

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 – 088

By: Mr. Maloney

AN ORDINANCE AUTHORIZING THE MAYOR TO CONSENT AND ENTER INTO AN ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER A DEVELOPMENT AGREEMENT WITH THE CITY OF STRONGSVILLE DATED JULY 30, 2003 AND AMENDED SEPTEMBER 19, 2005, FROM WEBSTER ROAD, LLC TO LEGACY-CARRINGTON DEVELOPMENT GROUP, LTD., IN CONNECTION WITH AVERY WALDEN RESERVE SUBDIVISION PHASE 3, AND DECLARING AN EMERGENCY.

WHEREAS, on July 29, 2003, Council by and through adoption of Ordinance No. 2003-182 accepted a subdivision plat for recording purposes and authorized the Mayor to enter into a Development Agreement with developer Avery Group, Inc. in connection with land that became Avery Walden Reserve Subdivision; and

WHEREAS, the City and the Avery Group, Inc. ("Avery") did enter into that certain Development Agreement dated as of July 30, 2003 (the "Original Agreement") relating to certain real property located in the City of Strongsville, County of Cuyahoga, State of Ohio, and more particularly described therein (the "Property"); and

WHEREAS, the Property was subsequently conveyed by Avery to Webster Road, LLC ("Assignor") by deed dated September 8, 2004, recorded September 13, 2004 as Instrument No. 200409131603 in the Cuyahoga County Records; and

WHEREAS, the Original Agreement was amended by that certain Amendment to Development Agreement (the "Amendment") dated as of September 19, 2005 by and between the City and Assignor (as so amended, the "Development Agreement"); and

WHEREAS, Webster Road, LLC and Legacy-Carrington Development Group, Ltd., the latter being the purchaser and new developer of a portion of the Property ("Assignee"), have requested that the City of Strongsville enter into and consent to an Assignment and Assumption of Rights and Obligations Under Development Agreement ("Assignment"), in connection with sale of the Property, in the form attached hereto as Exhibit "A" for purposes of the new developer-assignee's development of Avery Walden Reserve Phase 3; and

WHEREAS, on May 5, 2014, Council by and through adoption of Ordinance No. 2014- 086 approved and accepted a subdivision plat submitted by Legacy-Carrington Development Group, Ltd. for recording purposes only in connection with said Avery Walden Reserve Subdivision, Phase 3; and

WHEREAS, in connection with the sale of the Property by Assignor to Assignee, the parties to said Assignment and Assumption Agreement desire to release and relieve Assignor of any and all rights and obligations it has under the provisions of the Development Agreement and, further, seek to have Assignee assume all such rights and obligations of Assignor under the amended Development Agreement; and

WHEREAS, the Development Agreement, as amended, permits such assignment; and

WHEREAS, the City will fully reserve all of its rights and remedies under the Development Agreement as amended, assigned and assumed by the new developer.

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

Section 1. That this Council hereby authorizes the Mayor to consent to and enter into Webster Road, LLC's Assignment and Assumption Agreement of its rights and obligations under the Development Agreement as amended, to Legacy-Carrington Development Group, Ltd., as more fully set forth in Exhibit A, which is attached hereto and incorporated herein as if fully rewritten.

Section 2. That, in furtherance thereof, the Mayor and City Engineer are hereby authorized and directed to implement and/or enforce any terms and conditions of said Development Agreement as amended, assigned and assumed by Legacy-Carrington Development Group, Ltd., which affect the interests of the City of Strongsville.

Section 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance 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.

Section 4. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the City, and for the further reason that it is immediately necessary to consent to and approve said assignment and assumption of Development Agreement to promote the orderly and proper development of lots and lands within the City, and to protect and serve the public. Therefore, provided this Ordinance 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; otherwise from and after the earliest period allowed by law.

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 - 088

Page 3

Michael Daymut
President of Council

Approved: James S. Suran
Mayor

Date Passed: May 5, 2014

Date Approved: May 6, 2014

	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Daymut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DeMio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dooner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maloney	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schonhut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Southworth	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Attest: Alison Pientka
Clerk of Council

ORD. No. 2014-088 Amended: _____
 1st Rdg. 05-05-14 Ref: _____
 2nd Rdg. Suspended Ref: _____
 3rd Rdg. Suspended Ref: _____

Pub Hrg. _____ Ref: _____
 Adopted: 05-05-14 Defeated: _____

**ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS
UNDER DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT (this "Assignment") is made and entered into as of the 6 day of May, 2014 (the "Effective Date") by and between the **City of Strongsville, Ohio**, a chartered municipal corporation and political subdivision duly organized and existing under the laws of the State of Ohio (the "City"), **Webster Road, LLC**, an Ohio limited liability company ("Assignor"), and **Legacy-Carrington Development Group, Ltd.**, an Ohio limited liability company ("Assignee").

WITNESSETH:

WHEREAS, the City and the Avery Group, Inc. ("Avery") entered into that certain Development Agreement dated as of July 30, 2003 (the "Original Agreement") relating to certain real property located in the City of Strongsville, County of Cuyahoga, State of Ohio, and more particularly described therein (the "Property"); and

WHEREAS, the Property was subsequently conveyed by Avery to Assignor by deed dated September 8, 2004, recorded September 13, 2004 as Instrument No. 200409131603 in the Cuyahoga County Records; and

WHEREAS, the Original Agreement was amended by that certain Amendment to Development Agreement (the "Amendment") dated as of September 19, 2005 by and between the City and Assignor (as so amended, the "Development Agreement"); and

WHEREAS, in connection with the sale of the Property by Assignor to Assignee, the parties hereto desire to release and relieve Assignor of any and all rights and obligations it has under the provisions of the Development Agreement and, further, desire to have Assignee assume all such rights and obligations of Assignor under the Development Agreement.

NOW, THEREFORE, for and in consideration of the foregoing, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, and intending to be legally bound, the parties do hereby agree as follows:

1. Assignment. Assignor hereby transfers and assigns to Assignee, as of the Effective Date, all of Assignor's right, title and interest in and to the Development Agreement.
2. Assumption. Assignee hereby accepts the foregoing assignment, and in consideration thereof, hereby covenants and agrees that, on and after the Effective Date, Assignee will assume, observe, perform, fulfill and be bound by all of the terms, covenants, conditions and obligations of Assignor under the Development Agreement.
3. Security for Webster Road Sanitary Sewers. Assignee further agrees as part of its obligations hereunder to enter into a separate Security Agreement and Escrow Agreement with the City and an approved escrow agent, and to post a sum deemed sufficient by the City to secure

completion of the sanitary sewers on Webster Road as required by the Development Agreement and specifically Section 4.

4. Indemnity.

(a) Assignee shall indemnify, defend and hold harmless Assignor from and against all liabilities, damages, losses and expenses (including, without limitation, reasonable attorney's fees) connected with, relating to or in any way arising out of Assignee's breach under the Development Agreement except for such funds, costs, obligations and expenses incurred and paid for by Assignor on or before the Effective Date, all of which shall be and remain the obligation of Assignor.

(b) Assignor shall indemnify, defend and hold harmless Assignee from and against all liabilities, damages, losses and expenses (including, without limitation, reasonable attorney's fees) connected with, relating to, or in any way arising out of, Assignor's breach under the Development Agreement prior to the Effective Date.

5. Consent and Release. The City hereby consents to the foregoing assignment and assumption and hereby releases Assignor from any and all obligations it does or may have with respect to the Development Agreement, specifically subject to and conditioned upon Assignee's execution of the separate security agreement and posting of security in escrow as required above in Section No. 3.

6. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the City, Assignor, Assignee and their respective successors and permitted assigns only upon its approval by the Council of the City of Strongsville in accordance with law.

7. Governing Law. This Assignment shall be governed by and controlled in accordance with the laws of the State of Ohio, and shall not be amended, modified or rescinded without the prior written and authorized approval of all parties.

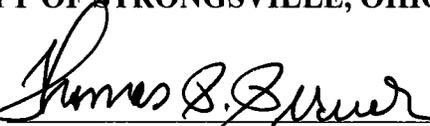
8. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City, Assignor and Assignee have caused this Assignment to be executed as of the date and year first above written.

City:

CITY OF STRONGSVILLE, OHIO

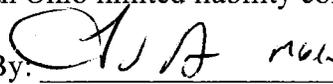
By: 

Name: Thomas P. Perciak

Its: Mayor

Assignor:

WEBSTER ROAD, LLC,
an Ohio limited liability company

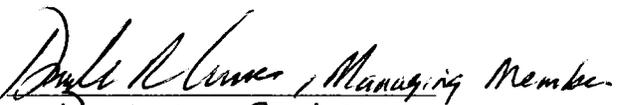
By: 

Tim Dean, Manager

Assignee:

Legacy-Carrington Development Group, Ltd.

An Ohio limited liability company

By: 

Name: DOUGLAS R. KRAUSE

Its: MANAGING MEMBER

APPROVED BY COUNCIL OF THE CITY
OF STRONGSVILLE BY ORDINANCE

NO. 2014-088 ON

May 5, 2014

By: Michael J. Daymut
Michael J. Daymut, President of Council

ATTESTED BY:

Aimee Pientka
Aimee Pientka, Clerk of Council

APPROVED AS TO FORM BY:

Kenneth A. Kraus
Kenneth A. Kraus, Law Director

5/6/14
Date