

**ORDINANCE NO. 08-74 AC CMS**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF THE FOURTH  
AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH  
SUSTAINABLE COMMUNITY ASSOCIATES LTD., AND  
DECLARING AN EMERGENCY.**

**WHEREAS**, to create jobs and employment opportunities, to provide for adequate, safe and decent housing, and to provide for revitalization of the area (the "Plan Area") described in the East College Street Economic Development Plan dated December 1, 2005, the City entered into a Development Agreement with Sustainable Community Associates Ltd. (the "Developer") executed on December 21, 2005, for development of commercial and residential facilities in the Plan Area (the "Project"), which Agreement was amended on December 7, 2006 and October 30, 2007; and July 22, 2008; and

**WHEREAS**, the Developer has requested that the City further amend the Development Agreement so that the Project may proceed, a copy of which proposed Fourth Amendment to Development Agreement is on file with the Clerk of Council;

**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 this Council hereby approves the Fourth Amendment to Development Agreement between the City of Oberlin, Ohio and Sustainable Community Associates Ltd., a copy being attached hereto, marked Exhibit A, and incorporated herein by reference, and the City Manager is hereby authorized and directed to execute the same on behalf of the City.

**SECTION 2.** That this Council finds and determines that all formal actions of this Council or of any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and of any of its committees, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

**SECTION 3.** This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance must be immediately effective in order to ensure the Project may proceed in appropriate weather conditions, to enable the public improvements therefore to proceed to eliminate existing hazards to vehicular and pedestrian traffic, and to permit the revitalization of the deteriorated Plan Area to proceed as soon as possible; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: October 6, 2008 (E)

Attest:

  
Belinda B. Anderson  
CLERK OF COUNCIL

  
David E. Somner  
PRESIDENT OF COUNCIL

Posted: 10/07/2008

Effective Date: 10/06/2008

**FOURTH AMENDMENT  
TO  
DEVELOPMENT AGREEMENT**

This Fourth Amendment to Development Agreement (this "Fourth Amendment") is made and entered into on this 17<sup>th</sup> day of October, 2008, between the CITY OF OBERLIN, OHIO, hereinafter referred to as the "City," an Ohio Chartered Municipal Corporation, and SUSTAINABLE COMMUNITY ASSOCIATES LTD., hereinafter referred to as "Developer," an Ohio limited liability company.

WITNESSETH:

WHEREAS, on December 21, 2005, the City and the Developer entered into a Development Agreement relating to a proposed commercial and residential development located in the City, which Development Agreement was amended on December 7, 2006, on October 30, 2007 and on July 24, 2008 (as amended, hereinafter referred to as the "Development Agreement"); and

WHEREAS, the Developer has obtained financing commitments for the proposed development and has updated information with respect to the expected tax value of the private development; and

WHEREAS, the City and the Developer, by mutual agreement, desire to amend the Development Agreement under the terms of this Fourth Amendment so that the development may proceed under the terms of the financing commitments and to ensure the related public improvements may proceed.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties, the Development Agreement is hereby amended as follows (with all capitalized terms not otherwise defined in this Fourth Amendment being used as defined in the Development Agreement):

1. Clause (5) of Section 5 of the Development Agreement is hereby amended to read as follows:

"(5) The City has received the as-built appraisal referred to below in this Section, which demonstrates to the City's reasonable satisfaction that there will be sufficient real property tax value increase resulting from the Developer Improvements that will result in Service Payments sufficient to provide not less than a 112% debt coverage ratio for each year all of the Developer Improvements are finished-out to accommodate initial occupancy (as indicated in the letter received by the City dated September 8, 2008, relating to the as-built appraisal), on Assumed Debt Service for debt issued to pay costs of the Public Improvements, as provided in this Agreement, after taking into account any

compensatory payments made to Oberlin City School District from the Service Payments (the "Approved Debt Coverage Ratio"). "Assumed Debt Service" for purposes of this Agreement shall mean the annual debt service requirements on an assumed issue of bonds in the principal amount of \$1,400,000 minus the amount of any reduction pursuant to the following paragraph relating to the as-built appraisal (\$1,400,000, as so reduced, hereby referred to as the "Maximum City Amount"), which bonds bear interest at the estimated rate of 5.50% per annum and will be amortized over nineteen (19) years with annual principal payments due on each December 1, and semiannual interest payments due on each June 1 and December 1, so that payments of principal and interest are substantially equal each year."

3. The first paragraph of Section 7(B) of the Development Agreement is hereby amended to read as follows:

"(B) Construction of Public Improvements. Subject to and conditioned upon the City's acquisition of the City Parcel and the City Conditions, the City shall construct the Public Improvements in a diligent manner and shall be responsible for the costs of bidding, construction and construction administration for the Public Improvements; provided, however, that the City shall only be obligated to pay for Costs of Public Improvements, as hereinafter defined, up to the Maximum City Amount determined in Section 5 hereof and provided, further, that the City shall only be obligated to pay for those Costs of Public Improvements that are eligible for tax increment financing under Revised Code Section 5709.40(C) and are eligible to be financed with tax-exempt general obligations, in each case, as reasonably determined by the City. Costs of Public Improvements, as provided in this Section (the "Public Improvement Costs"), include costs of issuance on notes or bonds (which includes, but is not limited to, legal fees and consulting fees relating to the matters contemplated in this Agreement, and underwriting, bond insurance, rating agency and bond registrar fees), City consulting engineering, if any, and related fees, landscape architecture fees, the cost of appraisal of the City Parcel and of the as-built appraisal required in Section 5 hereof, City fees related to the acquisition of the City Parcel (including, but not limited to, the cost of title insurance and other City costs described in Section 5 hereof), capitalized interest, and land acquisition and construction-related costs. Public Improvement Costs do not include any costs of City employees. The Cost of Public Improvements means costs incurred by the City. It is acknowledged by the Developer that the costs of issuance, capitalized interest and related costs are currently estimated to equal approximately \$300,000. The costs of all electrical work that are part of the Public Improvements (which consists of the installation of approximately 12 light poles to be located along public streets) shall be paid for by the City outside of the Maximum City Amount limit provided in this Section.

4. Section 7(D) of the Development Agreement is hereby amended to substitute "; and" at the end of clause (4) of that Section in place of the period, and to add the following clause (5) following clause (4) of that Section:

“(5) Properly maintain, repair and replace, as necessary, all electrical improvements within the Public Plaza, including underground and overhead electric lines, poles and lighting fixtures, and all appurtenances thereto.”

5. The Development Agreement is hereby ratified and confirmed in all other respects.

6. This Fourth Amendment to Development Agreement was authorized by Oberlin City Council pursuant to Ordinance 08-74 AC CMS, as approved by Oberlin City Council on Oct. 6, 2008.

IN WITNESS WHEREOF, the City and the Developer have each caused this Fourth Amendment to Development Agreement to be executed after due authorization as of the date aforesaid.

Witnesses:

B. Ezz  
Shari Haung

**CITY OF OBERLIN, OHIO**

By: [Signature]  
Eric Norenberg, City Manager

Witnesses:

[Signature]  
Shari Haung  
B. Ezz  
Shari Haung  
[Signature]  
B. Ezz

**SUSTAINABLE COMMUNITY ASSOCIATES LTD.**

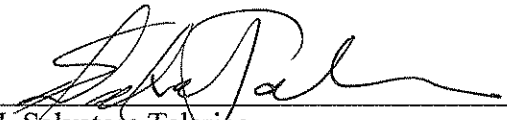
By: B. Ezz  
Benjamin Ezinga, Member  
By: [Signature]  
Joshua Rosen, Member  
By: [Signature]  
Naomi Sabel, Member

Approved as to form:

[Signature]  
Eric R. Severs  
Oberlin Law Director

## CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned, fiscal officer of the City of Oberlin, Ohio, hereby certifies that the money required to meet the obligations of the City during the year 2008 under the foregoing Agreement (which is \$0) has been lawfully appropriated by the Council of the City for such purposes and are 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.



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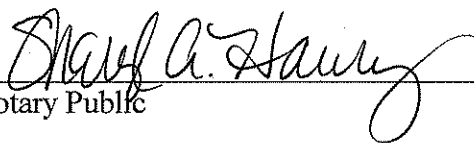
I. Salvatore Talarico  
Director of Finance

STATE OF OHIO )  
 ) SS:  
COUNTY OF LORAIN )

On this 17<sup>th</sup> day of Oct., 2008, before me a Notary Public in and for said State, personally appeared Eric Norenberg, City Manager of the City of Oberlin, Ohio, who acknowledged the execution of the foregoing instrument as the authorized officer of said City on behalf of said City, and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Oberlin, Ohio, on the day and year aforesaid.

[SEAL]

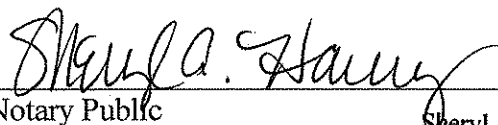
  
\_\_\_\_\_  
Notary Public

Sheryl A. Haury  
Notary Public, State of Ohio  
My Commission Expires 5/1/2011

STATE OF OHIO )  
 ) SS:  
COUNTY OF LORAIN )

On this 17<sup>th</sup> day of Oct., 2008, before me a Notary Public in and for said County and State, personally appeared Benjamin Ezinga, Joshua Rosen and Naomi Sabel, each being a member of Sustainable Community Associates Ltd., who acknowledged the execution of the foregoing instrument as the duly authorized officer thereof, and that the same is his/her voluntary act and deed as said officer and the voluntary act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Oberlin, Ohio, on the day and year aforesaid.

  
\_\_\_\_\_  
Notary Public

Sheryl A. Haury  
Notary Public, State of Ohio  
My Commission Expires 5/1/2011

This Instrument Prepared by:

Pamela I. Hanover, Esq.  
Squire, Sanders & Dempsey L.L.P.  
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127 Public Square  
Cleveland, Ohio 44114-1304