

ORDINANCE NO.: 2019-14
SPONSOR: MAYOR NEUGEBAUER
INTRODUCED: JUNE 11, 2019 **ASSIGNED TO:** PLANNING

AN ORDINANCE DECLARING A PORTION OF IMPROVEMENTS TO A CERTAIN PARCEL OF REAL PROPERTY OWNED BY FREDDY'S AKRON OHIO LLC TO BE A PUBLIC PURPOSE, EXEMPTING ONE HUNDRED PERCENT (100%) OF THE VALUE OF THE IMPROVEMENTS FROM REAL PROPERTY TAXATION; REQUIRING THE OWNERS OF THOSE PARCELS TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES EQUAL TO THE REAL PROPERTY TAX; THE DEPOSITING OF THOSE SERVICE PAYMENTS IN THE APPROPRIATE FUND; AND PROVIDING FOR THE PAYMENT OF A PORTION OF SAID SERVICE PAYMENTS TO THE GREEN LOCAL SCHOOL DISTRICT FOR THIRTY YEARS, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:

SECTION ONE:

Green City Council makes the following findings and determinations:

- (a) The City of Green adopted Ordinance No. 2003-12 on September 10, 2003, (and amended that Ordinance through Ordinance 2004-03), establishing a tax increment financing program ("TIF Program"), authorizing the City to declare improvements to certain parcels of real property to be a public purpose, requiring the owner, and its successors and assigns, of any structure located on any parcel of real property declared to be a public purpose to make annual service payments in lieu of taxes ("Service Payments") to the Fiscal Officer of Summit County, and providing the City the option to enter into an agreement ("TIF Agreement") with the owner of any structure located on any parcel of real property declared to be a public purpose under the TIF Program.
- (b) In accordance with Ordinance No. 2003-18, adopted November 25, 2003, Green City Council established a Municipal Public Improvement Tax Increment Equivalent Fund (the "TIF Fund"), as a separate fund of the City into which Service Payments distributed to the City under the TIF program must be deposited.
- (c) Freddy's Akron Ohio LLC ("Owner"), purchased property identified in the map attached as Exhibit "A" and the legal description attached as Exhibit "B" (the "TIF Property"), located within the boundaries of the City and is making improvements on the TIF Property (the "Development Improvements"), as described in Exhibit "C".
- (d) The City has approved the construction of certain public infrastructure improvements (the "Public Improvements") in connection with the Development Improvements, which Public Improvements will directly benefit the TIF Property as described in the attached Exhibit "D".

Ordinance 2019-14

- (e) City Council has, by notice delivered to the Board of Education of the Green Local School District on October 16, 2003, and to the Board of Education of the Portage Lakes Career Center on October 16, 2003, given notice of the City's intent to declare as a public purpose certain improvement to certain parcels of real property and of the Mayor's authorization to negotiate TIF Agreements under the TIF Program. A copy of Ordinance No. 2003-12 accompanied the notices.
- (f) Subject to the following, the Board of Education of the Green Local School District passed a resolution waiving the right to approve exemptions from taxation under Section 5709.43, Revised Code, for any improvements declared to be a public purpose and for any TIF Agreements entered into under the TIF Program on the condition that a compensation agreement be negotiated in accordance with Section 5709.40, Revised Code, and waiving any notice under Section 5709.83, Revised Code. The same has been provided by the City to the Green Local School District.
- (g) The Board of Education of the Green Local School District, on November 17, 2003, entered into a compensation agreement with the City. The City and the Board of Education amended the Compensation Agreement effective January 1, 2006 and again on May 25, 2017. As a result of the May 25, 2017 amendment, the Green Local School District is required to receive a fourteen (14) day statutory notice under Ohio Revised Code 5709.83, from the City.
- (h) The Board of Education of the Portage Lakes Career Center on October 16, 2003, passed a resolution waiving any notice under Section 5709.83, Revised Code.

SECTION TWO:

Green City Council declares the Development Improvements to the TIF Property to be a public purpose. City Council exempts One Hundred Percent (100%) of the value of these improvements from real property taxation in accordance with the TIF Program and the authority in Section 5709.40, Revised Code, for a period of thirty (30) years.

SECTION THREE:

In accordance with the TIF Program and the authority in R.C. 5709.40, the Developer, and its successors and assigns, will make Service Payments equal to the real property taxes exempted under Section Two. City Council establishes an account in the TIF Fund (a "TIF Account") as a separate account in the City's Fund. The Service Payments distributed to the City must be deposited into the TIF Account and used to finance the Public Improvements described in Section 1(d), for other public infrastructure improvements benefiting the TIF Property. Additionally, funds due to the Green Local School District shall be distributed in an amount as provided in the Compensation Agreement entered into between the City and the School District.

SECTION FOUR:

The City finds and determines that all formal actions of this Council concerning and relating to the enactment of this Ordinance were taken in open meetings of this Council and all deliberations of

Page 3
Ordinance 2019-14

this Council or any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with Section 121.22, Revised Code.

SECTION FIVE:

City Council declares this Ordinance to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green and for the further reason that the Development Improvement may be revalued and Service payments commence immediately. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: July 9, 2019
Molly Kapeluck
Molly Kapeluck, Clerk of Council

Bob Young
Bob Young, Council President

APPROVED: July 10, 2019
Gerard M. Neugebauer
Gerard M. Neugebauer, Mayor

ENACTED EFFECTIVE: July 10, 2019

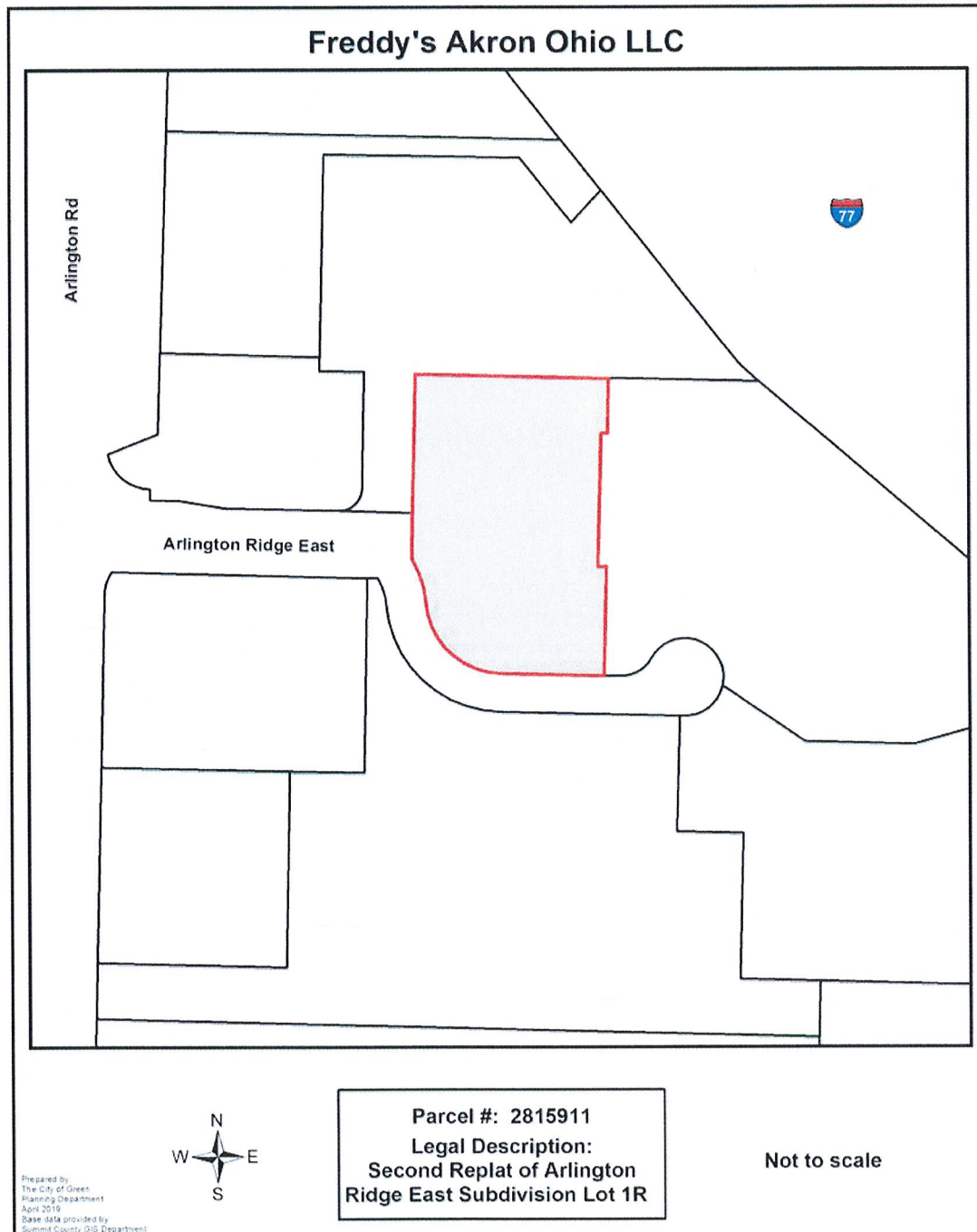
ON ROLL CALL: Babbitt -aye Dyer -aye
Speight -aye Yeargin -aye

Humphrey -aye Shaughnessy -aye
Young -aye Adopted 7-6

Suburbanite publication on July 12 and July 19, 2019
Molly Kapeluck
Molly Kapeluck, Clerk of Council

2019-14

Exhibit A
Map of Development Property



2019-17

Exhibit B
Legal Description of Development Property

For: Freddy's Akron Ohio, LLC Parcel Number(s): 28-15911
863 Arlington Ridge East
Green, OH 44312

The Development Property

SECOND REPLAT OF ARLINGTON RIDGE EAST SUBDIVISION LOT 1R ALL RN 55902789

Exhibit C
The Development Improvements

The Development Improvements consist of the following:

- (a) Construction of a 2,592 SF restaraunt.
- (b) Estimated Value of New Construction: Construction Costs \$1,300,000.00.
- (c) The facilities anticipated occupancy is Fall 2019.
- (d) Tax Year in which the improvements first appear on the tax list and duplicate:
January, 2020.

Exhibit D
The Public Improvements

The Public Improvements consist of, but are **not limited** to, the following:

- (a) Upgrade of the intersection at State Route 619 and Arlington Road and the Reconstruction of Arlington Road north of State Route 619 to the northern corporation limit boundary.
Total project estimated to cost approximately: \$13,650,000 (completed)
- (b) Development of the twenty-acre Spring Hill soccer complex, estimated to cost approximately \$2,500,000. Construction Completed in 2008.
- (c) Public improvements to Moore Road including but not limited to sidewalks, street lighting, roadway and stormwater. Sidewalk project estimated at \$600,000 for summer 2019.
- (d) Public improvements to Arlington Ridge East, inclusive of stormwater, street lighting, and sidewalks.
- (e) Reconstruction of roadways within Interstate Business Park (inclusive of storm water collection system, street lighting and sidewalks).
- (f) Public improvements to East Liberty Park.

2019-14

DRAFT

**TAX INCREMENT FINANCE DEVELOPMENT AGREEMENT BETWEEN THE CITY
OF GREEN AND FREDDY'S AKRON OHIO LLC**

This Tax Increment Finance Development Agreement is made and entered into as of this _____ day of _____ 2019 by and between the City of Green, Ohio ("City"), and Freddy's Akron Ohio LLC ("Owner"), under the following circumstances (capitalized terms are used with the meanings given them in Schedule 1):

Recitals

- A. The City adopted Ordinance No. 2003-12 on September 10, 2003, and Ordinance No. 2004-03 on February 10, 2004, establishing a Tax Increment Financing Program ("TIF Program"), authorizing the City to declare improvements to certain parcels of real property to be a public purpose, and authorizing the Mayor the option to negotiate agreements for tax increment financing.
- B. In order to create and preserve jobs and employment opportunities within the jurisdiction of the City and to improve the economic welfare of the people of the City, City Council adopted the TIF Ordinance on _____, 2019, in accordance with the Act and the TIF Program for the development and financing of the Project within the boundaries of the City.
- C. The City will acquire, construct, install and pay the costs of the Public Improvements, which Public Improvements directly benefit and serve the Development Property and the people of the City in general.
- D. In order to carry out the public purpose and to comply with the requirements of the Act and the TIF Program, the City desires to enter into this Development Agreement to provide for tax increment financing and the construction of the Public Improvements. The Owner is willing to complete the Development Improvements on the Development Property, to make the Service Payments to the City, and to perform such other actions required by the Owner as described in this Development Agreement.
- E. As part of carrying out the City's obligations, the City intends to provide funds for the Public Improvements in an amount presently estimated at \$16,150,000.00. The City has determined that it is necessary and in the best interests of the City to provide for the making of Service Payments in lieu of taxes by the Owner with respect to the New Construction, in accordance with the Act, the TIF Program, and the TIF Ordinance, and therefore, the City has declared that One Hundred Percent (100%) of the assessed value of the New Construction is a public purpose and will be exempt from real property taxation for the Exemption Period.
- F. The City has determined that the development of the New Construction by the Owner on the Development Property and fulfillment generally of the terms of this Development Agreement are in the best interests of the City and the health, safety, morals, and welfare of its residents.
- G. The City, by notice delivered to the Board of Education of the Green Local School District ("Green Local School Board") on October 16, 2003, and to the Board of Education of the

Portage Lakes Career Center (“Portage Lakes School Board”) on October 16, 2003, has given notice of the City’s intent to declare New Construction to be a public purpose in accordance with the TIF Program.

- H. The Green Local School Board, on November 17, 2003, passed a resolution waiving the right to approve exemptions from taxation under Section 5709.43, Revised Code, for any improvements declared to be a public purpose and for any Development Agreements entered into under the TIF Program on the condition that a Compensation Agreement be negotiated in accordance with Section 5709.40, Revised Code, and waiving any notice under Section 5709.83, Revised Code.
- I. The Green Local School Board entered into a Compensation Agreement with the City on November 17, 2003. The Compensation Agreement with the Green Local School Board was amended by a First Amendment to the Compensation Agreement effective the 1st day of January 2006 and again on May 25, 2017, by a Second Amendment. As a result of the Second Amendment, the Green Local School District is required to receive a fourteen (14) day statutory notice under Ohio Revised Code Section 5709.83, as is more fully described in Section 2.1 of the Second Amendment.
- J. The Portage Lakes School Board on October 16, 2003, passed a resolution waiving any notice under Section 5709.83, Revised Code.

The parties agree as follows:

[The Remainder of this Page Intentionally Left Blank]

ARTICLE 1
The City

Section 1.1 Representations. The City makes the following representations:

- (a) It is a political subdivision, duly organized, and validly existing under the laws of Ohio and its Charter.
- (b) It has performed all acts required of it as a condition to signing and delivering this Development Agreement.
- (c) It is not in violation of any laws of Ohio or its Charter, to an extent that would impair its ability to carry out its obligations under this Development Agreement.
- (d) It has the power to enter into and perform its obligations under this Development Agreement.
- (e) Its City Council has duly authorized the signing, delivery, and performance of this Development Agreement.

Section 1.2 City Agreement to Construct Public Improvements. Subject to the terms of this Development Agreement, the City agrees to acquire, construct, and install the Public Improvements described in Exhibit “D” in accordance with the time schedule and improvement descriptions provided in this Development Agreement.

ARTICLE 2

The Owner

Section 2.1 Owner Representations. The Owner makes the following representations:

- (a) It is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Ohio.
- (b) It has performed all acts required of it as a condition to signing and delivering this Development Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Development Agreement.
- (d) It has the power to enter into and perform its obligations under this Development Agreement.
- (e) Its managing member duly authorized the signing, delivery, and performance of this Development Agreement.

Section 2.2 Acquisition of Development Property. As of the date of this Development Agreement, the Owner has acquired fee title to all of the Development Property, which is located on parcel(s) 28-15911 within the boundaries of the City, and has paid all costs associated with this acquisition of title. The legal description of the property is attached as Exhibit “B”. This Development Agreement will be a covenant running with the land, regardless of lots splits or transfers, during the Exemption Period.

Section 2.3 Agreement to Make Service Payments. The Owner agrees for itself, and its successors in interest to the Development Property, or any part or interest in the Development Property, to make Service Payments to the City as described in Section 3.2 during the Exemption Period.

Section 2.4 Restrictions on Use. The Owner agrees for itself, and its successors and assigns, and every successor in interest to the Development Property or any part thereof, that until the end of the term of the Exemption Period, the Owner and any successors and assigns must use, develop and redevelop the Development Property in accordance with this Development Agreement, and further agrees for itself and its successors and assigns, that this covenant will be a covenant running with the land and will be included in any future deed by the Owner conveying the Development Property or any part thereof and will be binding for the benefit and in favor of and enforceable by the City, against the Owner, its successors and assigns. These covenants will be binding on the Owner and on each successor in interest to the Development Property, and every part thereof, for the period as the Owner or its successor has title to or an interest in the Development Property or any part thereof during the Exemption Period. The Owner will take all actions, within its power, necessary to ensure that this covenant will have priority over any interest in the Development Property except for the Permitted Encumbrances.

The Owner will cause this Development Agreement to be recorded in the real estate records of the Fiscal Officer of Summit County, Ohio ("County").

Section 2.5 Site Plan Approvals. By the entering into and the execution of this Development Agreement, the Owner acknowledges that the City in no way waives or implies the approval of a site plan for the Development Property or requires the City to render an approval of any site plan submitted for the Development Property. The Owner agrees to follow the usual and customary process of site plan approval per the City's Land Development Code, including compliance with the zoning of the Development Property at the time of the construction of the Development Improvements.

Section 2.6 No Request for reduction in vValuation of the Development Property Shall Remain Taxable. ~~Neither the Owner for itself, nor its successors and assigns and every successor in interest to the Development Property or any part thereof, during the Exemption Period, shall seek a reduction in the County Fiscal Officer's appraised value of the Development Property. Furthermore,~~ Tthe Owner agrees that the Service Payment obligations set forth herein shall continue notwithstanding that a subsequent Owner of the Development Property or the use of the Development Property may be by a non-profit entity exempt from the payment of real estate taxes.

ARTICLE 3

Exemption from Real Property Taxation

Section 3.1 Exemption of New Construction. The City hereby declares that the increase in assessed valuation of the Development Improvements by reason of all New Construction is a public purpose and determines that One Hundred Percent (100%) of the assessed valuation of the New Construction is exempt from real property taxation by all political subdivisions and taxing districts. The exemption will commence separately for each portion of the New Construction, as of the first tax year that each and any portion of the value of the New Construction appears on the tax list and duplicate, or would appear on the tax list and duplicate, but for the exemption, and will extend for the Exemption Period.

Section 3.2 Service Payments. The Owner and any successor in interest of the land within the Development Property must make Service Payments to the City as follows:

- (a) During the Exemption Period, in accordance with the Act, the TIF Program, and the TIF Ordinance, as amended and supplemented, the Owner, for itself and any successors in interest to the Development Property, or any part thereof or interest therein, covenants and agrees to make (or cause to be made) semiannual Service Payments in lieu of real property taxes with respect to the New Construction pursuant to and in accordance with the requirements of the Act, the TIF Program, and this Development Agreement. The obligation to make Service Payments will run with the land. The Service Payments must be made semiannually to the County, or to the designated agent of the County for collection of the Service Payments, on or before the date on which real property taxes would otherwise be due and payable for the New Construction. Any late Service Payments must include interest and penalties at the same rate and in the same amount and payable at the same time as delinquent real property taxes. Each semiannual Service Payment must be in an amount equal to the real property taxes that would have been charged and payable against the exempted portion of the New Construction, as if an exemption from real property taxation had not been granted, plus all interest and penalties thereon for nonpayment and must otherwise be in accordance with the requirements of the Act.
- (b) It is intended and agreed, and it must be provided in any future deed conveying the Development Property, or any portion thereof, to any person that the covenants provided in Section 3.2(a) will be covenants running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit and in favor of and enforceable by the City, whether or not this Development Agreement remains in effect, and whether or not this provision is included in any succeeding deed of the Development Property, or any portion thereof. It is further intended and agreed that these agreements and covenants will remain in effect for the full Exemption Period permitted in accordance with the requirements of the Act, the TIF Program, the TIF Ordinance, and this Development Agreement. The covenants running with the land will have priority over any other lien or encumbrance on the Development Property and the New Construction other than the Permitted

Encumbrances. The parties agree to execute and record any and all instruments of record in Summit County, Ohio, including this Development, as may be necessary to preserve and protect such covenants running with the land.

- (c) The Owner must prepare and file, or cause to be prepared and filed in cooperation with the City, any necessary applications and supporting documents to obtain the exemption from real property taxation for the New Construction to enable the City to collect Service Payments and to disburse these payments to or for the account of the City. The City will cooperate with the Owner in connection with the preparation and filing of any required exemption applications.
- (d) The Owner may sell, lease, or otherwise convey any portion of the Development Property. If the transfer provides that the transferee assumes the obligations under this Development Agreement to make Service Payments with respect to the New Construction on the portion of the Development Property transferred, the Owner will be released from its obligations under this Development Agreement to make those Service Payments with respect to that New Construction.

The agreement to make Service Payments under this Development Agreement is a covenant running with the land. Subject to the foregoing, the obligations of the Owner to make the Service Payments will be absolute and unconditional, and will not be terminated for any cause, and the Owner agrees that there will be no right to suspend or set off the Service Payments for any cause, including without limitation, its failure to complete the Development Improvements, any acts or circumstances that may constitute failure of consideration,

- (e) The Owner represents to the City, and the City acknowledges that upon completion of the Project, the expected appraised value for the New Construction will be approximately \$1,300,000.00. The parties acknowledge that this is an estimate and that the failure to achieve this level of New Construction will not constitute a failure of either party to perform under this Development Agreement. The City will not unreasonably withhold, delay, or condition the permits that the City issues or approves.

ARTICLE 4

Event of Default

Section 4.1 Event of Default. It will be an Event of Default by the City or the Owner, as applicable, under this Development Agreement if:

- (a) The Owner fails to observe or perform any of the material covenants and obligations of the Owner under this Development Agreement, and the failure continues for a period of thirty (30) days after receipt of written notice is provided, for default other than failure to pay Service Payments, and for a period of thirty (30) days, without any required written or other notice, for failure to pay Service Payments.
- (b) The City fails to observe or perform any of the material covenants and obligations of the City under this Development Agreement, and the failure continues for a period of thirty (30) days after receipt of written notice.

Section 4.2 Remedies in Event of Default. During the continuance of an Event of Default, the City or the Owner will have available as a remedy all rights granted under law or equity. Pursuit of any of the remedies will not preclude pursuit of any other remedies provided in this Development Agreement, or by law or equity. Pursuit of any remedy by either party will not constitute a forfeiture or waiver of any damages accruing to a party by reason of the violation of any of the other party's obligations under this Development Agreement. Forbearance by a party to enforce one or more of the remedies provided upon the occurrence of an Event of Default will not be construed to constitute a waiver of the default.

ARTICLE 5

Miscellaneous

Section 5.1 Term of Agreement. This Development Agreement will be effective as of its date and will continue in full force and effect for the Exemption Period as set forth in this Development Agreement.

Section 5.2 Progress Reports.

- (a) Until completion of all the Development Improvements, the Owner must make quarterly reports, in such detail as may reasonably be requested by the City, as to the actual progress of the Owner with respect to construction of the Development Improvements.
- (b) To the extent required under the Act and any other Applicable Laws, the Owner must supply or cause to be supplied to the City from time to time such information as the City may reasonably request in connection with the preparation of reports required by the State of Ohio, the County, or any other public agency under the Act and any other Applicable Laws. The City shall timely submit to the State of Ohio, the County, or any other public agency, under the Act and any other Applicable Law, any reports or information required to be submitted by the City in connection with the Project, the Development Property, Development Improvements or this Development Agreement.

Section 5.3 Discrimination Prohibited. The Owner must not, in the use and redevelopment, the sale or other transfer of the Development Property, discriminate against any person or group of persons based upon race, creed, sex, sexual orientation, religion, color, age, national origin, or ancestry, and must bind its successors by appropriate agreements and covenants running with the land enforceable by the City.

Section 5.4 Force Majeure. If the Owner is delayed or hindered in, or prevented from, the performance of any covenant or obligation of the Owner with respect to performance of the New Construction as a result of strikes, lockouts, shortages of labor, fuel or materials, acts of God, causes associated with unusual weather conditions, enemy acts, fire or other casualty, or other cause beyond the reasonable control of the Owner (including failure to obtain necessary governmental approvals after the Owner's good faith efforts to obtain them), then the performance of the covenant or obligation will be excused for the period of the delay, hindrance, or prevention and the period for the performance of the covenant or obligation will be extended by the number of days equivalent to the number of days of the delay, hindrance, or prevention.

The Owner's right to this extension will only be permitted if the Owner provides written notice of the delay within thirty (30) days of the date the Owner obtains knowledge of the delay. In no event will any delay or hindrance in or prevention from the performance of any covenant or obligation described in this Section 5.4 constitute a termination of this Development Agreement.

Section 5.5 Amendments and Waivers. This Development Agreement will not be amended, supplemented, or modified except by an instrument in writing, signed by the City and the Owner.

Section 5.6 Entire Agreement. This Development Agreement sets forth the entire agreement between the parties as to its subject matter, and merges and supersedes all previous discussions, agreements, and undertakings between the parties with respect to the subject matter of this Development Agreement. In addition, the Green Local School District shall be an intended third-party beneficiary of this Development Agreement and may specifically enforce the obligations of the Owner herein for payment due the Green Local School District under its Compensation Agreement with the City, a copy of which is attached hereto and incorporated herein as Exhibit "E".

Section 5.7 Counterparts. This Development Agreement may be signed in any number of counterparts, each of which constitute an original, but all of which constitute one agreement. Any party to this Development Agreement may sign this Development Agreement by signing any counterpart. Additionally, the parties agree that for purposes of facilitating the signing of this Development Agreement: (1) the signature pages taken from the separate, individually executed counterparts of this Development Agreement may be combined to form multiple fully signed counterparts; and (2) a facsimile transmission or .pdf file transmitted via electronic mail will be deemed to be an original signature for all purposes.

All executed counterparts of this Development Agreement will be deemed to be originals, but all counterparts taken together or collectively, as the case may be, will constitute one and the same agreement.

Section 5.8 Notice. All notices, communications, requests, and demands between the parties required or permitted to be given under this Development Agreement to be effective must be in writing (including without limitation by facsimile transmission or electronic mail), and unless otherwise expressly provided will be deemed to have been sufficiently given or made when physically delivered or mailed by U. S. registered or certified mail, or in the case of notice by facsimile transmission or electronic mail when received and telephonically confirmed, addressed as follows, or to any address as may be notified in writing by the parties:

If to the City:

City of Green
Attention: Gerard M. Neugebauer, Mayor
Attention: William G. Chris, Law Director, Interim
1755 Town Park Boulevard, P.O. Box 278
Green, Ohio 44232-0278
Telephone: (330) 896-6615
Facsimile: (330) 896-6606
Electronic Mail: gneugebauer@cityofgreen.org

If to the Owner:

Freddy's Akron Ohio LLC

Attention: _____

125 N. Emporia STE 202

Wichita, KS 67202

Telephone: (____) _____ - _____

Facsimile:

Electronic Mail: _____

Section 5.9 Successors and Assigns. This Development Agreement will be binding upon, and inure to the benefit of the City, the Owner and their respective successors and assigns. The Owner may not assign this Development Agreement or any of its rights or obligations in whole or in part, to any person without the prior written consent of the City, which consent must not be unreasonably withheld.

Section 5.10 Governing Law. This Development Agreement, and the rights and obligations of the parties under this Development Agreement, will be governed by, construed, and interpreted in accordance with the law of the State of Ohio without regard to conflict of laws principles.

Section 5.11 Severability. Any provision of this Development Agreement that is prohibited or unenforceable in any jurisdiction will, as to the jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable the provision in any other jurisdiction.

Section 5.12 Headings and Table of Contents. The headings and table of contents contained in this Development Agreement are for convenience of reference only and will not limit or otherwise affect the meaning.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Owner have each caused this Development Agreement to be effective after due authorization as of the date set forth above.

CITY OF GREEN:

By:

Gerard M. Neugebauer, Mayor

Date: _____, 20____

The legal form of the within instrument
is hereby approved.

By: _____
William G. Chris, Director of Law, Interim
City of Green

Date: _____, 20____

FREDDY'S AKRON OHIO LLC:

By:

Name
Title

Date: _____, 20____

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on _____, 2019, by Gerard M. Neugebauer, the Mayor of the City of Green, Ohio, an Ohio political subdivision, on behalf of the City.

[SEAL]

Notary Public

My Commission Expires: _____

STATE OF OHIO)
COUNTY OF SUMMIT)

) SS:

The foregoing instrument was acknowledged before me on _____, 2019, by _____, the _____ of Freddy's Akron Ohio, an ~~Ohio~~ Utah Limited Corporation, on behalf of the property owner.

[SEAL]

Notary Public

My Commission Expires: _____

Index of Exhibits

Schedule 1 – Definitions

Exhibit A – Map of Development Property

Exhibit B – Legal Description of Development Property

Exhibit C – The Development Improvements

Exhibit D – The Public Improvements

Exhibit E – City of Green and Green Local Schools Compensation Agreement

Schedule 1

Definitions

The following defined terms are used in the Development Agreement:

- (a) "Act" means Sections 5709.40, et seq., Revised Code.
- (b) "Applicable Laws" means all federal, state, and local laws, ordinances, resolutions, regulations, and codes, including the Act, governing the design, planning, construction, and installation of the Public Improvements.
- (c) "City" means the City of Green, Ohio.
- (d) "County" means Summit County, Ohio.
- (e) "Development Agreement" means this Development Agreement, between the City and the Owner dated as of _____, 2019, as may be amended from time to time.
- (f) "Development Improvements" means the land acquisition, utility extensions, engineering and inspections, building construction, and other improvements to the Development Property described in Exhibit "C".
- (g) "Development Property" means the real property identified as parcel number(s) 28-15911, and shown in Exhibit "A" and described in Exhibit "B".
- (h) "Event of Default" means any of the events described in Section 4.1.
- (i) "Exemption Period" means the thirty (30) year period of abatement of real property taxes on New Construction established in the TIF Ordinance and beginning in the tax years described in Section 3.1 for each portion of the New Construction.
- (j) "Green Local School Board" means the Board of Education of the Green Local School District.
- (k) "Improvement Plans" means the plans, specifications, profiles, and cost estimates of the Development Improvements, prepared by or for the Owner, in accordance with the requirements of all applicable governmental authorities.
- (l) "Improvements" means collectively the Development Improvements and the Public Improvements.
- (m) "New Construction" means the buildings and other improvements constructed on the Development Property after the date of this Development Agreement during the Exemption Period, including the Development Improvements.

- (n) “Owner” means Freddy's Akron Ohio LLC, an Ohio-Utah Limited Liability Corporation Partnership.
- (o) “Permitted Encumbrances” means the zoning resolutions, easements for utilities, and all other restrictions or conditions on title. The term does not include any mortgage lien, other liens, or title exceptions that are superior to or on a parity with the covenants running with the land contained in the Development Agreement, except liens for real property taxes and special assessments.
- (p) “Portage Lakes School Board” means the Board of Education of the Portage Lakes Career Center.
- (q) “Project” means the development and construction of the Improvements to the Development Property.
- (r) “Public Improvements” means the public infrastructure improvements to the land in connection with the development, including installation of additional sewer improvements, development and construction of public facilities, road extensions, intersection upgrades, reconstruction of roadways, and related public infrastructure improvements described in Exhibit “D”.
- (s) “Second Amendment to Agreement for Tax Increment Financing” or “Second Amendment to the Compensation Agreement” means the Second Amendment to the Agreement with the Green Local School District dated May 25, 2017 outlining the agreed upon compensation to be paid to the School District by the City out of the Service Payments required under the Development Agreement. A fully executed copy of the Agreement for Tax Increment Financing, also referred to as the Compensation Agreement, as amended and entered into between the Green Local School District and the City of Green is attached to this Development Agreement as Exhibit “E”.
- (t) “Service Payments” or “PILOTS” mean the payments in lieu of taxes paid by the Owner in accordance with Section 3.2 with respect to the Development Improvements and any other New Construction under this Development Agreement.
- (u) “TIF” means the tax increment financing by the City for the Development Improvements.
- (v) “TIF Ordinance” means Ordinance No. 2019-____, adopted_____, 2019 by City Council declaring a portion of improvements to be a public purpose and approving an agreement for tax increment financing for public infrastructure improvements benefiting those parcels.
- (w) “TIF Program” means the program, approved by City Council through Ordinance No. 2003-12 on September 10, 2003 and Ordinance No. 2004-03 on February 10, 2004, establishing a Tax Increment Financing Program, authorizing the City to declare improvements to certain parcels of real property to be a public purpose, and authorizing the Mayor the option to negotiate agreements for tax increment financing.

Exhibit A
Map of Development Property

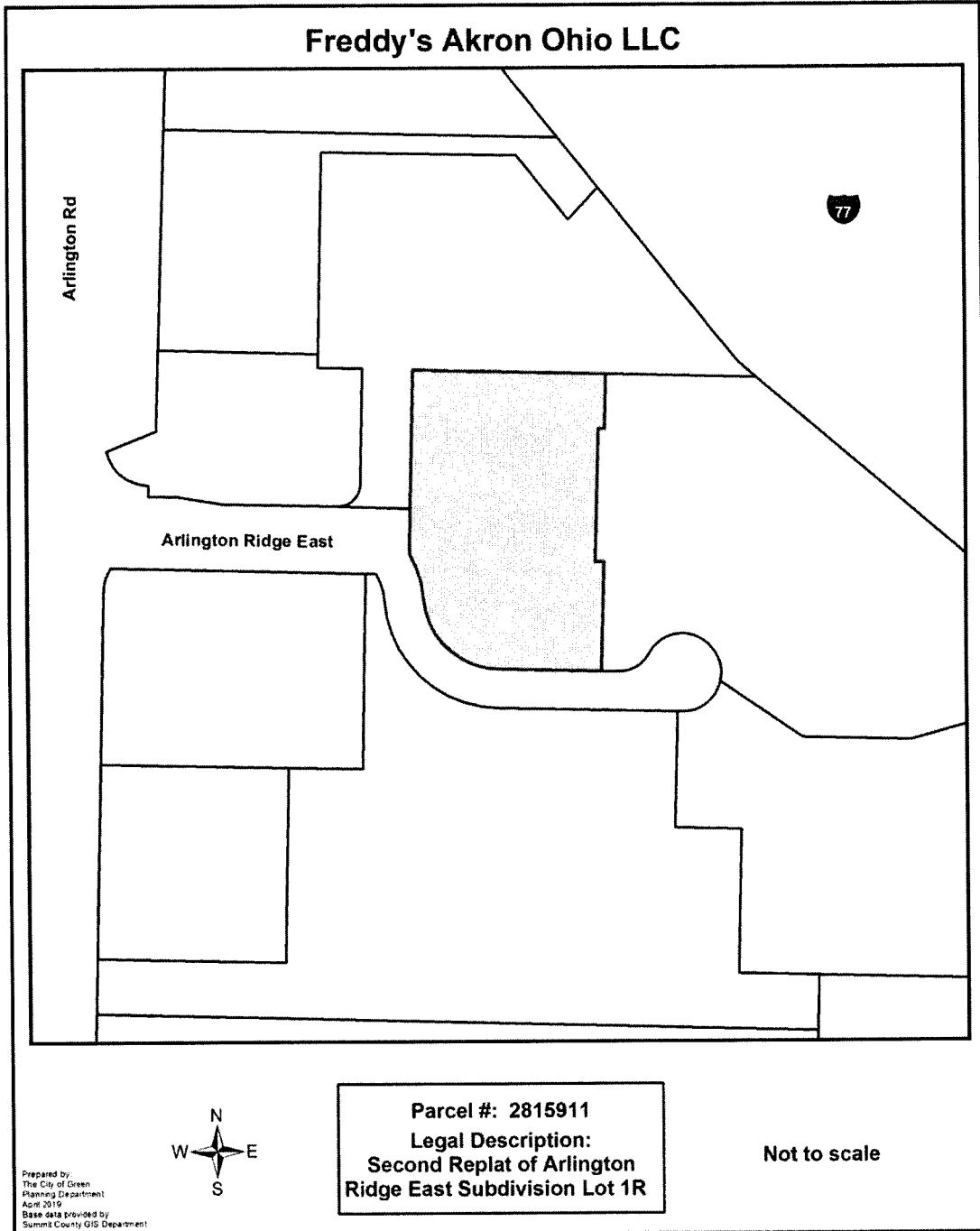


Exhibit B
Legal Description of Development Property

For: Freddy's Akron Ohio, LLC
863 Arlington Ridge East
Green, OH 44312

Parcel Number(s): 28-15911

The Development Property

SECOND REPLAT OF ARLINGTON RIDGE EAST SUBDIVISION LOT 1R ALL RN 55902789

Exhibit C
The Development Improvements

The Development Improvements consist of the following:

- (a) Construction of a 2,592 SF restaraunt.
- (b) Estimated Value of New Construction: Construction Costs \$1,300,000.00.
- (c) The facilities anticipated occupancy is Fall 2019.
- (d) Tax Year in which the improvements first appear on the tax list and duplicate:
January, 2020.

Exhibit D
The Public Improvements

The Public Improvements consist of, but are **not limited** to, the following:

- (a) Upgrade of the intersection at State Route 619 and Arlington Road and the Reconstruction of Arlington Road north of State Route 619 to the northern corporation limit boundary.
Total project estimated to cost approximately: \$13,650,000 (completed)
- (b) Development of the twenty-acre Spring Hill soccer complex, estimated to cost approximately \$2,500,000. Construction Completed in 2008.
- (c) Public improvements to Moore Road including but not limited to sidewalks, street lighting, roadway and stormwater. Sidewalk project estimated at \$600,000 for summer 2019.
- (d) Public improvements to Arlington Ridge East, inclusive of stormwater, street lighting, and sidewalks.
- (e) Reconstruction of roadways within Interstate Business Park (inclusive of storm water collection system, street lighting and sidewalks).
- (f) Public improvements to East Liberty Park.

Exhibit E
City of Green and Green Local Schools Compensation Agreement