

**RESOLUTION #19-0617-07**

**Approving Development Agreement between Schottenstein Real Property Group LLC and Liberty Township for Planned Overlay District (POD) located east of Sawmill Parkway, North of Home Road and adjacent to railroad tracks**

**WHEREAS**, the Board of Trustees approved a Planned Overlay District (POD) located east of Sawmill Parkway, North of Home Road and adjacent to railroad tracks, and

**WHEREAS**, this POD will be subject to a comprehensive planning and master plan for zoning/development, and

**WHEREAS**, it is necessary to authorize and approve a "Development Agreement" with the Schottenstein Real Estate Property Group, LLC ("Developer") to agree to certain aspects of maintenance and development of this POD.

**NOW, THEREFORE BE IT RESOLVED, BY THE LIBERTY TOWNSHIP BOARD OF TRUSTEES, DELAWARE COUNTY, OHIO**, to authorize and approve the attached "Development Agreement" between the Schottenstein Real Property Group, LLC and Liberty Township for the Planned Overlay District located east of Sawmill Parkway, North of Home Road and adjacent to railroad tracks.

Motion made by Leneghan and seconded by Gemperline.

**Vote:** yes Mrs. Eichhorn yes Mr. Gemperline yes Mrs. Leneghan

This Resolution shall be in force and become effective immediately upon its execution.

June 17, 2019

Date

Melanie Leneghan  
Melanie Leneghan, Trustee

CERTIFIED BY:

Nancy Denutte  
Nancy Denutte, Fiscal Officer

Mike Gemperline  
Mike Gemperline, Trustee

Shyra Eichhorn  
Shyra Eichhorn, Trustee



## **DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") is made and entered into this 17<sup>th</sup> day of June 2019, by and between the Schottenstein Real Property Group LLC, an Ohio limited liability company ("Developer") and Liberty Township, an Ohio township organized and existing under the laws of the State of Ohio ("Township").

### **RECITALS:**

**WHEREAS**, the Developer owns approximately 17.4 +/- acres of land located east of Sawmill Parkway, North of Home Road, and adjacent to railroad tracks, which land is depicted on Exhibit A and referred to herein as the "Property"; and,

**WHEREAS**, the Township has proposed a comprehensive master planned development of the Property in the form of a Planned Overlay District ("POD") again as depicted on Exhibit B attached hereto for the benefit of the Township; and

**WHEREAS**, the Developer believes the Property would benefit from comprehensive planning and zoning/development; and

**WHEREAS**, the Township may seek easement(s) within the Property, in the future, to connect the Property to a regional bike path/ multi use path/ trail system, as generally shown on Exhibit C attached hereto (the "Path Easement"); and

**WHEREAS**, the Developer seeks to memorialize its commitment with the Township to agree on the proposed location of the Path Easement, and for the Township to accept the Path Easement and associated Path Easement maintenance responsibilities in the future; and

**WHEREAS**, the Property is located along Old Home Road, which currently has full, four (4) way access; and



**WHEREAS**, the Property is located generally east of a newly planned large scale medical/institutional facility with an internal road network; and

**WHEREAS**, the Delaware County Engineer (DCEO) has control of the Property access, specifically at the current intersection of Old Home Road and (new) Home Road, and

**WHEREAS**, the adjacent municipality and DCEO recently approved a traffic impact study performed by the medical/institutional facility, dated January \_\_, 2019, (the "Approved TIS") for the development of a significant medical/institutional use, and which Approved TIS scope and final approved traffic improvement recommendations specifically included the Property's future development traffic; and

**WHEREAS**, the Approved TIS states that the DCEO plans to close or limit the Property's Old Home Road access to emergency access only, and that the Property's development traffic is planned to be redirected and routed to and through the adjacent private road, Limerick Lane, which is currently stubbed at the west boundary of the Property;

**WHEREAS**, the Approved TIS states that the effective management of traffic in the Home Road corridor contemplates these road / access changes and further specifically counts the Project's development traffic as being directed to the westerly private road, Limerick Lane, which road then leads to the intersection at Tullamore Drive and Home Road, planned to be new signalized; and

**WHEREAS**, the Approved TIS has been approved by the municipality adjacent to the Township and which Approved TIS serves as the basis for future road improvements to Home Road and within the Home Road corridor generally, which improvements are currently planned by DCEO; and



**WHEREAS**, the Township concurs with the Approved TIS and seeks to maintain safe, well planned full, four (4) way access for the Property and further, the Township is aware of the DCEO plan to direct the Project's development traffic to the Limerick Lane with the ultimate purpose of obtaining the full, four (4) way access for the Property at the intersection of Tullamore Drive and Home Road; and

**WHEREAS**, the Township considers the planned improvements as contemplated in the Approved TIS to be of utmost important to the effective and efficient flow of traffic for the north east quadrant of Sawmill and Home Roads, in addition to increasing the safety of pedestrian and vehicular traffic in the area; and

**WHEREAS**, the DCEO improvements have not been finalized for time or scope, sufficient to permit the development of the Property and future traffic to be safely directed to the new signalized intersection – at the time of the Property's development; and

**WHEREAS**, the Township seeks to provide for the necessary road right of way and to participate in future roadway improvements as those improvements are set forth in the Approved TIS accepted by the adjacent municipality, with concurrence from and planned for construction by DCEO.

**NOW THEREFORE**, in consideration of the mutual promises and benefits contained herein, the adequacy and sufficiency of which is hereby acknowledged and agreed, the Landowners, and Township hereby agree as follows:

1. **Recitals.** The above recitals are incorporated by reference herein.
2. **Acknowledgement and Planning.** The Township acknowledges and agrees that the proposed POD includes the Property and POD Plan, as depicted on the attached Exhibits A and B, respectively. The Parties acknowledge and agree that the Property will provide an integral



and necessary component of a future regional path way/multi-use trail (the "trail"), which requires the Path Easement.

**3. Township Plans.** The Developer agrees to provide to the Township a Path Easement, not to exceed eight (8) feet in width for the sole and exclusive purpose to serve as a multi-use path, with an additional 5 feet in width on each side of the Trail for Township construction/maintenance, as generally depicted on Exhibit C attached hereto, for the future Trail. This dedication shall occur at such time as the Trail is fully designed and constructed so as to require this easement for connection. Developer shall have no responsibility to pay for or to construct the Trail. The parties acknowledge that the Trail is contemplated but not designed for placement or construction at this time. In exchange for the promises and covenants contained herein, the Township in turn agrees to accept the Path Easement, and the construction and maintenance responsibilities for the Trail.

**4. DCEO Home Road Corridor Improvements.**

The Township acknowledges and agrees that the Approved TIS serves as the basis for certain future DCEO road improvements specifically to address current and future traffic access and circulate needs for the entire Home Road corridor. The Township further acknowledges and agrees that the road improvements will be required at or before the opening day for the Project, which direct Project traffic to Limerick Lane and ultimately to the future signalized intersection at Tullamore Drive and Home Road. As such, to the extent that there are delays or non-performance of the planned future road improvements as set forth in the Approved TIS, specifically the connection of the Property to the existing private roadways known as both Limerick Lane and Tullamore Drive for the routing of Project traffic to the new signalized intersection at Tullamore Drive and Home Road, the Township agrees to utilize its authority to appropriate the requisite



property that encompasses (a) the existing Limerick Lane and Tullamore Drive, (b) any necessary additional right of way for roadway purposes, including but not limited to turn lanes and other roadway improvements; together with (c) any other additional road right of way necessary to allow for construction of the recommended road improvements as set forth in the Approved TIS, which together the forgoing a, b and c, form the "Road Right of Way;" such Road Right of Way to be appropriated by the Township via quick take procedures as permitted and set forth by Ohio law. Any such appropriation(s) of the Road Right of Way by the Township would be at the Township's sole cost and expense. If at any time after July 15, 2019, Developer determines in its sole and absolute discretion, that there is the need for the Township to appropriate the Road Right of Way, Developer shall provide written notice to the Township of such determination "Developer's Roadway Right of Way Notice." No later than 15 business days after receipt of Developer's Roadway Right of Way Notice, the Township agrees to commence and to diligently, and continuously pursue the Road Right of Way quick take procedure, and to obtain the Roadway Right of Way no later than 120 days after receipt of Developer's Roadway Right of Way Notice. The necessity for full four (4) way access to the Property via the internal private road network which encompasses the existing private roadways known as Limerick Lane and Tullamore Drive for the routing of Project traffic to the new signalized intersection, complete with four (4) way full traffic movements, at Tullamore Drive and Home Road, in the north east quadrant of Sawmill and Home Roads. Developer shall reimburse the Township for the cost of acquisition and the reasonable and actual professional fees required to obtain said acquisition or termination of same.

**5. Additional Terms.**



(i) **Compliance Statement**. Nothing in this Agreement shall exempt the parties hereto from any zoning requirements, or Final Development Plan approval as required by the POD.

(ii) **Trustee Action**. The obligations of and agreements by the Township contained herein shall be effective and enforceable upon, and subject to, the passage of a resolution which authorizes this Agreement. By passage of Resolution 9061707 on June 17 2019, the Township Trustees authorized the execution of this Agreement.

(iii) **Permits**. Developer shall have no obligation to obtain any permits or further approvals for the Trail or Path Easement.

(iv) **Authority**. All Parties represent and warrant that they are duly authorized to sign this Agreement.

(v.) **Cancellation or Termination**.

The Developer is relying on the commitments of Township herein to: (1) accept the Path Easement location and assume construction and maintenance responsibilities; and (2) provide the public access and roadways from the Property over Limerick Lane and Tullamore Drive as set forth in the Approved TIS and in Section 4 above, to facilitate the traffic flow and improvements contemplated in the Approved TIS and planned for in the future by DCEO, but as yet undetermined for timing and other such considerations. In exchange for these commitments, Developer agrees that the Property shall not be annexed to or accepted for annexation by a municipality under any of the annexation procedures provided for in Chapter 709 of the Ohio Revised Code (or any similar statutes of like tenor or effect). Failure on the part of the Township to perform all obligations related to the Trail or Path Easement or to provide such public access and roadways from Home Road to the Property at the time and in the manner as set forth herein shall be considered a material



breach of this Agreement, which breach, in addition to other rights and remedies set forth herein, shall fully and permanently relieve the Developer of the obligations and commitments against annexation of this Section 5(v). Further, in the event that the Township, its boards or commissions (as may apply), act in a manner adjudged by a court of competent jurisdiction to be unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by a preponderance of substantial, reliable, and probative evidence for any decision or order, related to the Property or a POD final development plan process, or any approval or permit required by the Township for construction or development, and without regard to the finality of such a legal decision or its appealability, the Developer shall be completely and permanently relieved of all obligations and commitments, respecting the Property and otherwise for all Property within POD 18(B) or 18 (C), and specifically as to the no annexation commitment as set forth herein above. In addition to the aforementioned, this Agreement may be cancelled or otherwise terminated by mutual written agreement of the Township and the Developer.

(vi) **Assignment of Agreement.** Developer shall be freely permitted to assign its rights and obligations hereunder, in whole or in part, and if appropriate as determined by Developer to multiple parties. In addition, Developer shall also have the right to collaterally assign its rights under this Agreement to Developer's lender.

Developer shall deliver written notice of either an assignment or collateral assignment to the Township within a reasonable amount of time after the assignment is made, and such notice shall identify the assignee and provide the assignee's name, address, contact person, telephone number and email address.

(vii) **Relative Rights.** The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on,



their respective heirs, successors and assigns. There are no third-party beneficiaries created by this Agreement.

(viii) **Entire Agreement Merger Clause; Statement of Incorporation**. It is agreed that the Agreement merges all oral negotiations, representations, discussions and understandings between the Parties, their legal counsel, agents or representatives. This Agreement contains the entire Agreement of the Parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

(ix) **Severability**. If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement to the extent that the Parties rights and expectations, specifically the material terms hereof, can still be given full meaningful effect.

(x) **Modifications or Amendment of Agreement**. No modifications, amendments, alterations or additions shall be made to this Agreement except in a writing signed by all Parties hereto.

(xi) **Remedies**. The Parties expressly acknowledge and agree that all remedies, in law or in equity shall be available in the event of a breach or other non-performance by the other Party, and further that specific performance of this agreement is the most appropriate remedy to ensure or compel the performance of commitments made herein.

(xii) **Executed Counterparts**. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but



one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(xiii) **Captions and Defined Terms.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement. Use of the terms Property and POD shall be read consistent so as to give full effect and benefit to all of the Property owned by Landowner, whether in whole or in parts, or as may apply in phases, as the Property comprises the POD.

(xiv.) **Effective Date.** This Agreement shall be effective when signed by all the Parties hereto.

(xv.) **Time.** Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

[signatures on next page]



Developer

Schottenstein Real Property Group LLC

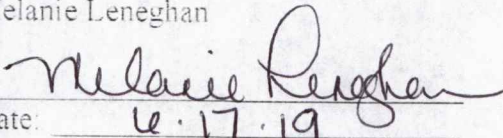
By: \_\_\_\_\_

Printed: \_\_\_\_\_

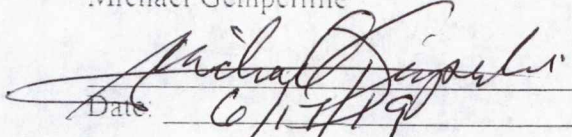
Date: \_\_\_\_\_

Liberty Township Trustees

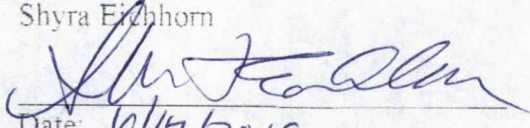
Melanie Leneghan

  
Date: 6.17.19

Michael Gemperline

  
Date: 6/17/19

Shyra Eichhorn

  
Date: 6/17/2019



## **EXHIBITS**

- A. Property
- B. Planned Overlay District (POD) Area
- C. POD Trail Exhibit



## 17.237 ACRES

Situated in the State of Ohio, County of Delaware, Townships of Liberty, Farm Lots 2 and 3, Section 2, Township 3, Range 19, United States Military Lands, being all of lots 115, 116, 117, 118, 119 and a portion of lots 109, 110, 111, 112 and lot 103, of Flory Subdivision of record in Plat Book 5 Page 9, and vacated in Delaware County Commissioners record 96-661 and a portion of Flory Drive as vacated in Delaware County Commission Resolution NO. 96-660, and being all of those tracts as conveyed to Randolph A. and Reva R. Schirtzinger of record in Deed Book 650, page 195, Deed Book 650, page 199, Deed Book 650, page 203, Deed Book 650, page 207 and official record 905, page 26

**BEGINNING**, at an iron pin found with a cap inscribed "Stults" at the intersection of Farm Lots 3, 24 and 25, being a westerly corner of Lot 5148 of a plat entitled Golf Village North Commercial Revised, of record in Plat Cabinet 4 Slides 12-12B, and being the northwesterly corner of said Lot 117,

Thence, South 86°02'39" East partly the with southerly line of Lot 5148, and partly with the southerly line of a 77.427 acre tract of land conveyed to Board of Education of the Olentangy Local School District of record in Record 616 Page 516, a distance of 1082.95 feet to an iron pin set at the westerly line of the CSX Railroad,

Thence, South 3°29'20" West with said westerly line a distance of 686.17 feet to an iron pin set in the northerly right of way of Home Road;

Thence following said northerly right of way the following courses

North 59°38'07" West a distance of 67.02 feet to an iron pin set,

South 88°08'54" West a distance of 57.66 feet to an iron pin set,

South 35°10'43" West a distance of 30.89 feet to an iron pin set,

South 74°19'21" West a distance of 26.93 feet to an iron pin set,

South 18°13'08" West a distance of 71.59 feet to an iron pin set,

North 84°45'33" West a distance of 129.74 feet to an iron pin set,

North 84°25'32" West a distance of 104.23 feet to an iron pin set,

North 84°25'58" West a distance of 102.88 feet to an iron pin set,

North 79°35'24" West a distance of 79.13 feet to an iron pin set,

North 79°47'50" West a distance of 25.42 feet to an iron pin set,

North 69°39'46" West a distance of 77.11 feet to an iron pin set,

North 60°29'31" West a distance of 61.20 feet to an iron pin set,

North 49°02'31" West a distance of 55.86 feet to an iron pin set,

North 59°52'35" West a distance of 43.70 feet to an iron pin set,

North 83°18'42" West a distance of 45.68 feet to an iron pin set,

South 73°29'00" West a distance of 59.94 feet to an iron pin set,

South 44°00'38" West a distance of 72.14 feet to an iron pin set on the easterly line of vacated Lot 114 of said Flory Subdivision; as conveyed to Daniel McClung of record in Official Record 1572, Page 1523

Thence, North 3°29'20" East with easterly line of said vacated Lot 114 a distance of 257.32 feet to an iron pin set at the northeasterly corner of said vacated Lot 114,

Thence, North 86°03'40" West with the northerly line of said vacated Lot 114 a distance of 103.80 feet to an iron pin found with a cap inscribed "Stults"; in the Easterly line of lot 5136 of said Golf Village North Commercial

Thence, North 3°29'20" East, partially with the easterly line of Lot 5136 and Lot 5147 of said Golf Village North Commercial a distance of 462.01 feet to the **TRUE POINT OF BEGINNING**, and containing 17.237 acres of land more or less, 12.095 acres being out of Farm lot 2 and 5.142 acres being out of Farm lot 3.



Exh A



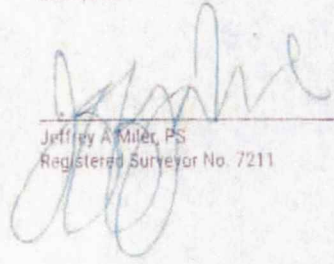
Subject to all covenants, conditions, restrictions, reservations and easements contained in any instrument of record pertaining to the above described tract of land.

All iron pins called as set are 5/8" X 30" rebar with yellow identification cap stamped "CESO".

Bearings are based on the bearing of North 3°29'20" East for the westerly line of Lots 114-117 of the Flory Subdivision of Record in P.B. 5, Pg. 9, as determined by GPS observations, based on NAD83 (2011), Ohio State Plane North Zone.



CESO, Inc.



Jeffrey A. Miller, PS  
Registered Surveyor No. 7211

10-16-18

Date

Date Prepared: 09/26/18  
File Name: 755280-17.69130.docx













