

**ORDINANCE NO. 09- 67 AC CMS**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A SUPPLEMENT 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 has been amended; and

WHEREAS, the Developer has requested that the City further confirm and amend the Development Agreement so that the Project may proceed, a copy of which proposed Supplement 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 Supplement 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 therefor 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: September 21, 2009

Attest: Wanda A. Anderson  
CLERK OF COUNCIL

[Signature]  
PRESIDENT OF COUNCIL

Posted: September 22, 2009

EFFECTIVE DATE: September 21, 2009

**SUPPLEMENT  
TO  
DEVELOPMENT AGREEMENT**

This Supplement to Development Agreement (this "Supplement ") is made and entered into on this 23<sup>rd</sup> day of Sept., 2009, 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, October 30, 2007, July 24, 2008, October 17, 2008 and on December 19, 2008 (as amended, hereinafter referred to as the "Development Agreement"); and

WHEREAS, the City and the Developer, by mutual agreement, desire to confirm and to amend the Development Agreement under the terms of this Supplement so that the development may proceed under the terms of the Developer's 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 confirmed and amended as follows (with all capitalized terms not otherwise defined in this Supplement being used as defined in the Development Agreement):

**Section 1.** Consistent with Section 7(B) of the Development Agreement, the City shall amend its existing contract with KS & Associates to pay an additional \$22,485.00 for the engineering assistance it has provided the City with respect to the Public Improvements, including, particularly, assistance in connection with the preparation of the bid packages for the Public Improvements. As provided in that Section 7(B), the costs the City incurs under that contract with KS & Associates, as so increased, constitute "Public Improvement Costs" subject to the Maximum City Amount.

**Section 2.** Consistent with Section 7(A) of the Development Agreement, the City shall enter into a contract with Integrated Architecture to pay the amount of \$34,807.33 for landscape architectural work related to the Public Improvements. Consistent with Section 7(B) of the Development Agreement, the amount of that cost constitutes Public Improvement Costs subject to the Maximum City Amount.

**Section 3.** It is acknowledged and confirmed by the parties hereto that the actual cost of the work related to waterlines referred to as Alternate 1 - Terrace in the bid documents for the

Public Improvements and expected to cost \$36,690.00, shall be paid by the City and shall not be treated as Public Improvement Costs pursuant to Section 7(B) of the Development Agreement.


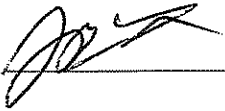
**Section 4.** Notwithstanding anything to the contrary in Sections 5 and 7 of the Development Agreement, the actual cost of the work related to waterlines referred to as Alternate 2 - Terrace in the bid documents for the Public Improvements and expected to cost \$40,440.00, shall only be treated as Public Improvement Costs to determine the Purchase Price of the City Parcel pursuant to Section 7(B) of the Development Agreement; that is, although the costs of such Alternate 2 shall not be treated as Public Improvement Costs that could require the Developer to pay for a portion of the Public Improvement Costs under the second paragraph of Section 7(B) of the Development Agreement in the event the Public Improvement Costs do not exceed the Maximum City Amount, those Alternate 2 costs shall be treated as Public Improvement Costs to determine the amount, if any, that the City is required to pay the Developer as the Purchase Price of the City Parcel.

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

**Section 6.** This Supplement was authorized by Oberlin City Council pursuant to Ordinance 09-67 AC CMS, as approved by Oberlin City Council on Sept. 21, 2009.

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


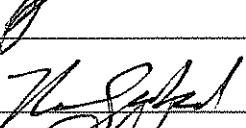
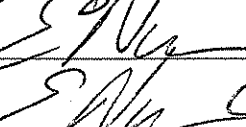
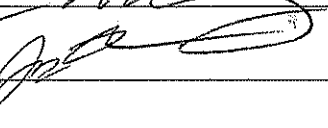
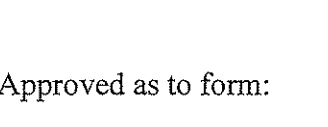
Witnesses:

  
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**CITY OF OBERLIN, OHIO**


By:   
\_\_\_\_\_  
Eric Norenberg, City Manager

Witnesses:

  
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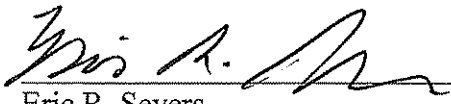
**SUSTAINABLE COMMUNITY ASSOCIATES LTD.**

By:   
\_\_\_\_\_  
Benjamin Ezinga, Member

By:   
\_\_\_\_\_  
Joshua Rosen, Member

By:   
\_\_\_\_\_  
Naomi Sabel, Member

Approved as to form:

  
\_\_\_\_\_  
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 2009 under the foregoing Supplement 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.

9/24/09  
Date

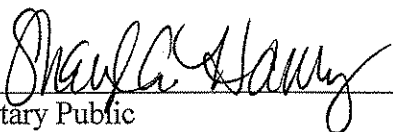
  
\_\_\_\_\_  
I. Salvatore Talarico  
Director of Finance

STATE OF OHIO )  
 ) SS:  
COUNTY OF LORAIN )

On this 23<sup>rd</sup> day of Sept., 2009, 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]

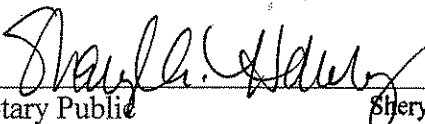
  
\_\_\_\_\_  
Notary Public

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

STATE OF OHIO )  
 ) SS:  
COUNTY OF LORAIN )

On this 23<sup>rd</sup> day of Sept., 2009, 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.  
4900 Key Tower  
127 Public Square  
Cleveland, Ohio 44114-1304