

RESOLUTION NO. 29-15  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Belinda Kenley ON THE 4<sup>th</sup> DAY  
OF May, 2015.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO THE FOURTH 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 contained several contingencies; and

WHEREAS, the Development Agreement was amended on May 9, 2014, June 4, 2014 and July 7, 2014 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, 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 2 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 2 public interior improvements.

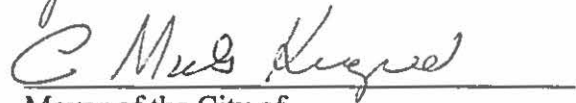
NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is authorized and directed to enter into a Fourth 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 Fourth Amendment, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

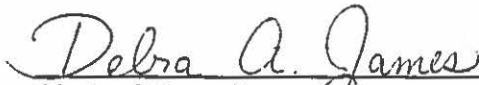
SECTION 2. This Resolution is to take effect at the earliest time allowed by law.

PASSED THIS 4<sup>th</sup> day of May, 2015.



Mayor of the City of  
Centerville, Ohio

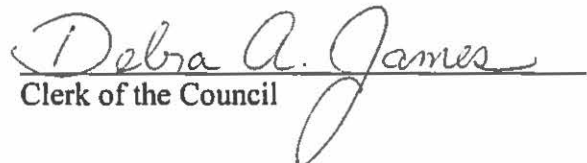
ATTEST:



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. 29-15, passed by the Council of the City of Centerville, Ohio on the 4<sup>th</sup> day of May, 2015.

  
Clerk of the Council

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

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (this "*Amendment*") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, 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, and Third Amendment to Development Agreement dated July 7, 2014 (as so amended, the "*Agreement*").

B. Section 6.4 of the Agreement currently contemplates that when Developer proceeds with Phase 2 of the Development, Developer will fund the entire cost of the Phase 2 Interior Public Improvements, but the actual construction of the Phase 2 Interior Public Improvements will be performed by the City.

C. The Parties desire to amend Section 6.4 to allow the performance of the Phase 2 Interior Public Improvements through a construction manager at risk agreement with Developer's affiliate, Oberer Construction Managers, Ltd. ("*OCM*"), through the execution of a new Phase 2 Construction Manager at Risk 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. Construction of Phase 2 Interior Public Improvements. The second paragraph of Section 6.4 of the Agreement (as currently set forth in the Second Amendment to the Agreement) is hereby amended in its entirety to read as follows:

To enhance the Coverage Ratio for the Phase I Borrowing, Developer agrees that, when Developer proceeds with Phase 2 (either anchor immediately east of the Costco parcel and the construction of the Interior Public Improvements necessary to serve that parcel), Developer will advance the full cost of the Interior Public Improvements relating to Phase 2 (the "*Phase 2 Interior Public Improvements*"). The Phase 2 Interior Public Improvements are shown graphically on Exhibit A attached to this Amendment. The City agrees to enter into a contract with OCM, an Oberer Affiliate, to construct the Phase 2 Interior Public Improvements (the "*Phase 2 Construction Manager at Risk Agreement*"). Developer will separately contract for the engineering of the Phase 2 Interior Public Improvements and will obtain such plans at its sole expense, not as part of any public funding. Nevertheless, the City

shall have the right to review and approve the plans and specifications for the Phase 2 Interior Public Improvements so as to ensure compliance with all applicable City requirements. The plans and specifications for the Phase 2 Interior Public Improvements, as reviewed and approved by the City are referred to herein as the "*Final Phase 2 Interior Plans*". The Phase 2 Construction Manager at Risk Agreement shall contain terms and conditions similar to those established for the Construction Manager at Risk Agreement for Phase I (including, but not limited to, the obligations of OCM to construct the Phase 2 Interior Public Improvements in accordance with the Final Phase 2 Interior Plans, to guarantee completion of the Phase 2 Interior Public Improvements, to fund any shortfalls in the cost of the work, to establish a bidding process that complies with the City's bidding requirements and award bids through this competitive process subject to the City's approval, to provide warranties consistent with applicable law and City requirements, to comply with the City's bonding requirements for both performance and maintenance bonds, and to include in the cost of the work for a fee not to exceed One Dollar (\$1.00)). Developer will provide the funding for such improvements through an escrow or other arrangement acceptable to the City. If in the course of issuing City Debt for future phases beyond Phase 2, the City determines in its sole discretion in accordance with the provisions of Section 6.7 that it could issue City Debt for the additional Phase and also reimburse Developer for all or part of the cost of the Phase 2 Interior Public Improvements, while also achieving the Coverage Ratio on all City Debt and satisfying all other conditions for the issuance of additional City Debt for the new Phase, then the City shall reimburse Developer for the cost of the Phase 2 Interior Public Improvements (or portion thereof).

3. Miscellaneous. 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: \_\_\_\_\_  
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

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