

ORDINANCE NO. 08-65 AC CMS

AN ORDINANCE APPROVING A DEVELOPMENT CONSTRUCTION AGREEMENT WITH OBERLIN COLLEGE FOR THE CONSTRUCTION OF CERTAIN IMPROVEMENTS RELATED TO THE DEVELOPMENT OF THE PHYLLIS LITOFF BUILDING AT THE OBERLIN COLLEGE CONSERVATORY OF MUSIC AND DECLARING AN EMERGENCY

Whereas, Oberlin College has submitted plans to the Oberlin Planning Commission and the City of Oberlin for the proposed development of the Phyllis Litoff Building at the Oberlin College Conservatory of Music, and;

Whereas, the Oberlin Planning Commission has approved the site plan and the improvement plans for same, and;

Whereas, the City of Oberlin desires to enter into a Development Construction Agreement with Oberlin College to ensure the installation of all proposed public improvements necessary to serve the proposed development in accordance with the approved improvement plans.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, 5/7ths of all members elected thereto concurring:

SECTION 1. That the proposed Development Construction Agreement between the City of Oberlin, Ohio and Oberlin College for construction and installation of the proposed public improvements located at and adjacent to the Oberlin College Conservatory of Music at 77 West College St., Oberlin, Ohio, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

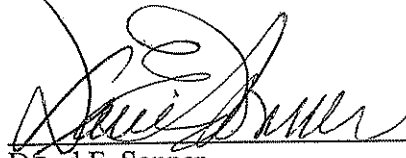
"to approve a Development Construction Agreement in a timely manner so as to avoid construction delays", and shall take effect immediately upon passage.

PASSED: 1st Reading – September 2, 2008(E)
 2nd Reading –
 3rd Reading –

ATTEST:



Belinda B. Anderson
CLERK OF COUNCIL



David E. Sonner
PRESIDENT OF COUNCIL

POSTED: 9/03/2008

EFFECTIVE DATE: 9/02/2008

I hereby certify that the foregoing is an accurate account summary of the contents of the above entitled ordinance.

Seal



Belinda B. Anderson
CLERK OF COUNCIL

CITY OF OBERLIN
DEVELOPMENT CONSTRUCTION AGREEMENT
ORIGINAL

Section I. Identification of Financial Parties:

This Construction Agreement is entered into by and between the City of Oberlin, Ohio hereinafter referred to as the "CITY," and Oberlin College, a corporation whose business address is Cox Administration Building, 70 North Professor St., Oberlin, OH 44074 hereinafter referred to as the "DEVELOPER"

Section II. Successors and Assigns:

This Agreement shall be binding upon and shall inure to the CITY, its legal representatives, agents, elected and appointed officials, and the DEVELOPER, its legal representatives, agents, successors, and assigns. The DEVELOPER shall not assign, transfer or otherwise convey any right, title or interest in this agreement without first obtaining the written consent of the CITY, provided however, in no event shall the obligations, liabilities and responsibilities of the DEVELOPER be released without first obtaining the express written consent of the CITY.

Section III. Description of Property:

This Agreement shall cover the development of real estate owned by the DEVELOPER and known as 77 West College St., the Phyllis Litoff Building at the Oberlin College Conservatory of Music. A copy of the approved site plan and improvement plans of said real estate prepared by KS Associates, Inc. and dated August 25, 2008 and marked Exhibit "A" are attached hereto for the purpose of identification of the real estate and the on-site and the off-site improvements covered by this Agreement.

Section IV. Improvement Plans and Specifications:

The DEVELOPER, in order to furnish the required plat and the required improvement plans and specifications for use in the construction of all improvements included in this Agreement (the "Improvement Plans and Specifications"), agrees that said site plan, including plats of and legal descriptions of all easements, shall be prepared by a registered Surveyor, and that said improvement plans and specifications shall be prepared by a registered Professional Engineer, both of whom shall be in good standing and duly registered with the Ohio Board of Registration for Professional Engineers and Surveyors, with authorization to practice in the State of Ohio. The Surveyor and Engineer may be the same person provided he or she holds both required registrations.

Before construction of any improvements by the DEVELOPER on any land included in Exhibit "A", the Improvement Plans and Specifications shall be subject to the CITY's review and approval. Said review shall be for compliance with City ordinances and construction standards and the requirements of this Agreement. The CITY shall complete its review and/or approval of the Improvement Plans and Specifications no later than 21 days after they are received from the DEVELOPER. All required improvements shall be constructed in accordance with the approved Improvement Plans and Specifications.

The specifications to be included in the Improvement Plans and Specifications shall be based on the standard specifications of the City of Oberlin Public Works Standards and those required by the Oberlin Municipal Light and Power System. Said Standards shall be used in the development of the construction documents and

produced and distributed by the DEVELOPER to the parties involved in the construction of the improvements. Reference to said Standards shall not constitute compliance with this requirement.

The DEVELOPER shall provide to the City Engineer three (3) sets of the printed plans showing proposed public improvements with one (1) AutoCad.dwg file accurately describing all of the improvements to be constructed. Three (3) sets of the printed plans with one (1) AutoCad.dwg file shall be submitted to the City Engineer of all approved revisions or additions to the Improvement Plans.

Section V. Required Improvements:

The DEVELOPER agrees to plan, manage, schedule, supervise, and to construct all required improvements within the development site and to construct additional required improvements that will be located outside the limits of the development but which improvements are required to serve facilities which will be located within the development site as specified in this Agreement.

- A.) As specified in the approved Improvement Plans, the required public improvements to be constructed on-site are:
- 1.) Sanitary sewer system in College Place
 - 2.) Storm sewer system in College Place
 - 3.) Water mains with fire hydrants
 - 4.) Street pavements with curb replacement as may be required and an underdrain system in College Place
 - 5.) Site restoration in the public rights-of-way
 - 6.) All required easements to be dedicated to the CITY
 - 7.) Any other improvements required by City Ordinances, by the City Planning Commission pursuant to City rules and regulations, by the City of Oberlin Public Works Standards, and those required by the Oberlin Municipal Light and Power System, and included in the final site plan and the Improvement Plans.
- B.) As specified in the approved Improvement Plans, the required improvements necessary to connect to or to improve existing public facilities that will be located outside the limits of the development include:
- 1.) Sanitary sewer system from and including Sanitary Sewer Manhole 1 (SAN MH-1) as shown on the approved Improvement Plans to the CITY's sanitary sewer main in West Vine St. as may be required by the CITY following inspection of the existing system and determination as to ownership.
 - 2.) Storm sewer system from and including Storm Sewer Manhole 1 (STM MH-1) as shown on the approved Improvement Plans to its point of connection to the CITY's storm sewer main in West Vine St. or to Plum Creek (point of connection to be determined) as may be required by the CITY following inspection of the existing system and determination as to ownership.
 - 3.) Water main connections across West College and South Professor streets
 - 4.) Street repairs to West College and South Professor streets
 - 5.) All required easements to be dedicated to the CITY
 - 6.) Site restoration in the public rights-of-way

- 7.) Any other improvements required by City Ordinances, by the City Planning Commission pursuant to City rules and regulations, by the City of Oberlin Public Works Standards, and those required by the Oberlin Municipal Light and Power System, and included in the final site plan and the improvement plans.
- C.) As specified in the approved Improvement Plans, the required private improvements to be constructed are:
- 1.) Sanitary sewer system including all laterals to the buildings and including Sanitary Sewer Manhole 1 (SAN MH-1) as shown on the approved Improvement Plans to the CITY's sanitary sewer main in West Vine St. as may be required by the CITY following inspection of the existing system and determination as to ownership.
 - 2.) On-site storm sewer system and its outlet from and including Storm Sewer Manhole 1 (STM MH-1) as shown on the approved Improvement Plans to its point of connection to the CITY's storm sewer main in West Vine St. or to Plum Creek (point of connection to be determined) as may be required by the CITY following inspection of the existing system and determination as to ownership.
 - 3.) Domestic and Fire Protection water service laterals to the buildings
 - 4.) Underground street and parking lot lighting system
 - 5.) Underground primary and secondary electrical distribution system and interconnecting facilities
 - 6.) South parking lot improvements
 - 7.) Oberlin Off-Street Parking Inc. parking lot improvements
 - 8.) Grey Gables parking lot improvements
 - 9.) West College street angled parking improvements or suitable alternative approved by the Planning Commission.
 - 10.) Trees, plantings and site restoration
 - 11.) All required easements to be dedicated to the CITY
 - 12.) Any other improvements required by City Ordinances, by the City Planning Commission pursuant to City rules and regulations, by the City of Oberlin Public Works Standards, and those required by the Oberlin Municipal Light and Power System, and included in the final site plan and the Improvement Plans.
- D.) The DEVELOPER shall be responsible for the entire cost of all the required improvements, including but not limited to:
- 1.) Surveys, plat drawings, and easements
 - 2.) Engineering design
 - 3.) Construction and installation costs, including supervision of same
 - 4.) Compliance with the Planning Commission's conditions of approval with regard to traffic circulation including emergency vehicle access; parking; construction vehicle and equipment site access; and materials and equipment storage
 - 5.) Stormwater Management Plan to be implemented continuously during development and construction activities
 - 6.) CITY Review and Inspection costs
 - 7.) Materials Testing Costs
 - 8.) Bonds, insurance and title guarantees
 - 8.) Landscape plans, production and installation costs, including but not limited to curb

- lawn trees
- 10.) All permit and tap-in fees
- 11.) Certification of the as-built drawings by the DEVELOPER'S Engineer and Surveyor.
- E.) The Developer shall be responsible for all costs associated with the construction and post-construction de-commissioning of a temporary electrical service by the CITY to provide temporary power to existing College facilities during construction of the development.
- F.) The DEVELOPER shall be responsible for the approved collection and conveyance or approved termination of all existing subsurface drainage systems affected by the proposed construction. Surface drainage and subsurface drainage systems of abutting properties shall not be adversely affected by the improvements by the DEVELOPER.
- G.) The DEVELOPER shall hold the CITY harmless from any and all costs, expenses, liabilities and claims arising from the DEVELOPER'S performance of the requirements of this Agreement and the construction of the development.
- H.) The DEVELOPER agrees to grant the CITY access to the site for the purpose of inspection of the public improvements, and as otherwise reasonably determined necessary by the CITY.

Section VI. Compliance with Laws, Regulations and Codes:

The DEVELOPER shall be responsible for carrying out and completing all requirements of this Agreement and the approved Improvement Plans and Specifications in compliance with all applicable Federal, State and City laws, regulations and codes, including but not limited to the following:

- a.) State plan approval and permits for water main extensions
- b.) State plan approval and permits for the sanitary sewer system
- c.) State NPDES permit for storm water control and discharge
- d.) City of Oberlin Public Works Standards
- e.) Oberlin Municipal Light and Power System approved installation requirements

The DEVELOPER and not the CITY, shall have the obligation and responsibility to comply with the NPDES permit for storm water discharge, including but not limited to:

- a.) Identifying potential pollutant sources
- b.) Using stabilization practices to control erosion and to prevent sediment from being discharged onto roadways or into any existing or newly-constructed storm sewer, ditch, retention/detention basin, field tile or any natural drainage course.
- c.) Maintain all required records as required showing compliance with the storm water discharge permit.

Measures shall be taken to minimize erosion and its impacts during construction activities. Erosion control plans shall be designed to control erosion on-site with the object of eliminating or minimizing erosion and sedimentation impacts off-site. Detailed erosion control plans setting forth the techniques to be used temporarily (during construction of improvements, or buildings) and permanently shall be submitted with the Improvement Plans. The erosion control plans shall include a schedule for the implementation or installation

of said measures. All erosion control devices shall be in place at the start of construction and other measures implemented according to the approved schedule. The erosion control plan and its procedures shall remain in effect until the construction is complete and the site is vegetated to control erosion in accordance with the storm water management plan basis of design.

Mud and soil from construction traffic shall remain on the construction site and shall not be tracked off-site in accordance with Section 339.08 of the City's Codified Ordinances. Concrete trucks shall not clean and deposit unused concrete into any street, parking lot or storm drainage system. All areas of disturbed soil shall be restored in an approved manner, including establishing the finished grade, seeding and planting. Any unpaved areas of rights-of-way or pedestrian ways shall be graded, seeded, and planted as described in the Improvement Plans.

To meet the requirements of this section and prior to the commencement of construction activities, the DEVELOPER shall file with the City Engineer a copy of all permit applications and the permits issued for the permits listed in this section.

Section VII. Environmental:

The DEVELOPER makes the representation to the CITY that to its knowledge:

- 1.) The site it is not in violation of any federal, state, or local laws, rules, or regulations concerning land use and the environment;
- 2.) The site has not previously been used for a landfill, dump or disposal site for garbage, refuse, or construction demolition debris;
- 3.) Neither the DEVELOPER nor any other person has caused or permitted hazardous materials to be placed, held, located, released or disposed of on, under, or at said real estate; and
- 4.) No part of the real estate has ever been used for activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous materials, except for materials used in the growth and production of agricultural products.

Section VIII. Pre-Construction Procedures

A) INSURANCE. Before the DEVELOPER authorizes a contractor(s) to work on any of the required improvements identified in Section V herein, or begins work on the required improvements with his own forces, the DEVELOPER shall file with the Public Works Director, copy(s) of the contractor's Certificate of Liability Insurance with the City of Oberlin, Ohio, its elected and appointed officials and employees named as additional insured. The liability insurance shall remain in force until all work has been completed and Oberlin City Council accepts the public improvements. The liability limits for the required coverages noted hereinabove shall be at least:

	<u>Each Occurrence</u>	<u>Aggregate</u>
Bodily Injury and Property Damage, Combined	\$1,000,000.00	\$2,000,000.00
Vehicle Liability	\$1,000,000.00	\$1,000,000.00

B) PERFORMANCE BOND. The DEVELOPER agrees to post a performance bond in the estimated amount of Two Hundred and Seventy-Two Thousand Eight Hundred and Fifty-Five and 00/100 dollars (\$272,855.00) or an irrevocable letter of credit subject to approval as to the amount by the City Engineer and as to form by the Law Director, in accordance with Section 1317.03 of the City of Oberlin Planning and Zoning Code. The amount of the performance bond shall be based on an itemized estimate provided by the DEVELOPER to the City Engineer for the installed cost of all of the public improvements detailed in the approved Improvement Plans.

The performance bond shall guarantee the completion of all improvements required hereunder. In the event that the required improvements are not completed by the DEVELOPER within the time period designated in this Agreement, except in the event such delay is caused by circumstances that are beyond the control, and not the fault, of DEVELOPER or its contractors, in which case DEVELOPER shall be entitled to an extension of the completion date set forth in this Agreement, the City Manager shall have the option, thirty (30) days after issuing written notice to the DEVELOPER, to complete the improvements and to collect and receive funds from the performance bond to be applied towards the costs of completing said improvements.

The DEVELOPER agrees that the expenditure of funds by the DEVELOPER in completing part of the required improvements shall not reduce the amount of the performance bond or letter of credit (as the case may be) for which the DEVELOPER is responsible. The letter of credit shall be in conformity with O.R.C. Chapter 1305 or such other requirements as determined by the Law Director.

C) RESTORATION BOND. The DEVELOPER agrees to post a restoration bond in the estimated amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) or an irrevocable letter of credit subject to approval as to the amount by the City Engineer and as to form by the Law Director, in accordance with Section 1317.04 of the City of Oberlin Planning and Zoning Code. The amount of the restoration bond shall be based on an itemized estimate provided by the CITY to the DEVELOPER for the estimated cost of potential damages to existing improvements adjacent to the development.

The restoration bond shall guarantee the repair of any damage done to the existing public utilities including but not limited to curbs, gutters, sidewalks, driveways, street pavement, landscaping, or other items within the rights-of-way adjacent to the development or within areas or easements controlled by the CITY, to the extent caused by the acts or omissions of the DEVELOPER, its agents, contractors and sub-contractors. In the event that said damages are not repaired and/or replaced by the DEVELOPER within the time period designated in this Agreement, the City Manager shall have the option, thirty (30) days after issuing written notice to the DEVELOPER, to complete the repairs and/or replacements and to collect and receive funds from the restoration bond to be applied towards the costs of completing said repairs and/or replacements.

The letter of credit shall be in conformity with O.R.C. Chapter 1305 or such other requirements as determined by the Law Director. The restoration bond shall be released when all damaged facilities, if any, have been restored to the satisfaction of the City Manager.

D) INSPECTION OF IMPROVEMENTS. Prior to receiving Authorization to Proceed, the DEVELOPER shall submit to the Public Works Director the required fees for inspection and testing services as delineated hereinafter in Section IX of this Agreement.

The CITY shall make inspections during the installation of improvements to ensure conformity with the approved improvement plans and with this Agreement. The CITY may, at its sole discretion, contract for inspection services which fees shall be paid from the DEVELOPER'S deposit.

The CITY may have materials testing of the work performed during the installation of the improvements to ensure conformity with the approved Improvement Plans and this Agreement. The costs of said testing shall be paid from the DEVELOPER's deposit. Said testing shall be performed in accordance with the Public Works Standards.

The inspections of all construction by the City Engineer and other personnel employed by the CITY shall be done to ensure proper installation and construction of all improvements, provided however, that the presence of City personnel shall not make the CITY liable for the acts of the DEVELOPER or the DEVELOPER'S agents. The DEVELOPER and its successors and assigns agree to hold the CITY, its agents, representatives, elected and appointed officials and employees, harmless from any and all liability, claims, causes of action, damage to property or person arising out of or in connection with any acts, errors, omissions, or negligence arising out of or caused by the design or by the construction of any and all improvements by the DEVELOPER or the DEVELOPER'S agents.

The DEVELOPER shall provide a minimum of seventy-two (72) hours (exclusive of weekends and holidays) advance notification of start/stop of construction activity to the CITY. Construction shall not recommence prior to the expiration of the three (3) working day notification period. All inspection costs due to non-compliance with this clause shall be borne by the DEVELOPER.

The installation of all required improvements shall be supervised by a Professional Engineer employed by the DEVELOPER.

E) RESPONSIBLE PARTY. The DEVELOPER shall designate a Project Representative thoroughly knowledgeable with the approved Improvement Plans and empowered to act on behalf of the DEVELOPER. The Project Representative shall be the CITY's primary contact with regard to the construction of the improvements. The Project Representative will co-ordinate a Pre-Construction meeting and subsequent job meetings as may be required with the CITY.

F) AUTHORIZATION TO PROCEED. Not later than 7 days after the DEVELOPER has met all Pre-Construction conditions, the City Manager shall issue written authorization to the DEVELOPER to proceed with the installation of the approved improvements. No work shall begin prior to the receipt of the written Authorization to Proceed.

Section IX. Inspection Costs incurred by CITY:

The DEVELOPER agrees to deposit with the CITY the estimated amount of **Thirteen Thousand Six Hundred and Forty-Two and 75/100 Dollars (\$13,642.75)** representing 5% of the estimated construction cost of the public improvements as determined by the DEVELOPER'S design professional and approved by the City Engineer. Said funds shall be deposited in a dedicated construction inspection account. Said funds may be drawn on by the CITY to pay for review and inspection charges and costs directly related to this development. The fees for contracted inspection services shall be paid from the DEVELOPER'S deposit. Construction observation shall continue for the full duration of the improvements, including remedial activities required to secure the CITY's acceptance of said improvements. In the event that the funds are insufficient,

additional funds shall be deposited by the DEVELOPER in increments of not less than 1% of the aforementioned construction cost until such time as the CITY accepts said improvements. The CITY shall, with written notice, provide a full accounting of said deposit account to the DEVELOPER.

The DEVELOPER shall deposit with the CITY the additional amount of **Two Thousand Seven Hundred Twenty-Eight and 55/100 Dollars (\$2,728.55)** representing 1% of the estimated construction cost as determined by the DEVELOPER'S design professional and approved by the City Engineer. Said funds shall be deposited in a dedicated construction inspection account. Said funds may be drawn on by the CITY to pay the costs of materials testing and reporting by a materials testing firm based on the invoices of said firm. In the event that the funds are insufficient, additional funds shall be deposited by the DEVELOPER in increments of not less than 0.2% of the aforementioned construction cost until such time as the CITY accepts said improvements. The CITY shall, with written notice, provide a full accounting of said deposit account to the DEVELOPER.

Upon completion of all required inspections and testing and following acceptance of the public improvements by Oberlin City Council, the City Engineer shall make a final and complete statement of the amount of the inspection and testing costs charged or to be charged against the DEVELOPER'S deposit account. The City Engineer shall make a recommendation to the City Manager requiring final payment or making a refund to the DEVELOPER.

Section X. Modification of Improvement Plans:

If at any time before or during the construction of the required improvements, it is demonstrated to the satisfaction of the City Manager and the City Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the City Manager may authorize such modifications upon written request of the DEVELOPER, provided such modifications are within the spirit and intent of the Planning Commission's approval and do not amount to the waiver or substantial alteration of the function of any improvement required by the Commission. The City Manager shall issue such authorization in writing and shall transmit a copy to the Planning Commission.

Section XI. Stop Work Order:

In the event that the DEVELOPER fails to comply with the terms and conditions of this Agreement or the DEVELOPER fails to construct the Development in accordance with the approved improvement plans or is performing said work in a dangerous or unsafe manner, the CITY shall have the right to issue a Stop Work Order. The effect of this order shall be limited to the matter(s) specified in the order.

The Stop Work Order shall be issued in writing with the reason for the order clearly stated and the condition(s) under which the cited work may resume. The Stop Work Order shall be given to the DEVELOPER or the DEVELOPER'S Agent and to the person(s) doing the work. Upon issuance of the Stop Work Order, the cited work shall immediately cease, except such work as that person is directed to perform to remove a violation or unsafe condition.

Failure to cease work after receipt of a Stop Work Order is hereby declared to be a public nuisance.

Section XII. Completion Time:

The DEVELOPER agrees to commence the expansion of the Grey Gables parking lot prior to the issuance of the Building Permit. The DEVELOPER agrees to complete all of the other parking and street improvements including College Place; South parking lot; Oberlin Off-Street Parking Inc. parking lot, West College angled parking or suitable alternative approved by the Planning Commission, prior to the issuance of the Occupancy Permit.

The DEVELOPER agrees to complete all required improvements listed in Section V within 446 consecutive days (18 months) from the date of issuance of the building permit by the CITY, except those improvements whose completion date is otherwise indicated, or unless completion is extended in writing for good cause by the Oberlin City Manager due to the acts or omissions of third parties, or other events that are beyond the control of the DEVELOPER. Such extension or extensions shall not exceed 365 additional days. Requests for extension(s) shall be submitted in writing to the CITY Manager no less than thirty (30) days prior to the completion date or approved extension date.

Section XIII. Acceptance of Land and Improvements:

The DEVELOPER acknowledges that final plat approval does not constitute acceptance of the public improvements. The public improvements may be accepted by the CITY for public maintenance only by action of the Oberlin City Council, through the passage of an ordinance accepting the public improvements for public maintenance.

The DEVELOPER acknowledges its responsibility for all maintenance costs incurred (by it or by the CITY) before the date of passage of the ordinance accepting the public improvements for public use and maintenance. Prior to acceptance, the DEVELOPER shall be responsible for the maintenance of all public improvements. The DEVELOPER shall repair all failures in or damages to the public improvements as soon as they become apparent.

The DEVELOPER shall, prior to the acceptance of the public improvements, provide waivers of lien executed by all suppliers, contractors, and subcontractors who have provided materials or performed work related to the construction of the public improvements.

The DEVELOPER'S Professional Engineer who has supervised the installation of the public improvements shall, after completion of the installation, certify to the City Manager that all public improvements have been constructed as required by this Agreement and as such requirements may have been modified during the course of construction (if authorized). The DEVELOPER shall provide to the City Engineer one set of AutoCad.dwg drawing files and one set of printed plans accurately describing all of the improvements, as constructed.

The DEVELOPER shall provide to the City Engineer an itemized report detailing the actual costs to construct each component of the public infrastructure including water main(s) and appurtenances; sanitary sewer system and appurtenances; storm sewer system and appurtenances; and street and curb improvements.

After all the public improvements have been completed and all of the conditions met, the DEVELOPER shall petition the CITY in writing for acceptance of the public improvements. When the City Manager and the City Engineer determine that all improvements have been completed and all requirements and conditions have been complied with, they shall make a written recommendation to City Council to accept the public improvements

for ownership, operation, and maintenance. City Council shall accept the public improvements by the adoption of an ordinance.

At the time of acceptance of the public improvements, action shall be taken to release the Performance and Restoration Bonds and to establish the Maintenance Bond.

Section XIV. Maintenance Guarantee:

At the time the public improvements are accepted by City Council, a maintenance bond shall be posted with the City Manager in the amount of ten percent (10%) of the costs of the improvements. The bond shall be arranged for a period of twelve (12) months from the date of acceptance of the improvements by the CITY. Said bond shall be either a cash deposit or a corporate surety bond or an irrevocable letter of credit in a form approved by the Law Director.

During the maintenance guarantee period, it shall be the DEVELOPER'S responsibility to make any and all repairs necessary, and to repair all failures and damages of any type due to any cause. Any street, public utilities, street trees, monuments, and all other improvements shall be in a condition acceptable to the City Manager at the end of the maintenance period. If maintenance is not satisfactory to the City Manager, the City Manager may claim such portion of the Maintenance Guarantee as is necessary to pay for repairs to the improvements.

Section XV. Building Construction before Improvements are Complete:

Upon approval of the Site Plan and Improvement Plans and the commencement of construction of the Grey Gables parking lot expansion, the DEVELOPER or its assigns may, after obtaining the required permit(s) from the City Building Department, posting the required bonds, and complying with all other applicable portions of this Agreement, begin the construction of building(s).

However, in no event shall any such building(s) be occupied before the Chief Building Official has issued an occupancy permit and before all of the sanitary sewers, storm sewers, water lines, fire hydrants, street improvements, electrical service, street-lighting and the parking lots that will serve the development have been constructed, tested and approved for use by the City of Oberlin and the public improvements have been accepted by ordinance of the City Council.

Section XVI. Indemnification:

The DEVELOPER agrees to indemnify and save harmless the CITY OF OBERLIN, OHIO, and its elected and appointed officials, agents, representatives and employees from any and all causes of action, suits, claims and damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from or incurred in connection with any work, acts, or obligations carried out or done, or to be carried out or to be done, under this Agreement by the DEVELOPER, or the omission of any work, acts or obligations to be carried out or to be done by the DEVELOPER under this Agreement.

The covenants, conditions and obligations contained in this Agreement are binding upon the DEVELOPER, its successors and assigns, and run with the land which is the subject matter of this Agreement, said lands being

further described as situated in the State of Ohio, County of Lorain, City of Oberlin, and more particularly known as permanent parcel number 09-00-085-112-022 described in Volume 798, Page 41 of Lorain County Deed Records, and; permanent parcel number 09-00-085-112-051 described in Volume 798, Page 41 of Lorain County Deed Records, and; permanent parcel number 09-00-085-112-085 described in Volume 472, Page 172, Volume 419, Page 374, Volume 325, Page 339 and Volume 263, Page 499 of Lorain County Deed Records, and; permanent parcel number 09-00-085-112-075 described in Volume 263, Page 499 of Lorain County Deed Records.

Section XVII. Breach of Contract:

The DEVELOPER agrees that any violation of any of the material provisions and stipulations of this Agreement shall constitute a breach of contract. A breach of contract shall also be deemed to have occurred in the event of the DEVELOPER'S failure to perform work at the development site for a period of one hundred twenty (120) days after DEVELOPER commences such work; the DEVELOPER'S insolvency; appointment of a receiver; filing of a voluntary or involuntary petition in bankruptcy; the commencement of a foreclosure proceeding of a lien against the property; or a conveyance in lieu of foreclosure.

The CITY agrees that in the event of a breach, it shall provide the DEVELOPER with notice thereof in writing. Should DEVELOPER fail to remedy the breach to the satisfaction of the CITY within thirty (30) days after receiving notice thereof from the CITY, the CITY shall have the right to stop the work forthwith and utilize the DEVELOPER'S guarantees and bonds for such purpose, and require the DEVELOPER to pay any additional amount necessary to complete the work.

Section XVIII. Attachments:

The following attachments are hereby incorporated by reference and made a material part of this Agreement:

- | | |
|--------------|--|
| Exhibit "A": | Final Site Plan and approved Improvement Plans |
| Exhibit "B": | CITY of Oberlin Public Works Standards |
| Exhibit "C": | Final Site Plan and approved Improvement Plans for "Grey Gables" parking expansion |
| Exhibit "D": | Final Site Plan and approved Improvement Plans for diagonal parking along the southerly side of Tappan Square or suitable alternative approved by the Planning Commission. |

Section XIX. Entire Agreement:

This Agreement constitutes the entire agreement between the CITY and the DEVELOPER with respect to the development of the property to which it relates. The parties hereto agree that no representation or warranties shall be binding upon either part unless expressed in writing in this instrument.

Section XX. Modifications:

No changes in, modifications to, extension of, supplement to, or discharge of this Agreement shall be valid or enforceable unless it is in writing and duly executed on behalf of the CITY and the DEVELOPER and approved by ordinance of Oberlin City Council.

Section XXI. Governing Law:


This Agreement is to be interpreted and construed in accordance with the laws of the State of Ohio. Adjudication, if required, shall be in a court of competent jurisdiction in Lorain County, State of Ohio.

Section XXII. Severability:

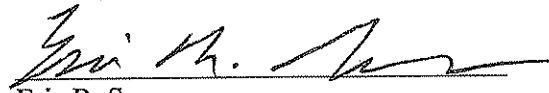
If any term or provision of this Agreement shall become or be declared by a court of law to be invalid or unenforceable, the remainder of this Agreement and the application of the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have hereunto set their hands to this Agreement on this 15th day of September, 2008.

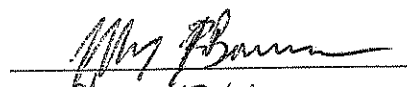
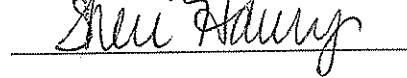
APPROVED AS TO AMOUNT OF BOND:


Keith Johnson, P.E.
Oberlin CITY Engineer

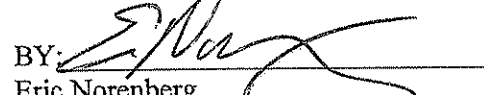
APPROVED AS TO FORM:


Eric R. Severs
Law Director

IN THE PRESENCE OF:





THE CITY OF OBERLIN, OHIO

BY: 
Eric Norenberg
CITY Manager

IN THE PRESENCE OF:

DEVELOPER

BY: 
Ronald R. Watts
Vice-President of Finance

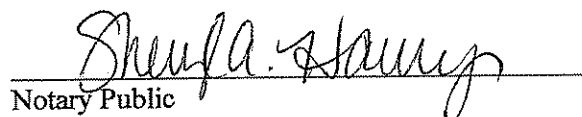
State of Ohio

SS.

Lorain County

Before me, a Notary Public in and for the County of Lorain, State of Ohio, personally appeared the above named CITY OF OBERLIN, OHIO by Eric Norenberg, its City Manager, who acknowledged that he did execute and sign the foregoing instrument and that the same is his free act and deed as said City Manager.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and seal at Oberlin, Ohio this 15th day of Sept., 2008.


Notary Public

Sheryl A. Haury
Notary Public, State of Ohio
My Commission Expires 5/11/2011

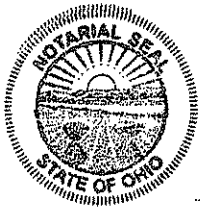
State of Ohio

SS.

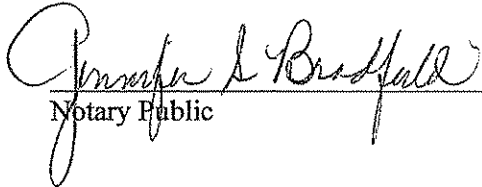
Lorain County

Before me, a Notary Public in and for the County of Lorain, State of Ohio personally appeared the above named Oberlin College by Ronald R. Watts, its Vice-President of Finance, who acknowledged that he did execute and sign the foregoing instrument and that the same is his free act and deed as said President.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and seal at Oberlin, Ohio this 3rd day of September, 2008.



JENNIFER S. BRADFELD
Notary Public
In and for the State of Ohio
My Commission Expires
April 22, 2009


Notary Public