

EXHIBIT A

FIRST AMENDMENT

TO

ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF COLUMBUS, OHIO

AND

GATEWAY AREA REVITALIZATION INITIATIVE

ORDINANCE NO. 0127-2005

PASSED \_\_\_\_\_, 2005

\_\_\_\_\_, 2005

FIRST AMENDMENT  
TO  
ECONOMIC DEVELOPMENT AGREEMENT

This First Amendment To Economic Development Agreement (this “Amendment”) made this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the **City of Columbus**, Ohio (the “City”), an Ohio municipal corporation, and **Gateway Area Revitalization Initiative** (the “Revitalization Initiative”), an Ohio non-profit corporation with its principal place of business located at 1824 North High Street, Columbus, Ohio 43201.

W I T N E S S E T H:

WHEREAS, in order to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the City and to provide for the redevelopment and revitalization of a certain area (the “Gateway Area”) situated within the corporate limits of the City, being generally the property outlined on the map that is included with and incorporated in the EDA (as hereinafter defined) as **Exhibit “A”**, excluding, however, all legal streets and public rights-of-way within the Gateway Area except those portions of such streets and public rights-of-way which may be vacated from time to time, by constructing, enlarging, improving or equipping, or causing the construction, enlargement, improvement or equipping of, property and facilities within the Gateway Area for use or development for industry, commerce, housing, distribution or research (the “Project”), the City and Revitalization Initiative entered into the Economic Development Agreement (the “EDA”), dated December 23, 1999, pursuant to Ordinance No. 2925-99; and

WHEREAS, the City Council is the governing body and legislative authority of the City; and

WHEREAS, pursuant to the provisions of the Taxpayer Relief Act of 1997 (P.L. 105-34) and IRC §§1391(g) and 1394(f), major portions of the Gateway Area are located within a federally designated empowerment zone (the “Empowerment Zone”), wherein the City and the U.S. Department of Housing and Urban Development have established a public policy objective of identifying and encouraging appropriate types of needed private commercial investment; and

WHEREAS, on June 30, 1997, the City Council, by Ordinance No. 1634-97, adopted the *University Neighborhoods Revitalization Plan: Concept Document* which recommends the development of a major mixed-use project in the Gateway Area; and

WHEREAS, the City is an impacted city, as that term is defined in division (C) of section 1728.01 of the Revised Code of Ohio, and as that term is used in section 5709.40(B)(1) of the Revised Code of Ohio; and

WHEREAS, prior to the authorization and execution of the EDA, the City’s Department of Trade and Development (i) undertook a blight assessment and study of the area in which the Gateway Area is located, (ii) concluded that the Gateway Area is located in a blighted area, as that term is defined in section 1728.01 of the Revised Code of Ohio, and as that term is used in section 5709.40(B)(1) of the Revised Code of Ohio, and (iii) submitted that assessment and finding to the City Council; and

WHEREAS, the City has not designated any community improvement corporation as the agency of the City pursuant to section 1724.10 of the Revised Code of Ohio, and the City Council has not confirmed any plan for the Gateway Area prepared pursuant to section 1724.10 of the Revised Code of Ohio by a community improvement corporation organized under Chapter 1724 of the Revised Code of Ohio; and

WHEREAS, in order to achieve its goals of creating or preserving jobs and employment opportunities and improving the economic welfare of its people, the City desires to have the Gateway Area redeveloped in accordance with the redevelopment concepts described in the EDA, as amended by this Amendment; and

WHEREAS, among other matters, the EDA provided for a Development and Reimbursement Agreement between the City and Revitalization Initiative under which Revitalization Initiative would design and construct certain public improvements having a total cost of up to \$5,000,000.00 and, subject to the satisfaction of certain conditions, the City would be required to reimburse Revitalization Initiative up to a total of \$5,000,000.00 for the costs of those public improvements; and

WHEREAS, the City and Revitalization Initiative desire to increase that spending authority and reimbursement obligation to a maximum of \$7,000,000.00; and

WHEREAS, the City and the Revitalization Initiative desire to make this Amendment both in order to increase the spending authority of Revitalization Initiative, and the reimbursement obligation of the City, with respect to public improvements in the Gateway Area, and in order to evidence the mutual agreements and undertakings between the City and the Revitalization Initiative;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, it is mutually agreed between the City and the Revitalization Initiative as follows:

1. **Amendment to Section 20.** Section 20 of the EDA is hereby amended by deleting the first thirty-seven (37) lines thereof (that is, to and including the last line of the

indented, single-spaced provision on page 15 of the EDA) and inserting the following in the place of such deleted language:

**20. Improvements to Surrounding Public Area and Public Rights-of-Way to be built Under a Capital Improvements Project Development and Reimbursement Agreement.** In order to provide for the efficient construction of certain necessary public improvements to, on, over, and under the Gateway Area and the portions of the streets, sidewalks, and intersections abutting the Gateway Area (the “Gateway Public Improvements Area”), and in order to coordinate the construction of such public improvements with the private construction of Project, the City shall (a) no later than three (3) months after the effective date of this Agreement, enter into a fully assignable Capital Improvements Project Development and Reimbursement Agreement (the “Original D & R Agreement”) with the Revitalization Initiative (with the Revitalization Initiative or its assignee being designated herein as the “Contractor”) and (b) no later than February 28, 2005, enter into a fully assignable First Amendment to Development and Reimbursement Agreement (the “First Amendment”) with the Revitalization Initiative, both in forms approved by the City and by the Contractor, which approvals shall not be unreasonably withheld or delayed (the Original D & R Agreement, as amended by the First Amendment, being herein the “D & R Agreement”). The Original D & R Agreement shall provide that the Contractor shall undertake and complete the following work (the “Public Improvements Work”) in the Gateway Public Improvements Area, and that the City shall pay (in the form of progress payments

as the costs and expenses are incurred) or at the Contractor's option reimburse the Contractor for, all of the Contractor's design and construction costs and expenses (including, but not limited to, architectural and engineering fees, survey fees, testing and inspection fees, other professional fees, contract administration costs, bond premiums, insurance premiums, demolition costs, hard construction costs, permit fees, construction management and oversight expenses, environmental remediation costs, and cost of funds) incurred in undertaking and completing the Public Improvements Work up to a total of Five Million Dollars (\$5,000,000), subject to the future authorization and appropriation of the City Council and certification by the City Auditor.

Needed roadway improvements (including, but not limited to, relocation of Pearl Street, street/roadway widenings, drainage, curbing, street resurfacing, landscaped traffic islands, and concrete bus pads), storm and sanitary sewers (including separation of the same), all other public and private utility lines (including, but not limited to, water, electricity, telephone, natural gas, traffic control, cable television, and internet access), sidewalks, sidewalk bump-outs, textured pedestrian crossing surfaces, special sidewalk paving, decorative and functional street and sidewalk lighting, traffic signal mast arms, poles and fixtures, pedestrian crosswalk signal poles and fixtures, relocating and burying utility lines (to the extent that the City is not able to cause the relocation and burial to be done by others), street trees, tree grates, conduit to trees for lighting, street tree irrigation systems, streetscape furnishings, traffic control systems, and graphics for vehicular and pedestrian traffic, all in accordance with detailed construction plans (consistent with the redevelopment concepts for the Project) to be prepared by landscape architects and civil engineers selected by the Contractor and approved by the City, which approval shall not be unreasonably withheld or delayed.

The First Amendment shall increase the total amount of the Public Improvements Work, and the City's payments therefor, from a maximum of Five Million Dollars (\$5,000,000) to a maximum of Seven Million Dollars (\$7,000,000).

2. **Ratification.** The EDA, as amended by this Amendment, is and shall remain in full force and effect. Each party to this Amendment hereby ratifies and confirms all of its duties, covenants and other obligations under the EDA, as amended by this Amendment.

3. **Successors and Assigns.** This Amendment shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assignees) of the City and of the Revitalization Initiative.

4. **Governing Law and Forum.** This Amendment shall be governed by and construed in accordance with the laws of the State of Ohio.

5. **Duplicate Originals.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.

6. **Headings.** The headings contained in this Amendment are included only for convenience of reference and do not define, limit, explain or modify this Amendment or its interpretation, construction or meaning and are in no way to be construed as a part of this Amendment.

7. **Provisions Separable.** If any provision of this Amendment or the application of any such provision to any person or any circumstances shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Amendment or the application of such provision to any other person or circumstance, all of which other provisions shall remain in full force and effect; and if any provision of this Amendment is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then such provision shall have the meaning which renders it valid.

8. **Entire Agreement.** This Amendment constitutes the entire agreement between the City and the Revitalization Initiative in respect of the subject matter hereof, and this Amendment supersedes any other prior and contemporaneous agreements between the City and the Revitalization Initiative in connection with the subject matter of this Amendment. No officer, employee or other servant or agent of the City or of the Revitalization Initiative is authorized to make any representation, warranty or other promise not contained in this Amendment. No change, termination or attempted waiver of any of the provisions of this Amendment shall be binding upon the City or the Revitalization Initiative unless in writing and signed by the party affected.

9. **Assignment.** This Amendment shall be fully assignable. This Amendment shall inure to the benefit of, and be binding on, all parties and their respective successors and assigns.

CITY OF COLUMBUS, OHIO

By \_\_\_\_\_  
Mark Barbash, Director  
Department of Development

GATEWAY AREA REVITALIZATION INITIATIVE

By \_\_\_\_\_  
Terry D. Foegler, President

Approved as to form

\_\_\_\_\_  
Richard C. Pfeiffer, Jr.,  
City Attorney



