation (DTE Form 24 or its successor form) with the Madison County Auditor (the "County Auditor") for the Improvement to each Parcel. The Developer and the Village agree to cooperate with each other for this purpose, and to cooperate with the County Auditor, the Ohio Department of Taxation and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Ordinance and this Agreement. The Developer and the Village agree that this paragraph and this Agreement do not constitute consent by an owner to the filing by a municipal corporation of an application for exemption within the meaning of R.C. 5709.911(B).

C. The Village shall perform such acts as are reasonably necessary or appropriate to (i) preserve and maintain the exemptions under the CRA Agreement as exemptions having priority over exemptions established pursuant to the TIF Ordinance, and (ii) effect, claim, reserve and maintain the exemptions from real property taxation granted under the TIF Ordinance and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 4. **Service Payments.** As provided in R.C. Section 5709.42, the Owners are required under this Agreement and pursuant to the TIF Ordinance to make annual service payments in lieu of taxes to the Madison County Treasurer (the "County Treasurer") on or before the final dates for payment of real property taxes. Each such payment (including any interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not exempt from real property taxation (the service payments in lieu of taxes, including any penalties and interest, are referred to herein as the "Service Payments"). Any late payments shall be subject to penalty and bear interest at the then-current rates established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time. No Owner shall, under any circumstances, be required with respect to any tax year both to pay Service Payments with respect to an Improvement and to reimburse local taxing authorities for the amount of real property taxes that would have been payable had the Improvement not been exempted from taxation pursuant to the TIF Ordinance. No Service Payments are required with respect to the assessed value of any structures exempted under the CRA Agreement for the period and to the extent that the structures are exempt under the CRA Agreement.

Section 5. School District Payments. Pursuant to the TIF Ordinance and in accordance with R.C. Section 5709.42, the County Treasurer is to distribute a portion of the Service Payments to the School District in an amount equal to the real property tax payments the School District would have received from the Improvement exempted from real property taxation had the Improvement not been exempted. No such payments to the School District are to be made with respect to the assessed value of any structures exempted under the CRA Agreement for the period and to the extent that the structures are exempt under the CRA Agreement.

Section 6. Tax Increment Equivalent Fund. Pursuant to the TIF Ordinance, a municipal public improvement tax increment equivalent fund (the "Fund") has been established and shall be maintained in the custody of the Village. The Fund shall receive all Service Payments distributed by the County Treasurer to the Village pursuant to R.C. Section 5709.42.

The Fund shall remain in existence so long as such Service Payments are collected and used for the purposes described in this Agreement and the TIF Ordinance, after which the Fund shall be dissolved in accordance with R.C. Section 5709.43. Further, except as otherwise provided in this Agreement or the TIF Ordinance, moneys deposited in the Fund shall be used as described in Section 7 hereof.

Section 7. Use of Service Payments Deposited into the Fund.

A. The Village agrees that the Service Payments deposited into the Fund shall be used exclusively as set forth in this Section 7.

B. The Service Payments deposited into the Fund shall be used on a semi-annual basis for the following purposes:

1. Until the Developer is paid in full for the Cost of Developer Improvements, 50% of the total available Service Payments shall be paid to the Developer in accordance with Section 1 for such costs, and the remaining 50% of the available Service Payments shall be paid to the Village to pay for costs incurred (or to be incurred) by the Village for all or any portion of the Public Infrastructure Improvements, including any financing therefor.

2. After the Developer is paid in full for the Cost of Developer Improvements, 100% of the available Service Payments shall be paid to the Village to pay for costs incurred (or to be incurred) by the Village for all or any portion of the Public Infrastructure Improvements, including any financing therefor.

3. After the Developer is paid in full for the Cost of Developer Improvements and all of the Public Infrastructure Improvements are paid in full, any incidental surplus remaining in the Fund upon dissolution of the Fund shall be disposed of as provided in R.C. Section 5709.43(D).

C. Notwithstanding any other provision of this Agreement, the Village's payment obligations hereunder shall be limited to the monies in the Fund and do not constitute an indebtedness of the Village within the provisions and limitations of the laws and the Constitution of the State of Ohio. Nothing herein shall be deemed to prohibit the Village from

using, of its own volition, any other lawfully available resources for reimbursement to the Developer of the Cost of Developer Improvements.

Section 8. Village Agreement. Except as set forth in the CRA Agreement, the Village agrees that so long as the real property tax exemption pursuant to the TIF Ordinance is in effect, it shall not grant or approve an exemption from real property taxation for the Project Area pursuant to R.C. Section 5709.61 et. seq., R.C. Section 3735.65 et. seq., or any other tax exemption or tax abatement program without the prior written approval of the Developer.

Section 9. Release. Upon satisfaction of the Developer's obligations under this Agreement and expiration of the periods of exemption under the TIF Ordinance, or other termination of the obligations of the Owners to make the Service Payments, the Village shall, upon the request of the Developer, execute an instrument in recordable form evidencing such satisfaction or termination.

Section 10. Estoppel Certificate. Upon request of the Developer, the Village shall execute and deliver to the Developer or any proposed purchaser, mortgagee or lessee of any Parcel, a certificate stating: (a) that the Agreement is in full force and effect, if the same is true; (b) that the Developer is not in default under any of the terms, covenants or conditions of the Agreement, or, if the Developer is in default, specifying same; and (c) such other matters as the Developer reasonably requests.

Section 11. Representations of the Parties. The Developer hereby represents that it is or intends to be the owner in fee simple of all of the Project Area, and has full power and authority to enter into this Agreement and carry out its terms. The Village hereby represents that the TIF Ordinance was passed by the Council on _____, 2007 and remains in full force and effect, that this Agreement is authorized by the TIF Ordinance and that the Village has full power and authority to enter into this Agreement, to carry out its terms and to perform its obligations hereunder and thereunder.

Section 12. Successors. This Agreement shall be binding upon and inure to the benefit of the Developer and its beneficiaries, successors and assigns, including successive as well as immediate successors and assigns; and shall be binding upon and inure to the benefit of the Village, and its successors and assigns.

Section 13. Agreement Binding on Parties; No Personal Liability; Village Consents. All covenants, obligations and agreements of the Village and the Developer contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of the Village in other than their official capacity or of any individual person who is a partner, shareholder, director, member, manager, employee, officer or agent of the Developer other than in their capacity as a partner, shareholder, director, member, manager, employee, officer or agent, and neither the members of the Council nor any Village official executing this Agreement, or any individual person executing this Agreement on behalf of the Developer, shall be liable personally by reason of the covenants, obligations or agreements of the Village or the Developer contained in this Agreement.

Any consent of the Village to be given under this Agreement may be given by the Mayor or the _____, and shall be given in writing.

Section 14. **Amendments.** This Agreement may be amended only by written instrument executed by both of the parties to this Agreement.

Section 15. **Notices.** Except as otherwise specifically set forth in this Agreement, all notices, certificates, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, demands, requests, consents or approvals, or other communications shall be sent. The present notice addresses of the parties follow:

(a) To the Developer at: Duke Realty Ohio
5600 Blazer Parkway, Suite 100
Dublin, OH 43017
Attention: Art Makris
Phone: (614) 932-6015
Fax: (614) 932-6290

With copies to: Duke Realty Corporation
Legal Department
600 East 96th Street, Suite 100
Indianapolis, IN 46240
Attention: Columbus Attorney

And to:

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Attention: Scott J. Ziance
Phone: (614) 464-8287
Fax: (614) 719-5053

(b) To the Village at: 28 East Main Street
West Jefferson, Ohio 43162
Attention: Jack Herrel
Phone: (614) 879-7363
Fax: (614)

With a copy to: Culp, Parsons & Murray
8 East Main Street
West Jefferson, Ohio 43162
Attention: Ronald C. Parsons
Phone: (614) 879-7606
Fax: (614) 879-7607

Section 16. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

Section 17. Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

a. that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

b. the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and

c. each other section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 18. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 19. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the Village, its agents and employees, and the Developer, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the State of Ohio.

Section 20. Assignments. Except as otherwise provided in this Section 20, the Developer agrees not to assign this Agreement without the prior written consent of the Village, which consent shall not be unreasonably withheld (and shall not, in any event, be withheld to stop or delay development consistent with zoning already in effect). Notwithstanding any provisions to the contrary in this Section, the Developer may assign its interest in this Agreement

to an entity controlled by or under common control with the Developer without the prior written consent of the Village.

Section 21. **Entire Agreement.** This Agreement and the TIF Ordinance constitute the entire agreement between the Developer and the Village pertaining to the subject matter contained herein and therein and supersede all other prior or contemporaneous agreements or understandings between the Developer and the Village in connection with such subject matter.

[Remainder of the Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the Village and the Developer have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

VILLAGE OF WEST JEFFERSON

By: _____
Its: _____

By Ordinance No. _____ dated _____, 2007
Verified and Certified:

_____, Clerk

Approved as to Form:

DUKE REALTY OHIO

By: _____
Printed: _____
Title: _____

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of _____, 2007, by _____, the _____ of the Village of West Jefferson, a municipal corporation of the State of Ohio, on behalf of the municipal corporation.

Notary Public

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 2007, by _____, the _____ of Duke Realty Ohio, an Ohio general partnership, on behalf of the partnership.

Notary Public

FISCAL OFFICER'S CERTIFICATE

As fiscal officer for the Village of West Jefferson, I hereby certify that funds sufficient to meet the obligations of the Village in this Agreement (including specifically the funds required to meet the obligation of the Village in the year 2007) have been lawfully appropriated for the purposes thereof and are available in the treasury, and/or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. The Village has no obligation to make payments pursuant to this Agreement except from Service Payments to be collected for deposit into the Fund, which Service Payments are in the process of collection. No Village expenditures will be required in 2007. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 et seq.

Dated: _____, 2007

Village of West Jefferson,
Madison County, Ohio

EXHIBIT A to Draft TIF Agreement

LEGAL DESCRIPTION OF THE PROJECT AREA

The Project Area is the real estate described on the attached legal descriptions.

EXHIBIT A

Instrument Book Page
200100005606 OR 126 525

Being a 254.00 acre tract and being all of TRACT II, First Parcel containing 100 acres, all of the Second Parcel containing 135 acres and a portion of TRACT III, containing 172.81 acres all of record in Deed Book 267, page 511 of the Recorder's records, Madison County, Ohio, and further being a part of VMS 12143, VMS 9232 and VMS 7876 in the Village of West Jefferson, in the County of Madison and in the State of Ohio, said 254.00 acre tract being more particularly described as follows:

Beginning for reference at a spike found marking the intersection of the centerlines of State Route 29 and US Route 40 (the centerline of U.S. Route 40 being the centerline of the westbound lanes);

thence North 67° 01' 05" West 4499.49 feet, in the centerline of State Route 29, to a spike found at an angle point in said centerline, the same being the northeasterly corner of said 100 acre tract and the northwesterly corner of an original 297 acre tract of record in Deed Book 222, page 55 of said Recorder's records and being the principal place of beginning of the 254.00 acre tract herein described;

thence South 11° 38' 45" East, 2561.41 feet, passing iron pins found at 36.46 feet 1249.51 feet and 2521.41 feet, in the easterly line of said 100 acre tract and a westerly line of said original 297 acre tract and in the westerly line of a 102.47 acre tract of record in O.R. 14, page 1049 of said Recorder's records, to a spike found in the centerline of U.S. Route 40 (the centerline of the westbound lanes) at the southwesterly corner of said 102.47 acre tract and the southeasterly corner of said 100 acre tract;

thence South 78° 16' 52" West 1207.78 feet, in the centerline of U.S. Route 40 (the centerline of the westbound lanes) to a spike set at an angle point in said centerline;

thence South 78° 14' 58" West, 1950.49 feet, in the centerline of U.S. Route 40 (the centerline of the westbound lanes) to the southwesterly corner of said 135 acre tract;

19-115

Instrument Book Page
200100005605 OR 126 523
EXHIBIT A

Being a 151.549 acre tract and being a portion of Tract III, containing 172.81 acres of record in Deed Book 267, page 511 of the Recorders records, Madison County, Ohio and further being a part of VMS 12143, VMS 9232, VMS 6971 and VMS 6653 in the Village of West Jefferson, in the County of Madison and in the State of Ohio, said 151.549 acre tract being more particularly described as follows:

Beginning for reference at a spike found marking the intersection of the centerlines of State Route 29 and US Route 40 (the centerline of US Route 40 being the centerline of the west-bound lanes);

thence North 67° 01' 05" West, 4499.49 feet, in the centerline of State Route 29, to a spike found at an angle point in said centerline;

thence North 67° 15' 00" West, 2937.07 feet in the centerline of State Route 29, to the place of beginning of the herein described 151.549 acre tract;

thence South 22° 45' 00" West, 2532.17 feet, passing an iron pin set at 40.00 feet, to an iron pin set in the southerly line of said 172.81 acre tract and in the northerly line of a 203.69 acre tract--(Parcel 2, First Tract) of record in Deed Book 297, page 257 of said Recorders records;

thence North 83° 46' 09" West, 2290.34 feet, in the southerly line of said 172.81 acre tract and in the northerly line of said 203.69 acre tract, to an iron pin set;

thence North 19° 21' 04" East, 1772.53 feet, in the westerly line of said 172.81 acre tract and an easterly line of a 461.5579 acre tract of record in Deed Book 282, page 938, to an iron pin set;

thence North 17° 54' 14" East, 1419.07 feet, passing a 2 inch iron pipe found at 1389.37 feet, in the westerly line of said 172.81 acre tract and an easterly line of said 461.5579 acre tract, to the centerline of State Route 29;

thence South 67° 15' 00" East, 2420.78 feet, in the centerline of State Route 29, to the place of beginning containing 151.549 acres, more or less.

This description represents the results of a field survey in October, 1995 by Gary L. Elswick, Registered Surveyor No. 6395. Iron pins set are 5/8"x10" reinforcing rod with identification cap stamped "ELSWICK RS 6395". Bearings are based on the centerline of State Route 29 being South 67° 15' 00" East as shown on the State Route 29 plans (S.H. 188, Section A).

S.H. 188

EXHIBIT B to Draft TIF Agreement

DESCRIPTION OF DEVELOPER IMPROVEMENTS

The Developer Improvements are a public fire system comprised of a +/- 250,000 gallon water tank, pump system (including pump house), water lines and associated land, all with a cost not to exceed \$650,000.

EXHIBIT C to TIF Ordinance

DESCRIPTION OF THE DEVELOPER IMPROVEMENTS

The Developer Improvements are a public fire system comprised of a +/- 250,000 gallon water tank, pump system (including pump house), water lines and associated land, all with a cost not to exceed \$650,000.

EXHIBIT D to TIF Ordinance

DESCRIPTION OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements may include, but are not limited to, the following:

Construction of a water tower and/or reservoir or other project to improve the water delivery system of the Village; street lighting; sidewalks and/or bike paths; acquisition of land for park purposes; acquisition and installation of equipment in parks; construction of other park improvements; acquisition of land for rights of way; construction of roads and all related appurtenances; traffic signs and signals; engineering and other professional services secured in connection with the Developer Improvements including legal, planning, citizen participation, environmental studies and remediation; streetscape and other improvements including, but not limited to, grading, draining, curbing, paving, resurfacing, constructing or reconstructing storm sewers, sanitary sewers, water mains, sidewalks, driveway approaches and aprons, public parking spaces and structures; electrical lighting; removal and placement of overhead utilities underground; installation of the desired conduit; environmental remediation; land acquisition; demolition; traffic control devices, including traffic lights, signs and other markings; installing public benches, seating areas and trash receptacles; planting trees, shrubbery and other landscaping materials, together with all other necessary and appropriate appurtenances.