

RESOLUTION NO. 28-15
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Brooks Compton ON THE 4th
DAY OF May, 2015.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING AND A CONSTRUCTION ESCROW AGREEMENT 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 and Third Amendment to Development Agreement dated July 7, 2014 (as so amended, the "Development Agreement"); and

WHEREAS, the parties have proceeded with Phase I of the Development; and

WHEREAS, the Developer wishes to proceed with Phases II and III of the Development; and

WHEREAS, The Developer and City desire to enter into this Memorandum of Understanding to summarize their understanding regarding the scope of Public Improvements for Phases II and III, the allocation of the TIF funds for those improvements, the approval of the City Debt for Phases II and III and related matters.

WHEREAS, a 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 Memorandum of Understanding contemplates the necessity of a Construction Escrow Agreement for the purposes of escrowing funds for the construction of Phase II public improvements; and

WHEREAS, the Memorandum of Understanding once agreed upon, will become the basis for the creation of an Amendment to the Development Agreement and a new Construction Manager at Risk Agreement for Phase II;

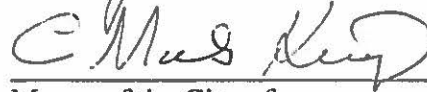
NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. The City Manager is hereby authorized and directed to execute a Memorandum of Understanding with Cornerstone Developers, Ltd., 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 negotiate the terms of a Construction Escrow Agreement after consultation with the Municipal Attorney and execute a Construction Escrow Agreement that is consistent with the terms of the Memorandum of Understanding and which is in the best interests of the City.

Section 3. This resolution is to take effect at the earliest date allowed by law.

PASSED THIS 4th day of May, 2015.



Mayor of the City of
Centerville, Ohio

ATTEST:

Debra A. James
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. 28-15, passed by the Council of the City of Centerville, Ohio on the 4th day of May, 2015.

Debra A. James
Clerk of the Council

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

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") is made as of May __, 2015, 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 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 and Third Amendment to Development Agreement dated July 7, 2014 (as so amended, the "Development Agreement").

B. The parties have proceeded with Phase I of the Development.

C. Developer wishes to proceed with Phase II and Phase III of the Development.

D. The Developer and City desire to enter into this Memorandum to summarize their understanding regarding the scope of Public Improvements for Phases II and III, the allocation of the TIF funds for those improvements, the approval of the City Debt for Phases II and III and related matters.

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. In addition, the following definitions shall apply for purposes hereof:

Phase II. "Phase II" shall mean the portion of the Development located east of Phase I (Costco) as shown outlined on the Site Plan attached hereto as Exhibit A.

Phase III. "Phase III" shall mean the portion of the Development located west and north of the Phase I (Costco) development, as shown on the Site Plan attached hereto as Exhibit A.

Phase II Interior Public Improvements. The "Phase II Interior Public Improvements" shall mean the interior roads, utility services, and related improvements as shown on Exhibit A attached to this Memorandum.

Phase II/III Exterior Public Improvements. The "Phase II/III Exterior Public Improvements" shall mean the upgrades to the Wilmington Pike/Feedwire Road intersection, the improvements on the east side of Wilmington Pike between Dille Drive and Village Center Drive, and the improvements on the west side of Wilmington Pike from Old Whipp Court South to the Southbound I-675 entrance ramp, all as shown on Exhibit A attached to this Memorandum.

Phase III Interior Public Improvements. The "Phase III Interior Public Improvements" shall mean the public street and related improvements for Village Center Drive and the extension of Cornerstone North Boulevard Drive shown outlined on Exhibit A attached to this Memorandum.

Phase II/III Work. The "Phase II/III Work" means, collectively, the Phase II Interior Public Improvements, the Phase II/III Exterior Public Improvements and the Phase III Interior Public Improvements.

2. Use of TIF Funds. The amount of City Debt for Phase II & III shall be \$3.4 million. The City agrees to proceed with the issuance of City Debt for the Phase II/III Work in time to fund the cost of the work.

In support of the City's commitment to issue the \$3.4 million in City Debt for Phase II and Phase III, Developer agrees to commercially reasonable efforts, in accordance with its business judgment and taking into consideration market conditions, tenant commitments, and other factors, to complete Private Improvements in Phase II and Phase III on or before December 31, 2016, at a taxable value of at least \$23.3 million.

Consistent with Sections 6.4 and 6.7 of the Development Agreement that funding, where possible, shall follow an 11/14 ratio, the Parties agree to this one time deviation from the 11/14 ratio in order to allow the funding of the Phase II and III Public Improvements through the issuance of City debt. The City shall make available \$350,000 in proceeds of the City Debt to pay the cost of the Phase III Interior Public Improvements plus the amount of the remaining City Debt in excess of the cost of the Phase II/III Exterior Public Improvements plus capitalized interest and issuance costs.

3. Construction of Phase II/Phase III Work. Subject to approval of a Construction Manager at Risk Agreement in a form acceptable to the City, Developer, and Developer's affiliate, Oberer Construction Managers, Ltd. ("OCM"), the City will engage OCM as Construction Manager, at no fee or charge to the City, to perform the Phase II Interior Public Improvements in accordance with a Fourth Amendment to the Development Agreement. The City agrees to use good faith, commercially reasonable efforts to expedite its plan reviews and approvals for the final plans and specifications for the Phase II Interior Public Improvements, and the negotiation and execution of the Construction Manager at Risk Agreement in order to assist the Developer to meet its commitments to its tenants/purchasers. As security for the performance of the Phase II Interior Public Improvements, Developer shall deposit into escrow with a third party escrow agent a cash deposit in the amount of 120% of the estimated cost of the Phase II Interior Public Improvements. The escrow agreement will be in a form acceptable to the City, executed and funded prior to or at the closing between Developer and Cabela's Wholesale, Inc. The escrow agreement will provide that the escrow funds will be used to pay the costs of construction of the Phase II Interior Public Improvements in accordance with the draw procedures established in the Construction Manager at Risk Agreement or be available for use by the City for the construction of the Phase II Interior Public Improvements if it becomes necessary for the City to complete the Phase II Interior Public Improvements. This escrow shall not relieve Developer from its obligation to post any bonds required by law. The escrow agreement will also be for the benefit of Cabela's Wholesale, Inc., but will give the City the sole authority to obtain access to the escrow funds upon the Construction Manager's failure to perform, without the necessity of approvals from any other parties.

The City will proceed with the balance of the Phase II/III Work. With respect to the Phase III Interior Public Improvements, Developer at its risk and expense may proceed with the design and engineering at Developer's sole expense, not as part of any public funding, in order to advance the timetable for the construction of that work.

4. Miscellaneous. This Memorandum is intended to summarize the specific understandings of the parties in relation to the Public Improvements required for Phase II and Phase III, the maximum amount of funding available for those Public Improvements, and the allocation of those funds as between the Interior Public Improvements and the Exterior Public Improvements. The specific provisions of this

Memorandum shall not supersede anything to the contrary in the Development Agreement, but 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 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.

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

APPROVED AS TO FORM:

CITY:

Scott A. Liberman, Municipal Attorney

THE CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation

By: _____
Gregory B. 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 _____, 2015, by Gregory B. Horn, City Manager on behalf of the City of Centerville, Ohio, an Ohio municipal corporation.

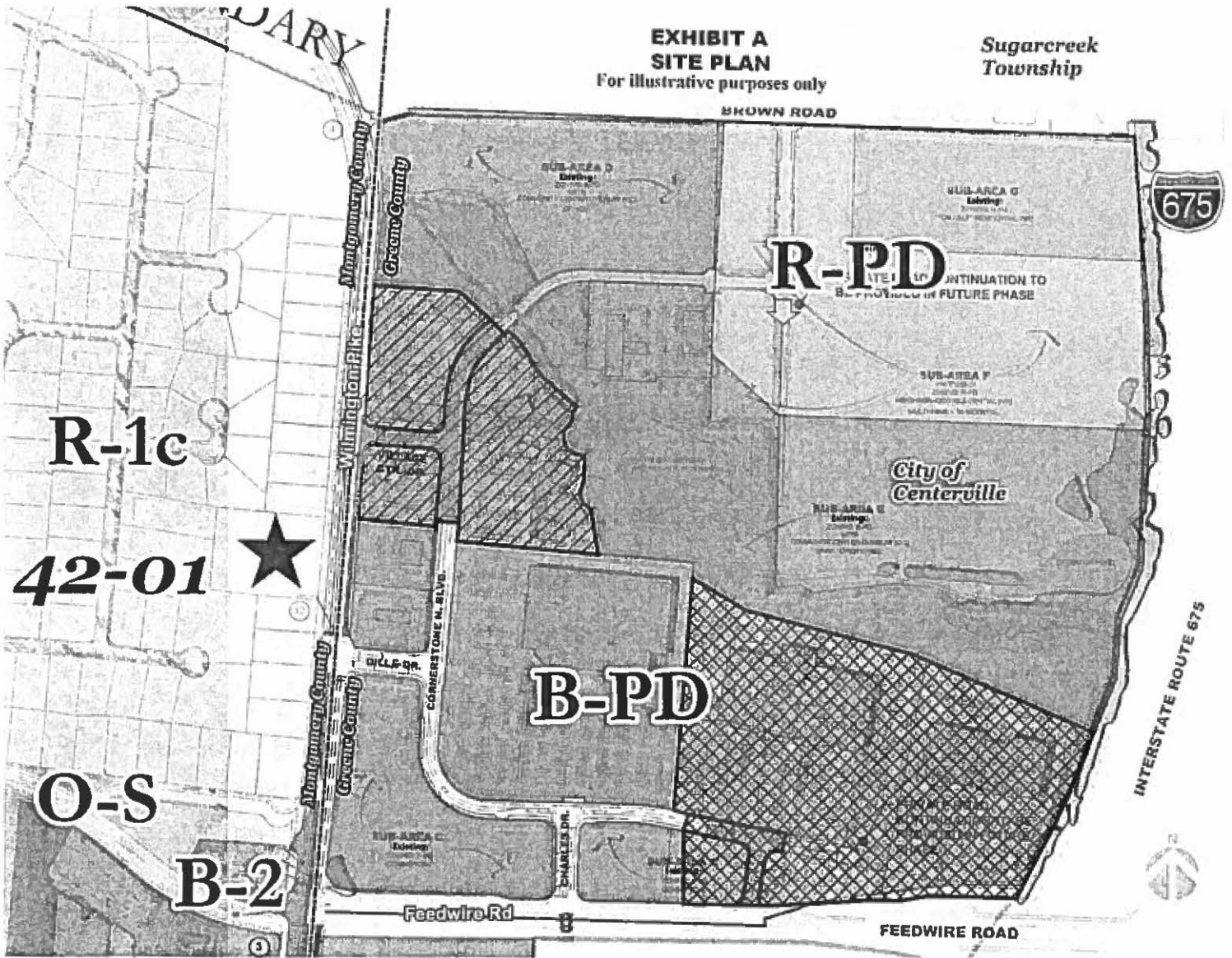
Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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

821841.4



PHASE II



**PHASE II / III EXTERIOR
PUBLIC IMPROVEMENTS**



**PHASE II INTERIOR
PUBLIC IMPROVEMENTS**

- NORTHBOUND DIRECTION: BUILD EAST CURB LINE BETWEEN DILLE DRIVE AND VILLAGE CENTER DRIVE



PHASE III

- SOUTHBOUND DIRECTION: BUILD FROM OLD WHIPP COURT SOUTH TO SOUTHBOUND [I-675] ENTRANCE RAMP



**PHASE III INTERIOR
PUBLIC IMPROVEMENTS**

- INTERSECTION IMPROVEMENTS

Note:

This plan represents the approved Preliminary Development Plan with conditions dated August 29, 2013. Buildings, parking, lot lines and Sub-Area boundaries shown are for illustrative purposes only.