

7/7/08 1<sup>ST</sup> reading  
7/21/08 2<sup>nd</sup> reading  
8/4/08 3<sup>rd</sup> reading  
8/4/08 Public hearing held

Requested by  
All of Council

ORDINANCE NO. 2008-181

INTRODUCED BY: Kraus

AN ORDINANCE APPROVING THE PROJECT  
DEVELOPMENT AGREEMENT WITH CENTRAL  
PARK SOLON, LLC AND AUTHORIZING THE MAYOR  
TO EXECUTE SAID AGREEMENT

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Solon,  
State of Ohio:

SECTION 1. That the Project Development Agreement attached hereto as  
Exhibit "A" is hereby approved and that the Mayor is hereby authorized to execute said  
Agreement.

SECTION 2. That this Ordinance shall take effect and be in force from and after  
the earliest period allowed by law.

Passed: August 18, 2008

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Mayor Kevin C. Patton

ATTEST:

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Clerk of Council

## **PROJECT DEVELOPMENT AGREEMENT**

This Project Development Agreement (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2008, between the City of Solon, Ohio, a municipal corporation organized and existing under the Constitution and Laws of the State of Ohio and a duly adopted charter (the "City"); and Central Park Solon, LLC, an Ohio limited liability company (the "Developer") (collectively referred to as the "Parties").

### **WITNESSETH:**

WHEREAS, the City and the Developer hereby enter into this Project Development Agreement for the development of certain properties in the City, which properties are highlighted on Exhibit A attached hereto (the "Project Site");

WHEREAS, the Developer has proposed to redevelop the Project Site by acquiring the properties, by leasing or conveying parts of the Project Site and/or improvements thereon to, as of yet, unidentified buyers or tenants (collectively, "Project Tenants") and constructing improvements on the Project Site for one or more of the following types of uses: retail, hotel, restaurants, medical office, office, residential space and/or hospitality uses (such improvements are referred to hereinafter together as the "Developer Improvements");

WHEREAS, to promote the safe and efficient flow of vehicular and pedestrian traffic in and around the Project Site and to provide adequate service of public utilities to the Project Site, the City proposes to construct, or to cause the Developer to construct or as otherwise directed by the City, one or more multi-level public parking garages or surface parking facilities (collectively, the "Parking Facility") and other public infrastructure improvements including, but not limited to, public parks, streets, water and sanitary and storm sewer facilities, sidewalks, streetscapes and lighting (such Parking Facility and other public infrastructure improvements,

are referred to hereinafter together as the “Public Infrastructure Improvements”). The mixed-used development on the Project Site comprised of the Developer Improvements and Public Infrastructure Improvements is referred to hereinafter as the “Project”;

WHEREAS, the City believes that the redevelopment of the Project Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, and welfare of its residents, and are necessary for the purpose of the creation of jobs and employment opportunities, to improve the economic welfare of the people of the City, to revitalize the area in a safe and environmentally sound manner and to provide for adequate housing in the area;

WHEREAS, the Developer has submitted a preliminary site plan which may be subject to modifications during the development of the Project and which shall be subject to all approvals required by the City’s ordinances (“Codified Ordinances”);

WHEREAS, subject to modifications to be agreed upon by the City and the Developer, the City has requested that the Project be a mixed-use development comprised of a combination of retail, office, residential, and/or hospitality uses, together with a public green space sufficient in size to accommodate events such as band concerts, and art festivals, together with such parking as is required for acceptable functioning of the Project;

WHEREAS, in order to effect the mixed-use development contemplated by the City it will be necessary for the Council to adopt the ordinance attached as Exhibit B hereto captioned “Center of Town Planned Unit Development” (hereinafter “Town Center Ordinance”) and to obtain approval of the Town Center Ordinance and the Town Center Ordinance as applied to the Project Site from a majority of the electorate of the City and from a majority of the electorate in the Ward in which the Project Site is located;

WHEREAS, the City intends to request that a port authority or port authorities (the “Issuer”) issue bonds in one or more series to pay for all or a portion of the costs for the construction of the Public Infrastructure Improvements (the “Bonds”) under the terms of a Cooperative Agreement to be entered into between the City and the Issuer (the “Cooperative Agreement”), under which the Issuer will construct the Public Infrastructure Improvements on behalf of the City consistent with this Agreement or as otherwise agreed to by the City, which Bonds would be payable from service payments in lieu of taxes collected by the City pursuant to one or more tax increment financing programs (the “Service Payments”); and

WHEREAS, to further secure the Bonds, the Developer intends that 100% of the costs of the Public Infrastructure Improvements funded by the proceeds of the Bonds not otherwise paid by Service Payments be assessed by the levy of special assessments against all or a portion of the Project Site (the “Special Assessments”).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements and conditions as set forth herein, the Developer and the City hereby covenant and agree as follows:

## ISSUANCE OF BONDS

The Parties hereto intend that all or a portion of the costs relating to the acquisition, construction and equipping of the Public Infrastructure Improvements will be paid from the proceeds of the Bonds and that principal and interest of the Bonds will be paid from the Service Payments and Special Assessments that shall be transferred by the City to the Issuer under the terms of the Cooperative Agreement. Subject to the City Conditions defined below in this Section, the City shall use good faith efforts to enter into the Cooperative Agreement, in form and substance satisfactory to the City, under which the City will agree to transfer the Service Payments and Special Assessments received by the City to the Issuer for payment of debt service on the Bonds, other than any portion of the Service Payments to be paid to the Solon City School District (the "School District") under agreements to be entered into with the School District; provided however, that the City shall not assume any financial obligation for the repayment of the Bonds or the acquisition or construction of the Public Infrastructure Improvements, except for such transfer of Service Payments and Special Assessments received. The City's agreements in this Article I

are subject to the following (hereinafter referred to as the "City Conditions"):

the electorate has approved the Town Center Ordinance and the Town Center Ordinance as applied to the Project Site;

the Master Development Plan (as defined in the Town Center Ordinance) will have been approved by the City pursuant to the Town Center Ordinance;

the Developer has acquired ownership of all of the properties in the Project Site, except for (A) those parcels owned by the City identified as Parcel Nos. 952-21-022, 952-21-023, 952-21-024, 952-21-025, 952-21-026, 952-21-027 and 952-21-028 (the "City's Amphitheater Parcels"), (B) the Project Site Rights-of-Way (as defined in Section 3.1 of this Agreement), and (C) those parcels located at 34150 Solon Road and identified as Parcel No. 952-26-003 and 952-26-016 and commonly known as the "Jerpak Bayless building", which Developer shall have under control and have a right to purchase following the performance of certain construction work;

the Developer is not in default under this Agreement;

the Developer has obtained all State, federal and local approvals necessary to commence construction of Phase I of the Project (as defined in Section 6.1 below); and

the documents to be entered into in connection with the Bonds satisfactorily address the security for the Bonds, the evidence of financing for the remaining costs of the Project, the ownership and maintenance of the Public Infrastructure Improvements, the process for construction of the Public Infrastructure Improvements, and the time schedule for the construction of the Project.

The City shall use good faith efforts in cooperation with the Developer to implement a tax increment financing program or programs so that Service Payments are available to pay debt service on the Bonds; provided that, it is acknowledged that the City's participation in tax increment financing is subject to receiving approvals from the School District and potentially from the Cuyahoga County Board of County Commissioners. The Developer shall seek the approvals from the School District and any necessary approval from the County Commissioners.

## **PARKING FACILITY**

**It is expected by the Parties hereto that the Parking Facility will be constructed by the Developer on behalf of the Issuer, pursuant to a construction management agreement between the Developer and the Issuer to be executed in connection with the Bonds, substantially in accordance with the plans and specifications to be filed with and approved by the Issuer and the City.**

**Any portion of the Parking Facility financed with the Bonds shall be owned by the Issuer upon land conveyed or leased by the Developer to the Issuer (as determined in agreements relating to the Bonds) and the City intends to request that the Issuer agree not to charge for the privilege of parking thereon. Until repayment in full of the Bonds, or for such longer period in agreements related to the Bonds, the Developer shall agree in a management agreement (the "Management Agreement") that all of the operations of such portion of the Parking Facility will be managed by the Developer and that (a) the Developer will be responsible for all costs of operation, maintenance, any taxes, reconstruction and insurance of such Parking Facility; (b) the Developer shall be required to provide the City with an annual inspection report from a licensed engineer; (c) the Developer shall be required to provide security in such Parking Facility, which is state-of-the-art for parking facilities comparable to such Parking Facility, which may be off-premises security, for those portions of such Parking Facility which are not secured areas for residential use; (d) the Developer shall be required to submit a written security plan to the City Chief of Police for his reasonable approval prior to opening such Parking Facility to the public; and (e) the insurance policy covering such Parking Facility shall name each of the City and the Issuer as additional insureds and shall otherwise be in a form reasonably acceptable to the City. Without the City's prior written consent and subject to requirements of the agreements entered into in connection with the Bonds, the Developer's obligations under the Management Agreement shall be carried out by Developer or by an experienced parking management firm engaged by the Developer; provided, however, that Developer may assign its obligations under the Management Agreement to (v) an entity with the qualifications and experience to operate a parking facility; or (z) any other assignee of the Developer that may take title to the entire Project Site or any component portion (residential, medical office, office or retail) as otherwise permitted by this Agreement and possesses the qualifications and experience to operate a parking facility.**

## **VACATION OF PROPERTY**

**Section 3.1. When the Developer has complied with the City Conditions, the City shall commence street vacation proceedings for all such street and railroad rights-of-way controlled by the City in the Project Site to the extent such streets and rights of way are determined by the City not to be needed as public property (the "Project Site Rights-of-Way").**

## **DEVELOPER IMPROVEMENT PLANS**

**Following approval by the electorate of the Town Center Ordinance and the Town Center Ordinance as applied to the Project Site, Developer shall submit the plans and other information regarding the Project as contemplated by the Town Center Ordinance (the “Improvement Plans”) for review and approval to the applicable City Review Boards specified in the Town Center Ordinance and other applicable Codified Ordinances. For the purpose of this Agreement, “City Review Boards” shall mean the City Planning and Community Development Director (“Planning Director”), Director of Law, City Engineer, Planning Commission and Council.**

**Developer shall be responsible for providing all of the following information, studies and services in connection with the Project:**

**From time to time upon the City’s reasonable request, Developer shall provide to the Planning Director and Finance Director cost estimates for the Project and the estimated total assessed value of the Project and projected Service Payments, which estimates shall be made by Developer or its consultant using its reasonable business judgment and applying generally accepted accounting and appraisal principles;**

**Developer shall prepare and submit to the City Engineer and Chief Building Official the demolition plans for the Project pursuant to the Codified Ordinances;**

**Developer shall cause the Improvement Plans for the Project to be prepared by reputable architects and engineers, licensed to do business in the State of Ohio;**

**Developer shall obtain and provide for all inspections, permits and licenses and the payment of all fees associated with such licenses, permits and inspections as are necessary to the Project pursuant to the Codified Ordinances;**

**Developer shall assist the City in the preparation of plans, budgets, proposals and necessary information required by the City for its legislation, agreements and the sale and issuance of the Bonds relating to the Project;**

**Developer shall make a timely petition or petitions for Special Assessments on the Project Site in connection with the Bonds, and comply with all requirements of the process of such petitions;**

**Developer shall notify the Director of Law of the Project Tenants;**

**The leases and/or pad sales for the occupancy of the commercial and retail portions of the Project entered into by the Developer shall be consistent with the terms of this Agreement;**

**Developer shall hire, engage, contract with and supervise such reputable and experienced architects, contractors, subcontractors, laborers, materialmen and suppliers as are necessary to the Project and construction of all improvements, including for construction activities carried on by Developer with respect to the Developer Improvements and any Public Infrastructure Improvements constructed by the Developer. This obligation shall be an ongoing obligation of Developer under the terms of this Agreement for all phases of construction of the Developer Improvements, except for construction of the Developer Improvements if completed by the City or any other contractor of the City.**

**Developer shall obtain and provide developer financing which may include proceeds from Developer-obtained construction loan financing;**

**Upon request, Developer shall provide to the Planning Director copies of all surveys, environmental site assessments and design plans in connection with the Project that Developer has, commissions or obtains, excluding any such information as is confidential, privileged, proprietary or subject to trade secret protection;**

**Developer shall be responsible for, and shall pay to the appropriate division of the City, building permit fees in connection with the construction of the Developer Improvements, exclusive of “build outs” or other improvements constructed by Project Tenants. Developer shall require, in all leases and contracts with Project Tenants for the build out and completion of space for Project Tenants, the payment of all additional building permit fees in accordance with the Codified Ordinances.**

**The demolition plans and specifications shall be subject to the review and approval as provided for and set forth in the Codified Ordinances, including the Town Center Ordinance. The Improvement Plans shall be subject to the review and approval as further described in Section 4.2 hereof.**

**From and after completion of the Project to the extent the Developer continues to own the Developer Improvements or portions thereof, Developer shall use commercially reasonable efforts to operate, lease and re-lease all retail and commercial portions of the Project, maintain, insure, replace and keep in good condition and repair, the Developer Improvements, in accordance with the terms of this Agreement and all applicable federal, state and local laws and regulations (“Applicable Laws”).**

Developer agrees to incorporate “green building” practices, such as those practices described in the Leadership in Energy and Environmental Design (“LEED”) green building rating system, into Developer Improvements constructed by Developer, to the extent that the application of such practices will not adversely affect Developer’s construction budget or *pro forma* for the Project. Developer is further encouraged to request that commercial Project Tenants consider the application of LEED guidelines in construction of commercial interior build outs in leasehold spaces.

Improvement Plans.

The Improvement Plans submitted for review and/or approval to the applicable City Review Board shall be generally consistent with the preliminary concept plans for the Project which have been presented to the Planning Commission as of the date of this Agreement (the “Concept Plans”) and comply with the Town Center Ordinance, the Codified Ordinances, the City Charter and this Agreement; provided, however, that the City and Developer acknowledge and agree that the Concept Plans are preliminary and remain subject to further revisions and modifications, which revisions and modifications shall be permissible, subject to approval by the applicable City Review Boards in accordance with the Town Center Ordinance.

Upon its review, each City Review Board shall evidence its approval of the Improvement Plans in compliance with the Codified Ordinances, including the Town Center Ordinance. If any City Review Board disapproves of the Improvement Plans or revised Improvement Plans in whole or in part, such disapproval shall be made in accordance with the Codified Ordinances, including the Town Center Ordinance.

If the Developer desires to make any material change in any of the Improvement Plans after final approval thereof, the Developer shall submit the proposed change to the City for review and approval by the City in accordance with the Codified Ordinances, including the Town Center Ordinance.

The City shall use good faith efforts to timely process any application for the Project and to issue the permits necessary for commencement of construction of the Project. Any review or approval by the City is not to be construed as a review or approval of architectural or structural soundness, nor of the means and methods of construction. No approval given by the City shall relieve the Developer from its obligation to comply with all Applicable Laws in connection with the construction of the Project,

**including without limitation, compliance with the Codified Ordinances, including the Town Center Ordinance.**

Developer shall be responsible for the cost of the Public Infrastructure Improvements. Developer shall be exclusively responsible for paying the costs of any and all Public Infrastructure Improvements that are reasonably determined by the City to be both reasonably necessary and directly related to increased service demands created by the Project and which are not paid for by the proceeds of the Bonds. If the need for any Public Infrastructure Improvements is not solely attributable to the Project, then the Developer shall only be responsible for paying the costs of such Public Infrastructure Improvements in reasonable proportion to the actual need caused by the Project as reasonably determined by the City. The City shall not be required to advance any of its funds to pay for any costs of Public Infrastructure Improvements that are reasonably necessary and directly related to the Project, including costs of engineering and surveys, pending issuance of the Bonds.

It is further understood, however, that with regard to all items related to Public Infrastructure Improvements as described in this Agreement that the Developer and the City shall work together and cooperatively and use good faith efforts to obtain additional third-party financing which may be available from any county, State of Ohio or federal agency.

422 Access Road Required. The City and Developer shall petition the Ohio Department of Transportation (and other applicable federal, state, regional and local authorities) for direct vehicular access from the eastbound exit ramp of Route 422 into the Project Site by way of a newly constructed access road (the "422 Access Road"). The 422 Access Road shall not utilize any portion of SOM Center Road or Solon Road, except at the point(s) where such 422 Access Road crosses these streets.

Solon/Aurora Connector Road Required. Developer shall prepare conceptual site plan options providing for a continuous connector road accessing the Project Site, extending from Solon Road to Aurora Road (the "Connector Road"). The City shall determine whether this road must be constructed for traffic control as part of the Public Infrastructure Improvements hereunder.

Multiple Project Access Points Required. Unless otherwise approved by the City, at least three (3) primary vehicular access points to the Project Site shall be provided (collectively, the "Required Multiple Access Points"). These access points shall be provided on SOM Center Road, and via the 422 Access Road and/or the Connector Road, depending on whether the approval under Section 4.4 is obtained and whether the City determines there will be a Connector Road.

Bainbridge Road Access Restricted. No direct vehicular access route between any non-residential portion of the Project and Bainbridge Road shall be provided in the Project, except for the Connector Road and a road connecting City Hall to the Project. The foregoing restriction shall not be deemed to prohibit direct vehicular access from the Project to Bainbridge Road in the event of an emergency or for access to City Hall.

Bainbridge Road Intersection Modifications. Developer shall prepare conceptual site plan options for converting the Eastern half of the Bainbridge Road/SOM Center Road intersection into an intersection with roads approaching at approximately 90-degree angles (the "Intersection Reconfiguration"). Subject to receipt of a recommendation by the GPD Group (the "Traffic Engineer") and Wells & Associates, and the City's request that the Developer implement the Intersection Reconfiguration, the Developer agrees to use good faith efforts to implement the Intersection Reconfiguration, provided, however, that in no

event shall Developer be responsible for any cost associated with the Intersection Reconfiguration on the West side of SOM Center Road for which the City shall be responsible.

The Developer expressly agrees to comply with minimum building quality standards, conceptual elevations, perimeter land use buffers, landscaped buffer areas around Bainbridge Road, minimum green space requirements, building setbacks from all city streets, setbacks from single-family zoned land as required by the Codified Ordinances, and specifically, the new Town Center Ordinance.

City Approval of All Professional Studies. Critical to the City's determination to approve the Project will be the results of studies conducted by professional consultants relating to crucial project features and impacts, including but not limited to traffic studies and infrastructure capacity studies. The City reserves the right to accept or reject any of the findings contained in these studies and to base its support or non-support of approvals under the Town Center Ordinance in whole or in part on its level of satisfaction with the quality, feasibility, and accuracy of the findings of these studies. In the event that the City bases its non-support of the Project or any portion thereof upon the findings of any of these studies, the City agrees to communicate the basis of its non-support to Developer and provide Developer with a reasonable opportunity to cure or otherwise address such findings.

Proof of Site Control Required. Developer shall submit proof acceptable to the City that all properties that are identified for potential zoning change other than the City Amphitheater Parcels and the Project Site Rights-of-Way are either owned by or under the legal control of Developer to the satisfaction of the City prior to the City agreeing to place the Town Center Ordinance on the ballot.

Notice of Intent to Sell; Amphitheater Property.

**Notice of Intent to Sell.** If Developer desires to market all or substantially all of the Project Site (the "Applicable Site") for sale to unrelated third parties, it shall give the City a one-time sixty (60) day prior notice. During such sixty (60) day period, (i) Developer shall not enter into any binding agreement to sell the Applicable Site to an unrelated third party, and (ii) the City shall have a right to make an offer to Developer to purchase all or any part of the Applicable Site, which offer, if made, Developer shall be under no obligation whatsoever to accept. This Section 4.12(a) shall not apply to (x) any sale of the Applicable Site or any portion thereof to any entity in which any of the beneficial owners of Developer has an interest, directly or indirectly, (y) any sale of less than substantially all of the Project Site, or (z) any transfer of all or any portion of the Applicable Site to or by any Mortgagee or its designee pursuant to a foreclosure sale or deed in lieu of foreclosure or other similar disposition. Upon the expiration of such sixty (60) day period, this Section 4.12(a) shall terminate and be of no further force or effect.

**Amphitheater Property.** If Developer acquires fee title to that certain property described on Exhibit D attached hereto (the "Amphitheater Property"), then the City shall have a right to acquire the Amphitheater Property by delivering written notice (the "Exercise Notice") to Developer at

any time prior to thirty (30) days after Developer delivers to the City Developer's notice of intention to commence construction of the amphitheater on the Amphitheater Property, time being of the essence for delivery of the Exercise Notice. The purchase price for the Amphitheater Property shall be the average price per square foot actually paid by Developer for the Amphitheater Property, including all transactional costs and expenses paid by Developer and the costs of any and all site improvements to the Amphitheater Property paid for by Developer. The closing of the sale of the Amphitheater Property by Developer to the City shall take place at the office of Developer's counsel within thirty (30) days after delivery of the Exercise Notice. If the City should acquire the Amphitheater Property pursuant to this Section 4.12(b), the City shall be responsible for all costs associated with the transfer and for constructing the amphitheater within twenty-four (24) months after the closing on the acquisition. In the deed from Developer to the City, Developer shall have an automatic right of reversion if the amphitheater is not so timely constructed or if the Amphitheater Property should at any time cease to be used for a public purpose.

Progress Reports. Until completion of all of the Developer Improvements and Public Infrastructure Improvements, Developer shall make quarterly reports in such detail as may reasonably be requested by any of the City Review Boards, as to the actual progress of Developer with respect to the construction of the Project.

## DEPOSIT

Deposit. Not later than five (5) business days after the execution and delivery of this Agreement by the City and the Developer, the Developer shall deposit with a title company or bank selected by the Developer and approved by the City (the "Escrow Agent") the sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000) (the "Deposit"). The Deposit is security for the Developer's obligations to pay for or reimburse the City for certain professional fees and expenses incurred by the City in connection with the Project pursuant to Section 7.1 of this Agreement. If the Developer defaults in its obligations to pay for or reimburse the City for such professional fees and expenses, then the City shall deliver written notice to Developer. If Developer fails to pay for or reimburse such fees and expenses within thirty (30) days after receipt of such notice, the City shall deliver a written notice to the Escrow Agent requesting release such portion of the Deposit required to pay for or reimburse such fees and expenses. Upon receipt of such notice from the City, the Escrow Agent shall promptly release the requested sum to the City and, upon receipt of such sum, the City shall apply the such received portion of the Deposit to pay for or reimburse such fees and expenses. Upon completion of the Public Infrastructure Improvements included in Phase I of the Project, any unused portion of the Deposit shall be released to the Developer.

## CONSTRUCTION OF IMPROVEMENTS

Project Improvements. Subject to the terms and conditions of this Agreement, the Developer agrees to develop the Project Site by constructing the Developer Improvements, all consistent with City approved Improvement Plans. Subject to Force Majeure, the Developer shall commence construction of Phase I of the Project (including the Public Infrastructure Improvements included therein), to the extent to be constructed by the Developer, including demolition of existing buildings on the Project Site, no later than one hundred eighty (180) days following the last to occur of the following (the "Commencement Date"): (i) the issuance of the Bonds; (ii) the City's issuance of all permits or approvals necessary to commence construction; and (iii) the City's or the Developer's obtaining any other necessary State or federal permits or approvals, if required and necessary to commence construction. The Developer shall complete all exterior construction of Phase I of the Project (including the Public Infrastructure Improvements included therein) within eighteen (18) months after the Commencement Date (the "Phase I Completion Date"), subject to Force Majeure; provided, however, that Developer shall have the right to extend the Phase I Completion Date by twelve (12) months by delivering written notice to the City. For the purpose of this Agreement, "Phase I of the Project" shall mean a mixed use development comprised of (A) Developer Improvements of at least 250,000 square feet of retail space, 150,000 square feet of office space, and 100 residential units, and (B) the 422 Access Road, the Connector Road, the Required Multiple Access Points and such other Public Infrastructure Improvements as are required to service the aforementioned Developer Improvements.

Public Infrastructure Improvements. The Developer will work cooperatively with the City to coordinate the construction schedule for Public Infrastructure Improvements or work to be performed by the Developer and/or such other work to be agreed upon by the parties. Consistent with the provisions contained in Section 4, et seq., hereof, such work shall be funded from the proceeds of the Bonds although it is recognized that additional funding may be sought for Public Infrastructure Improvements to the extent necessary to complete the Project pursuant to the Improvement Plans. It is further understood that the City shall have the sole discretion to determine whether or not roads within the Project Site shall be publicly owned and maintained or privately owned and maintained, provided, however, that the Parties agree that the Connector Road shall be publicly owned and maintained. All parks and other green space within the Project Site shall be privately owned and maintained by the Developer, or if the Bonds are issued, the Issuer.

Force Majeure. The Developer shall not be considered in default in its obligations to be performed under this Agreement, if delay in the performance of such obligations is due to causes beyond its reasonable control, including but not limited to, acts of God or of a public enemy, acts of the federal or state government, acts of terrorism, acts or delays of the other party, fires, floods, weather conditions which preclude construction, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or material men due to any of such causes, delays due to Project Site environmental requirements or other events beyond the reasonable control of a party (herein referred to as "Force Majeure"); it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall within 30 days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated

duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other party in writing of the duration of the delay.  
Quality of Work. All work done in connection with the construction or placement of all Public Infrastructure Improvements and Developer Improvements (including any demolition and excavation work), any renovation, rehabilitation, restoration or repair thereto performed by the Developer shall be done in compliance with Applicable Laws, subject to the Developer's right to contest or appeal the same pursuant to Ohio law.  
Support: Indemnification. At all times during the demolition, excavation and/or construction of the Public Infrastructure Improvements by the Developer or of Developer Improvements or any repairs, rehabilitation, restoration, alterations thereto or replacements thereof, the Developer shall provide lateral and sub-adjacent support to adjacent properties and any improvements whatsoever upon said properties in compliance with generally accepted engineering practices and the recommendations of its engineers. The Developer hereby indemnifies and holds harmless the City from and against such damages, liabilities, obligations, penalties, claims, costs, charges and expenses, including architects' and reasonable attorneys' fees which may be suffered or incurred by or imposed upon the City solely by reason of the Developer's negligent demolition, excavation and construction and/or the Developer's failure to provide the support required by this paragraph.  
Employment and Worker Safety Laws. The Developer shall at all times while constructing, installing, maintaining, or repairing those Public Infrastructure Improvements constructed by the Developer or Developer Improvements, comply with Applicable Laws related to Social Security, Occupational Safety and Health Acts, regulations required by the Ohio Department of Commerce, and any applicable prevailing wage and competitive bidding regulations if required.

Insurance Requirements. From the date of execution of this Agreement through and until the completion of construction or later as set forth below, the Developer shall obtain and/or cause its contractors to maintain all policies of insurance as required by this Section of the Agreement and such additional insurance as may be required by the Issuer.

**Builder's Risk Insurance.** During construction and subsequent to reconstruction, restoration, renovation or rehabilitation of any or all of those Public Infrastructure Improvements constructed by the Developer and of Developer Improvements, the Developer shall procure and maintain, and/or cause its contractors, tenants or agents to procure and maintain all builders' risk and fire insurance with extended coverage upon the Public Infrastructure Improvements and Developer Improvements then to be constructed in the full replacement cost thereof.

**Hazard Insurance.** Upon completion of construction, the Developer shall procure and maintain, or cause its contractors, tenants or agents to procure and maintain "all risk" property insurance in the full replacement cost of the Developer Improvements and Parking Facility as erected on the Project Site.

**Public Liability Insurance.** During construction and until completion of construction of those Public Infrastructure Improvements constructed by

**the Developer and of Developer Improvements, the Developer shall maintain public liability insurance against all claims for personal injury or death or property damage occurring in or about the Project Site, with limits not less than Two Million Dollars (\$2,000,000) in the event of bodily injury or death of one person, and not less than Five Million Dollars (\$5,000,000) in the event of bodily injury or death to any number of persons in any one occurrence, and broad form property damage coverage of not less than Five Million Dollars (\$5,000,000). These limits of liability insurance may be provided in a combination of a primary and excess liability policies. During construction of those Public Infrastructure Improvements constructed by the Developer and of Developer Improvements, the City and the Issuer, if applicable, shall be named as an additional insured on the public liability insurance policies required by this Section. All insurance shall be effected by valid enforceable policies issued by insurers authorized to do business in the State of Ohio and approved by the City in its reasonable discretion. Certificates of such insurance shall be delivered to the City and the Issuer at least one week prior to the commencement of construction; certificates of replacement policies shall be delivered to the City on or before the expiration of the policy. All such policies shall contain agreements by the insurers that the policies shall not be cancelled except upon fifteen (15) days prior written notice to the Developer, the Issuer and the City; the Developer shall promptly forward the City a copy of such notice of cancellation.**

**The Parties agree that Developer shall have the right to satisfy the insurance requirements set forth in (a), (b) or (c) above (in whole or in part) through any blanket or self-insurance program or policy maintained by Developer or any of its affiliates or through the use of any owner-controlled or contractor-controlled “wrap-up” or excess liability program.**

Special Provisions.

**During the construction of Phase I of the Project, the Developer agrees to maintain a temporary office on or in close proximity to the Project Site, which will have telephone service.**

**Prior to commencement of construction, the Developer shall submit a written plan for dust control, rodent control, and perimeter fencing to the City Engineer, Chief Building Official and Chiefs of Police and Fire pursuant to the Codified Ordinances, which plan shall include reasonable access for emergency vehicles.**

**The Developer agrees to construct those portions of the Public Infrastructure Improvements and Developer Improvements in compliance**

with this Agreement and applicable Codified Ordinances. Unless otherwise approved by the City, at no time during construction or thereafter shall the Developer allow non-construction, vehicular traffic onto the Project Site which is not related to the construction of the Project.

Upon request by the City, the Developer shall provide the City with proof of comprehensive property, casualty and liability insurance coverage as required in Section 6.7 herein.

The Developer shall comply with Codified Ordinances related to trash pickup and service deliveries.

The Developer covenants that all storm, water and sanitary sewer systems installed by the Developer and servicing the Project shall be constructed in full compliance with all Applicable Laws, including, without limitation, applicable Ohio and federal environmental health and safety laws.

The Developer agrees to utilize commercially reasonable efforts to practice non-discriminatory hiring in its operations.

The Developer agrees to maintain a proper snow removal plan for those sections of the completed Project.

## **PAYMENT OF COSTS**

### Payment of Costs.

The Developer agrees to pay the City for (a) the cost for the issuance of the Bonds incurred by the City, and (b) the commercially reasonable fees of special counsel, Mansour, Gavin, Gerlack & Manos Co., L.P.A., Rademaker, Matty, McClelland & Greve; and Squire, Sanders & Dempsey L.L.P., to the extent the fees of such counsel were for services rendered concerning this transaction. The Developer also agrees to pay the City (i) commercially reasonable fees of the Director of Law for the City in reviewing the Bond proceedings and in reviewing plans and specifications, permits and approvals, (ii) the reasonable costs of the services of any consultants reasonably engaged by the City with respect to the Project, with such invoices to be approved by the Developer, (iii) the reasonable costs of obtaining necessary traffic studies and infrastructure capacity studies, and (iv) clerical fees and fees for outside inspectors engaged by the City in connection with the construction of the Project; provided, however, that said studies and costs have been pre-approved by the Developer. Such amounts shall be paid for directly by the Developer (but subject to reimbursement from Bond proceeds to the extent permitted by Applicable

Laws) or from the proceeds of the Bonds, and the City shall have no responsibility for such costs. All of such costs invoiced prior to the issuance of Bonds shall be paid or reimbursed by the Developer within 30 days of receipt of such invoice from the City. Such amounts shall be paid irrespective of whether the Bonds are issued and such obligation shall survive the termination of this Agreement.

The Developer shall pay or reimburse the City for all of the City's costs for the purchase and installation of required school crossing signs and flashing light assemblies on streets adjacent to the Project Site. To the extent monies are available from the net proceeds of the Bonds for the purpose, the City shall request the Issuer to reimburse the Developer for such costs.

## **TERMINATION**

### Termination.

The City may terminate this Agreement at any time upon written notice to the Developer after the occurrence of any of the following events:

In the event the Bonds are not issued by Required Bond Issuance Date in an amount sufficient to provide net proceeds in an amount at least equal to the costs of the Public Infrastructure Improvements included in Phase I of the Project, together with any funds to be provided by the Developer.

In the event the Developer fails to make the Deposit required by Section 5.1 where such failure shall continue for five (5) business days after the Developer's receipt of written notice from the City.

In the event the Developer fails to meet each of the City Conditions on or before the Required Bond Issuance Date.

For the purpose of this Agreement, the "Required Bond Issuance Date" shall mean

November 30, 2010, subject to extension by twelve (12) months upon the Developer's delivery of written notice to the City.

Either of the Parties may terminate this Agreement upon written notice to the other in the event that the Town Center Ordinance and Town Center Ordinance as applied to the Project Site as set forth hereinabove is not approved at the November 4, 2008 election.

If the Developer determines that it cannot meet the requirements imposed by the City under this Agreement or the City can not reach agreements with the School District and, if required, Cuyahoga County, with respect to the

portion of the Service Payments that will be paid to the School District and Cuyahoga County, which agreements are reasonably acceptable to the Developer and the Developer so notifies the City in writing prior to the issuance of the Bonds, this Agreement shall terminate and be of no further force and effect.

This Agreement shall terminate and be of no further force and effect upon the earlier of (i) substantial completion of the Project, and (ii) satisfaction of the Bonds.

In the event of any termination of this Agreement, any unused portion of the Deposit shall be promptly returned to Developer.

## **REMEDIES**

In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, within thirty (30) days after receipt of such notice, or in the event the default or breach cannot be cured within thirty (30) days, such longer period of time as may be reasonable. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time after such written notice, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

Other Rights and Remedies: No Waiver by Delay. The City and the Developer shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Article; provided, that any delay by the City or the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that the City or the Developer should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City or the Developer with respect to any specific default by the City or the Developer under this Section be considered or treated as a waiver of the rights of the City or the Developer with respect to any other defaults by the City or the Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

Costs and Expenses. Notwithstanding anything to the contrary herein, in the event of any breach or default by the Developer under this Agreement, the Developer shall pay to the City and shall indemnify and hold harmless the City from and against any loss, cost, damage, or expenses reasonably incurred by the City in enforcing the obligations of the Developer under this Agreement.

## **Mortgagee Protections**

**The City acknowledges and agrees that this Agreement shall not prevent or limit the Developer, in any manner, from encumbering the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Project Site. The City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification; provided, that the City shall have no obligation to agree to any interpretation or modification that would adversely affect its rights or increase its obligations under this Agreement in any material respect. Notwithstanding anything herein to the contrary, any mortgagee of all or any portion of the Property (a "Mortgagee") shall be entitled to the following rights and privileges:**

**Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project Site made in good faith and for value.**

**The Mortgagee of any mortgage or deed of trust encumbering the Project Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from the City of any default by the Developer in the performance of the Developer's obligations under this Agreement.**

**If the City timely receives a request from a Mortgagee requesting a copy of any notice of default given to the Developer under the terms of this Agreement, the City shall provide a copy of each such notice to the Mortgagee within ten (10) days of sending the notice of default to the Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed the Developer under this Agreement, but in no event less than thirty (30) days, except that as to a default requiring title or possession of the Project Site or any portion thereof to effectuate a cure, if the Mortgagee timely cures all defaults which do not require possession to effectuate a cure and commences foreclosure proceedings to acquire title to the Project Site or applicable portion thereof within ninety (90) days after receipt from the City of the written notice of default and thereafter diligently and continuously prosecutes such foreclosure to completion, the Mortgagee shall be entitled to cure such default after obtaining title or possession provided that such Mortgagee does so promptly and diligently after obtaining title or possession.**

Any Mortgagee who comes into possession of the Project Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project Site, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of the Developer's obligations or other affirmative covenants of the Developer hereunder, or to guarantee such performance.

## City Commitments

Connector Road Approval. If the City requests installation of the Connector Road pursuant to Section 4.5, the City shall approve the final location of the Connector Road through the Project Site so as to enable the Developer to proceed with the Project in a timely fashion and meet its obligations under this Agreement.

Intersection Reconfiguration Approval. If the City requests implementation of the Intersection Configuration pursuant to Section 4.8, the City shall approve the plans for the Intersection Configuration so as to enable the Developer to proceed with the Project in a timely fashion and meet its obligations under this Agreement.

Connector Road to Aurora. If the City requests the installation of the Connector Road pursuant to Section 4.5, and Developer installs the Connector Road on the Project Site, the City shall, at the City's sole cost and expense, design and install such portions of the Connector Road not located on the Project Site. The City's obligations in connection with such portions of the Connector Road not located on the Project Site include the City's purchase of any private property necessary to construct such portions of the Connector Road. The City agrees to use good faith efforts to complete such portions of the Connector Road not located on the Project Site on a schedule that is consistent with the construction schedule of the Developer's portion of the Connector Road.

## MISCELLANEOUS

Conflict of Interest: the City's Representatives not Individually Liable. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

No Brokers/Release. The City shall not be responsible for any brokerage fees or real estate commissions due and payable or resulting from the assemblage of the Project Site. Developer agrees to indemnify City for any claimed brokerage fees and to reimburse City for the cost of defense of any such claims.

Invalidity of Particular Provisions. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or

**provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.**  
**Applicable Law and Construction. The laws of the State of Ohio shall govern the validity, performance and enforcement of this Agreement. The headings of the several Articles and Sections contained herein are for convenience only and do not define, limit or construe the contents of such Articles or Sections. Except as expressly provided otherwise, whenever the City's or the Developer's permission, consent, approval, cooperation, or other act or omission is required pursuant to the terms of this Agreement, such act or omission shall not be unreasonably withheld, conditioned or delayed.**  
**Notice. All notices or other communications required to be given hereunder shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or if delivered to a nationally recognized overnight courier service; or, if mailed by U.S. registered or certified mail, Postage Prepaid; and, addressed as follows:**

NOTICE TO CITY:

City of Solon  
Attention: Mayor Kevin C. Patton  
34200 Bainbridge Road  
Solon, OH 44139  
with a copy to:

David J. Matty  
Director of Law, City of Solon  
Rademaker, Matty, McClelland & Greve  
55 Public Square, Suite 1775  
Cleveland, Ohio 44113

NOTICE TO DEVELOPER:

with a copy to:

Central Park Solon, LLC  
13990 Cedar Road  
Cleveland, Ohio 44118  
Attention: Peter L. Rubin, President

Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
Attn: James B. Aronoff, Esq.

and

Dahan & Nowick LLP  
1700 Broadway, 14th Floor  
New York, New York 10019  
Attn: M. Marc Dahan, Esq.

Each of the foregoing may change its notice address if it so notifies the other parties listed above pursuant to this Section.

No Recordation of Agreement. Neither party shall record this Agreement, whether in the public records of Cuyahoga County or elsewhere; provided that the City or the Issuer may record a declaration of restrictive covenants setting forth the Developer's obligations under this Agreement.

Construction of Terms. Whenever the singular or plural number or masculine, feminine or neuter gender is used herein, it shall equally include the other, and the terms and provisions of this Agreement shall be construed accordingly.

Agreement Binding Upon Successors. The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit not only of the parties hereto, but their respective personal representatives, heirs (if applicable), successors and assigns.  
Authority. Each of the parties represents and warrants to the other that the parties signing this Agreement have been duly authorized and empowered to sign on behalf of the parties.

Survival. The provisions of this Agreement shall survive any expiration or earlier termination of the Agreement to the extent necessary to carry out the intent and expectations of the parties.

Complete Agreement; Amendment. All negotiations, considerations, representations and understandings between the parties as to the Project are incorporated herein, and may be modified or altered only by agreement in writing signed by both parties to this Agreement.  
Non-Waiver. Failure of the City or the Developer to complain of any act or omission on the part of the other party, however long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by the City or the Developer at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.

No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed so as to confer upon any other party the rights of a third party beneficiary.

Time is of the Essence. Time is of the essence in this Agreement.

Exhibits. All Exhibits attached hereto are incorporated herein as if fully rewritten herein.

City Council. This Agreement and all terms and provisions herein are subject to and conditioned upon the approval or ratification by duly enacted ordinance or resolution of City Council of the City of Solon.

Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement.

Agreement Runs with the Land. All of the provisions, rights, terms covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assignees, personal representatives, and all other persons

**acquiring all or substantially all of the Project Site, whether by operation of law or in any matter whatsoever.**

**Estoppels. Upon request by Developer from time to time, the City, within ten (10) days, shall execute an estoppel certificate identifying this Agreement and any amendments thereto, verifying that there is no default by Developer or the City thereunder (or if there is a default, describing the same with particularity) and containing such other information as Developer may reasonably request.**

**No Joint Venture; Domicile & Name. It is understood and agreed by the City and the Developer that the relationship is that of independent contracting parties and not an agency, joint venture or partnership relationship. The City acknowledges and agrees that Developer has a right to change its state of domicile from Ohio to Delaware and its name as Developer shall select.**

**Business Days. For the purpose of this Agreement, "business day" shall mean any day other than a Saturday, Sunday or legal holiday in the State of Ohio.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by its duly authorized officers as of the date set forth above.

**CENTRAL PARK SOLON, LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

**CITY OF SOLON, OHIO**

By \_\_\_\_\_

Approved as to form  
and correctness:

\_\_\_\_\_  
Director of Law

**CERTIFICATE OF FISCAL OFFICER**

The undersigned, fiscal officer of the City, hereby certifies that the money required to meet the obligations of the City during the year 2008 under the Agreement 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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Director of Finance