

**THIRD AMENDMENT
TO
DEVELOPMENT AGREEMENT**

This Third Amendment to Development Agreement (this "Third Amendment") is made and entered into on this 24 day of July, 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 and on October 30, 2007 (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 costs of the private development and the public improvements related to the development; and

WHEREAS, the City and the Developer, by mutual agreement, desire to amend the Development Agreement under the terms of this Third 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 Third Amendment being used as defined in the Development Agreement):

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

"The Developer Improvements shall consist of a mixed-use residential and commercial project consisting of approximately 32 residential units and approximately 24,720 square feet of commercial space, together with required parking. The project budget for the construction (labor and material only) of the Developer Improvements, excluding the costs of Public Improvements and excluding land acquisition, engineering, financing, legal and other fees relating to the Developer Improvements, is presently estimated to be \$10,000,000."

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

“(1) The City shall have issued tax exempt general obligation notes or bonds or other obligations no higher than substantially the same interest rates as would apply to general obligation notes or bonds to finance the Purchase Price and to finance the other Public Improvements.”

3. Clause (4) of Section 5 of the Development Agreement is hereby amended to read as follows:

“(4) The Developer has received current bank financing commitments and other financing commitments in form and substance reasonably satisfactory to the City as evidence of the Developer’s ability to finance the construction of all of the Developer Improvements and the documents relating to those construction loans and other financing commitments have been signed and the release of funds therefor is not conditioned, other than those conditions approved by the City.”

4. 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 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.”

5. Clause (6) of Section 5 of the Development Agreement is hereby amended to read as follows:

“(6) The Developer shall have received all government approvals, including, but not limited to, issuance of a building permit or permits, for construction of the Developer Improvements and the Public Improvements, the Developer has entered into binding

[guaranteed maximum price] construction contracts for the costs of the Development Improvements and construction of the Developer Improvements has commenced.”

6. The third and fourth paragraphs of Section 5 of the Development Agreement are hereby amended to read as follows:

“Promptly following the City’s approval of the Developer’s Improvement Plans, the City shall select an appraiser, after consulting with the Developer and using good faith efforts to select an experienced appraiser, to prepare, at the City’s expense, an as-built appraisal of the Developer Improvements; provided that the City instead, at its option, may rely on an as-built or market appraisal commissioned by the Developer’s bank or provided by the Developer to a bank providing financing for the Developer Improvements if after conferring with the County Auditor or other experts, as the City may deem appropriate, the City is satisfied with that appraisal. If the Developer is dissatisfied with the as-built appraisal, it may obtain, at its expense, its own as-built appraisal, and the City and the Developer agree to work in good faith to arrive at an agreed upon as-built appraisal of the Developer Improvements; provided, that in the event no agreement can be reached, the as-built appraisal shall be as reflected in the as-built appraisal report obtained by the City or for the bank, as applicable. If such appraisal amount does not provide the Approved Debt Coverage Ratio, the Purchase Price of the City Parcel shall be reduced (to as low as \$0) until the issuance of bonds in the principal amount of \$1,400,000 less the amount the Purchase Price will be so reduced shall be sufficient to attain the Approved Debt Coverage Ratio (with such bonds bearing interest and subject to all other terms contained within the definition of Assumed Debt Service). If the Approved Debt Coverage Ratio is not met as described in this paragraph, even if the Purchase Price has been reduced to \$0, then the Maximum City Amount shall be further reduced until such Approved Debt Coverage Ratio is met, subject to the requirement that the Developer deposit the amount of any shortfall relating to Public Improvement Costs with the City as provided in Section 7(B) hereof.

Assuming all other City Conditions have been met, the City shall use good faith efforts to issue the notes or bonds referred to in clause (1) above. The Purchase Price shall not be paid upon transfer of the City Parcel; it is due immediately following completion of construction of the Public Improvements and after all Public Improvement Costs (as defined in Section 7 hereof) have been paid and following completion of all of the Developer Improvements materially consistent with this Agreement and the Construction Agreement, with completion to be evidenced by certificates of occupancy. The Purchase Price shall be reduced, in addition to any reduction described in the preceding paragraph, to the extent the Public Improvement Costs, determined as provided in Section 7 hereof, have exceeded the Maximum City Amount. In the event that, after all Public Improvement Costs have been paid and the portion of the Parcels needed for the Public Improvements has been transferred to the City, any such portion later determined by the City to be not needed for such Public Improvements shall, upon request by the Developer, be reconveyed to the Developer at no cost as long as the City has not paid for the City Parcel or the improvements thereto.”

7. Section 7(A) of the Development Agreement is hereby amended to read as follows:

“(A) Design and Engineering. The Developer shall, with the approval of the City and at the Developer’s expense, engage such professional service providers as shall be necessary for all survey, design, permitting and engineering for the Public Improvements, which plans and specifications shall be subject to review and final approval by the City and shall be available in such electronic format as is reasonably requested by the City or the Developer. The Developer shall select the professional service providers necessary for such work, subject to reasonable approval by the City in advance of that selection. The City shall engage, at the City’s expense, the service provider to provide landscape architectural work for the Public Improvements. The cost of such services is to be included in the Maximum City Amount limit provided below.”

8. The first two paragraphs of Section 7(B) of the Development Agreement are 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) shall be paid for by the City outside of the Maximum City Amount limit provided in this Section.

As referred to in Section 5 hereof, the Purchase Price of the City Parcel shall be reduced to the extent the Public Improvement Costs exceed or are reasonably estimated by the City to exceed the Maximum City Amount. If at any time the Public Improvement

Costs exceed or are so estimated to exceed the Maximum City Amount, if the Purchase Price has been reduced to \$0, the City shall not be obligated to sign a contract relating to construction or incur additional expenses of the Public Improvements until the Developer shall have deposited the amount of any such shortfall in immediately available funds with the City. The Developer shall deposit the additional amount required within 14 days of request by the City. Any portion of the amount deposited not used to pay Public Improvement Costs shall be promptly returned to the Developer. If the purchase price has been or at any time is expected to be reduced to \$0, the City and Developer shall work cooperatively to determine whether all or any portion of the public plaza/park area which is part of the Public Improvements should be removed from the list of Public Improvements and should be privately owned and financed.”

9. Clause (2) of Section 12 of the Development Agreement is hereby amended to read as follows:

“(2) the Lorain County Auditor has appraised (for the most recent tax year that information is available) the increase in assessed value of the Developer Improvements on the Development Property to be an amount that will result in Service Payments (not otherwise paid to the Oberlin City School District) sufficient to provide not less than a 112% debt coverage ratio for each year with respect to the Bonds or Assumed Debt Service, as applicable; provided, that the Assumed Debt Service shall be calculated by the City using a principal amount less than the Maximum City Amount to the extent the City reasonably projects that the Public Improvement Costs will be less than the Maximum City Amount;”

10. Section 12 of the Development Agreement is hereby amended to add the following at the end of the last paragraph of that Section:

“If approved by the Letter of Credit Bank, the City shall give 5 days’ advance written notice to the Developer of any Deficiency prior to drawing on the Letter of Credit, and shall not draw on the Letter of Credit if the Developer has paid the Deficiency in immediately available funds prior to the submission of the draw for such Deficiency.”

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

12. This Third Amendment to Development Agreement was authorized by Oberlin City Council pursuant to Ordinance 08-57 AC CMS, as approved by Oberlin City Council on July 22, 2008.

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

Witnesses:

Shari Haunig

CITY OF OBERLIN, OHIO

By: 
Eric Norenberg, City Manager

Witnesses:

Shari Haunig

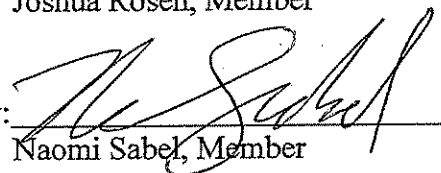
SUSTAINABLE COMMUNITY ASSOCIATES LTD.

By: 
Benjamin Ezinga, Member

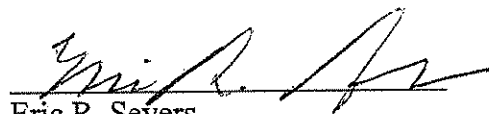
Shari Haunig

By: 
Joshua Rosen, Member

Shari Haunig

By: 
Naomi Sabel, Member

Approved as to form:


Eric R. Severs
Oberlin Law Director

STATE OF OHIO)
) SS:
COUNTY OF LORAIN)

On this 24th day of July, 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]

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 24th day of July, 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.

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.
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