

ORDINANCE 2021-41

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND VILLAGE ADMINISTRATOR TO ENTER INTO A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT WITH COI RICKENBACKER INDUSTRIAL LAND, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, COI Rickenbacker Industrial Land, LLC (“Developer”), and the Village of Commercial Point are parties to a Development Agreement with an Effective Date (as defined therein) of January 6, 2021 (“Original Agreement”), authorized by the enactment of Ordinance 2020-33 adopted on December 21, 2020, regarding the development of a certain parcel of property consisting of approximately 178 acres in the Village and more particularly described in the Original Agreement (“Property”); and

WHEREAS, an issue has arisen regarding the status of a sanitary sewer manhole (“Manhole #1”) constructed by Developer under the Original Agreement (“Manhole #1 Issue”) wherein the Village has determined that Manhole #1 requires repair or replacement; and

WHEREAS, the Village and Developer have disputed who was responsible for resolving the Manhole #1 Issue; and

WHEREAS, the Village and Developer have agreed to a resolution of their dispute regarding the Manhole #1 Issue and desire to amend the Original Agreement, in part, to incorporate the terms of that agreed-upon resolution; and

WHEREAS, the Village Council desires to approve of the negotiated resolution between the Village and Developer and wishes to authorize and direct the Mayor and Village Administrator to enter into an amendment to the Original Agreement to incorporate the terms of such negotiated resolution.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY, OHIO THAT:

Section 1. First Amendment to Original Agreement. The Village Council hereby authorizes and directs the Mayor and Village Administrator to enter into a First Amendment to Development Agreement with COI Rickenbacker Industrial Land, LLC, on substantially the same terms and in substantially the same form, as the Agreement attached as Exhibit A to this Ordinance, which is incorporated herein by reference.

Section 2. Further Actions Authorized and Directed to Carry Agreement into Effect. The Village Administration is hereby authorized and directed to take whatever actions are necessary to carry out Section 1 of this Ordinance.

Section 3. Open Meetings Certification. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. Effective Date; Declaration of Emergency. Because the Village must undertake actions necessary to resolve the Manhole #1 Issue with all possible speed so as to avoid any unnecessary delay at the Rickenbacker Exchange Development, this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the Village of Commercial Point, this Resolution shall, therefore, go into immediate effect upon passage.

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Vote on Suspension of Readings:

Motion by: Nancy Geiger

2nd: Laura Wolfe

Roll Call:

Yes Jason Thompson

Yes Aaron Grassel

Yes Ryan Mitchem

Yes Nancy Geiger

Yes Tracy Joiner

Yes Laura Wolfe

Vote on Passage of the Ordinance:

Motion by: Nancy Geiger

2nd: Tracy Joiner

Roll Call:

Yes Jason Thompson

Yes Aaron Grassel

Yes Ryan Mitchem

Yes Nancy Geiger

Yes Tracy Joiner

Yes Laura Wolfe

Adopted this 25th day of October, 2021.


Allan D. Goldhardt, Mayor


Wendy Hastings, Fiscal Officer

Approved as to Form:



Joshua Cartee, Village Solicitor

EXHIBIT A
TO
ORDINANCE 2021-41

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First Amendment to Development Agreement

This First Amendment to Development Agreement (“**First Amendment**”) is made and entered into as of October ____, 2021, by and between COI Rickenbacker Industrial Land, LLC, an Ohio limited liability company (“**Developer**”) and the Village of Commercial Point, a municipal corporation in the State of Ohio (“**Village**”) (collectively, the “**Parties**”).

Recitals

A. Developer and the Village are parties to that certain Development Agreement with an Effective Date (as defined therein) of January 6, 2021 (“**Original Agreement**”), authorized by the enactment of Village Ordinance 2020-33 adopted on December 21, 2020, regarding the development of a certain parcel of property consisting of approximately 178 acres in the Village and more particularly described in the Original Agreement (“**Property**”).

B. An issue has arisen regarding the status of a sanitary sewer manhole (“**Manhole #1**”) constructed by Developer under the Original Agreement (“**Manhole #1 Issue**”). The Village has determined that Manhole #1 requires repair or replacement, in part, because Manhole #1 was modified without the consent of Developer or the Village before acceptance by the Village. Developer and the Village have disputed who was responsible for resolving the Manhole #1 Issue.

C. Developer and the Village have agreed to a resolution of their dispute regarding the Manhole #1 Issue and desire to amend the Original Agreement, in part, to incorporate the terms of that agreement.

Agreements

Now, therefore, for and in consideration of the foregoing Recitals and the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, Developer and the Village agree as follows:

1. Meanings of Terms, Incorporation of Recitals. Except as otherwise set forth in this First Amendment, all capitalized terms used herein will have the respective meanings given them in the Original Agreement. The Recitals set forth above are hereby incorporated into this First Amendment and are hereby made a part hereof, as if fully set forth herein. The Original Agreement, as amended by this First Amendment, will herein and hereafter be called the “**Agreement.**”

2. Completion of Owner Infrastructure; Dedication and Acceptance. The Village hereby acknowledges and agrees that Developer has completed construction of the Owner Infrastructure in accordance with the requirements of the Original Agreement and has otherwise satisfied the requirements of the Original Agreement for the Village’s acceptance thereof. Developer hereby conveys to the Village all of Developer’s right, title and interest in and to the Owner Infrastructure and otherwise dedicates the Owner Infrastructure to the Village. The Village hereby accepts that conveyance and dedication as of the date of this First Amendment. Subject to Developer’s delivery to the Village of Maintenance Bonds for the Owner Infrastructure required under the Original Agreement (as amended by this First Amendment), the Village will release to Developer any performance bonds delivered by Developer to the Village in connection with the Owner Infrastructure.

3. Manhole #1 Issue. The Village acknowledges and agrees that Developer will have no responsibility for resolving the Manhole #1 Issue under the Original Agreement or otherwise. Manhole #1 is hereby excluded from the Owner Infrastructure and will therefore also be excluded from Developer’s maintenance obligations under Section 1.6 of the Original Agreement and from any Maintenance Security delivered to the Village in connection therewith. The Village hereby accepts responsibility for resolving the Manhole #1 Issue, including, without limitation, causing Manhole #1 to be incorporated into the Village’s public sanitary sewer system as contemplated by the Original Agreement, at the Village’s sole cost. The Village will diligently pursue the resolution of the Manhole #1 Issue and the connection of the Building Improvements at the Property to the Village’s public sanitary sewer system. To the extent it is necessary for the Village to access the Property, Developer agrees that the Village and/or its contractors shall have permission to enter onto the Property, with reasonable advance notice, to perform any and all acts reasonably necessary to resolve the Manhole #1 Issue. In consideration for the Village’s agreement to accept responsibility for the Manhole #1 Issue as described above, and as a condition to the Village’s obligation to do so, Developer will pay to the Village the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) (“**Manhole #1 Payment**”) within five business days after the date of execution and delivery of this First Amendment by both the Village and Developer. The Village will apply the Manhole #1 Payment to the cost of resolving the Manhole #1 Issue; however, to the extent that the cost to the Village of resolving the Manhole #1 Issue is less than the Manhole #1 Payment, the Village may use the balance of the Manhole #1 Payment for any purpose at the Village’s discretion.

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4. Oversized Line. The Village hereby acknowledges and agrees that Developer has completed construction of the Oversized Line in accordance with the requirements of the Original Agreement and to the Village's satisfaction and has satisfied the requirements of Section IV of the Original Agreement for payment to Developer of the Village's share of the costs associated with the Oversized Line. Developer acknowledges receipt of the \$923,000.00 payment from the Village required under Section IV of the Original Agreement as payment for the Village's share of the costs associated with the Oversized Line.

5. Correction Regarding Exhibit A. Developer and the Village each acknowledge and agree that the last two (2) pages of Exhibit A to the Original Agreement (pages 17 and 18 of the Original Agreement, respectively) were attached to the Original Agreement as part of Exhibit A in error. The first of those pages (page 17) should have been part of Exhibit B to the Original Agreement and the second of those pages (page 18) should have been attached to the Original Agreement as Exhibit C. Page 17 of the Original Agreement will be deemed to have been attached to the Original Agreement as part of Exhibit B and Page 18 of the Original Agreement will be deemed to have been attached to the Original Agreement as Exhibit C.

6. Resolution of Claims. This First Amendment represents a resolution of all claims raised by the Village against Developer under the Development Agreement described in Village correspondence dated August 2, 2021 and September 17, 2021, respectively.

7. Full Force and Effect. Except as expressly amended by this First Amendment, the Original Agreement will remain in full force and effect in accordance with its terms and conditions. In the event of a conflict between the terms of the Original Agreement and the terms of this First Amendment, the terms of this First Amendment will control.

8. Counterparts; Electronic Transmission. This First Amendment may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. The parties to this First Amendment agree that electronic signatures to this First Amendment, whether digital or encrypted, via DocuSign or other digital signature program, shall be as valid as original manual signatures and shall be effective to bind the parties to this First Amendment and have the same force and effect as manual signatures. This First Amendment may be transmitted by electronic mail in portable document format ("pdf") and signatures, whether digital, encrypted, or manual, appearing on electronic mail instruments shall be treated as original signatures. At the request of either party, any electronic document is to be re-executed in original form by the parties who executed the electronic document.

9. Village Council Approval. The Village and Developer each agree that this First Amendment shall not take effect until the Council of the Village of Commercial Point provides its approval, or approves of the Parties entering into an Agreement in substantially the same form and on substantially the same terms as this First Amendment. Notwithstanding the foregoing, the execution of this First Amendment on behalf of the Village will be conclusive evidence that this First Amendment has been approved by the Council of the Village of Commercial Point and the execution of this First Amendment on behalf of both the Village and the Developer will be conclusive evidence that this First Amendment is in full force and effect.

[Signatures on following page]

ORDINANCE 2021-##

In witness whereof, the parties hereto have caused this First Amendment to be executed and delivered the day and the date first above written.

Developer:

COI Rickenbacker Industrial Land, LLC, an Ohio limited liability company

By: _____
Name: _____
Its: _____

Village:

Village of Commercial Point, a municipal corporation in the State of Ohio

By: _____
Name: _____
Its: _____

ATTEST:

By: _____

ATTEST:

Village of Commercial Point, a municipal corporation in the State of Ohio

By: _____

By: _____
Name: _____
Its: _____

ACCEPTED AS TO FORM:

Joshua Cartee, Village Solicitor

FISCAL OFFICER CERTIFICATION:

Wendy Hastings, Village Fiscal Officer