

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Memorandum") is made as of _____, 2011, among THE BOARD OF TOWNSHIP COMMISSIONERS OF MIAMI TOWNSHIP, OHIO (the "Township"), the MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, an Ohio body politic and corporate organized under Chapter 5540 of the Ohio Revised Code (the "TID"), and RG PROPERTIES, INC., an Ohio corporation ("Developer") (the Township, the TID and the Developer, individually, a "Party" and collectively, the "Parties"), under the following circumstances:

A. Developer or its affiliates own certain real property located in the northeast quadrant of the Austin Road interchange area at Interstate 75 and Miamisburg-Springboro Pike in Montgomery County, as shown on the site plan attached to this Memorandum as Exhibit A and referred to in this Memorandum as the "Property."

B. Pursuant to a Memorandum of Understanding dated November 26, 2008 among Developer, the TID, the Township, the Board of County Commissioners of Montgomery County, Ohio (the "County"), the City of Miamisburg and the City of Springboro, the parties have proceeded with the implementation of a master plan based on a preliminary conceptual plan prepared by the Developer for the Property and other land owned by Developer in the area of the Austin Road interchange, and Developer has obtained from the Township appropriate zoning of the Property supporting a mixed use development as contemplated by the master plan.

C. On September __, 2009, the County, the TID and Developer entered into a Phase I Development Agreement (the "Phase I Development Agreement") which identified certain public roadway and infrastructure improvements necessary for the first phase of the development of the Property, and established Developer's obligations for the construction of Phase I private improvements.

D. Developer has completed the construction of certain Phase I private improvements contemplated by the Phase I Development Agreement, with the remainder (specifically the hotel project) to be completed in the near future. The County, the Township and the TID have completed significant portions of the Phase I public improvements contemplated by the Phase I Development Agreement, with the remainder of the Phase I Public Improvements also scheduled to be completed in the near future.

E. Developer is now prepared to proceed with Phase II of the development of the Property, and the parties have identified the public improvements necessary for Phase II.

F. The Township and the TID believe that the Phase II improvements will promote the highest and best use of the land through the development of amenities and employment opportunities that will encourage knowledge workers to live, work and recreate in the Township and benefit the entire region. To that end, the TID and the Township are willing to pursue and provide financial support for the public infrastructure improvements supporting the development of the Property which will, in turn, support the entire Austin interchange area.

G. The TID will cooperate with the Township in facilitating the funding of the Phase II public improvements and in constructing the transportation aspects of the Phase II public improvements.

H. Developer recognizes that the obligation of the public parties to commit to finance the Phase II public improvements is based on Developer's commitment to develop and construct the Phase II private improvements set forth in this Memorandum.

I. The Parties desire to enter into this Memorandum to memorialize certain understandings relating to the scope of Phase II and the Parties' respective obligations relating to the Phase II development. The Parties recognize, however, that certain sources of funding have not yet been fully developed, and a more detailed agreement will need to be entered into when the funding sources are fully identified and the requirements relating to that funding can be addressed in greater detail.

NOW, THEREFORE, in consideration of the mutual benefits and obligations contained in this Memorandum, the Parties agree as follows:

1. Developer's Phase II Obligations. Subject to the terms of this Memorandum, Developer agrees to proceed with the construction and completion of the following private improvements on the Property (the "Phase II Private Improvements"):

- (a) The "Village Area" and adjacent retail area consisting of approximately 70,000 square feet of retail building area on the first floor and approximately 186 residential apartment units on floors 2 through 4 above part or all of the retail buildings;
- (b) A 14 screen cinema adjacent to the Village Area; and
- (c) An office building with a minimum of 120,000 square feet.

The Phase II Private Improvements, together with an approximately 520 space parking structure that will be subject to real estate taxation, will have a minimum value of \$50,000,000.00. Developer also agrees to use commercially reasonable efforts, in accordance with its business judgment and taking into consideration market conditions, tenant commitments, and other factors, to develop the balance of the Property for mixed uses consistent with available zoning. Such additional development, so as to achieve the full development of the Property, shall be at Developer's sole expense; additional public funding is not contemplated for the remainder of the development of the Property. Subject to the terms of this Memorandum, Developer agrees to use its best efforts to complete the construction of the Phase II Private Improvements and have the uses open for business on or before April 1, 2013.

2. Phase II Public Improvements. Subject to the terms of this Memorandum, the Township (with the cooperation of the TID) agrees to undertake \$10,000,000.00 of public improvements on or supporting the Property, to consist of the following (the "Phase II Public Improvements"):

- (a) Public street and utility improvements in the areas shown on Exhibit B attached to this Memorandum (the "Roadway Infrastructure");

(b) One parking structure adjacent to the Village Area (the "Parking Structure") as shown on Exhibit B; and

(c) Park improvements in the Village Area (the "Park Improvements").

The Phase II Public Improvements also may include other related amenities and costs of acquisition of portions of the Property for their dedication to public use. Notwithstanding anything in this Memorandum to the contrary, the Township shall not be obligated to incur costs in excess of a maximum funding commitment of \$10,000,000.00. Once the aggregate amount of costs incurred reaches \$10,000,000.00, the obligations of the Township with respect to the construction of the Phase II Public Improvements shall be deemed satisfied in full.

3. Staging of Project. Certain components of the Phase II Private Improvements and Phase II Public Improvements may be conducted in stages. The Parties agree that it is impossible at the execution of this Memorandum to predict all of the factors that will impact the timing and development of the Phase II Private Improvements and the Phase II Public Improvements. The parties agree to be flexible and work cooperatively as the project moves through the stages in order to maximize the development potential of the Property. For example, the parties may agree to delay or accelerate the timing of certain Phase II Private Improvements to correspond with the Phase II Public Improvements. Notwithstanding the foregoing, the Township agrees to commence construction of the Parking Structure no later than August 1, 2011. Further, when Developer has started construction of all three elements of the Phase II Private Improvements, Developer may notify the Township, and within thirty (30) days after receipt of Developer's notice, the Township shall commence the construction of all remaining Phase II Public Improvements as a final stage. In all cases, the Phase II Public Improvements will be commenced and completed in a timely manner as needed to support the construction and completion of the Phase II Private Improvements.

4. Funding and Repayment Sources. The Township contemplates the funding of its \$10,000,000.00 commitment as follows:

(a) The Roadway Infrastructure and the Park Improvements will be financed through the issuance of general obligation bonds by the Township; and

(b) The Parking Structure will be financed through the TID's issuance of bonds pursuant to an agreement ("Cooperative Agreement") among the Developer, the TID and the Township. Under the Cooperative Agreement, the Township will commit to make all payments of principal and interest on the bonds issued by the TID, and will pledge its available non-tax revenues to the funding of such payments, such non-tax revenues consisting of payments in lieu of taxes received by the Township under the applicable TIF arrangements that include the Property. As a further credit enhancement, the TID may establish special assessments against the benefited portions of the Property to secure the repayment of the financing issued through the Cooperative Agreement.

5. JEDD Funding. Subject to the terms of this Agreement, and to provide a funding source for the maintenance and operational costs of the Phase II Public Improvements, Developer agrees to submit the retail and hospitality portions of the Property to a JEDD of which

the Township is a member, such JEDD to be mutually acceptable to Developer and the Township and to include not less than 50% of the Property. The Township shall contract with Developer to maintain and operate the Phase II Public Improvements (including, but not limited to, marketing and entertainment costs) in accordance with the standards adopted by Developer for a first class development. The Township agrees to apply its share of JEDD revenue toward the costs of such maintenance and operation. If the revenue is insufficient, Developer shall bear the balance.

6. Establishment of New Community. Subject to the adoption of certain modifications to the Ohio law governing new communities, and subject to the approval of the affected retailers on the Property, Developer agrees to submit the retail and hospitality portions of the Property to a new community, the terms of which shall be mutually acceptable to Developer and the Township. The new community authority established for the new community shall have the right to levy a service charge in an amount up to one-half of one percent of the sales generated from the new community area up to a maximum of \$500,000.00. The sales to which the service charge would apply would include all sales that are subject to state sales tax, specifically excluding food sales for off-premises consumption, but specifically including hotel room receipts and theater admissions and concession sales. Any such revenue shall be made available to Developer to apply toward the costs of operating and maintaining the Phase II Public Improvements, with any balance to be applied to the repayment of the Township's obligations as described in Section 4.

7. Parking Structure. The Parties intend that the Parking Structure funded by public funding, as part of the Phase II Public Improvements, will be owned by a public authority during the useful life of the structure (or, if permitted by law, the term of the bonds), with management obligations delegated to Developer pursuant to a management agreement. Under the management agreement, Developer will have the ability to establish rules that limit the use of the Parking Structure to specific users in the development during business hours, but be open to the public after business hours. If necessary in order to permit this arrangement, the Parking Structure funding shall be handled through taxable bonds rather than tax exempt bonds. The management agreement will place all costs of operation, maintenance, repair and other costs and expenses of the Parking Structure upon the Developer. At the end of the term of the management agreement, title to the Parking Structure shall be transferred to Developer.

8. Phase II Development Agreement. When the Parties have approved the funding arrangements contemplated by this Agreement, the Parties shall use their best efforts to negotiate the terms and conditions of the Development Agreement (the "Phase II Development Agreement") acceptable to the Parties. The Phase II Development Agreement will include the following:

(a) Developer's obligations to:

(i) Proceed with the design and construction of the Phase II Private Improvements as described above;

(ii) Negotiate in good faith with the Township and the TID for the sale of easements and rights of way necessary for the construction of the Phase II Public Improvements on the Property;

(iii) Submit plans to the Township for the Phase II Private Improvements and obtain the Township's approval of the same (such approval not to be unreasonably withheld, and to be made as a staff level administrative approval);

(iv) Implement the funding arrangements with respect to the Property, including, as appropriate, negotiating the terms of the Cooperative Agreement, submitting applicable portions of the Property to a JEDD, a new community, and/or special assessments to secure TIF payments;

(v) Enter into a contract with the Township under which Developer will assume responsibility for the maintenance and operation of the Phase II Public Improvements, subject to the Developer's right to receive reimbursement to the extent of the Township's JEDD and new community revenues as described above.

(b) The Township's obligations to:

(i) Arrange for the funding of the Township's \$10,000,000.00 commitment contemplated by this Memorandum, through a Cooperative Agreement with the Developer and the TID to the extent applicable;

(ii) To the maximum extent possible, allow flexibility in the expenditure of the funding so that the funds are available on an aggregate basis rather than on a line item basis, subject to applicable legal requirements;

(iii) Arrange for the design and construction of the Phase II Public Improvements, working in cooperation with the TID, where applicable, pursuant to plans approved by a design process set forth in the Phase II Development Agreement in conjunction with Developer;

(iv) Enter into a contract with Developer for the maintenance and operation of the Phase II Public Improvements after completion, subject to the Developer's right to receive reimbursement to the extent of the Township's JEDD and new community revenues as described above.

(c) The TID's obligations to:

(i) Cooperate with the Township through the Cooperative Agreement or otherwise to facilitate in the implementation of funding of the Parking Structure, utilizing the statutory authority of the TID to facilitate the Township's borrowing of the funds necessary to fulfill its financial commitment under the Phase II Development Agreement;

(ii) Cooperate with the Township to facilitate and/or implement the taking of the portions of the Property necessary for the Phase II Public Improvements;

(iii) Assist the Township in the development of the design and engineering of the Phase II Public Improvements;

(iv) Where appropriate and as mutually agreed, act as agent for the Township in the construction and maintenance (until turnover upon final acceptance) of the Phase II Public Improvements; and

(v) Assist in the prequalification of subcontractors, in cooperation with Developer and the Township, for the performance of such construction.

(d) Time schedules for the completion of the Phase II Private Improvements and the Phase II Public Improvements, recognizing that the target opening date is in the Fall, 2012. Accordingly, time is of the essence with respect to the negotiation and execution of the Phase II Development Agreement and the implementation of the work contemplated thereby.

(e) Terms and conditions relating to the construction of the improvements, including, but only where applicable, bidding procedures and prevailing wage requirements for the Phase II Public Improvements.

(f) Other appropriate terms and conditions, including representations and warranties of the Parties; arbitration and dispute resolution provisions; default provisions and remedies; and other miscellaneous terms.

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