

RESOLUTION NO. 39-18
CITY OF CENTERVILLE, OHIO

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

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO THE FIFTH AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH CORNERSTONE DEVELOPERS, LTD. FOR PROPERTY LOCATED IN THE CITY OF CENTERVILLE CONSISTING OF APPROXIMATELY 228.5 ACRES LOCATED NORTH AND SOUTH OF I-675.

WHEREAS, the City of Centerville and Cornerstone Developers, LTD, the Owner and Developer of property located in City of Centerville both north and south of Interstate 675, had successfully negotiated a Development Agreement to allow property to be developed in the City and for the construction of both private and public improvements; and

WHEREAS, by Resolution No. 52-13, the City had authorized the City Manager to execute the Development Agreement with Cornerstone Developers, LTD; and

WHEREAS, the Development Agreement was executed on November 14, 2013; and

WHEREAS, the Development Agreement was amended on May 9, 2014, June 4, 2014, July 7, 2014 and May 4, 2015 for various purposes; and

WHEREAS, the parties to the Development Agreement have determined that certain adjustments are necessary with respect to the financial terms and other obligations under the Development Agreement; and

WHEREAS, the parties entered into a Memorandum of Understanding dated February 8, 2018, which required an amendment to the Development Agreement with regards to Phase IV of the project; and

WHEREAS, it is the desire of the parties to the Development Agreement to address and generally resolve these financial terms and other obligations with regards to Phase IV of the development; and

WHEREAS, this Council has determined that it would be in the best interests of the citizens of Centerville to enter into said Amendment to the Agreement in order provide for the parties obligations with regards to construction of Phase IV public interior improvements.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is authorized and directed to enter into a Fifth Amendment to the Development Agreement with Cornerstone Developers, LTD to allow for the development of property located in City of Centerville, consisting of approximately 228.5 acres along the north and south sides of I-675, in accordance with the terms of said Fifth Amendment, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

SECTION 2. This Resolution is to take effect at the earliest time allowed by law.

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. 39-18, passed by the Council of the City of Centerville, Ohio on the 18th day of June, 2018.



Clerk of the Council

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

FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT (this "*Amendment*") is made and entered into this ____ day of June, 2018, by and between the CITY OF CENTERVILLE, OHIO (the "*City*"), a municipal corporation duly organized and validly existing under the Constitution and the Laws of the State of Ohio and its Charter, and CORNERSTONE DEVELOPERS, LTD. ("*Developer*", and together with the City, the "*Parties*"), an Ohio limited liability company, under the circumstances summarized in the following recitals:

RECITALS

A. The Parties entered into a Development Agreement dated November 14, 2013 relating to the development of the North Parcel consisting of approximately 157 acres and the South Parcel consisting of approximately 71.5 acres in the area of Feedwire Road, Wilmington Pike and I-675 in the City of Centerville, Greene County, Ohio, 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 4, 2015 (as so amended, the "*Agreement*").

B. Section 6.7 of the Agreement sets forth the terms and conditions upon which the City will issue additional City Debt for successive phases of the Development. Pursuant to the provisions of Section 6.7, Developer and the City entered into a Memorandum of Understanding dated February 8, 2018 (the "*MOU*") setting forth their understanding regarding the scope of Public Improvements for Phase IV of the Development, the allocation of TIF funds for those improvements, the approval of City Debt for Phase IV and related matters.

C. The Second Amendment to the Agreement sets forth a definition of "Funding Gap" and Section 6.10 sets forth the terms and conditions for filling the Funding Gap.

D. The Parties desire to enter into this Amendment to confirm that the terms and conditions of the MOU shall be applicable and shall, to the extent inconsistent with the Agreement, constitute an amendment to the Agreement.

NOW, THEREFORE, the Parties hereby amend the Agreement as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the meanings set forth in the Agreement.

2. North/South Parcel Ratio. The City acknowledges and agrees that, because the total amount of City Debt for Interior Public Improvements on the North Parcel (\$6,010,000.00) plus the amount credited to Developer for Brown Road improvements under Paragraph 4 below is scheduled to be less than the \$7.75 million maximum permitted by Sections 6.1 and 6.3 of the Agreement, the difference allows the opportunity to finance additional Interior Public Improvements on the South Parcel, subject to all applicable terms and conditions of the Agreement. In order to obtain greater flexibility, the Parties agree to eliminate the \$7.75 million/\$0.75 allocation between the North Parcel and South Parcel. In addition, as part of the elimination of the Funding Gap as contemplated by the MOU, the Parties agree to amend the total cap on Interior Public Improvements to \$10,457,863.94 (the original \$11 million cap less the \$542,136.06 previously applied toward the Funding Gap under

the Memorandum of Settlement between the Parties). The Funding Gap is hereby extinguished and Section 6.10 of the Agreement is hereby void.

3. Exemption Agreement. The City agrees to permit a tax exempt use on an approximately 10.73 acre portion of the Development located at the southeast corner of Wilmington Pike and Brown Road in the North Parcel of the Development for Happy Meadows, LLC ("Happy Meadows," the property to be acquired by Happy Meadows for such use, the "Happy Meadows Property," as those terms are defined in the MOU), subject to the following terms and conditions: Happy Meadows shall have entered into an agreement with the City (the "Exemption Agreement") whereby 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 the Happy Meadows Property based on the nonprofit status of Happy Meadows and the use of the Happy Meadows Property (the "Happy Meadows Exemption"), which will exempt the Happy Meadows Property from the payment of real estate taxes and statutory service payments under the TIF, and (i) the City (A) will agree not to file its DTE exemption application for the City TIF with respect to the Happy Meadows Property, and (B) pursuant to Section 5709.911 of the Ohio Revised Code, the City will consent to the Happy Meadows Exemption and agree that it will have priority over the TIF exemption, which consent and agreement will be expressed in the legislation of the City Council authorizing the Exemption Agreement. In consideration thereof and subject to the terms of a Supplemental Declaration of Covenants and Mortgage to be executed and recorded by Happy Meadows upon its acquisition of the Happy Meadows Property, and which will amend the TIF Mortgage as to the Happy Meadows Property, Happy Meadows will commit to pay to the City, in lieu of taxes, statutory service payments, minimum service payments, or the like, the fixed annual sum of \$125,316.00, commencing with the next installment of taxes becoming due and payable after the acquisition of the Happy Meadows Property by Happy Meadows (anticipated to be the 2018 taxes, with the first installment due from Happy Meadows in 2019) and continuing for a period of thirty (30) years. Such payments by Happy Meadows will not constitute TIF revenue but the City will credit such payments toward the coverage ratios and the priorities for the use and distribution of excess TIF revenues established under the 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 Agreement. The obligation of Happy Meadows to make the annual payments will be guaranteed by either an irrevocable letter of credit in favor of the City in the amount of all annual payments for the 30-year term (or any remaining portion thereof), a deposit into an escrow account satisfactory to the City in the amount of \$3,759,480, or a guarantee by a guarantor, after having verified to the City Manager's satisfaction that the guarantor has been in existence for at least 20 years and has a net worth of not less than \$60 million.

4. Brown Road Grant and Loan. Subject to and to the extent of the terms set forth in the MOU and this paragraph, the City agrees to participate in the Brown Road Improvements. The Parties acknowledge that the Ohio Public Works Commission (OPWC) has indicated its intent to fund improvements to Brown Road, partially as grant funding and partially in the form of a low interest loan. The Parties anticipate that Sugarcreek Township will take responsibility for 50% of the loan payments due under the OPWC loan. Subject to Sugarcreek Township's approving its own participation, this Amendment authorizes the City to fund the remaining 50% portion of the loan payment on the OPWC loan, such 50% portion to be funded from TIF proceeds and the Developer by equal portions up to the total amount authorized by OPWC funding. Project expenditure amounts above the OPWC funding will be the responsibility of the Developer, based on the conditions that Sugarcreek Township will bear one-half of the shortfall, and the current scope of work will not be

increased so as to require additional funds. The City will not enter into final documents for the OPWC project without confirmation of the Township's participation as described herein. The City and Developer will also coordinate a revision to the plans to re-route the storm sewer to follow the natural drainage. The portion of the loan funded from TIF payments shall be credited toward Developer's cap on financing for Interior Public Improvements under the Agreement.

5. Miscellaneous. To the extent practicable, the MOU shall be consistent with the Agreement, but in the event of any inconsistency, the terms of the MOU shall be applied. Except as modified hereby, the Agreement is ratified and confirmed and remains in full force and effect. This Amendment may be executed in several counterparts, each 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 Amendment to produce or account for more than one of those counterparts.

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

APPROVED AS TO FORM:

Scott A. Liberman, Municipal Attorney

CITY:

THE 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

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2018 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2018

Jonathan Hudson
Finance Director
City of Centerville, Ohio