

RESOLUTION NO. 38-18
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Mark Engert ON THE 18th
DAY OF June, 2018.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXEMPTION AGREEMENT AND RELATED DOCUMENTS WITH CORNERSTONE DEVELOPERS, LTD. AND HAPPY MEADOWS, LLC.

WHEREAS, The City and Cornerstone Developers, Ltd. ("Developer") are parties to a Development Agreement dated November 14, 2013, as amended by Amendment to Development Agreement dated May 9, 2014, Second Amendment to Development Agreement dated June 4, 2014, Third Amendment to Development Agreement dated July 7, 2014 and Fourth Amendment dated May 4, 2015 (as so amended, the "Development Agreement"); and

WHEREAS, the Developer and the City entered into a Memorandum of Understand as to Phase IV to set forth additional understandings regarding handling the City Debt for Phase IV and future phases of the Development; and

WHEREAS, the Memorandum of Understanding contemplates that Happy Meadows, LLC, or its designee, intends to acquire a parcel of land consisting of approximately 10.73 acres, more or less, located at the southeast corner of Wilmington Pike and Brown Road in the North Parcel of the Cornerstone Development; and

WHEREAS, Happy Meadows' proposed use of the Happy Meadows Property is one for which Happy Meadows or its designee intends to apply for a real property tax exemption that would exempt the Happy Meadows Property from the payment of real estate taxes (the "Happy Meadows Exemption"); and

WHEREAS, The Development Agreement anticipates that the TIF Exemption will take priority over any other exemptions. The establishment of an exemption such as the Happy Meadows Exemption would diminish the revenue potentially available to fund the borrowings issued for the Development; and

WHEREAS, The City is willing to allow the establishment of the Happy Meadows Exemption, with priority over the TIF Exemption, but only on the basis that Happy Meadows and its successors and assigns as owners of the Happy Meadows Property will make payments in lieu of taxes that will serve to offset the potential lost revenue under the TIF; and

WHEREAS, The City is further incentivized to enter into this Exemption Agreement based on the early commencement of the payments in lieu of taxes and the financial support behind those payments; and

WHEREAS, it is in the best interests of the City to set forth these additional terms regarding the Development.


NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. The City Manager is hereby authorized and directed to execute a Exemption Agreement with Cornerstone Developers, LTD., and Happy Meadows, LLC, in substantial conformity to the document attached hereto, marked Exhibit "A" and incorporated herein.

Section 2. The City Manager is hereby authorized and directed to execute any other documents necessary to facilitate the above purposes, including, but not limited to, the Supplemental Declaration of Covenants and Mortgage, attached to the Exemption Agreement.


Section 3. This resolution is to take effect thirty (30) days after passage to coordinate with the effective date of the appropriations ordinance authorizing payment.

PASSED THIS 18th day of June, 2018.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 38-18, passed by the Council of the City of Centerville, Ohio on the 18th day of June, 2018.

Carin R. Andrew
Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

EXEMPTION AGREEMENT

This Exemption Agreement ("Agreement") is made as of _____, 2018, among the CITY OF CENTERVILLE, OHIO (the "City"), a municipal corporation organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter, CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company ("Developer") and HAPPY MEADOWS, LLC, an Ohio limited liability company ("Happy Meadows") (the City, Developer and Happy Meadows, collectively, the "Parties"), under the following circumstances:

A. The City and Developer are parties to a Development Agreement dated November 14, 2013, as amended by Amendment to Development Agreement dated May 9, 2014, Second Amendment to Development Agreement dated June 4, 2014, Third Amendment to Development Agreement dated July 7, 2014, and Fourth Amendment to Development Agreement dated May 4, 2015 (as so amended, the "Development Agreement").

B. The City and Developer have proceeded with Phase I, II and III of the Development.

C. To facilitate Developer's plans to proceed with Phase IV of the Development, the City and Developer entered into a Memorandum of Understanding dated February 8, 2018 (the "MOU").

D. The MOU contemplates that Happy Meadows, or its designee, intends to acquire a parcel of land consisting of approximately 10.73 acres, more or less, located at the southeast corner of Wilmington Pike and Brown Road in the North Parcel of the Development, and more particularly described in Exhibit A attached to this Agreement (the "Happy Meadows Property"). Developer and Happy Meadows are parties to an Agreement to Purchase Real Estate dated January 11, 2017, as amended, pertaining to the sale of the Happy Meadows Property.

E. Happy Meadows' proposed use of the Happy Meadows Property is one for which Happy Meadows or its designee intends to apply for a real property tax exemption that would exempt the Happy Meadows Property from the payment of real estate taxes (the "Happy Meadows Exemption").

F. The Development Agreement anticipates that the TIF Exemption will take priority over any other exemptions. The establishment of an exemption such as the Happy Meadows Exemption would diminish the revenue potentially available to fund the borrowings issued for the Development.

G. The City is willing to allow the establishment of the Happy Meadows Exemption, with priority over the TIF Exemption, but only on the basis that Happy Meadows and its successors and assigns as owners of the Happy Meadows Property will make annual payments that will serve to offset the potential lost revenue under the TIF.

H. The City is further incentivized to enter into this Exemption Agreement based on the early commencement of the annual payments and the financial support behind those payments.

NOW, THEREFORE, in consideration of the foregoing premises, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Definitions. Except as otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in the Development Agreement (and, as applicable, the MOU).

2. Subordination of TIF Exemption. Subject to the satisfaction of the conditions set forth in Section 3 of this Agreement, the City agrees that (a) Happy Meadows may file a DTE exemption application with the State of Ohio in order to obtain the Happy Meadows Exemption that will exempt the Happy Meadows Property from the payment of real estate taxes and statutory service payments under the TIF, and (b) the City (i) will not file its DTE exemption application for the City TIF with respect to the Happy Meadows Property and (ii) pursuant to Section 5709.911 of the Ohio Revised Code, the City hereby consents to the Happy Meadows Exemption and agrees that the Happy Meadows Exemption will have priority over the TIF Exemption.

3. Conditions. The City's agreement under Section 2 hereof is subject to the satisfaction of the following conditions:

(a) Happy Meadows or its designee shall have acquired the Happy Meadows Property from Developer.

(b) At the time of acquisition of the Happy Meadows Property, Happy Meadows shall execute and record a Supplemental Declaration of Covenants and Mortgage, in the form attached to this Agreement as Exhibit B (the "Supplemental Declaration"), pursuant to which Happy Meadows or its designee commits to pay the City, in lieu of taxes, statutory service payments, minimum service payments, or the like, the fixed annual sum of \$125,316.00 (the "Annual Payments"), payable no later than the due date of the first installment of real property taxes is due, commencing with that first installment due in January, 2019 and continuing for a period of thirty (30) years. The City acknowledges that the Supplemental Declaration shall operate as an amendment to the existing Declaration of Covenants and Mortgage recorded with respect to the Happy Meadows Property (the "Existing TIF Mortgage"). As provided in the Supplemental Declaration, if any nonexempt uses are established on the Happy Meadows Property, the Developer and Happy Meadows hereby consent that the City will be entitled to file its DTE exemption for that portion of the Happy Meadows Property so that the affected property will be subject to the payment of statutory service payments (but not minimum service payments) and the amounts so received by the City, net of any school compensation, shall be credited against the Annual Payment(s) due in the same taxing period, to be offset against the Annual Payments as further provided in the Supplemental Declaration.

(c) The obligation of Happy Meadows to pay the Annual Payments shall be guaranteed either (i) by a responsible party approved by the City Manager as hereinafter provided, (ii) by the issuance of an irrevocable letter of credit in form and by a financial institution reasonably satisfactory to the City in the amount of the Annual Payments for the full 30-year term established herein (the "Letter of Credit"), or by a deposit of \$3,759,480 (the total of the Annual Payments for the full 30-year term) to be held by the City in escrow in an interest bearing account. If using a Letter of Credit, Annual renewals of the Letter of Credit shall be based on the amount of the remaining payments not yet due and payable. The full amount of the Letter of Credit may be drawn upon the City's certification (A) that an Annual Payment has not been timely made and such failure has continued for thirty (30) days after written notice to the owner of the Happy Meadows Property or (B) that the Letter of Credit has not been renewed or replaced at least fifteen (15) days prior to its scheduled expiration. Funds drawn in excess of Annual Payments then due shall be held in escrow by the City for payment of future Annual Payments as they become due. If depositing the Annual Payments with the City, the City may draw upon the funds to pay the Annual Payment each year for the thirty (30) years, in the event an Annual Payment has not been timely made and such failure has continued for thirty (30) days after written notice to the owner of the Happy Meadows Property. Within thirty (30) days of Happy Meadows making the Annual Payment, the City shall release a corresponding amount of

the escrowed deposit to Happy Meadows.. If at any time Happy Meadows or its successor as owner of the Happy Meadows Property desires to utilize a guarantor rather than a Letter of Credit or the escrow deposit, such guarantee (the "Guaranty") shall be in substantially the form attached hereto as Exhibit C and the City Manager shall approve the guarantor only after the City Manager confirms to his satisfaction that the guarantor has a net worth of not less than \$60 million and has been in existence for at least twenty (20) years. Upon acceptance of the executed Guaranty, the City shall release all rights in and return the Letter of Credit or return any unapplied escrow deposit to Happy Meadows. If the Guarantor becomes Happy Meadows Owner, the Guarantor's assumption of personal liability for the Annual Payments for the full term of the Annual Payments, as a modification of the Supplemental Declaration in form reasonably satisfactory to the City, may be substituted for a separate Guaranty. The Guarantor, if not a Happy Meadows Owner, agrees to execute a new Supplemental Declaration, if requested by the City.

(d) All other conditions upon the City's obligations under the MOU in regard to the development of the Happy Meadows Property, shall have been satisfied (including the establishment of the escrow(s) contemplated thereby) at the time of the closing of the sale of the Happy Meadows Property. The City's execution and delivery of the Supplemental Declaration and its acceptance of the Guaranty shall be evidence the City's acceptance or waiver of all applicable conditions.

4. Application of Annual Payments. Annual Payments under the Supplemental Declaration will not constitute TIF revenue but the City will credit such payments toward the coverage ratios and priorities for the use and distribution of excess TIF revenues established under the Development Agreement in the same manner and with the same effect as TIF revenues. If the City elects to establish a separate borrowing that monetizes the future revenues from the Happy Meadows Property, such borrowing shall be treated as City Debt for purposes of the Development Agreement. The Existing TIF Mortgage shall be deemed amended by the provisions of this Agreement.

5. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. This Agreement may be executed in several counterparts, all of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts. Signature by facsimile or scan copies attached to a PDF shall be treated as original signatures.

Signed by the Parties as of the date first written above.

APPROVED AS TO FORM:

CITY:

Scott A. Liberman, Municipal Attorney

CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation

By: _____
Wayne S. Davis, City Manager

DEVELOPER:

CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company

By: Oberer Construction Managers, Ltd., an Ohio limited liability company, its Manager

By: _____
George R. Oberer, Jr., Manager

HAPPY MEADOWS:

HAPPY MEADOWS, LLC,
an Ohio limited liability company

By: _____
Name:
Title:

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Wayne S. Davis, City Manager on behalf of the City of Centerville, Ohio, an Ohio municipal corporation.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by George R. Oberer, Jr., Manager of Oberer Construction Managers, Ltd., an Ohio limited liability company, on behalf of the limited liability company as Manager of Cornerstone Developers, LTD., an Ohio limited liability company.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018,
by _____, _____ of Happy
Meadows, LLC, an Ohio limited liability company, on behalf of the limited liability company.

Notary Public

EXHIBIT A

Legal Description of Happy Meadows Parcel

EXHIBIT B

SUPPLEMENTAL DECLARATION OF COVENANTS AND MORTGAGE

This SUPPLEMENTAL DECLARATION OF COVENANTS AND MORTGAGE (this "*Declaration*") is made by and between HAPPY MEADOWS, LLC, an Ohio limited liability company, whose address is c/o Mark Fornes Realty, Inc., 2080 Byers Road, Miamisburg, Ohio 45342 ("*Happy Meadows*"), and the CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation, whose address is 100 West Spring Valley Road, Centerville, Ohio 45458 (the "*City*").

WITNESSETH:

WHEREAS, Happy Meadows has acquired from Cornerstone Developers, Ltd., an Ohio limited liability company ("*Cornerstone*") certain real property located in the City, a description of which real property is attached hereto as EXHIBIT A (the "*Happy Meadows Parcel*"), having acquired such fee simple title by an instrument recorded in the Official Records of the Office of the Recorder of Greene County, Ohio (the "*County Recorder*"), as instrument number _____; and

WHEREAS, Happy Meadows or its successor/assignee/nominee contemplates making private improvements to the Happy Meadows Parcel in order to conduct uses which are intended to include certain uses that are exempt from real estate taxation; and

WHEREAS, the City, by its Ordinance No. 7-13, as amended by Ordinance No. 5-14 and Ordinance 20-16 (collectively the "*TIF Ordinance*"), has declared that 100% of the increase in the assessed value of the Happy Meadows Parcel and other parcels of land then owned by Cornerstone (the "*Other Parcels*;" the Happy Meadows Parcel and the Other Parcels, collectively, the "*Parcels*" and individually a "*Parcel*") subsequent to the effective date of the TIF Ordinance (such increase hereinafter referred to as the "*Improvement*," as further defined in Section 5709.40 of the Ohio Revised Code and the TIF Ordinance) is a public purpose and is exempt from taxation for a period commencing with the first tax year that begins after the effective date of the TIF Ordinance and in which an Improvement, due to the construction of a new structure on that Parcel, first appears on the tax list and duplicate of real and public utility property for such Parcel (the "*TIF Exemption*") and ending on the earlier of (a) 30 years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, for the non-exempted Parcels, all in accordance with the requirements of Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code (the "*TIF Statutes*") and the TIF Ordinance; and

WHEREAS, it is necessary to construct or to cause to be constructed certain public infrastructure improvements (the "*Public Improvements*") specified in the TIF Ordinance, which Happy Meadows agrees will directly benefit the Happy Meadows Parcel; and

WHEREAS, the City has determined to issue bonds (the "*City Debt*") to fund those Public Improvements; and

WHEREAS, Cornerstone and the City entered into a Development Agreement dated November 14, 2013, as amended by Amendment to Development Agreement dated May 9, 2014, Second Amendment to Development Agreement dated June 2, 2014, Third Amendment to Development Agreement dated July 7, 2014, and Fourth Amendment to Development Agreement dated May 5, 2015 (as so amended, the "*Development Agreement*"); and

WHEREAS, the City is willing to permit Happy Meadows to establish a tax exempt use or uses on the Happy Meadows Parcel with priority over the TIF Exemption, and to refrain from filing a DTE with the State of Ohio Department of Taxation that would implement the TIF Exemption on the Happy Meadows Parcel, in return for Happy Meadows' agreement and commitment to make the annual payments described herein as a covenant running with the Happy Meadows Parcel and a first lien thereon; and

WHEREAS, Happy Meadows is willing to make the annual payments described above on the terms and conditions set forth in this Declaration; and

WHEREAS, the parties intend that this Declaration shall amend and supersede the TIF Declaration but only insofar as it applies to the Happy Meadows Parcel (without in any manner affecting the TIF Declaration in regard to any other Parcels described therein).

NOW, THEREFORE, Happy Meadows, for itself and its successors and assigns to or of the Parcel (collectively, the "*Happy Meadows Parcel Owners*" and individually, each a "*Happy Meadows Parcel Owner*"), hereby declares that the forgoing recitals are incorporated into this Declaration by this reference and that the Happy Meadows Parcel and any improvements thereon will be held, developed, encumbered, leased, occupied, improved, built upon, used and conveyed subject to the terms and provisions of this Declaration:

Section 1. Defined Terms. Any terms which are used but not defined herein shall have the meaning as set forth in the Development Agreement.

Section 2. Exclusion of Happy Meadows Parcel from TIF Exemption. The City agrees that (i) Happy Meadows may file a DTE exemption application with the State of Ohio in order to obtain a real property tax exemption for all or part of the Happy Meadows Parcel based on the nonprofit status of the Happy Meadows Parcel Owner and the use of the Happy Meadows Parcel for a tax exempt use (the "*Happy Meadows Exemption*"), which will exempt the Happy Meadows Parcel from the payment of Service Payments under the TIF, and (ii) (A) the City will not file a DTE exemption application with respect to the Happy Meadows Parcel and (B) pursuant to Section 5709.911 of the Ohio Revised Code, the City hereby consents to the Happy Meadows Exemption and agrees that it will have priority over the TIF Exemption. For avoidance of doubt, subject to the terms and conditions of this Declaration, the Happy Meadows Parcel shall not be subject to the payment of Statutory Service Payments or Minimum Service Payments, or to the Minimum Service Payment Obligation Lien (as those terms are defined in the TIF Declaration).

Section 3. Annual Payments. In consideration of and as a condition to the foregoing, Happy Meadows on behalf of itself and its successors and assigns as Happy Meadows Parcel Owners, agrees to pay the City the fixed annual sum of \$125,316.00, payable no later than the due date of the first installment of real property taxes is due, commencing with that first installment due in January, 2019 and continuing for a period of thirty (30) years (the "*Annual Payments*"), with each Annual Payment being due on the same date that the first installment of real estate taxes is due on properties in Montgomery County, Ohio (i.e., the full Annual Payment shall be due on the same date on which the First Half real estate taxes are due in order to avoid delinquency). The obligation to pay the Annual Payments shall be a covenant running with the land and shall be a first lien on the Happy Meadows Parcel, secured by this Declaration which shall operate and be construed as a mortgage on the Happy Meadows Parcel. Per the Memorandum of Understanding for Phase IV ("MOU"), the Annual Payments by Happy Meadows shall not constitute TIF revenue but will be applied by the City toward payment of the City Debt and credited towards the coverage ratios under the Development Agreement in the same manner and with the same effect as TIF revenues. If the City elects to establish a separate borrowing that monetizes the future revenue from the Happy Meadows Parcel, such borrowing shall be treated as City Debt for purposes of the Development Agreement.

Section 4. Mortgage Covenants. Happy Meadows hereby encumbers and grants, with mortgage covenants, to the City, the Happy Meadows Parcel. The mortgage covenants contained in this Section 4 are given, upon the statutory condition, to secure the payment of the Annual Payments described in Section 3 hereof. "*Statutory condition*" is defined in Section 5302.14 of the Ohio Revised Code and provides generally that, if the Happy Meadows Parcel Owners pay the Annual Payment(s) secured by the mortgage contained herein, perform the other obligations secured by that mortgage and the conditions of any prior mortgage, pay all the taxes and assessments, maintain insurance against fire and other hazards, and do not commit or suffer waste, then the mortgage contained herein is void.

Happy Meadows excepts from the mortgage covenants the following (the "*Permitted Encumbrances*"): (a) all legal highways; (b) all zoning and building laws, ordinances, and regulations; (c) all real estate taxes and assessments not yet due and payable and (d) easements and restrictions of record at the time this Declaration is recorded.

If any Happy Meadows Parcel Owner fails to pay or perform when due any of its obligations under this Declaration, and such failure is not cured within thirty (30) days after written notice from the City to the Happy Meadows Parcel Owner, then (i) the amounts past due shall bear interest from the due date until paid at the rate of eight percent (8%) per annum, or, if less, the maximum amount permitted by law, and (ii) the City shall have the right to foreclose on the Happy Meadows Parcel under this Declaration.

The City acknowledges that each Happy Meadows Parcel Owner may, from time to time, subject the Happy Meadows Parcel to one or more mortgages subordinate to this Declaration in order to secure debt or other obligations of the Happy Meadows Parcel Owner.

Section 5. Taxable Uses. In the event that Happy Meadows (or a Happy Meadows Parcel Owner) elects to conduct any use on the Happy Meadows Parcel that is not exempt from real estate taxation, the Happy Meadows Parcel Owner shall notify the City and take all steps necessary to enable the City, at the City's sole discretion, and hereby expressly consents to the City filing the DTE form and activate the TIF Exemption for the applicable portion of the Happy Meadows Parcel (the "*Taxable Parcel*"), in which case the obligation to pay Statutory Service Payments (but not Minimum Service Payments) shall apply to the Taxable Parcel on the same terms and conditions (other than the Minimum Service Payment obligations) set forth in the TIF Declaration. To the extent that the City receives Statutory Service Payments from a Taxable Parcel, the amounts so received by the City, net of any School Compensation, shall be credited against the Annual Payment(s) due in the same taxing period.

Section 6. Failure to Make Payments. Should the Happy Meadows Parcel Owner fail to make any payment required hereunder, the Happy Meadows Parcel Owner shall pay, in addition to the payments it is required to pay hereunder, such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) required by the City to enforce the provisions of this Declaration.

Section 7. Cooperation. The City and each Happy Meadows Parcel Owner agree to cooperate with the other in the preparation, execution and filing of all necessary applications to obtain from Happy Meadows Exemption, the TIF Exemption (for any Taxable Parcel) and to enable the City to collect the Annual Payments as well as Statutory Service Payments with respect to any Taxable Parcel.

Section 8. Preservation of TIF Declaration. All terms and conditions of the TIF Declaration that are not affected by or inconsistent with this Declaration, shall remain in full force and effect, including, but not limited to, the obligation of each Happy Meadows Parcel Owner to provide information reasonably requested by the City and to comply with the City's nondiscriminatory hiring policy.

Section 9. Covenants to Run With the Land. Each Happy Meadows Parcel Owner agrees that each of its covenants contained in this Declaration are covenants running with the land and that they are, in any event and without regard to technical classification or designation, legal or otherwise, binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against the Happy Meadows Parcel, any improvements thereon and the Happy Meadows Parcel Owner, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. The City has the right in the event of any breach of any covenant herein contained to exercise all of the rights and remedies and to maintain all actions or suits at law or in equity or in other proper proceedings to which it may be entitled to cure that breach.

Each Happy Meadows Parcel Owner further agrees that all covenants herein, whether or not these covenants are included by any Happy Meadows Parcel Owner in any deed of the Happy Meadows Parcel to that Happy Meadows Parcel Owner's successors and assigns, are binding upon each subsequent Happy Meadows Parcel Owner and are enforceable by the City.

Each Happy Meadows Parcel Owner further agrees that its covenants herein will remain in effect until the final payment of the Annual Payments and the expiration of the TIF Exemption (the date when both of these conditions have occurred, the "Termination Date"), unless otherwise modified or released in writing by the City in a written instrument filed in the Official Records of the County Recorder. Within sixty

(60) days after the Termination Date, the City shall execute and record a release of this Declaration in the Official Records of the County Recorder.

Each Happy Meadows Parcel Owner further agrees that the covenants herein have priority over any other lien or encumbrance on the Happy Meadows Parcel and any improvements thereon, except for Permitted Encumbrances, and each Happy Meadows Parcel Owner will cause any and all holders of mortgages or other liens existing the Happy Meadows Parcel as of the time of recording of this Declaration to subordinate such mortgage or lien to the covenants contained herein.

Upon recordation of this Declaration, Happy Meadows shall provide to the City such title evidence with respect to the Happy Meadows Parcel, at no cost to the City, as is necessary to demonstrate to the City's satisfaction that the covenants running with the land provided in this Declaration are prior and superior to any other liens, encumbrances or other title exceptions, except for Permitted Encumbrances.

Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, the City and Happy Meadows have caused this Declaration to be executed and effective as of _____, 2018.

HAPPY MEADOWS:

HAPPY MEADOWS, LLC,
an Ohio limited liability company

By: _____

Printed: _____

Title: _____

STATE OF OHIO)
) ss
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ of Happy Meadows, LLC, an Ohio limited liability company, on behalf of the limited liability company.

Notary Public

CITY:

CITY OF CENTERVILLE, OHIO,
an Ohio municipal corporation

APPROVED AS TO FORM:

By: _____

Scott A. Liberman, Municipal Attorney

Printed: Wayne S. Davis

Title: City Manager

STATE OF OHIO)
) ss
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Wayne S. Davis, City Manager of the City of Centerville, Ohio, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

This instrument is prepared by:

Robert M. Curry, Esq.
Thompson Hine LLP
10050 Innovation Dr., Suite 400
Dayton, Ohio 45342

EXHIBIT A

Legal Description of Happy Meadows Parcel

EXHIBIT C

GUARANTY

The undersigned ("Guarantor") hereby absolutely and unconditionally guarantees to the CITY OF CENTERVILLE, OHIO (the "City") the prompt, complete, and full and punctual payment, observance, and performance of all those obligations of HAPPY MEADOWS, LLC ("Happy Meadows"), an Ohio limited liability company, and its successors and assigns as "Happy Meadows Parcel Owners" under that certain Supplemental Declaration of Covenants and Mortgage between Happy Meadows and the City dated _____, 2018 (such Supplemental Declaration, as amended, being herein referred to as the "Supplemental Declaration"), pertaining to certain real property consisting of approximately _____ acres located at the corner of Wilmington Pike and Brown Road in the City of Centerville, Greene County, Ohio, as more particularly described in the Supplemental Declaration (the "Happy Meadows Parcel"), such guaranteed obligations including, without limitation, the obligation to make the "Annual Payments" as provided in the Supplemental Declaration.

This Guaranty is a guaranty of payment and not of collection. The obligations of Guarantor are primary and independent of the Happy Meadows Parcel Owners' obligations under the Supplemental Declaration and in the event of a default by a Happy Meadows Parcel Owner under the terms of the Supplemental Declaration the same may be enforced directly against Guarantor independently of and without proceeding against the Happy Meadows Parcel Owner or exhausting or pursuing any remedy against the Happy Meadows Parcel Owner or any other person or entity.

This instrument may not be changed, modified, discharged, or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and the City.

The obligations of Guarantor under this Guaranty shall not be released or otherwise affected by reason of any transfer of the Happy Meadows Parcel Owner's interest under the Happy Meadows Parcel.

Any act of the City, or the successors or assigns of the City, consisting of a waiver of any of the terms or conditions of the Supplemental Declaration, or the giving of any consent to any manner or thing relating to the Supplemental Declaration, or the granting of any indulgences or extensions of time to the Happy Meadows Parcel Owner, may be done without notice to Guarantor and without releasing the obligations of Guarantor hereunder.

The obligations of Guarantor hereunder shall not be released by the City's receipt, application, or release of security given for the performance and observance of covenants and conditions in the Supplemental Declaration on the Happy Meadows Parcel Owner's part to be performed or observed nor by any modification of the Supplemental Declaration; but in case of any such modification the liability of Guarantor shall be deemed modified in accordance with the terms of any such modification of the Supplemental Declaration.

Guarantor waives any defense or right arising by reason of any disability or lack of authority or power of the Happy Meadows Parcel Owner, and shall remain liable hereunder if the Happy Meadows Parcel Owner or any other party shall not be liable under the Supplemental Declaration for any such reason.

Until all the covenants and conditions in the Supplemental Declaration are fully performed and observed by the Happy Meadows Parcel Owner and all Annual Payments have been made in full, Guarantor (i) shall have no right of subrogation against the Happy Meadows Parcel Owner by reason of any payments or acts of performance by Guarantor, in compliance with the obligations of the Guarantor

hereunder; (ii) waives any right to enforce any remedy which Guarantor now or hereafter shall have against the Happy Meadows Parcel Owner by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor hereunder; and (iii) subordinates any liability or indebtedness of the Happy Meadows Parcel Owner now or hereafter held by Guarantor to the obligations of Happy Meadows Parcel Owner to the City under the Supplemental Declaration.

The liability of Guarantor hereunder shall not be released or otherwise affected by (i) the release or discharge of the Happy Meadows Parcel Owner in any insolvency, bankruptcy, reorganization, receivership, or other debtor relief proceeding involving the Happy Meadows Parcel Owner (collectively "proceeding for relief"); (ii) the impairment, limitation, or modification of the liability of the Happy Meadows Parcel Owner or the estate of the Happy Meadows Parcel Owner in any proceeding for relief, or of any remedy for the enforcement of the Happy Meadows Parcel Owner's liability under the Supplemental Declaration, resulting from the operation of any law relating to bankruptcy, insolvency, or similar proceeding or other law or from the decision in any court; (iii) the rejection or disaffirmance of the Supplemental Declaration in any proceeding for relief; or (iv) the cessation from any cause whatsoever of the liability of the Happy Meadows Parcel Owner.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment by the Happy Meadows Parcel Owner to the City under the Supplemental Declaration is rescinded or must otherwise be returned by the City upon the insolvency, bankruptcy, reorganization, receivership, or other debtor relief proceeding involving the Happy Meadows Parcel Owner, all as though such payment had not been made.

This Guaranty is executed and delivered for the benefit of the City and its successors and assigns, and is and shall be binding upon Guarantor and its successors and assigns, but Guarantor may not assign its obligations hereunder.

GUARANTOR AND THE CITY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN THE CITY AND GUARANTOR ARISING OUT OF THIS GUARANTY OR ANY OTHER DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION HEREWITH OR ANY TRANSACTION RELATED TO THIS GUARANTY.

Guarantor agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by the City in enforcing the terms of this Guaranty.

This Guaranty shall be governed by and construed in accordance with the internal laws of the State of Ohio.

IN WITNESS WHEREOF, the Guarantor has signed this Guaranty this ____ day of _____, 2018.

Signed and acknowledged in the presence of:

GUARANTOR:

Witnesses:

_____,
an Ohio non-profit corporation

(Signature of Witness #1)

(Signature)

(Printed Name of Witness #1)

(Printed Name)

(Date)

(Date)

(Signature of Witness #2)

(Printed Name of Witness #2)

(Date)