

RESOLUTION NO. 48-16  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE 20<sup>th</sup>  
DAY OF June, 2016.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT AS TO SPECIAL ASSESSMENT FINANCING FOR PHASE III INFRASTRUCTURE WITH CORNERSTONE DEVELOPERS, LTD., OBERER CONSTRUCTION MANAGERS, LTD., AND OBERER DEVELOPMENT CO. REGARDING PHASE III PUBLIC IMPROVEMENTS.

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 Agreements between Centerville and Cornerstone Developers, Ltd call for the construction of certain public improvements serving the Cornerstone Development, sometimes referred to in the parties' Agreements as Phase III Interior Public Improvements ("Phase III Public Improvements" or the "Project"); and

WHEREAS, Centerville solicited bids for the Phase III Improvements and on March 21, 2016, pursuant to the bid process, awarded the contract for the Phase III Improvements to Double Jay Construction, Inc. ("Double Jay"); and

WHEREAS, following the award of the bid to Double Jay, Cornerstone has expressed a desire to have the Phase III Public Improvements paid for through Special Assessment Financing ("SAF") and to have Centerville proceed with the Phase III Public Improvements as a SAF project without engaging in a new bid process for the Project; 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, Centerville at Cornerstone's request has agreed to delay the execution of a contract with Double Jay, and to delay the commencement of the Project, in order to give Cornerstone the opportunity to establish the SAF; and

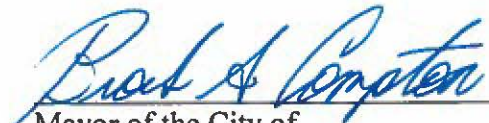
WHEREAS, because proceeding with the Phase III Public Improvements as a SAF project would be solely at the request of Cornerstone Developers, Ltd, the parties hereto agree that they do not wish for Centerville to be liable in any manner for, or to bear any risk resulting from, delaying the execution of a contract with Double Jay, delaying the commencement of the Project, or proceeding with the Phase III Public Improvements as a SAF project.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:


Section 1. The City Manager is hereby authorized and directed to execute an Agreement as to Special Assessment Financing for Phase III Infrastructure with Cornerstone Developers, Ltd., Oberer Construction Managers, Ltd., and Oberer Development Co., 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 20<sup>th</sup> 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. 48-16, passed by the Council of the City of Centerville, Ohio on the 20<sup>th</sup> 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"

**AGREEMENT AS TO SPECIAL ASSESSMENT  
FINANCING FOR PHASE III INFRASTRUCTURE**

This AGREEMENT AS TO SPECIAL ASSESSMENT FINANCING FOR PHASE III INFRASTRUCTURE (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF CENTERVILLE, OHIO ("Centerville") and CORNERSTONE DEVELOPERS, LTD., an Ohio Limited Liability Company, OBERER CONSTRUCTION MANAGERS, LTD., an Ohio Limited Liability Company, and OBERER DEVELOPMENT CO., an Ohio corporation (collectively "Cornerstone").

RECITALS:

WHEREAS, Centerville and Cornerstone Developers, Ltd. are parties to various agreements, including, but not limited to, a November 14, 2014, Development Agreement, subsequent amendments thereto and a "Memorandum of Understanding to Development Agreement," ("Agreements") all pertaining, in whole or in part, to a development generally located at the intersection of Wilmington Pike and Feedwire Road in Centerville, Ohio ("The Cornerstone Development"); and

WHEREAS, the Agreements between Centerville and Cornerstone Developers, Ltd call for the construction of certain public improvements serving the Cornerstone Development, sometimes referred to in the parties' Agreements as Phase III Interior Public Improvements ("Phase III Public Improvements" or the "Project"); and

WHEREAS, Centerville solicited bids for the Phase III Improvements and on March 21, 2016, pursuant to the bid process, awarded the contract for the Phase III Improvements to Double Jay Construction, Inc. ("Double Jay"); and

WHEREAS, the Agreements between Centerville and Cornerstone Developers, Ltd., call for Cornerstone Developers, Ltd. to pay for all costs for Phase III Public Improvements over and above \$350,000.00; and

WHEREAS, following the award of the bid to Double Jay, Cornerstone has expressed a desire to have the Phase III Public Improvements paid for through Special Assessment Financing ("SAF") and to have Centerville proceed with the Phase III Public Improvements as a SAF project without engaging in a new bid process for the Project; and

WHEREAS, Centerville at Cornerstone's request has agreed to delay the execution of a contract with Double Jay, and to delay the commencement of the Project, in order to give Cornerstone the opportunity to establish the SAF; and

WHEREAS, because proceeding with the Phase III Public Improvements as a SAF project would be solely at the request of Cornerstone Developers, Ltd, the parties hereto agree that they do not wish for Centerville to be liable in any manner for, or to bear any risk resulting from, delaying the execution of a contract with Double Jay, delaying the commencement of the Project, or proceeding with the Phase III Public Improvements as a SAF project.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements provided herein, the parties agree as follows:

1. Centerville will proceed with the Phase III Public Improvements, to the extent possible, as a SAF project. The parties acknowledge that, possibly contradicting strict statutory requirements, Centerville's implementation of the SAF project may give rise to certain delays, additional costs and/or claims and may require additional documentation in the form of waivers of statutory rights from all property owners that will be subject to the SAF, through no fault of Centerville but due to Cornerstone's request, and, accordingly, all risk and expense associated with the SAF process shall be borne solely by Cornerstone.

2. Pursuant to the Agreements, Cornerstone agrees that prior to the execution of the contract with Double Jay for the Project, Cornerstone will deposit with the City the full amount of the contract awarded to Double Jay on March 21, 2016, plus a 10% contingency amount to cover any change orders (the "Contingency Funds"), over and above the \$350,000.00, less any reasonable legal fees and costs associated with this expedited SAF project and/or this Agreement, that Centerville will make available. The City estimates its legal fees in connection with the SAF as \$34,000.00. With respect to the Contingency Funds:

(a) The funds shall be released for the payment of change orders entered into by the City and Double Jay for delays, causes beyond the contractor's control, unforeseen conditions, and other matters, and as approved solely by the City, and not involving upgrades or unnecessary additions to the Project. Cornerstone will not have the right to approve change orders but will be provided copies of requests for change orders as well as copies of any supporting documentation provided by Double Jay.

(b) Within fifteen (15) business days after final completion and the issuance of the final payment to the contractor, the balance of the Contingency Funds shall be released to Cornerstone. Such release shall not be conditioned upon the resolution of issues between Cornerstone and the City that are unrelated to this Project.

(c) The Contingency Amount shall not be construed as a limitation upon Cornerstone's liability under paragraph 3 of this Agreement or under the Agreements with respect to the cost of completing the Phase III Improvements.

3. Cornerstone further agrees to indemnify and hold harmless Centerville and its officers, agents, servants, affiliates, employees, representatives, attorneys, successors and assigns, of and from any and all liability, claims, demands, damages, actions, causes of actions, expenses, loss of revenues, loss of special assessment revenues, any challenge to the validity of any SAF, now or in the future, or loss of any kind or nature whatsoever due to or arising out of Centerville proceeding with the Phase III Public Improvements, or treating the Phase III Public Improvements, as a SAF project, including but not limited to any claims of Double Jay or any other party with regards to the public contract bidding process or by owners or holders of property interests in the Cornerstone Development who would or could be subject to any SAF and whose claims may include a denial of all or a part of an obligation to pay any special assessment now and into the future.

4. Cornerstone further agrees that any such indemnity owed to Centerville shall include, but not be limited to, any legal expenses, reasonable attorney's fees, court costs, litigation costs, expert fees, or other expenses incurred in responding to or defending against any such claims, demands, damages, actions, causes of actions, expenses, loss of revenues or loss of any kind or nature.

5. All of the recitals set forth in this Agreement are hereby incorporated into and made a part of this Agreement.

6. The parties further agree that this Agreement shall be binding upon the parties hereto, and their respective heirs, successors and assigns.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without application of its choice of rules.

8. This Agreement may be amended or modified only by a written agreement executed and entered into by the parties and its heirs, successors and assigns.

9. If any provision of this Agreement shall be held invalid or unenforceable, such holding shall not affect the validity or enforceability of any other provisions hereof, all of which other provisions shall, in such case, remain in full force and effect.

10. The parties have executed this Agreement as of the day first above written.

CITY OF CENTERVILLE, OHIO

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Scott A. Liberman, Municipal Attorney

CORNERSTONE DEVELOPERS, LTD., an  
Ohio limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

OBERER CONSTRUCTION MANAGERS,  
LTD., an Ohio Limited Liability Company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

OBERER DEVELOPMENT CO., an Ohio  
corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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