

ORDINANCE NO. 07-63 AC CMS

AN ORDINANCE AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH SUSTAINABLE COMMUNITY ASSOCIATES LTD.

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, which Agreement was amended on December 7, 2006; and

WHEREAS, the Developer has requested that the City further amend the Development Agreement to permit additional time for completion of tasks required under the Development Agreement, a copy of which proposed Second 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, a majority of all members elected thereto concurring:

SECTION 1. That this Council hereby approves the Second 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. That this Ordinance shall take effect at the earliest date allowed by law.

Passed: 1st Reading – August 20th, 2007
2nd Reading – September 4th, 2007
3rd Reading – September 17th, 2007

ATTEST:



Belinda Anderson
CLERK OF COUNCIL

POSTED: 09/18/2007



Daniel Gardner
PRESIDENT OF COUNCIL

EFFECTIVE DATE: 10/17/2007

**SECOND AMENDMENT
TO
DEVELOPMENT AGREEMENT**

This Second Amendment to Development Agreement (this "Second Amendment") is made and entered into on this 30th day of October, 2007, 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, City and Developer entered into a Development Agreement relating to a proposed commercial and residential development located within the City, which Development Agreement was amended on December 7, 2006 (as amended, hereinafter referred to as the "Development Agreement"); and

WHEREAS, the Development Agreement requires that the Developer complete the construction of those improvements and complete certain other actions by given dates; and

WHEREAS, City and Developer by mutual agreement desire to extend those dates to allow additional time for the completion of the tasks under the terms of this Second Amendment.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties, the Development Agreement is hereby amended in the following particulars:

1. The first paragraph of Section 1(A) of the Development Agreement is hereby amended to read as follows:

“(A) Developer Improvements. Subject to the terms and conditions contained herein, the Developer agrees that it shall construct the Developer Improvements on the Development Property in accordance with (i) the Developer’s Improvement Plans (as approved by the City in accordance with this Agreement), (ii) the requirements of this Agreement and the Construction Agreement, as hereinafter defined, and (iii) the requirements of applicable federal, state and local laws, including the ordinances and regulations of the City (as amended or modified by the City Review Bodies (as defined in paragraph (B) below), by variance or otherwise, to permit construction of the Developer Improvements, as provided herein). It is understood by the parties hereto that following the approval by the City Review Bodies, as provided in paragraph (B) below, the City and the Developer will enter into a Construction Agreement consistent with the City’s Planning and Zoning Code and containing conditions imposed by the Planning

Commission relating to the Developer Improvements (the "Construction Agreement"). **The Developer shall obtain a building permit for the Developer Improvements by no later than December 31, 2008, shall commence the Developer Improvements by no later than March 15, 2009, shall complete 50% of the Developer Improvements by no later than January 1, 2010, and shall complete the Developer Improvements by no later than December 31, 2011,** subject to timely completion of the Public Improvements by the City and further subject to any extensions that may be granted by the City Manager upon request from the Developer, and further subject to force majeure."

2. Section 1(B)(4) of the Development Agreement is hereby amended read as follows:

"(4) If the Developer determines that it cannot meet the requirements imposed by the City, and so notifies the City in writing, this Agreement shall terminate. This Agreement shall also terminate if the Construction Agreement is not executed by the parties hereto by December 31, 2008, unless otherwise extended by the parties hereto in writing."

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

"(F) All documents and funds (except for the amount of the Purchase Price) necessary for the completion of this transaction shall be deposited with the escrow agent on a date determined by mutual agreement of the parties after the City Conditions and the other conditions of this Section have been met. If for any reason all City Conditions have not been met by December 31, 2008, the escrow and this Agreement shall terminate, unless extended in writing by the parties hereto. In the event of such termination, all instruments and funds shall be returned to the respective parties and neither party shall thereafter have any further obligation to the other under this Agreement."


4. The Developer shall be in compliance with all Ohio Environmental Protection Agency (the "State EPA") requirements and further agrees that it shall not seek any approval from the State EPA that would confer a real property tax exemption on the Development Property.

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

6. This Second Amendment to Development Agreement was authorized by Oberlin City Council pursuant to Ordinance 07- 63 AC CMS, as approved by Oberlin City Council on September 17, 2007.

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


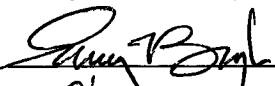
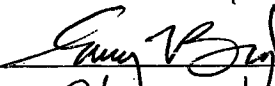
Witnesses:


Shari Haung

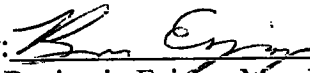
CITY OF OBERLIN, OHIO

By: 
City Manager


Witnesses:


Shari Haung

Shari Haung

Shari Haung

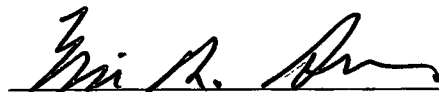
SUSTAINABLE COMMUNITY ASSOCIATES LTD.

By: 
Benjamin Ezinga, Member

By: 
Joshua Rosen, Member

By: 
Naomi Sabel, Member

Approved as to form:


Eric R. Severs
Oberlin Law Director

STATE OF OHIO)
) SS:
COUNTY OF LORAIN)

On this 30th day of October, 2007, 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]

Sheryl A. Haury
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 30th day of Oct, 2007, 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.

Sheryl A. Haury
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