

2021-041 EXHIBIT B

AGREEMENT

For

**CONSTRUCTION of PRIVATELY FINANCED
SANITARY SEWER LINES and DEVELOPMENT GRANT**

THIS AGREEMENT, made and entered into this ____ day of _____, 2021~~0~~, by and between the County of Summit, hereinafter referred to as the COUNTY, and BH (Ohio) Leasing, LLC, an Ohio limited liability company, hereinafter referred to as DEVELOPER.

WHEREAS, DEVELOPER has requested permission to construct, at DEVELOPER'S expense, and subject to a Reimbursement Grant by the COUNTY as detailed herein, an extension to COUNTY sanitary sewer lines located in the City of Stow; known as Seasons Business Park West Sanitary Improvement No. ____ (“Project”); and,

WHEREAS, the COUNTY shall own, operate and maintain said sanitary sewer lines and appurtenances (“Improvements”) upon completion of the work by DEVELOPER and acceptance of the Project by the COUNTY; now,

THEREFORE, in consideration of the mutual covenants hereinafter set forth and of other good and valuable consideration, DEVELOPER and the COUNTY do hereby agree as follows:

SECTION 1

The COUNTY, by its Department of Sanitary Sewer Services, shall review the plans and specifications for the Project. Upon receiving approval from the Department of Sanitary Sewer Services, DEVELOPER shall submit the plans and specifications to the Ohio Environmental Protection Agency (“Ohio EPA”) for approval and shall pay all costs associated with Ohio EPA

plan review and approval. DEVELOPER shall submit evidence of Ohio EPA approval to the Department of Sanitary Sewer Services.

SECTION 2

DEVELOPER agrees to make any and all changes in the detailed plans required by the Ohio EPA and any other entity having jurisdiction and/or control over the construction of sanitary sewer lines and water distribution lines prior to the formal approval of the plans. Any construction occurring prior to said formal approval of the detailed plans by all jurisdictional entities and the expiration of any appeal periods applicable will be done at the sole risk of DEVELOPER, and the COUNTY and its agents shall be held safe and harmless from any claims, costs, damages, obligation or liability whatsoever arising from any construction that does occur. The COUNTY'S obligation is subject to the final approval of the plans and specifications by its Department of Sanitary Sewer Services and the Ohio EPA.

SECTION 3

After the COUNTY has approved the project for construction, the following fee shall be paid for the engineering, inspection and administrative functions performed by the Department of Sanitary Sewer Services:

Sanitary Sewer Lines and Force Mains

\$3.80 per lineal foot constructed

The fee shall be paid prior to or at the time of the pre-construction conference and shall be valid for a period of time not to exceed one (1) calendar year from the date of the pre-construction conference. In the event that DEVELOPER requests authorization for an inspector to work

overtime, and upon approval by the Department of Sanitary Sewer Services, DEVELOPER will be billed for overtime work at the rate of Thirty Nine Dollars and Sixty Cents (\$39.60) per hour. Overtime shall be accrued in one-half hour increments only. The rates, fees and conditions contained in this Section are based upon the rates, fees and conditions adopted by the Council of the County of Summit, Title V, Section 923.07 of the Codified Ordinances. Upon amendment of said ordinance, the rates, fees, and conditions contained in this Section shall be modified accordingly. As these rates and fees are mandated by Ordinance, they cannot be waived. However, they may be reimbursed as part of the Sanitary Sewer Reimbursement Grant described in Section 8 below.

SECTION 4

DEVELOPER shall submit to the COUNTY prior to or at the time of the pre-construction conference a Performance Bond in the amount of One Hundred Percent (100%) of the Engineer's estimate of cost of the Improvements except that no performance bond shall be required if DEVELOPER does not record the plat until the Project is accepted for ownership by the COUNTY. Said Bond is to guarantee that DEVELOPER will complete the Project within a reasonable time and in accordance with the approved plans. The Performance Bond shall be released upon acceptance of the Project by the COUNTY.

SECTION 5

DEVELOPER shall furnish, as part of the Project cost, any pumps, fittings, lines, and services from the right-of-way to and into any property being served in accordance with COUNTY standards governing such installations, and shall secure, at its expense, any permits necessary from

any governmental subdivisions having jurisdiction and/or control of any roads or highways used or transversed by such service or tap-in lines.

SECTION 6

DEVELOPER will obtain, as part of the Project cost, any easements that are required and agrees to furnish a copy of the executed easement prior to obtaining a connection permit. All easements for rights-of-way will be properly processed and recorded with the County of Summit Fiscal Officer.

SECTION 7

Prior to the acceptance of the Project by the COUNTY, the following items must be submitted to the Department of Sanitary Sewer Services:

1. The color filming and air test results of the sewer project.
2. For flexible sanitary sewer pipe installation:
 - a) The Design Engineer's certification that the backfill over the pipe has settled sufficiently to reliably test for 5% deflection limit.
 - b) Results of the deflection test showing that the Improvements are within the 5% deflection limits.
3. The final measurements of said Improvements which include:
 - a) Distance from centerline to centerline of manholes.
 - b) Final flow line elevations and affected grade changes.
 - c) Final top of manhole casting elevations.
4. An itemization of complete costs for construction of the Project certified by DEVELOPER and/or its designated Engineer.
5. Verification that the Engineers, Vendors, Suppliers and Craftsmen have been paid

in full.

6. Developer's engineer shall update the detailed plans, accurately drawn and showing the locations, sizes, and elevations of all Improvements as constructed. Te Developer may choose to authorize the Summit County Engineer to update the tracings at Developer's sole expense. Said plans shall be submitted to the Department of Sanitary Sewer Services in a digital format acceptable to the Department of Sanitary Sewer Services.
7. Complete set of good-quality, legible, reproducible tracings on wash-off mylar (by photographic process), or day-rex mylar.
8. A maintenance bond in the amount of 3% of the cost of construction of the sanitary sewer lines, which bond will be released after two (2) year of satisfactory operation of the aforesaid improvement. Said bond is to guarantee that the Improvements are not faulty. If any of the Improvements do fail within two (2) year from the date of acceptance of the Project, DEVELOPER will be responsible for making the necessary repairs without cost to the COUNTY.

Upon acceptance of the Project by Executive Order, the sanitary sewer and appurtenances shall be owned, operated and maintained by the COUNTY.

SECTION 8

The COUNTY recognizes that that the Project will bring a substantial number of additional jobs to the City of Stow and the County of Summit. Therefore, pursuant to Res. No. 20210-041, the COUNTY shall provide a Sanitary Sewer Reimbursement Grant for the costs of the Improvements in an amount not to exceed \$271,200.00 to DEVELOPER. Said Grant shall be paid to DEVELOPER only upon successful completion of the Project and acceptance of the Project by the Executive in accordance with the terms in Section 7, above. The Reimbursement Grant amount shall equal the eligible costs as certified by DEVELOPER and/or its designated Engineer in Section 7(4) above. Costs considered ineligible for purposes of this Grant include the costs for lateral connections or "tie-ins" for future buildings constructed by Developer and costs contained in Section 3 of this agreement. Total costs exceeding the Grant amount of \$271,200.00 will not be

paid or reimbursed by the COUNTY. Upon successful completion and acceptance of the Project by the Executive, the Grant amount shall be paid to DEVELOPER within 30 days, but not before January 1, 2021.

SECTION 9

The owners of property serviced by the Project will pay the applicable rates, charges and fees established by the COUNTY as are assessed and collected from other property owners in the service area. In addition, all connections to the Project are subject to a tap-in fee which shall be paid in cash to the Department of Sanitary Sewer Services.

SECTION 10

DEVELOPER agrees to hold the COUNTY safe and harmless from any claims, costs, loss, damage or obligation whatsoever arising from any and all causes connected with the construction, operation and maintenance of the Improvements until such time as the COUNTY accepts ownership of the Project.

SECTION 11

DEVELOPER shall comply with all applicable terms of the Occupational Safety Health Act, 29 CFR 1910, 29 CFR 1926 and Ohio Revised Code Chapter 4167. This compliance shall include at a minimum providing all employees working on the project with the necessary training before work is performed, and all safeguards, safety devices, and protective equipment. DEVELOPER shall take any other actions reasonably necessary to protect the life and health of employees of DEVELOPER and to protect property in connection with performance of the work

covered by this agreement. DEVELOPER and/or any other party (contractor(s) and sub-contractor(s)) acting on behalf of DEVELOPER shall comply with the terms of the Occupational Safety and Health Act, 29 CFR 1910, 29 CFR 1926 and Ohio Revised Code Chapter 4167.

SECTION 12

DEVELOPER shall not begin performance under this Agreement until such time as the contractor hired to construct the Improvements described herein has filed with the COUNTY a copy of a current insurance policy which provides public liability and property damage insurance and which shall protect the contractor, DEVELOPER, the COUNTY and any subcontractor performing work covered by this agreement from claims for personal injury damage including accidental death, as well as from claims for property damage. The amount of such bodily injury insurance shall be not less than \$1,000,000.00 for injuries, including accidental death, to any one person and not less than \$1,000,000.00 for each accident involving injury to more than one person. The amount of such property damage insurance shall be not less than \$1,000,000.00 for each accident and not less than \$1,000,000.00 aggregate property damage liability.

SECTION 13

DEVELOPER agrees to accept and be bound by the rules and regulations of the COUNTY as they now exist or any amendments thereto of which DEVELOPER has prior notice. If the work required of DEVELOPER by this Agreement has not commenced in a satisfactory manner within two (2) years from the date of final approval of the detailed construction plans by the Department of Sanitary Sewer Services, this Agreement shall be null and void.

SECTION 14

The provisions of this Agreement shall be binding upon the COUNTY and its successors in office, and DEVELOPER, its successors and assigns.

SECTION 15

This agreement contains the entire agreement and understanding by and between the COUNTY and DEVELOPER with respect to Seasons Business Park West Project, Sanitary Improvement No. _____. No change or modification of this agreement shall be valid or binding unless it is in writing and signed by the party intended to be bound.

SECTION 16

Nothing in this Agreement shall be deemed to require DEVELOPER to complete the Project by any specific time or require that the entirety of the Project go forward, provided that DEVELOPER shall return any excavated areas to grade and prior paving prior to abandoning or suspending the Project.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have affixed their hands, DEVELOPER by his signature and the COUNTY by the signatures of the County Executive and the Director of Sanitary Sewer Services.

DEVELOPER:

BH (OHIO) LEASING, LLC

By: _____
Joseph R. Weber, Vice President

Date: _____

COUNTY OF SUMMIT:

By:

Ilene Shapiro
County Executive

Date: _____

Approved:

Michael Vinay
Director, Department of Sanitary Sewer Services

APPROVED AS TO FORM:

Deborah S. Matz, Department of Law
Insurance and Risk Management