

RESOLUTION NO. 52-16
CITY OF CENTERVILLE, OHIO

11th SPONSORED BY COUNCILMEMBER John Beale ON THE
DAY OF July, 2016.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A REIMBURSEMENT AGREEMENT AS TO SPECIAL ASSESSMENT FINANCING FOR PHASE III INFRASTRUCTURE WITH CORNERSTONE DEVELOPERS, LTD., 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, Section 6.8 of the Development Agreement permits the Developer to request that the City levy and collect voluntary special assessments by petition pursuant to Section 727.06 of the Ohio Revised Code with respect to the payment of costs of constructing public improvements on the North Parcel; and

WHEREAS, Developer and the owners of other parcels of land in the North Parcel of the Development that will be subject to the special assessments have submitted a petition to the City for the levy and collection of those special assessments; and

WHEREAS, Developer has arranged for the funding of the costs of the Phase III Interior Public Improvements in excess of \$350,000.00 and to make those funds available to the City in one or more advances to pay those costs as incurred by the City; and

WHEREAS, the City has awarded a construction contract to Double Jay Construction, Inc. in the amount of \$1,283,518 to provide for the construction of the Phase III Interior Public Improvements; and

WHEREAS, the City is willing to enter into this Agreement with Developer whereby it will levy and collect the special assessments against the North Parcel and use those special assessments, when and as received, to reimburse Developer for certain of the amounts advanced by Developer to the City for the costs of the Phase III Interior Public Improvements in excess of \$350,000.00 and associated interest thereon; and


WHEREAS, this Reimbursement Agreement is necessary to allow the City to treat the project as a special assessment financing project.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. The City Manager is hereby authorized and directed to execute a Reimbursement 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 11th day of July, 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. 52-16, passed by the Council of the City of Centerville, Ohio on the 11th day of July, 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"

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "Agreement") dated as of July 11, 2016, between the CITY OF CENTERVILLE, OHIO, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio (the "City"), and CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company ("Developer") (collectively, the "Parties" and each individually a "Party").

WITNESSETH:

WHEREAS, Developer owns certain parcels of real property in the City on which it is developing a mixed-use development known as Cornerstone of Centerville (the "Development"); and

WHEREAS, Developer and the City 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"), concerning the funding of Public Improvements located within the Development, including the establishment of a tax increment financing applicable to the Development; and

WHEREAS, Section 6.8 of the Development Agreement permits the Developer to request that the City levy and collect voluntary special assessments by petition pursuant to Section 727.06 of the Ohio Revised Code with respect to the payment of costs of constructing public improvements on the North Parcel, the total amount of which shall not exceed \$1,700,000.00 on the North Parcel plus any interest on any associated indebtedness; and

WHEREAS, Developer has previously levied special assessments on the North Parcel for the benefit of Greene County to finance a sewer line extension by the Greene County Commissioners in the amount of \$789,812.00, leaving up to \$910,188.00 of special assessments available to be levied on the North Parcel; and

WHEREAS, pursuant to a Memorandum of Understanding entered into between the City and the Developer dated May 4, 2015, as amended by a Supplemental Memorandum of Understanding dated July 1, 2016 (collectively, the "MOU"), the City agreed to proceed with the Phase III Interior Public Improvements and utilize \$350,000.00 in proceeds of the City Debt to pay for the cost of the Phase III Interior Public Improvements, with a balance of such costs to be funded by Developer; and

WHEREAS, Developer desires to fund its obligation to pay for the costs of the Phase III Interior Public Improvements in excess of \$350,000.00 by contributing monies to the City to be reimbursed (either in whole or in part as provided in this Agreement) through the levy and collection of special assessments on the North Parcel of the Development in accordance with the provisions of Section 6.8 of the Development Agreement and this Agreement; and

WHEREAS, Developer and the owners of other parcels of land in the North Parcel of the Development that will be subject to the special assessments have submitted a petition to the City for the levy and collection of those special assessments; and

WHEREAS, Developer has arranged for the funding of the costs of the Phase III Interior Public Improvements in excess of \$350,000.00 and to make those funds available to the City in one or more advances to pay those costs as incurred by the City; and

WHEREAS, the City has awarded a construction contract to Double Jay Construction, Inc. in the amount of \$1,283,518 to provide for the construction of the Phase III Interior Public Improvements; and

WHEREAS, the City is willing to enter into this Agreement with Developer whereby it will levy and collect the special assessments against the North Parcel and use those special assessments, when and as received, to reimburse Developer for certain of the amounts advanced by Developer to the City for the costs of the Phase III Interior Public Improvements in excess of \$350,000.00 and associated interest thereon.

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

ARTICLE I DEFINITIONS

SECTION 1.1. Definitions. Capitalized terms used in this Agreement shall have the meanings set forth in the Development Agreement, unless otherwise defined herein. The following words and terms used in this Agreement with initial capital letters shall have the meanings set forth in this Section 1.1.

“Additional Component” means a portion of the Developer Contribution and shall be an amount equal to (a) the Cost of the Work less (b) the Special Assessment Component less (c) the City Contribution, provided that the Additional Component shall never equal less than zero dollars.

“Agreement” means this Reimbursement Agreement, as duly amended or supplemented from time to time in accordance with its terms.

“City Contribution” means proceeds of the City Debt available to pay the Cost of the Work and shall be an amount equal to \$350,000 less the City Legal Fees.

“City Legal Fees” means the City’s reasonable fees of legal counsel and related costs incurred or expected to be incurred by the City in connection with the Special Assessments, this Agreement and documents related thereto and shall be an amount equal to \$34,000.00.

“Construction Contract” means the document or documents by and between the City and the Contractor providing for the construction of the Work.

“Contingency Amount” means an amount equal to ten percent (10%) of the Contract Amount.

“Contract Amount” means the estimated Cost of the Work as set forth in the Construction Contract in the amount of \$1,283,518.

“Contractor” means Double Jay Construction, Inc.

“Cost of the Work” means the total consideration paid or to be paid by the City for the construction or installation of any Work, including amounts paid using funds provided by Developer. Such costs may include labor costs, including wages, taxes, insurance, contributions and benefits required by law or collective bargaining agreements, and customary benefits; costs of material and equipment not customarily owned by construction workers; transportation and storage costs; costs of unused materials in excess of those actually installed to allow for reasonable waste and spoilage; costs of temporary facilities; costs of machinery and equipment or charges incurred for rental of the same; costs of removal of debris; insurance and bond premiums; costs of professional services (including but not limited to architectural, engineering and legal fees), costs of any performance and materialman’s bond, bonding of mechanic’s liens, financing costs and letter of credit fees incurred in connection with the Work.

“Developer” means Cornerstone Developers, Ltd., an Ohio limited liability company, and its successors and assigns.

“Developer Contribution” means the monies to be deposited by the Developer with the City to pay a certain portion of the Cost of the Work and shall be equal to (a) the Contract Amount, plus (b) the Contingency Amount and less (c) the City Contribution.

“Event of Default” means an Event of Default under Section 6.1 of this Agreement.

“Notice Address” means:

(a) As to the City:

City of Centerville
100 W. Spring Valley Road
Centerville, Ohio 45458
Attention: City Manager

With a copy to:

Scott A. Liberman, Esq.
Altick & Corwin Co., LPA
1 S. Main St., Suite 1590
Dayton, Ohio 45402-2026

(b) As to Developer:

Cornerstone Developers, Ltd.
3475 Newmark Drive.
Miamisburg, Ohio 45342
Attention: George R. Oberer, Jr.

(c) With a copy to:

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

or a different address as to which notice is given pursuant to Section 8.1 of this Agreement.

“Person” shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

“Petition” means the Affidavit and Petition for Special Assessments dated July 1, 2016, which was filed contemporaneously with the execution of this Agreement by Developer and the other owners of parcels of land in the North Parcel and provides for the levy and collection of special assessments on the North Parcel of the Development.

“Phase III Interior Public Improvements” has the meaning set forth in the MOU.

“Special Assessments” means the special assessments to be levied and collected as a lien on the North Parcel of the Development in accordance with the Petition and this Agreement.

“Special Assessment Component” means the portion of the Developer’s Contribution that is used to fund the Cost of the Work and is within the limits established by the Development Agreement and the Petition for the special assessments on the North Parcel of the Development.

“Work” means the construction of the Phase III Interior Public Improvements in accordance with the MOU and the Development Agreement.

SECTION 1.2. Certain Words Used Herein: References. Any reference herein to the City, any members or officers thereof, or other public boards, commissions, departments, institutions, agencies, bodies or other entities, or members or officers thereof, includes without limitation, entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or performing their functions lawfully.

Any reference to a section or provision of the Constitution of the State, the Act, a section, provision or chapter of the Ohio Revised Code, federal or State laws includes without limitation, that section, provision or chapter, or those laws or regulations, as amended, modified, revised, supplemented or superseded from time to time.

Words of any gender include the correlative words of any other gender. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “herein,” “hereby,” “hereto” and “hereunder”, and similar terms, refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Agreement.

ARTICLE II
PROJECT FUND

SECTION 2.1. Project Fund. Developer agrees that on or before the date on which the Construction Contract is executed, it shall deposit monies in an amount equal to the Developer Contribution with the City. The Developer's Contribution shall be held by the City in a segregated interest bearing account. The City agrees that it will disburse (a) *first*, the City Contribution and (b) *second*, the Developer Contribution, to provide for the payment of the Cost of the Work.

The Parties agree that the Developer's Contribution shall consist of two (2) components- the Special Assessment Component and the Additional Component.

ARTICLE III
CONSTRUCTION OF THE PUBLIC IMPROVEMENTS

SECTION 3.1. Construction of the Phase III Interior Public Improvements. The City agrees that it will construct the Work in accordance with the terms and conditions of the Development Agreement and the MOU.

SECTION 3.2. Developer Required to Pay Excess Costs of the Work.

(a) The City does not make any representation or warranty, either express or implied, that the Cost of the Work will not exceed the Contract Amount. The City shall have the right to issue change orders and to the extent any change order causes the Cost of the Work to exceed the Contract Amount, the City may draw upon the Contingency Amount for such purpose; *provided that*, such Contingency Amount will only be disbursed for the payment of change orders approved by the City for delays, causes beyond the Contractor's control, unforeseen conditions, and other matters as approved solely by the City and not involving upgrades or unnecessary additions to the Project. Further, to the extent any change order causes the Cost of the Work to exceed the sum of the Contract Amount and the Contingency Amount, the City shall promptly provide written notification to Developer of such occurrence and such excess Cost of the Work and Developer will within ten (10) business days deposit monies with the City in sufficient amount to cover such excess Cost of the Work and for purposes of this Agreement, the Contingency Amount shall be increased accordingly. Developer 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 the Contractor.

(b) Within fifteen (15) business days after final completion of the Work and the issuance of the final payment to the Contractor, the balance of the Developer Contribution shall be released to Developer. Such release shall not be conditioned upon the resolution of issues between Developer and the City that are unrelated to Developer's obligations under Section 3.3 of this Agreement.

(c) The Contingency Amount shall not be construed as a limitation upon Developer's liability under Section 3.3 of this Agreement or under the Agreements with respect to the cost of completing the Phase III Improvements.

SECTION 3.3. Indemnity. Developer further agrees to indemnify and hold harmless the City 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 Special Assessments, now or in the future, or loss of any kind or nature whatsoever due to or arising out of the City proceeding with the Work, or treating the Work as a special assessment project, including but not limited to any claims of the Contractor or any other party with regards to the public contract bidding process or by owners of property that are subject to the Special Assessments.

ARTICLE IV
LEVYING AND COLLECTION OF SPECIAL ASSESSMENTS

SECTION 4.1. Allocation of Project Fund. Upon completion of the Work, the City shall determine the final Cost of the Work and the total amount expended for the Work. The City, in consultation with Developer, shall then determine the amount of the Special Assessment Component based on the terms of the Petition, the Development Agreement, and this Agreement, taking into account (a) the prepayment of Special Assessments by the owners of certain parcels of the North Parcel, as permitted by the Petition as well as the Development Agreement, (b) the maximum Special Assessment on the remaining parcels to which the Special Assessments will be applicable, as set forth in the Petition, (c) a zero percent (0%) interest rate on the Special Assessments that are not prepaid, (d) the overall maximum amount of Special Assessments permitted on the North Parcel as provided in the Development Agreement, and (e) costs of issuance and other associated costs, if any, of securities which may be issued by the City in anticipation of the levy and collection of the Special Assessments.

SECTION 4.2. Certification of Payment of Special Assessments. Except for prepaid amounts, which shall be due and payable upon the initial determination of the amount of the Special Assessment Component, the obligation to pay Special Assessments shall commence in tax year 2017 for collection in 2018 and shall continue for a period of fifteen (15) years. The City shall certify the amount of the Special Assessments to the Greene County Auditor for collection in accordance with the terms hereof.

SECTION 4.3. Special Assessment Proceedings. The Developer acknowledges that the City authorized the award of the construction contract for the Work prior to the passage of legislation accepting the Petition and resolving the need for and determination to proceed forward with the Work, and Developer hereby agrees to proceed forward with the Work and to accept the City's limited obligation of reimbursement created under this Agreement.

ARTICLE V
REIMBURSEMENT TO DEVELOPER

SECTION 5.1. Reimbursement to Developer. Inasmuch as Developer will have financed the construction of the Work for which the Special Assessments are being levied, the

City agrees, within thirty (30) days after receipt by the City of payments of the Special Assessments in a year, to remit the amounts received to Developer. The City's obligation to make payments to the Developer hereunder shall be limited solely to the amount of Special Assessments received by the City. The City agrees to use commercially reasonable efforts to pursue the collection of delinquent assessments. The obligation of the City to make payments to Developer pursuant to this Agreement is not an obligation or pledge of any monies raised by taxation and does not constitute a debt or pledge of the full faith and credit of the City. Except for the payments from the Special Assessments received by the City, and in the aggregate amount of the Special Assessment Component and associated interest and other costs as described in this Agreement, Developer shall not be entitled to receive any other monies from the City in connection with the construction of the Work.

SECTION 5.2. Additional Funds. To the extent that the Cost of the Work needs to be funded with monies constituting the Additional Component, over and above the Special Assessment Component and the City Contribution, Developer shall have no right of reimbursement from the City. Notwithstanding the foregoing, to the extent that funds are made available to fill the Funding Gap pursuant to Section 6.10 of the Development Agreement, the Additional Component shall be eligible for reimbursement.

ARTICLE VI
CERTAIN REPRESENTATIONS, WARRANTIES,
COVENANTS AND AGREEMENTS

SECTION 6.1. Certain Representations, Warranties, Covenants and Agreements of City. The City represents and warrants as of the date of delivery of this Agreement that:

- (a) It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State.
- (b) It will have duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Agreement as a valid and binding instrument enforceable in accordance with its terms.
- (c) It is not in violation of or in conflict with any provision of the laws of the State which would impair its ability to observe and perform its covenants, agreements and obligations under this Agreement.
- (d) It has and will have full power and authority (i) to execute, deliver, observe and perform this Agreement and all other instruments and documents executed and delivered by the City in connection therewith and (ii) to enter into, observe and perform the transactions contemplated in this Agreement and those other instruments and documents.
- (e) It has or will have duly authorized the execution, delivery, observance and performance of this Agreement.

SECTION 6.2. Certain Representations, Warranties, Covenants and Agreements of Developer. Developer represents and warrants as of the date of delivery of this Agreement that:

(a) Developer (i) is an Ohio limited liability company duly organized, validly existing and in good standing under the laws of the State and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) The execution and delivery by Developer of this Agreement and the compliance by Developer with all of the provisions hereof (i) are within the authority and powers of Developer, (ii) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, articles of organization, operating agreement or other instrument to which Developer is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over Developer or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of Developer.

SECTION 6.3. Assignment. Developer may, with the written consent of the City, which consent is not to be unreasonably withheld, delayed, conditioned or denied, assign all or a part of its rights and/or obligations hereunder to such person or persons designated by Developer. The foregoing notwithstanding, no limitations on transfers of this Agreement or assignment of rights and delegation of duties on the part of Developer shall apply to the assignment or transfer to an affiliate of Developer or to a company developing the Development in collaboration with Developer, or to an institutional lender or lenders for the purpose of financing the Development.

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

SECTION 7.1. Events of Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, or any successor to such Party, such Party or successor shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days of such written notice, the Party asserting default or breach may institute such proceedings at law or in equity, or in the case of a claim against the City, an action in mandamus, as may be necessary or desirable in its opinion to remedy such default or breach.

SECTION 7.2. No Remedy Exclusive. Unless provided expressly otherwise herein, no right, remedy or power conferred upon or reserved to either Party under this Agreement is intended to be exclusive of any other available right, remedy or power, but each right, remedy and power shall be cumulative and concurrent and shall be in addition to every other right, remedy and power available under this Agreement or existing at law, in equity or by statute or otherwise now or hereafter.

No exercise, beginning of the exercise, or partial exercise by either Party of any one or more rights, remedies or powers shall preclude the simultaneous or later exercise by that Party of any or all other rights, remedies or powers. No delay or omission in the exercise of any right, remedy or power accruing upon any Event of Default hereunder shall impair that or any other right, remedy or power or shall be construed to constitute a waiver of any Event of Default hereunder, but any right, remedy or power may be exercised from time to time and as often as may be deemed to be expedient.

SECTION 7.3. No Additional Waiver Implied by One Waiver. In the event that any covenant, agreement or obligation under this Agreement shall be breached by either Developer or the City and the breach shall have been waived thereafter by Developer or the City, as the case may be, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or any subsequent breach thereunder.

No failure by either Party to insist upon the strict observance or performance by the other Party of any covenant, agreement or obligation under this Agreement and no failure to exercise any right, remedy or power consequent upon a breach thereof, shall constitute a waiver of any right to strict observance or performance or a waiver of any breach. No express waiver shall be deemed to apply to any other breach or to any existing or subsequent right to remedy the breach.

SECTION 7.4. Provisions Subject to Applicable Law. All rights, remedies and powers hereunder may be exercised only to the extent permitted by applicable law. Those rights, remedies and powers are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

ARTICLE VIII MISCELLANEOUS

SECTION 8.1. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. A duplicate copy of each notice, certificate, request or other communication given hereunder to the City or Developer shall be given also to the others. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 8.2. Extent of Provisions Regarding City. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those

representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity.

SECTION 8.3. Extent of Provisions Regarding the City and Developer; No Personal Liability. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of the City or Developer in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving the City's or Developer's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 8.4. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Parties, and their respective permitted successors and assigns, subject, however, to the specific provisions hereof; provided that any covenant, agreement or obligation of the City which requires the expenditure of funds shall not be a general debt of the City.

The Parties will observe and perform faithfully at all times all covenants, agreements and obligations under this Agreement.

Each covenant, agreement and obligation of the City under this Agreement is binding upon each officer of the City who may have the authority or duty from time to time under law to take any action which may be necessary or advisable to observe or perform that covenant, agreement or obligation.

SECTION 8.5. Execution Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

SECTION 8.6. Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

(a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and

(c) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

SECTION 8.7. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

SECTION 8.8. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and Developer, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Warren, Ohio.

SECTION 8.9. Survival of Representations and Warranties. All representations and warranties of Developer and the City in this Agreement shall survive the execution and delivery of this Agreement.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF CENTERVILLE, OHIO

By: Gregory B. Horn
Its: City Manager

Approved as to Form:

By: _____
Scott A. Liberman, Municipal Attorney

CORNERSTONE DEVELOPERS, LTD.,
an Ohio limited liability company

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

By: George J. Oberer, Jr.
Printed: GEORGE R. OBERER, JR.
Title: MANAGER

FISCAL OFFICER'S CERTIFICATE

The undersigned, Clerk of the City under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2016 under the foregoing Agreement are 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: _____, 2016

City Clerk