

RESOLUTION NO. 23-14
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Brooks Compton ON THE 2nd DAY
OF June, 2014.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO THE SECOND 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 12, 2014, by Resolution No. 17-14, to extend the contingencies that had not yet been completed; and

WHEREAS, in the course of completing the contingencies, 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 resolve these financial terms, other obligations and to extend the deadline for completion of the contingencies; and

WHEREAS, this Council has determined that it would be in the best interests of the citizens of Centerville to enter into said Second Amendment to the Agreement in order to address and resolve these financial terms and other obligations, and to extend the contingencies.

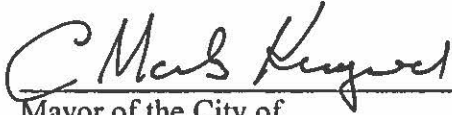
NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is authorized and directed to enter into the Second 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 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 2nd day of June, 2014.



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. 23-14, passed by the Council of the City of Centerville, Ohio on the 2nd day of June, 2014.



Clerk of the Council

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

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into this ____ day of June, 2014, by and between the CITY OF CENTERVILLE, OHIO ("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 and amended by Amendment to Development Agreement dated May 9, 2014 (the "First Amendment") (collectively the "Agreement") 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.

B. The Agreement contemplates the satisfaction of certain contingencies during the Contingency Period established therein. In the course of addressing and resolving the contingency items, the Parties have determined that certain adjustments are necessary with respect to the financial terms and other obligations under the Agreement.

C. In consideration of the mutual benefits accruing hereunder, the Parties desire to amend the Agreement as hereinafter provided.

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.

"Tax Incentive Agreement" has the same meaning as "School Compensation Agreement" and both are interchangeable.

2. Contingencies. The Parties accept the terms of the Tax Incentive Agreement approved by the Bellbrook-Sugarcreek Local School District as satisfying the contingency set forth in Section 5.1(c) of the Agreement. The contingency set forth in Section 5.1(e) of the Agreement has been satisfied and is hereby waived. The Contingency Period is hereby extended until July 7, 2014, with respect only to the contingencies set forth in Sections 5.1(a), as it relates to passage of the Amended TIF Ordinance, (b), and (d). With respect to those contingencies, the City has taken initial action to set for hearing the Amended TIF Ordinance and the ordinance authorizing the execution of the Construction Manager at Risk Agreement. In light of the progress in resolving all contingencies, Developer is authorized to proceed with the recording of the TIF Declaration in anticipation of the satisfaction of the other contingencies.

3. Funding Gap. Subject to all other terms and conditions of the Agreement, the City's commitment to issue City Debt shall be modified as follows:

(a) As a result of revised projections obtained by the Parties based on the compensation arrangements described in this Amendment, the Parties currently anticipate that the net proceeds of City Debt available for the Development will be reduced by \$2.5

million. This anticipated reduction in available funding is referred to herein as the "*Funding Gap*." Developer has agreed to assume the risk of the Funding Gap as a reduction of the net proceeds that would otherwise be available for the Interior Public Improvements on the North Parcel and the South Parcel, subject, however, to the terms set forth herein. Accordingly, Section 6 of the Agreement is hereby amended and restated in its entirety as follows:

Section 6.1 Total Commitment. Subject to the satisfaction of all terms and conditions of this Agreement, the City agrees to incur City Debt and allocate net proceeds of the City Debt in an amount not to exceed \$7.75 million to finance the Interior Public Improvements on the North Parcel, an amount not to exceed \$0.75 million to finance the Interior Public Improvements on the South Parcel, and an amount not to exceed \$14 million to finance Exterior Public Improvements. The parties acknowledge that these are maximum amounts that may be reduced if the projected TIF revenues do not support the full amount of each borrowing at the Coverage Ratio provided in this Agreement, or if the City is able to fund certain of the Public Improvements from grants or other sources not yet identified. The City Debt shall include, in addition to such amounts, two (2) years of capitalized interest on the City Debt and the related costs of issuance of the City Debt as and when issued by the City.

Section 6.2 Phasing. The Parties agree that the Development contemplated by this Agreement is intended to be designed, financed, constructed and installed in Phases over an extended period of time and that the various obligations of the Parties set forth herein are also anticipated to be satisfied in Phases. At the commencement of each Phase, the maximum amount of funding available for Public Improvements in that Phase will be based on the anticipated TIF-eligible value of completed Private Improvements that will generate annual TIF revenues (net of School District and/or Township compensation) sufficient to fund One Hundred Thirty Percent (130%) of the estimated annual Debt Service on the City Debt to be issued for the Public Improvements in that Phase. Notwithstanding the foregoing, the amount of the City Debt in Phase I of the Development shall be as set forth in Section 6.4. For purposes of this Section, if the City Debt consists of short-term notes, the Debt Service on such notes will be determined as if the notes were issued as long-term bonds as of their issuance date, based upon the reasonable estimates of the City's bond underwriter, bond counsel or financial advisor as to the estimated term and interest rates. Where possible, the funding shall follow an 11/14 ratio between the Interior Public Improvements and the Exterior Public Improvements, subject to the terms hereof relating to the reduction of Developer's share of the funding as a result of the Funding Gap.

Section 6.3 Allocation between North Parcel and South Parcel. Unless otherwise agreed by Developer and the City, City Debt for Interior Public Improvements will be allocated on the basis of up to \$7.75 million for Interior Public Improvements on the North Parcel and up to \$0.75 million for Interior Public Improvements on the South Parcel. Up to \$14 million of the net proceeds of the City Debt for Exterior Public Improvements shall be allocated between the North Parcel and the South Parcel as determined by the City based upon the traffic studies that relate to the Phases of development, the availability of TIF revenues from the various Phases, and other relevant factors. Developer shall be solely responsible for any

Interior Public Improvements that are not covered by the net proceeds made available by the City. Because the Funding Gap is allocated primarily to the South Parcel, Developer agrees to reserve the ability to assess the South Parcel for up to \$1.8 million of the \$3.5 million of permitted special assessments under Section 6.8. The City shall have the responsibility for any additional funding required for the Exterior Public Improvements above the funding allocated pursuant this Agreement, recognizing that the City has procured a grant for a portion of the Feedwire Road widening costs and has agreed to supplement the funding of the Exterior Public Improvements through TIF revenues from other developments in the City that will also benefit from the Exterior Public Improvements.

Section 6.4 Phase I Obligations. Developer and the City agree that Phase I of the Development shall be as shown on Exhibit E attached to this Agreement ("*Phase I*"). Developer will use 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 I on or before December 31, 2015, having a taxable value of at least \$16.3 million. As part of Phase I and subject to Sections 6.1 and 6.6, the City will issue City Debt in the total amount of \$4.0 million, plus capitalized interest and costs of issuance (the "*Phase I Borrowing*"). Net proceeds of the Phase I Borrowing shall be allocated 44% to Interior Public Improvements and 56% to Exterior Public Improvements. A description of the Phase I Public Improvements (both the Interior Public Improvements and the Exterior Public Improvements) is set forth on Exhibit F attached hereto. If the amount necessary to fund the Interior Public Improvements or the Exterior Public Improvements in Phase I is less than the amount allocated as provided above, any remaining net proceeds of the Phase I Borrowing may be applied to, or the balance of the Phase I Borrowing may be allocated to, the payment of other Exterior Public Improvements for Phase I or future Phases, with the intent to use such excess in accordance with the desired 11/14 ratio between Interior Public Improvements and Exterior Public Improvements, as adjusted based on the reduction of Developer's share due to the Funding Gap. The Exterior Public Improvements in Phase I include Feedwire Road improvements for which the City will receive grant funding for a portion of the costs. With respect to the off-site sewer line being extended to the North Parcel from east of I-675, Developer may pursue a protection agreement from Greene County allowing the recovery of construction costs from off-site third party users who tap into the extended sewer service. No TIF proceeds are to be used for these sewer line costs.

To enhance the Coverage Ratio for the Phase I Borrowing, Developer agrees that, when Developer proceeds with Phase 2 (the anchor parcel located 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 (estimated at \$800,000) (the "*Phase 2 Interior Public Improvements*"). The Phase 2 Interior Public Improvements are shown graphically on Exhibit A attached to this Amendment. The City will perform and pay for the Phase 2 Interior Public Improvements through the same bidding procedures and other terms (including prevailing wages) that apply to other Public Improvements under the Agreement. Developer will provide the funding for such improvements through an escrow or other arrangement reasonably 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).

Section 6.5 City Debt for Phase I Borrowing. Once all of the conditions set forth in this Agreement for issuance of the Phase I Borrowing have been satisfied, the City's Finance Department shall initiate the steps necessary for the issuance of the Phase I Borrowing. The City will act in good faith to issue the Phase I Borrowing within thirty (30) days following the satisfaction of the contingencies set forth in Section 5.1, but in no event sooner than 90 days following the Effective Date. The City acknowledges Developer's immediate need to commence the Phase I Interior Public Improvements, and agrees to authorize OCM to begin work under its Construction Manager at Risk Agreement with the City prior to the issuance of the Phase I Borrowing, provided that Developer advances the costs of the work, which shall then be reimbursed once the debt is issued. It is contemplated that the City will initially fund such costs of the Phase I Public Improvements through the issuance of bonds or one or more series of notes to be renewed from time to time for a period of up to five years until the Phase I Public Improvements are complete. The City will consult with the Developer as to the timing of the conversion of the notes to long term bonds, if utilized, but the City reserves the right to determine when to implement such conversions. If Developer or the City is able to secure grants or other sources of funds for the completion of Public Improvements that were contemplated to be funded pursuant to this Agreement, such that Developer does not require the entire Phase I Borrowing, the Parties shall endeavor to identify qualifying costs for which the TIF Funds may be used on other Exterior Public Improvements either in Phase I or for Public Improvements in future Phases of the Development.

Section 6.6 Letter of Credit.

(a) Developer agrees that contemporaneous with the delivery of the Phase I Borrowing and upon the issuance of any subsequent City Debt in connection with any subsequent Phase, Developer will deliver a letter of credit to the City which shall be issued by an Acceptable Bank and which shall have an initial term of at least one (1) year (the "*Letter of Credit*"). Developer shall pay all costs associated with the delivery, maintenance, replacement and renewal of the initial Letter of Credit and any subsequent Letter of Credit. The Letter of Credit shall be irrevocable and shall name City or such other entity as designated by City as the sole beneficiary.

(b) Developer agrees that until such time as the Coverage Ratio is satisfied for all City Debt, Developer will maintain the Letter of Credit in order that the amount available to be drawn against the Letter of Credit by City or its designee on any date, shall be equal to three (3) years of Debt Service payments

on the Maximum Amount of the City Debt, calculated on the basis of the anticipated principal and interest payments that will be due on the bonds (as opposed to interest-only payments due when the bond anticipation notes are outstanding). In determining whether the Coverage Ratio is satisfied for all City Debt under this Section 6.6(b), the Statutory Service Payments for all then existing Phases shall be compared against the Debt Service on all then outstanding City Debt. (Thus, for example, the Statutory Service Payments from Phase 2 – where there is no City Debt initially contemplated – may be included with the Statutory Service Payments from Phase 1 in determining the Coverage Ratio on the Phase 1 Borrowing.)

(c) At least 15 days prior to the expiration of any Letter of Credit, Developer shall deliver to City either (i) written acknowledgment from the provider of the existing Letter of Credit that the existing Letter of Credit has automatically renewed for an additional one (1) year period or (ii) a subsequent Letter of Credit with an expiration date of not earlier than one (1) year from the date of the issuance of the subsequent Letter of Credit.

(d) If on the thirtieth day prior to any date on which Debt Service is payable on the City Debt, the Amount Available for Debt Service is not sufficient to pay the Debt Service on the Maximum Amount of that City Debt, the City shall notify Developer of the amount of the deficiency (a "*Debt Service Deficiency*") prior to the twentieth day prior to date on which Debt Service is payable, and Developer shall remit to the City an amount equal to that Debt Service Deficiency no later than the fifteenth day prior to the date on which Debt Service is payable.

(e) If on the fourteenth day prior to the date on which Debt Service is payable, the City has not received the amount of the Debt Service Deficiency (if any) from Developer, the City will be entitled to draw on the Letter of Credit in an amount sufficient, together with the Amount Available for Debt Service, to pay the Debt Service Deficiency (if any). Any amount drawn on the Letter of Credit shall be used solely to pay the Debt Service on City Debt. Within fifteen (15) calendar days following any draw on the Letter of Credit, Developer shall restore the amount available to be drawn under such Letter of Credit to the Letter of Credit Amount. Developer acknowledges and agrees that any failure by City to notify Developer of any Debt Service Deficiency in accordance with this Section 6.6(e) shall not impair the City's right to draw on the Letter of Credit.

(f) Developer, at its option, may substitute cash for the Letter of Credit in whole or in part. Any cash collateral substituted for the Letter of Credit shall be held by the City to ensure that the City will have access to the cash in a manner equivalent to the City's ability to draw on the Letter of Credit, and that the cash is held in a manner that will be outside of Developer's control and not subject to bankruptcy claims. The City will hold the funds in a separate account, provide reporting of the account status to Developer, and distribute any earnings on the cash to Developer provided Developer is not in Default. The Letter of Credit

shall remain in place for at least ninety (90) days after cash is transferred to the City.

(g) City agrees that it shall record the amount of monies deposited into the TIF Fund in each calendar year (for each calendar year, the aggregate deposit being referred to as the "*Annual Deposit in the TIF Fund*"). If the Annual Deposit in the TIF Fund for each of two (2) consecutive calendar years equals or exceeds the Coverage Ratio in each of those calendar years, then subject to subsection 6.6(i), Developer shall no longer be required to maintain the Letter of Credit pursuant to this Agreement and the City will cooperate with Developer to terminate the Letter of Credit (and/or refund to Developer any cash in lieu thereof, if applicable). If at any time the City Debt may be paid down and the Developer is willing to fund the pay down in order to achieve the Coverage Ratio, the City shall cooperate with Developer in implementing the pay down.

(h) If Developer shall fail to establish, maintain, restore or renew the Letter of Credit with an Acceptable Bank in accordance with the provisions of this Section 6.6, or provide cash in lieu thereof as provided herein, such failure shall constitute an event of default and City shall be entitled to pursue any and all remedies now or hereafter existing at law or in equity to enforce such performance, which may include, but shall not be limited to drawing the entire stated amount of the Letter of Credit. The City acknowledges that drawing upon the Letter of Credit or cash in lieu thereof does not constitute an event of default if Developer restores such Letter of Credit or the cash funds in accordance with the terms hereof.

(i) If Developer's obligation to maintain the Letter of Credit shall have terminated in accordance with subsection 6.6(g) and Developer later proposes that the City issue additional City Debt to pay the costs of additional Public Improvements, then Developer shall be required to establish a new Letter of Credit in accordance with this Section 6.6 (or cash in lieu thereof pursuant to Section 6.6(f)) and maintain that Letter of Credit (or cash in lieu thereof) in the manner provided in this Section 6.6 until such time as the Coverage Ratio is satisfied for all of the then outstanding City Debt.

Section 6.7 City Debt for Subsequent Phases. Following the issuance of the Phase I Borrowing, the City shall not be obligated to issue any additional City Debt in connection with a successive phase of the Development unless the City has determined in its sole discretion that (a) the Coverage Ratio has been satisfied or will be satisfied [based on the City's review of work in progress, commitments for transactions (which may be in the form of redacted copies of purchase agreements, letters of intent or the like) and similar information] for the then outstanding City Debt, (b) the projected annual Statutory Service Payments and Property Tax Rollback Payments to be received by the City in connection with any existing Private Improvements and the Private Improvements proposed to be constructed in connection with such successive phase will be sufficient to satisfy the Coverage Ratio for all outstanding City Debt no later than five (5) years following the anticipated completion of those Private Improvements proposed to be constructed, (c) Developer

shall have the ability to increase, and upon issuance of such additional City Debt will have increased, the Letter of Credit Amount to an amount sufficient to provide coverage for the payment of the Maximum Amount of Debt Service until the projected Service Payments and Property Tax Rollback Payments are realized and (d) City Council will approve the issuance of such City Debt and the issuance of such City Debt will not cause the City to exceed any legal debt limitations or otherwise impair the City's ability to issue debt required by the City for other City purposes. In exercising its discretion and approval rights under this Section, the City will base its decisions on its analysis of the factors described in Section 6.7 (a) through (d) and not arbitrarily withhold its approvals. The Parties acknowledge that the City may take into account any potential loss of revenue due to changes in the law (for example, changes that eliminate dual taxation of annexed properties, if the result would be to reduce TIF revenues available to the City).

Section 6.8 Special Assessments. To supplement the funds available to Developer for the payment of the costs of construction of public improvements on the North Parcel and/or the South Parcel, Developer may establish voluntary special assessments by petition pursuant to Section 727.06 of the Ohio Revised Code with respect to the payment of costs of constructing such public improvements on the North Parcel and/or the South Parcel (but not to support any City Debt) or other public improvements that may be financed by special assessments under applicable law. The special assessments may include amounts to finance sewer and/or water line extensions by the Greene County Commissioners. The total amount of the special assessments shall not exceed \$1.7 million on the North Parcel and \$1.8 million on the South Parcel plus any interest on any associated indebtedness. The City shall reasonably cooperate in the levying of the special assessments, but the City shall not be obligated to pay for or otherwise issue any indebtedness for the purpose of paying the costs of the public improvements requested by such special petition. If requested by Developer, the City agrees to reasonably cooperate with Developer to assign such special assessments to a port authority or other governmental issuer of such indebtedness for the purpose of paying the costs of the public improvements requested by such special assessment petition. To the extent practical, and as allowed by law, individual purchasers of parcels of land that are subject to the special assessment shall be permitted to prepay their share of the special assessment and, in that event, be released from further obligations as to the special assessments. Developer acknowledges that because the Funding Gap primarily affects the South Parcel funding, Developer agrees to use the special assessment on the South Parcel to facilitate the development of the South Parcel unless the Funding Gap has been filled from other sources. The Developer further acknowledges that to the extent it petitions for any public improvements which are not within the sole authority of the City to construct, the City may be required to enter into a cooperative agreement with any applicable political subdivision prior to or concurrent with the filing of such petition in order to provide for the construction of those public improvements.

Section 6.9 Other Financing. The Parties agree that it is the mutual interest of both Parties to pursue other financing sources to cover the cost of the Public Improvements that may be acceptable to the Parties, and the Parties agree to cooperate with each other in pursuing other funding opportunities. The Parties agree that if other monies, including, but not limited to, State legislatively approved sources

or from Greene County, Ohio, become available to the Developer in the future which may lawfully be applied to the costs of the Public Improvements, then each Party agrees to make good faith, reasonable efforts to negotiate for the use of those funds in a manner that will lessen the need for contributions by the Parties to the cost of the Public Improvements. To the extent other public sources provide a benefit to the Developer in or the City, the Parties agree to work toward an equalization of benefits.

(b) The following provisions are hereby added as new Sections 6.10 and 6.11:

Section 6.10 Filling the Funding Gap. Developer and the City shall use reasonable, good faith efforts to fill the Funding Gap through other public funding sources, as contemplated by Section 6.9 of the Agreement. The first funds made available to the Public Improvements from third party sources (other than funds currently committed such as the Feedwire Road grant and the Greene County sewer assessment project) – whether to Interior Public Improvements or to Exterior Public Improvements – shall be deemed to reduce the Funding Gap, and shall be subject to the provisions of Section 6.9 of the Agreement relative to the Parties' commitment to work toward an equalization of benefits.

In the event that the Funding Gap is not filled in whole or in part through other public funding sources as contemplated by the preceding paragraph, the Funding Gap may be filled through the use of surplus Statutory Service Payments under the following conditions: if (i) Statutory Service Payments from the TIF are sufficient to pay the Debt Service on the City Debt and to pay all other amounts under the *first, second and third* paragraphs of Section 7.5, such that a surplus exists which would be subject to the terms of the *fourth* paragraph of Section 7.5 (a "Service Payment Surplus"), (ii) the Coverage Ratio has been met for three (3) consecutive calendar years, and (iii) the accumulated amount of the Service Payment Surplus exceeds three (3) years of Debt Service on the outstanding City Debt, then the amount of the excess funds (i.e., in excess of a reserve for three (3) years of Debt Service) shall be made available to fill the Funding Gap (or remaining portion thereof) either by reimbursing Developer for costs of Interior Public Improvements paid by Developer at its own expense (provided that such Improvements were approved by the City prior to payment by Developer) or by enhancing the funds issued in connection with a Phase of the Interior Public Improvements that would have otherwise been reduced as a result of the Funding Gap.

Section 6.11 Alternative Debt. If market conditions change such that it becomes commercially reasonable to issue project-specific debt that is not a General Obligation of the City, Developer agrees to work with the City to allow project-specific debt in substitution or replacement for the General Obligation City Debt, provided that the change is not materially more burdensome to the economics of the development.

4. **Use of TIF Funds.** Section 7.5 of the Agreement is hereby amended and restated in its entirety as follows:

Section 7.5 Use of TIF Funds. The Parties agrees that the Statutory Service Payments from the TIF, net of any compensation payments under the School

Compensation Agreement and, if applicable, the Township Compensation Agreement, shall be used for the purpose and in the order of priority as follows:

(a) *first*, those Statutory Service Payments received in the then current calendar year shall be used to pay Debt Service on the City Debt which is due and payable in the then current calendar year or otherwise reimburse the City for such prior Debt Service payments;

(b) *second*, those Statutory Service Payments received in excess of the payment required by the *first* paragraph in the then current calendar year shall be used to reimburse Developer for any (i) unreimbursed draws theretofore made under the Letter of Credit or (ii) direct payments theretofore made by Developer, each for the purpose of paying Debt Service;

(c) *third*, those Statutory Service Payments received in excess of all payment(s) required by *first and second* paragraph in the then current calendar year shall be used to reimburse the TIF Parcel Owners for the payment of Minimum Service Payments previously paid by such Owners;

(d) *fourth*, those Statutory Service Payments received in excess of all payment(s) required by *first, second or third* paragraph in the then current calendar year, shall be used, at the City's election, and in such proportions as the City may determine, (i) to be held by the City in escrow as additional security, beyond the Letter of Credit and without in any way limiting Developer's obligations with respect to the Letter of Credit, for the payment of the City Debt when due, (ii) to prepay such indebtedness in whole or in part; or (iii) to pay, or reimburse the City, for costs of the City's share of the Exterior Public Improvements, as set forth on Exhibit E, to the extent of any shortfalls incurred by the City that were not funded through the City Debt; provided that, notwithstanding the foregoing, as long as the Funding Gap remains outstanding in whole or in part, any Service Payment Surplus shall be held in escrow so as to be available for the purposes set forth in Section 6.10, and shall be disbursed as provided in ~~that~~ and subject to Section 6.10; and

(e) *fifth*, those Statutory Service Payments received in excess of all payment(s) required by *first, second, third or fourth* paragraph in the then current calendar year, shall be used to pay, or reimburse the City, for costs of any other Exterior Public Improvements undertaken by the City with reference to the tax increment financing area.

5. Additional Miscellaneous Provisions added to Article XVI. Sections 16.12 and 16.13 of the Agreement are hereby added as follows:

Section 16.12 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 16.13 Third Party Litigation Defense Costs. In the event that a third party files suit or otherwise initiates litigation against the City with regards to any of the terms of this Agreement, the parties agree to share the litigation costs, including but not limited to attorney fees, at the 11/14 ratio between Interior Public Improvements and Exterior Public Improvements. Developer's obligation to the City under this paragraph shall be reduced to the extent Developer is or becomes a party to the lawsuit and expends legal fees in that action.

6. Miscellaneous. Except as modified, hereby, the Agreement is ratified and confirmed and remains in full force and effect. Terms of the Agreement not amended hereby shall apply to the terms and conditions of this Amendment (including, for example, but not limited to, the limitation on personal liability set forth in Section 16.3 of the Agreement). This Amendment embodies the entire agreement and understanding of the Parties relating to this subject matter herein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties. 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.

CITY:

APPROVED AS TO FORM:

THE CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation

City Attorney

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 _____, 2014, 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 _____, 2014, 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

7760843

FISCAL OFFICER'S CERTIFICATE

The undersigned Finance Director of the City of Centerville, Ohio under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2014 under the foregoing Agreement will, upon the issuance of bonds or notes for that purpose, have been lawfully appropriated for that purpose, and will be in the Treasury of the City or 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.

Finance Director
City of Centerville, Ohio