

**CONDOMINIUM/RETAIL
ECONOMIC DEVELOPMENT AGREEMENT**

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of July, 2007, by and among **THE CITY OF FORT WAYNE, INDIANA** (the "City"), Department of Redevelopment, by the Fort Wayne Redevelopment Commission (the "Commission"), (the City and Commission collectively called the "City"), and **BARRY REAL ESTATE COMPANIES, INC.**, a corporation organized under the laws of the State of Georgia (the "Company").

WITNESSETH:

WHEREAS, the City desires to foster economic development within the "_____ Community Revitalization Enhancement District," located within the City, the location of which is indicated on the map attached hereto as Exhibit A (the "CREED District"); and

WHEREAS, the Company has approached the City regarding the proposed acquisition of land located within the CREED District, as described on Exhibit B (the "Property"), and construction of a certain commercial and residential project to be constructed in connection with the project known as Harrison Square, as more particularly described in Exhibit C attached hereto (collectively, the "Project"); and

WHEREAS, the Company intends to make an initial capital investment in land, building, and equipment of not less than \$14,500,000 in Phase 1 of the Project and, subject to certain conditions as hereinafter described, a subsequent capital investment of not less than \$29,000,000 in future phases of the Project, as hereinafter described; and

WHEREAS, the Company has requested certain economic development assistance from the City in public infrastructure and economic development incentives; and

WHEREAS, the City has determined that the completion of the Project is in the best interests of the citizens of the City, and to stimulate and induce the development of the Property and the completion of the Project, the City has agreed, subject to further proceedings as required by law, to use its best efforts to provide the public infrastructure and economic development incentives described herein.

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

ARTICLE I. RECITALS

1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

ARTICLE II. MUTUAL ASSISTANCE

2.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the City, the adoption of such ordinances and resolutions by the City or Commission), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III. PROJECT DEVELOPMENT

3.01 Property. The Company shall acquire and improve the Property described in Exhibit B attached hereto (which consists of approximately one (1) acre generally located directly south of Jefferson Boulevard and adjacent to the multi-use Stadium to be constructed as part of the Harrison Square development (the "Stadium") by constructing the Project on such Property, as more particularly described in Section 3.02 hereof. The Company's obligations under this Agreement are further conditioned upon provision of power and water to the Property by the respective providers thereof to the reasonable satisfaction of the Company. The City agrees to use its best efforts to assist the Company in securing such utilities on terms acceptable to the Company.

The City currently owns or holds options to purchase the various tracts comprising the Property. The City shall acquire any tracts not currently owned and will sell all tracts comprising the Property to the Company on terms attached hereto as Exhibit B. The Property will, at the time of transfer to the Company, be clean, free of any structures, and in build-ready condition. For purposes herein, "build-ready condition" shall mean (i) the removal of all structures, unsuitable soil and debris, unnecessary roads, foundations and environmental hazards and (ii) the capping of utilities as required and leveling of the site at a suitable point identified by the project's civil engineers. The City further acknowledges and understands that the Company's obligations under this Agreement are conditioned upon the consummation of the sale of the Property to the Company.

3.02 Project Description and Development. The Project shall consist of the items and/or parameters set forth in Exhibit C attached hereto.

(a) Commencement of Phase 1. Subject to the Property being made available to Company by November 30, 2007, and timely receipt of all permits and approvals from the City, the Company shall complete in all material respects construction of Phase 1 of the Project no later than June 1, 2009, subject to permitted delays provided for in Section 3.03 hereof.

(b) Commencement of Phase 2. Subject to mutually acceptable property of approximately one (1) acre in size, to be designated as Phase 2, being made available for purchase by Company, and timely receipt of all permits and approvals from the City, the Company shall commence Phase 2 of the Project no later than the earlier of (i) three (3) years from the date of substantial completion of Phase 1, or (ii) two (2) years from the

date that Phase 1 of the Project is 90% occupied, leased or sold, and shall in all material respects complete Phase 2 within eighteen (18) months of commencement thereof. Phase 2 shall consist of the items and/or parameters indicated in Exhibit C attached hereto, subject to the terms and conditions described in Section 3.07 hereof.

(c) Commencement of Phase 3. Subject to mutually acceptable property of approximately one (1) acre in size to be made available for purchase by the Company, and timely receipt of all permits and approvals from the City, the Company further shall commence Phase 3 of the Project no later than the earlier of (i) three (3) years from the date of substantial completion of Phase 2, or (ii) two (2) years from the date that Phase 2 of the Project is 90% occupied, leased or sold, and shall in all material respects complete Phase 3 within eighteen (18) months of commencement thereof. Phase 3 shall consist of the items and/or parameters indicated in Exhibit C attached hereto, subject to the terms and conditions described in Section 3.07 hereof.

(d) Failure or Delay. In the event of the failure of the Company to commence and complete Phase 2 or Phase 3 within such time frames set forth above, the City shall serve written notice upon Company requesting that the Developer commence construction of the Phase. In the event the Company does not commence construction within one hundred twenty (120) days of such notice, and provide evidence of Developer's ability and commitment to complete such Phase within a time frame reasonably acceptable to the City, the City will be free to develop the Phase and all subsequent phases of the Project as it deems appropriate, and shall have no further obligations to the Company with regard to further development hereunder. The termination of any obligation to the Company shall be the City's sole and exclusive remedy should developer fail to commence any subsequent phase per the requirements as set out in this Agreement. Under no circumstances shall the City have the right to monetary damages or specific performance.

3.03 Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the Company or City is entitled to delay its performance under this Agreement and (ii) the Company or City anticipates that such permitted delay will cause a delay in its performance under this Agreement, then the Company or City, as the case may be, agrees to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay.

3.04 City Incentives. The City will use its best efforts to work with the Company as may be necessary to facilitate the incentives described in Article IV herein.

3.05 Other Obligations of the Company. The Company agrees to use its good faith efforts to employ qualified price competitive contracts from businesses located within the

County, and to use its good faith efforts to utilize qualified and competitive local contractors and trade organizations in the construction of the Project including, if available and qualified, minority owned and women owned business enterprises.

3.06 Obligations of the City. To the extent permitted by law, the City will expedite the necessary construction approvals and permits required for the development contemplated hereunder, and will waive permit fees, sewer taps and other related charges or fees for review or approval.

3.07 Project Modification. The Project is currently planned as a combination residential and commercial development containing, in all Phases, not less than one hundred eighty (180) residential units and not less than 90,000 square feet of commercial space. The City and Company recognize that market conditions may justify a modification of Phase II and/or Phase III as currently proposed, and agree to cooperate on any proposed modification so long as the Project compliments and enhances the Harrison Square project, and the City's downtown development plan, and the investment by the Company equals or exceeds its commitment of additional investments of Fourteen Million Five Hundred Thousand Dollars (\$14,500,000) for each of Phase II and Phase III, for a total investment in the Condominium and Retail components of the Project of Forty Four Million Five Hundred Thousand Dollars (\$44,500,000).

ARTICLE IV. ECONOMIC DEVELOPMENT INCENTIVES

4.01 Tax Abatement. Subject to further proceedings required by law, the City shall use its best efforts to approve deductions on real and personal property at the maximum levels permitted by law, all pursuant to Indiana Code 6-1.1-12.1, as amended from time to time. In order to facilitate the incentive described in this Section 4.01, the Company shall file such necessary documents and applications, including, without limitation, a statement of benefits, as required under Indiana Code 6-1.1-12.1 in order to qualify for the deductions referenced in this Section 4.01.

4.02 Infrastructure Improvements. In accordance with the goal of fostering economic development within the CREED District and the Company's agreement to complete the Project in accordance with the terms and conditions contained herein, the City shall, subject to further proceedings required by law, use its best efforts to finance the completion of the infrastructure improvements set forth in Exhibit E attached hereto (all of such improvements shall hereinafter be collectively referred to as the "Infrastructure Improvements"). The cost to the City to design and construct the Infrastructure Improvements is for each Phase of the Project is more particularly set forth in Exhibit E attached hereto. Subject to the provisions of this Agreement, the City shall use its collective best efforts to complete the Infrastructure Improvements for Phase 1 of the Project by not later than the respective dates set forth in Exhibit E attached hereto, subject to permitted delays as provided in Section 3.03 hereof.

4.03 Additional Financing.

The Redevelopment Commission shall, subject to further proceedings required by law, use its best efforts to (a) create a new economic development area and tax increment financing

allocation area ("TIF Area") in an area of land that includes the Property and (b) designate the Company as a designated taxpayer for purposes of capturing property taxes on the depreciable personal property of the Company, all pursuant to Indiana Code 36-7-14 and 36-7-25, as amended from time to time.

4.04 Community Revitalization Enhancement District Tax Credit. The State of Indiana has allocated a Four Million Dollar (\$4,000,000) CREED tax credit for the Project. The City will assist the Company in the application process to secure the allocated credits.

4.05 Property Tax Payments. The Company hereby pledges and agrees to make, or to cause to be made, all property tax payments when due with respect to the Property.

4.06 Termination. If on or before November 30, 2007, the Company has not received reasonable assurance that it will receive the CREED tax credit detailed in Section 4.04, the Company shall be entitled to terminate this Agreement with no obligation to the City.

ARTICLE V. AUTHORITY

5.01 Actions. The City represents and warrants that it has taken or will use its best efforts to take (subject to the Company's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable each to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part as provided by the terms and provisions hereof.

5.02 Powers. The City represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this Agreement, including, but not limited to, the right, power and authority, subject to such procedures as may be required by law, to construct the Infrastructure Improvements, and that, subject to the conditions described herein and subject to such procedures as may be required by law, all of the foregoing have been or will be duly and validly authorized and approved by all necessary proceedings, findings and actions. Accordingly, this Agreement constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms and provisions, and does not require the consent of any other governmental authority, except as set forth in Exhibit F attached hereto.

5.03 Authorized Parties. Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreement, request, demand, approval, notice or consent of any governmental body or the Company is required, or any of such parties is required to agree or to take some action at the request of another party, such approval or such consent or request shall be given (unless otherwise provided herein or prohibited by law) for the City, by the Mayor or his designee, for the Redevelopment Commission by the President of the Redevelopment Commission or its designee, and for the Company by any officer or agent of the Company so authorized (in any event, the officers or agents executing this Agreement are so authorized); and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and none of the parties hereto shall have any complaint against the other as a result of any such action taken.

ARTICLE VI. GENERAL PROVISIONS

6.01 Indemnity; No Joint Venture or Partnership. The Company covenants and agrees at its expense to pay and to indemnify and save the City and its officers and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from the Company's (and/or any affiliates thereof) development activities with respect to the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the City, or other Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the City and the Company or any affiliate thereof.

6.02 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

6.03 Coordination with Harrison Square. The City and Company recognize that the construction of the Project is an integral component to the broader project known as Harrison Square (the "Harrison Square Project"), which includes, in addition to the residential and commercial components, a hotel, parking facility, multi-use stadium facility and certain public areas and improvements. The various components of the Harrison Square Project, including the Project, may be developed by different developers and the construction of the various components may be constructed by different contractors and/or subcontractors. In addition to the requirements of this Agreement, the Company agrees to cooperate with the City in all reasonable respects to coordinate the design and construction of the Project with the design and construction of the other components of the Harrison Square Project, consistent with good architectural practice and the approved urban design guidelines for the City of Fort Wayne. The City shall make every reasonable effort to coordinate the design and construction of the other components of the Harrison Square Project to compliment one another.

6.04 Breach. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

6.05 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of each of the City and the Company approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

6.06 No Other Agreement. Except as otherwise expressly provided herein, or as may be provided in the Stadium License Agreement, the Stadium Management Agreement of even

date hereunder, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

6.07 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

6.08 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

6.09 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Company: Barry Real Estate Companies, Inc.

Attention: _____
Telephone: _____
Facsimile: _____

With a copy to: _____

Attention: _____
Telephone: _____
Facsimile: _____

To the City: _____

Attention: _____
Telephone: _____
Facsimile: _____

With a copy to: _____

Attention: _____
Telephone: _____
Facsimile: _____

To the Redevelopment Commission:

Attention: _____
Telephone: _____
Facsimile: _____

With a copy to:

Attention: _____
Telephone: _____
Facsimile: _____

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

6.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

6.11 Recordation of Agreement. At the request of any party hereto, the parties hereby agree to execute and deliver the original of this Agreement or a Memorandum thereof in proper form for recording in the appropriate property or governmental records.

6.12 Consent or Approval. Except as otherwise provided herein, whenever consent or approval of any party is required, such consent or approval shall not be unreasonably withheld.

6.13 Assignment. The rights and obligations contained in this Agreement may not be assigned by the Company or any affiliate thereof without the express prior written consent of the City; provided, however, that the Company may transfer all or a portion of its rights and obligations hereunder to an affiliate of the Company upon notice to but without the consent of the City, but any such transfer to an affiliate of the Company shall not have the effect of releasing the Company from its obligations hereunder.

6.14 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the City has approved or ratified this Agreement at the appropriate public meeting(s).

* * * * *

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

BARRY REAL ESTATE COMPANIES, INC.

By: _____

Its: _____

THE REDEVELOPMENT COMMISSION
OF THE CITY OF FORT WAYNE, INDIANA

By: _____

Its: _____

EXHIBIT A

MAP OF CREED DISTRICT

EXHIBIT B

DESCRIPTION OF PROPERTY

Phase 1

Phase 2

Phase 3

EXHIBIT C

DESCRIPTION OF THE PROJECT

[Need to describe scope of Phases II and III with some flexibility]

EXHIBIT D

CITY INCENTIVES

EXHIBIT E

INFRASTRUCTURE IMPROVEMENTS

The Infrastructure Improvements, including estimates of the costs of such improvements and dates of completion, consist of the following:

EXHIBIT F

REQUIRED GOVERNMENTAL CONSENTS

All procedures and approvals relating to any of the following: