

RESOLUTION NO. 47-16
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE 20th
DAY OF June, 2016.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING WITH CORNERSTONE DEVELOPERS, LTD. REGARDING THE DEVELOPMENT AGREEMENT DATED NOVEMBER 14, 2013 AND AS AMENDED.

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 parties have proceeded with Phases I and II of the Development; and

WHEREAS, on May 4, 2015, Developer and City entered into a Memorandum of Understanding ("MOU") to summarize their understanding regarding the scope of Public Improvements for Phases II and III of the Development, the allocation of the TIF funds for those improvements, the approval of the City Debt for Phases II and III, and related matters; and

WHEREAS, The Developer and City desire to enter into this Supplemental Memorandum of Understanding to set forth additional understandings regarding the handling of the City Debt for Phases II and III and future phases of the Development; and

WHEREAS, a Supplemental Memorandum of Understanding that sets forth the terms for the understanding of the parties has been created and is attached as Exhibit "A" and incorporated herein; and

WHEREAS, the Supplemental Memorandum of Understanding addresses the excess borrowing of funds.


NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. The City Manager is hereby authorized and directed to execute a Supplemental Memorandum of Understanding with Cornerstone Developers, Ltd., in

substantial conformity to the document attached hereto, marked Exhibit "A" and incorporated herein.

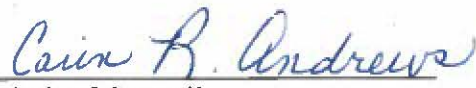
Section 2. This resolution is to take effect at the earliest date allowed by law.

PASSED THIS 20th day of June, 2016.



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. 47-16, passed by the Council of the City of Centerville, Ohio on the 20th day of June, 2016.



Clerk of the Council

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

Exhibit "A"

SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING

This Supplemental Memorandum of Understanding ("Memorandum") is made as of _____, 2016, between 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, and CORNERSTONE DEVELOPERS, LTD. ("Developer"), an Ohio limited liability company (the City and Developer, collectively, the "Parties"), under the following circumstances:

A. The City and Developer have entered into a Development Agreement dated as of November 14, 2013, as amended by Amendment dated May 9, 2014, Second Amendment dated June 4, 2014, Third Amendment dated July 7, 2014 and Fourth Amendment dated May 4, 2015 (collectively, the "Development Agreement").

B. The Parties have proceeded with Phase I and Phase II of the Development.

C. On May 4, 2015, Developer and City entered into a Memorandum of Understanding ("MOU") to summarize their understanding regarding the scope of Public Improvements for Phases II and III of the Development, the allocation of the TIF funds for those improvements, the approval of the City Debt for Phases II and III, and related matters.

D. The Parties desire to enter into this Memorandum to set forth additional understandings regarding the handling of the City Debt for Phases II and III and future phases of the Development.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Definitions.** Except as otherwise defined herein, capitalized terms used in this Memorandum shall have the meanings set forth in the Development Agreement as supplemented by the definitions in the MOU.

2. **Excess Borrowing.** Although the Development Agreement authorized a construction fund of \$4.0 million of City Debt (plus capitalized interest and costs of issuance) for Phase I, and the MOU authorized a construction fund of \$3.4 million of additional City Debt (plus capitalized interest and costs of issuance) for Phase II/III, for a total of \$7.4 million of City Debt (plus capitalized interest and costs of issuance), the City actually issued City Debt for a construction fund of \$7.9 million (plus capitalized interest and costs of issuance). The \$500,000 of additional construction funding issued by the City, plus the capitalized interest, which in the aggregate is equal to \$543,237.93, is referred to as the "Excess Borrowing." The Parties agree that the Excess Borrowing will be subject to the following terms and conditions:

(a) Although the Excess Borrowing shall be considered City Debt under the Development Agreement, it will not be secured by the TIF Declaration that is a lien on the Property. Accordingly, contemporaneously with the execution of this Memorandum, the City shall execute and record the Supplement to TIF Declaration in the form attached hereto as Exhibit A limiting the lien of the TIF Declaration in a manner that excludes the Excess Borrowing.

(b) The Excess Borrowing shall be counted toward the City's share of TIF funding on the next Phase of the Development in terms of calculating the allocation of funds between Developer and the City in their efforts to return to an 11/25 and 14/25 ratio between the Interior Public Improvements and the Exterior Public Improvements, subject to the reduction of the Developer's share of the funding as a result of the Funding Gap.

(c) The Letter of Credit required by Section 6.6 of the Development Agreement shall be calculated without reference to the Debt Service allocable to the Excess Borrowing.

(d) The Coverage Ratio for purposes of the Development Agreement shall be calculated without reference to any Debt Service on the Excess Borrowing.

(e) In determining whether any Debt Service Deficiency exists, and any Minimum Service Payments are due, any Debt Service applicable to the Excess Borrowing shall be disregarded.

(f) For purposes of determining whether there is a Service Payment Surplus pursuant to Section 6.10 of the Development Agreement, funds used to pay Debt Service on the Excess Borrowing shall not be deducted from the Statutory Service Payments from the TIF but rather shall be calculated as though Debt Service on the Excess Borrowing were paid from separate funds of the City. In the event Developer would be entitled to a distribution of Statutory Service Payments under Section 7.5 of the Development Agreement to reimburse Developer for unreimbursed draws made under the Letter of Credit or direct payments theretofore paid by Developer, and funds are not available because they were used to pay Debt Service on the Excess Borrowing, the City shall add back the funds used for that purpose in order that the reimbursement to Developer may be made.

(g) The Developer's guaranty of payment of any Debt Service Deficiency shall be deemed to exclude any such deficiency consisting of Debt Service on the Excess Borrowing.

At such time as the Parties enter into a written agreement and determine therein to proceed with a future Phase of the Development, the Excess Borrowing shall, from that point forward, be treated in the same manner as any other City Debt, including the applicability of the lien of the TIF Declaration, Developer's obligation to provide the Letter of Credit, the calculation of the Coverage Ratio, Debt Service Deficiency and Minimum Service Payments, as well as the Developer's Minimum Service Payment Guaranty. Such provisions shall not be applied retroactively, however, in regard to the handling of Debt Service on the Excess Borrowing prior to that date.

3. Future Phases. In determining the amount of City Debt that may be issued for future Phases of the Development, the following shall apply:

(a) Although the Excess Borrowing will be included in the City's share in the subsequent Phase, the determination of the Developer's share shall not be adversely impacted by the inclusion of the Excess Borrowing; any such impact shall be borne by the City from its share.

(b) Nothing contained herein shall be construed to waive or diminish Developer's right to reimbursement for Phase II work incurred at Developer's expense when funds are available in future phases, as contemplated by Section 6.4 of the Development Agreement.

4. City Debt. The Parties agree that the City may from time to time issue securities to provide for the payment of the costs of Public Improvements and such securities shall not be characterized as City Debt provided that the legislation authorizing the issuance of those securities provides that the debt service thereon (principal and interest) shall not be subject to the TIF Declaration, the Letter of Credit requirements of Section 6.6 of the Development Agreement, the Coverage Ratio requirement, determining the existence of a Debt Service Deficiency, application of the Minimum Service Payment requirements or determining whether there is a Service Payment Surplus, nor shall the debt service thereon be payable from the TIF revenue from the Development except when and to the extent excess Statutory Service Payments are available to the City as provided in Section 7.5(d) or 7.5(e) of the Development Agreement.

5. Miscellaneous. This Memorandum is intended to be construed as being consistent with the Development Agreement and not as an amendment thereto. The Development Agreement is ratified

and confirmed and remains in full force and effect. This Memorandum shall be binding upon and inure to the benefit of the City and Developer and their successors and assigns. This Memorandum embodies the entire agreement and understanding of the parties relating to the subject matter herein and may not be amended, waived or discharged except in an instrument in writing executed by the parties. This Memorandum may be executed in several counterparts, of which 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 Memorandum to produce or account for more than one of those counterparts. Signature by facsimile or scanned copies attached to a PDF shall be treated as original signatures.

6. This Memorandum shall become effective upon the issuance of the Letter of Credit pursuant to Section 6.6 of the Development Agreement, which issuance shall occur no later than ten (10) days from the execution of this Memorandum.

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

APPROVED AS TO FORM:

CITY:

City Attorney

THE CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation

By: _____
Gregory Horn, 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

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Gregory Horn, 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 _____, 2016, 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

901297.4

Exhibit A

SUPPLEMENT TO TAX INCREMENT FINANCING
DECLARATION OF COVENANTS AND MORTGAGE

This Supplement to Tax Increment Financing Declaration of Covenants and Mortgage (this "Supplement") is made by and between CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company ("Declarant") and THE CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), under the following circumstances:

A. Declarant executed and delivered that certain Tax Increment Financing Declaration of Covenants and Mortgage (the "TIF Declaration") dated July 14, 2014, and recorded in Official Record Volume 3520, Page 491, Greene County Official Records, pursuant to which Declarant submitted certain Parcels, as described in Exhibit A attached hereto, to a Minimum Service Payment Obligation Lien to secure the Minimum Service Payment Obligation relating to City Debt issued by the City for Public Improvements benefiting the Parcels.

B. On September 24, 2015, the City issued City Debt in amount of \$7.9 million plus associated costs of issuance and capitalized interest.

C. Pursuant to a Supplemental Memorandum of Understanding entered into by Declarant and the City contemporaneously with this Supplement, the City agreed that a portion of the City Debt in the amount of \$500,000 plus the related capitalized interest associated with that funding (the "Excess Borrowing") will not be secured by a lien on the Parcels.

D. The parties now desire to enter into this Supplement to limit the lien of the City Debt, for purposes of the TIF Declaration, so as to exclude the Excess Borrowing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Definitions. Except as otherwise defined herein, capitalized terms used in this Supplement shall have the meanings set forth in the TIF Declaration.

2. Excess Borrowing. For purposes of the TIF Declaration, the Excess Borrowing shall not be considered City Debt; the Debt Service required to service the Excess Borrowing shall not be included as part of the Minimum Service Payment Obligation; and no Minimum Service Payment Obligation Lien shall arise on the Parcels with reference to the Excess Borrowing or the Debt Service thereon. On the date hereof, the City Debt for purposes of the TIF Declaration is \$7.4 million plus associated costs of issuance and capitalized interest.

3. Ratification. Except as supplemented hereby, the TIF Declaration is ratified and confirmed and remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Supplement as of this ____ day of _____, 2016.

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

APPROVED AS TO FORM:

CITY:

City Attorney

THE CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation

By: _____
Gregory Horn, City Manager

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, 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 _____, 2016, by Gregory Horn, City Manager on behalf of the City of Centerville, Ohio, an Ohio municipal corporation.

Notary Public

This Instrument Prepared By:
Robert M. Curry, Esq.
Thompson Hine LLP
10050 Innovation Dr., Suite 400
Dayton, Ohio 45342

EXHIBIT A

[Legal Description]