

ORDINANCE NO. 12-2024

AUTHORIZING THE VILLAGE ADMINISTRATOR TO EXECUTE A FURTHER AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE PLANNED UNIT DEVELOPMENT AT RED BANK VILLAGE, AND DECLARING AN EMERGENCY

WHEREAS, on March 20, 2006, the Village of Fairfax entered into a Development Agreement with Regency Centers ("Regency") for the development of the former Ford Plant site now known as Red Bank Village (the "Site"); and

WHEREAS, in addition to certain third party transfers, Regency subsequently transferred such interest as it retained in the Site to Red Bank Village, LLC ("RBV"), of which Regency is the Sole Member; and

WHEREAS, this Council previously approved eight separate "Amendment[s] to Development Agreement" to satisfy the conditions required for the Revised Concept Plan for the Site; and

WHEREAS, the Village and RBV have now agreed in principle to a Ninth Amendment to Development Agreement; and

WHEREAS, given business needs for the subject outlots at the Site under current retail market conditions, the Ninth Amendment to Development Agreement is reasonable and necessary to assure marketability of the outlots and generate revenue and economic development for the Village; and

WHEREAS, prompt approval of the Ninth Amendment to Development Agreement is necessary to proceed with agreements with users or proposed users of the subject outlots at the Site; and

WHEREAS, this amendment does not require zoning review;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Fairfax, State of Ohio, that:

SECTION I: The Village Administrator is hereby authorized to execute the Ninth Amendment to Development Agreement attached hereto as Exhibit A, or such substantially similar Ninth Amendment to Development Agreement as necessary to correct errors or make changes of a non-material nature.

SECTION II: This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall be effective immediately. The reason for said declaration of emergency is the immediate need based on volatile and changing retail market conditions to proceed specified uses of outlots at the Site, thereby using or developing without delay outlots necessary for Village revenue and economic development.

Passed this 16th day of September, 2024.

Mayor

ATTEST:

Fiscal Officer

CERTIFICATE

I hereby certify this to be a true and correct copy of Ordinance No. 12-2024, passed at a meeting of the Council of the Village of Fairfax on this 16th day of September, 2024.

Fiscal Officer

NINTH AMENDMENT TO DEVELOPMENT AGREEMENT

This Ninth Amendment to Development Agreement (this “Ninth Amendment”) is made as of the _____ day of _____, 2024, by and between the Village of Fairfax, Ohio (the “Village”) and Red Bank Village, LLC, a Delaware limited liability company (“RBV”).

INTRODUCTION

This Ninth Amendment amends certain provisions of the Development Agreement between the Village and RBV (as successor-in-interest to Regency Realty Group, Inc.) dated March 20, 2006, as subsequently amended and supplemented (collectively, the “Development Agreement”). Capitalized terms in this Ninth Amendment are defined in the Development Agreement unless otherwise defined below.

RECITALS

A. The Development Agreement places restrictions on the development and use of Outlots at the Site and allows RBV to seek relief from those restrictions on the terms so specified.

B. The Eighth Amendment to Development Agreement dated December 19, 2022 and recorded December 22, 2022 in Official Record 14819, Page 0481 of the Hamilton County, Ohio Recorder’s Records (the “Eighth Amendment”) provided RBV with relief from certain restrictions contained in the Development Agreement and specifically allowed for the use of Lot 12 (as more particularly described in **Exhibit A** attached hereto and made a part hereof) as a “White Water Express Car Wash”.

C. RBV has requested additional relief from the Outlot restrictions for Lot 12 to permit the operation of tunnel car wash facilities on Lot 12, as more particularly set forth below.

D. In addition, RBV has requested relief from the Outlot restrictions for Lot 15 (as more particularly described in **Exhibit B** attached hereto and made a part hereof) to permit the operation of a Fast Food Restaurant on Lot 15, as more particularly set forth below.

E. RBV has complied with the prerequisites for the aforementioned requests for relief from the restrictions on the development and use of the Outlots as set forth in the Development Agreement, including the use of its best efforts to seek the preferred Outlot uses for Lots 12 and 15.

F. Consistent with the Development Agreement, market circumstances currently undermining the preferred Outlot uses make it reasonable for the Village to consent to the relief requested.

G. The Village and RBV have agreed to such relief and, to memorialize that agreement, hereby modify the existing Development Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the adequacy of which is hereby acknowledged, the Village and RBV agree as follows:

1. Outlots – Use of Lot 12. Section 1 of the Eighth Amendment is deleted in its entirety and replaced with the following:

“Outlots – Use of Lot 12. Notwithstanding any provision of Paragraph 18 and Paragraph 19d of the Development Agreement (including all subparts) to the contrary, Lot 12 may be used for the operation of a tunnel car wash facility operating under the trade name “White Water Express Car Wash” (the “Permitted Lot 12 Use”).

If the then-current owner or operator of Lot 12 desires to change the trade name of the Permitted Lot 12 Use, then RBV and the Village agree to consider a request for an amendment to the Development Agreement authorizing such trade name change and agree not to unreasonably withhold, delay, or condition their consent to such an amendment to the Development Agreement. It shall be reasonable for RBV or the Village to withhold its consent to such an amendment to the Development Agreement based upon any of the following:

- a. The proposed trade name conflicts with or potentially violates any covenants or requirements contained in the Development Agreement or any provision of law;
- b. The proposed trade name conflicts with or potentially violates any other covenants, restrictions or other matters contained in any recorded declaration, agreement, or other instrument applicable to Lot 12;
- c. The proposed trade name conflicts with or is materially similar to the trade name of a tenant of space located on other real property subject to the Development Agreement; or
- d. RBV or the Village consider the proposed trade name to be offensive or the proposed trade name otherwise raises a substantial question as to its propriety or fit within the Site.

As used herein, the “Permitted Lot 12 Use” shall include any trade name change approved by RBV and the Village pursuant to a fully-executed amendment to the Development Agreement as set forth above.

All uses of Lot 12 shall otherwise conform to the terms and conditions of the Development Agreement. If Lot 12 ceases to be used for the Permitted Lot 12 Use, then the owner of Lot 12 will use its best efforts to secure a bank, sit down restaurant, or other permitted use/user for Lot 12 before pursuing replacement tunnel car wash uses. Anything to the foregoing notwithstanding, temporary cessation of the use of Lot 12 for the Permitted Lot 12 Use shall be permitted for such items as casualty, condemnation, remodeling, renovations, and similar events provided that the Permitted Lot 12 Use is resumed within a commercially reasonable time after the occurrence of such event.”

2. Outlots – Use of Lot 15. Notwithstanding any provision of Paragraph 18 of the Development Agreement (including all subparts and as amended) to the contrary, for so long as the lease agreement between RBV and Chick-fil-A, Inc., a Georgia corporation, for Lot 15 (as more particularly described in **Exhibit A** attached hereto and made a part hereof) (as the same may be amended or assigned, the “Lot 15 Lease”) remains in effect, Lot 15 may be used as a Fast Food Restaurant. All uses of Lot 15

shall otherwise conform to the terms and conditions of the Development Agreement. If the Lot 15 Lease expires or is terminated, then RBV, or its successor or successor-in-interest, will use its best efforts to secure a bank, sit down restaurant or other permitted user for Lot 15 before pursuing replacement Fast Food Restaurant uses.

3. Full Force and Effect. Except for the modifications described above, all terms and conditions of the Development Agreement shall remain in full force and effect.

ONLY SIGNATURES TO FOLLOW

AGREED:

VILLAGE OF FAIRFAX, OHIO,
an Ohio municipal corporation

By: _____
Jennifer M. Kaminer, Village Administrator

STATE OF OHIO §
 §
COUNTY OF HAMILTON §

This instrument was acknowledged before me on this ____ day of _____, 2024, by Jennifer M. Kaminer, Village Administrator of the Village of Fairfax, Ohio, an Ohio municipal corporation, on behalf of the corporation. No oath or affirmation was administered to the signer in connection with this acknowledgement.

Notary Public

Approved as to form:

Alan H. Abes, Village Solicitor

EXHIBIT A

Lot 12

Situated in Section 15, Town 4, Fractional Range 2, Village of Fairfax, Columbia Township, Hamilton County, Ohio and being all of Lot 12 of Red Bank Village Subdivision - Phase 3 (being a replat of Lots 1, 4, 5 and 6 of Red Bank Village) as recorded in Plat Book 418, Pages 85-86.

Auditor's Parcel: 523-0002-0177

EXHIBIT B

Lot 15

Situated in Section 15, Town 4, Fractional Range 2, Miami Purchase, the Village of Fairfax, Columbia Township, Hamilton County, Ohio and being Lot 15 on the Plat of Red Bank Village Subdivision -Phase 3 recorded in Plat Book 418, Pages 85 and 86 in the Office of the Recorder of Hamilton County, Ohio.

Auditor's Parcel: 523-0002-0180