



**CITY OF WESTLAKE, OHIO
ORDINANCE NO. 2015-108:**

**AN ORDINANCE AUTHORIZING
THE MAYOR TO ENTER INTO A
MARKET SQUARE DEVELOPMENT
AGREEMENT AMENDMENT, AND
DECLARING AN EMERGENCY.**

WHEREAS, by and through Ordinance No. 2013-175, Council authorized the Mayor to enter into a Market Square Development Agreement; and

WHEREAS, the parties have agreed to amend the Market Square Development Agreement executed on March 26, 2014 in order to reflect the accomplishment of various tasks set forth in the Agreement and to adjust the deadlines set forth in the Agreement accordingly; and

WHEREAS, Council desires to authorize and direct the Mayor to execute said Market Square Development Agreement Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTLAKE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1: That the Mayor be and he hereby is authorized and directed to enter into a Market Square Development Agreement Amendment as to the Project substantially in the form attached hereto as Exhibit "A" and incorporated herein by this reference together with such revisions as may be made by the Director of Law that are not inconsistent with Exhibit "A" and not substantially adverse to the City. The approval of revisions, and the conclusion that such changes are not inconsistent with and not substantially adverse to the City, shall be conclusively evidenced by the execution of the Market Square Development Agreement by the Mayor.


Section 2: That this Council hereby authorizes the Mayor or other appropriate officers of the City to take such actions as are necessary or appropriate to implement the transactions contemplated by this Ordinance. The Mayor, or any other official, as appropriate, are each authorized and directed to sign any other documents, instruments or certificates and to take such actions as are necessary or appropriate to consummate or implement the actions described herein or contemplated by this Ordinance.

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Section 3: That it is found and determined that all formal actions of this Council concerning and relating to this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 10, Article XI of the Charter of the City of Westlake and Section 121.22 of the Ohio Revised Code.

Section 4: That this legislation is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare, and for the further reason that it is immediately necessary to adjust the deadlines of said Project, and further provided it receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Passed: 9/3/15

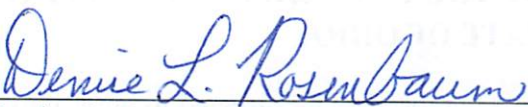


Michael F. Kilfeen
President of Council

Presented to Mayor: 9/4/15

Approved: _____
Effective 9/13/15 per Article II, Sec. 5(c)

ATTEST:



Denise L. Rosenbaum, Clerk of Council

Dennis M. Clough, Mayor

I, Denise L. Rosenbaum, Clerk of Council of the City of Westlake do hereby certify that Ordinance/Resolution no. 2015-108 adopted 9/3/15 was duly posted on 9/4/15 and remained posted for a period of 15 days thereafter in not less than 2 of the most public places in the City as determined by the Charter of said City.

RECEIVED

ORDINANCE NO. 2015-108

EXHIBIT "A"

AUG 04 2015

**ENGINEERING DEPT.
CITY OF WESTLAKE**

**AMENDMENT TO
MARKET SQUARE DEVELOPMENT AGREEMENT**

This **AMENDMENT to MARKET SQUARE DEVELOPMENT AGREEMENT** (this "Amendment") is executed as of ____, 2015 by and among the **CITY OF WESTLAKE, OHIO**, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Ohio and a duly adopted Charter (the "City"), and **CROCKER PARK, LLC**, an Ohio limited liability company, **CROCKER PARK PHASE III, LCC**, an Ohio limited liability company and **CROCKER PARK PHASE III RESIDENTIAL, LLC**, an Ohio limited liability company ("collectively, the "Company").

RECITALS

The City and the Company have agreed to amend that certain Market Square Development Agreement executed as of March 26, 2014, (the "Agreement") in order to reflect the accomplishment of various tasks set forth in the Agreement and to adjust the deadlines set forth in the Agreement accordingly. All capitalized terms not expressly defined in this Amendment shall have the meaning set forth in the Agreement.

NOW, THEREFORE, the City and the Company do hereby agree as follows:

1. The City acknowledges that two executed deeds conveying the Parcels have been delivered by the Company to the Escrow Agent and are being held in escrow pursuant to the terms of the Agreement, and that the City has approved the forms of the deeds.

2. The City acknowledges that the Company has delivered to the City a Survey of the parcels prepared by Neff & Associates and a Title Commitment issued by Stewart Title Guaranty Company, and that such Survey and Title Commitment have been approved by the City.

3. The City acknowledges that, pursuant to Section 3 of the Agreement, the City has engaged Bialosky & Partners, as the Architect for the Project, to prepare the Project Design Documents. The Company acknowledges that the Conceptual Plans for the Project have been modified from those which are attached to the Agreement, and the City and Company agree that the Conceptual Plans approved by City Council on July 2, 2015 are the approved Conceptual Plans for the Project.

The Project Design Documents have been completed to the extent necessary to permit the acceptance of the alternate bid by Panzica Construction Company ("Panzica") pursuant to Section 4(b) of the Agreement. Any subsequent changes in the Project Design Documents shall be subject to the Company's reasonable approval as provided in Section 3 of the Agreement.

4. Pursuant to Section 4(b) of the Agreement, the City has awarded the Market Square Alternate to Panzica and the Council has authorized and directed the Mayor to sign the Change Order awarding the Market Square Alternate as aforesaid.

5. Pursuant to Section 10 of the Agreement, the City Council on July 2, 2015, authorized the selection of the Company to operate the Project and authorized and directed the Mayor to sign an O & M Agreement in the form attached hereto as Exhibit A and the Company has heretofore executed the O & M Agreement.

6. The City and the Company agree that all time periods for performance set forth in the Agreement under Sections 2, 3, 4 and 10 of the Agreement shall be deemed satisfied.

7. The execution by the City of this Amendment shall be deemed the delivery of a Closing Notice pursuant to Section 5 of the Agreement.

8. Except as expressly provided in this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect.

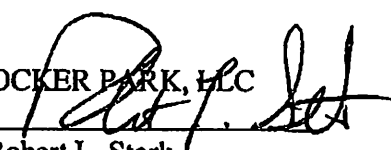
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IN WITNESS WHEREOF, the City and Company have each caused this Amendment to be executed on its behalf as of the day and year first above written.

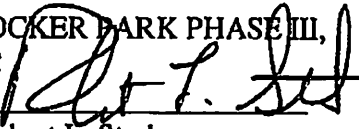
CITY OF WESTLAKE, OHIO

By: _____
Mayor

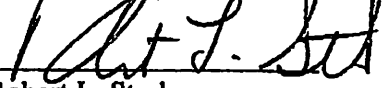
CROCKER PARK, LLC

By: 
Robert L. Stark
Manager

CROCKER PARK PHASE III,
LLC

By: 
Robert L. Stark
Manager

CROCKER PARK PHASE III
RESIDENTIAL, LLC

By: 
Robert L. Stark
Manager

Approved as to
Form and correctness:

Director of Law