

ORDINANCE NO. 09-2024

AUTHORIZING THE VILLAGE ADMINISTRATOR TO EXECUTE A COMMUNITY REINVESTMENT AREA AGREEMENT WITH BIRKDALE, LLC AND MARONDA HOMES OF CINCINNATI, LLC FOR A REAL PROPERTY TAX EXEMPTION PURSUANT TO THE COMMUNITY REINVESTMENT AREA PREVIOUSLY ESTABLISHED BY THE VILLAGE AND DECLARING AN EMERGENCY

WHEREAS, on May 19, 2008, the Council of the Village of Fairfax passed Resolution No. 3-2008, as subsequently amended, establishing a Community Reinvestment Area (“CRA”) in the Village pursuant to R.C. 3735.66; and

WHEREAS, Birkdale, LLC and Maronda Homes of Cincinnati, LLC (collectively, the “Developer”) recently submitted a Commercial Community Reinvestment Area Application to the Village, seeking to enter into an agreement for a real property tax exemption within the CRA as set forth in Chapter 3735 of the Revised Code; and

WHEREAS, under R.C. 3735.67 and R.C. 3735.671, based on the amount of the exemption at issue, approval is not required from the applicable board of education; and

WHEREAS, after examining the Developer’s application, the Village determined that the Developer is eligible for a real property tax exemption and believes it in the best interest of the Village to enter into such an agreement for the reasons set forth in Resolution No. 3-2008 and Chapter 3735 of the Revised Code;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Fairfax, State of Ohio, that:

SECTION I: The Village Administrator is hereby authorized to enter into a Community Reinvestment Area Agreement with the Developer for a real property tax exemption in substantially the form attached hereto as Exhibit A, subject to such revisions and supplemental information as the Village Administrator deems necessary under Resolution No. 3-2008 and as necessary to comply with R.C. 3735.671.

SECTION II: The Village Administrator is hereby designated by this Council to forward a copy of the Community Reinvestment Area Agreement to the Ohio Director of Development Services or any other applicable authority.

SECTION III: Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and its committees, if any, that

resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

SECTION IV: This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall be effective immediately. The reason for said declaration of emergency is the immediate need to approve the subject agreement to meet the development timeline set forth by the Developer and foster timely economic development in the Village.

Passed this 18th day of November, 2024.

Mayor

ATTEST:

Fiscal Officer

CERTIFICATE

I hereby certify this to be a true and correct copy of Ordinance No. 9-2024 passed at a meeting of the Council of the Village of Fairfax on this 18th day of November, 2024.

Fiscal Officer

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Area Agreement (“Agreement”) is made and entered into as of the latest date of execution below by and between the Village of Fairfax, Ohio (the “Village”), an Ohio municipal corporation, Birkdale, LLC, an Ohio limited liability company, and Maronda Homes of Cincinnati, LLC, an Ohio limited liability company (collectively, “Birkdale”), and Mer Land Development LLC (“Mer Land”), an Ohio limited liability company (together with Birkdale, the “Developer,” and collectively with the Village and Birkdale, the “Parties”).

WHEREAS, via Resolution No. 3-2008, as amended, the Village established Community Reinvestment Area #061-25942-01 (the “CRA”) within the boundaries of the Village; and

WHEREAS, the Village encourages the development and redevelopment of real property located in the CRA; and

WHEREAS, the Developer submitted a Community Reinvestment Area Application, Commercial Project (the “Application,” attached hereto as Exhibit A) for an agreement with the Village pursuant to the CRA; and

WHEREAS, the Application outlines a proposed project (the “Project”) that includes new construction of a large-scale development of forty-five (45) residential townhomes within eleven (11) buildings located at Birkdale Lane in the Village (the “Site”), as well as general Site improvements, at the total Project cost of approximately seventeen million four hundred eighty thousand dollars (\$17,480,000), provided that appropriate development incentives are available to support the economic viability of the Project, with some units to be built by Birkdale and others to be built by Mer Land; and

WHEREAS, the Project is a commercial property under Resolution No. 3-2008 due to the number of residential units to be built and attached together; and

WHEREAS, the Developer owns the property currently, but individual residential units will be sold to purchasers; and

WHEREAS, the current real property tax bill at the Project site is \$7,617.48; and

WHEREAS, approximately sixteen million seven hundred fifty thousand dollars (\$16,750,000) of the Project is attributable to real property additions and new construction eligible for incentives pursuant to the CRA, with a total market value of twenty million two hundred fifty thousand dollars (\$20,250,000) for local property taxation purposes; and

WHEREAS, the Village, having the appropriate authority, believes it in the best interest of the Village to provide the Developer with incentives available for development of the Project in the CRA; and

WHEREAS, the Village investigated the Application and recommends incentives in the form of a real property tax exemption for the Project because the Developer is qualified by financial responsibility and business experience to create and preserve opportunities in the CRA and to improve the economic climate of the Village; and

WHEREAS, pursuant to R.C. 3735.67(A), and in conformance with the requirements of law set forth in R.C. 3735.671, the Parties wish to set forth their agreement for a real property exemption as set forth below;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the adequacy of which is hereby acknowledged, and incorporating the recitals above by reference, the Village and the Developer agree as follows:

Section 1. Location, Scope, and Timing of the Project

The Project shall be constructed at the Site. The Developer's investment in the Project is anticipated to be approximately seventeen million four hundred eighty thousand dollars (\$17,480,000), of which approximately sixteen million seven hundred fifty thousand dollars (\$16,750,000) shall be spent on real property additions and new construction that are eligible for tax incentives. The Project shall begin no earlier than October 2019, with new construction to follow in November 2024, and all construction shall be complete by December 2026.

Section 2. Employment

No one is employed currently at the Site (the "Current Employment"). During construction of the Project, the Developer anticipates adding to the Current Employment approximately 4-6 new full-time positions in addition to approximately 250-350 temporary construction and other workers (the "Additional Employment"). The Additional Employment is anticipated to result in approximately \$1,868,000 of annualized payroll for the period of construction until completion. The Developer does not anticipate retaining such Additional Employment beyond the period of construction.

Section 3. Tax Incentive

In reliance on the completion of the Project and the Additional Employment, the Village hereby grants the Developer a total tax exemption (the "Exemption") for real property improvements made to the Site pursuant to R.C. 3735.66-.671, in the amount of a Seventy Five Percent (75%) exemption on new real property taxes resulting from the portion of the Project consisting of real property additions and

new construction. The term of the Exemption shall be, and shall not exceed, fifteen (15) consecutive years. The exemption commences the first year for which the real property at issue would first be taxable were that property not exempted from taxation. The Developer must notify the Village when the Project or any applicable portion thereof is complete so the Exemption can be applied. The Village may require additional applications for exemption or other information from the purchasers of individual residential units for the exemption to continue as to any purchased townhome.

Section 4. Cooperation and Compliance

The applicable Tax Incentive Review Council shall monitor this Agreement annually. The Developer shall provide to such Tax Incentive Review Council any information reasonably required by the council to evaluate the Developer's compliance with the Agreement, including returns filed pursuant to R.C. 5711.02, if requested. The Tax Incentive Review Council may also request tax forms related to the Exemption and payroll information. The Application and this Agreement are public records, and may be disclosed as appropriate.

Section 5. Annual Monitoring Fee

Prior to and during the period of exemption, the Developer shall pay the Village an annual monitoring fee ("Annual Fee") of \$1,250. The Annual Fee shall be in the form of a check payable to the Village for the full amount due and shall be due by December 31 of each year whether or not any exemptions have been claimed. The Village shall deposit and use the Annual Fee as allowed by law.

Section 6. Tax Requirements

The Developer shall pay such real property taxes as are not exempted under this Agreement and charged against the Site, and shall file all tax reports and returns, as required by law. If the Developer fails to pay such taxes or file such returns and reports, this Agreement and any exemptions from taxation granted under this Agreement shall be deemed rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

The Developer hereby certifies that at the time this Agreement is executed, the Developer does not owe any delinquent property taxes for which the Developer is liable under Chapter 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or if such delinquent taxes are owed, the Developer currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy, or has had such a petition filed against the Developer. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

Section 7. Maintenance of Tax Incentives

The Village shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 8. Revocation

If, for any reason, the Village revokes designation of the CRA, entitlements granted under this Agreement shall continue for the number of years specified unless the Developer materially fails to fulfill its obligations under this Agreement and the Village terminates or modifies the exemptions from taxation granted under this Agreement.

If the Developer materially fails to fulfill its obligations under this Agreement, or if the Village determines that the certification as to delinquent taxes set forth in Section 6 of this Agreement is false or fraudulent, the Village may revoke, terminate, or modify the exemptions from taxation granted under this Agreement.

If the Village revokes, rescinds, or otherwise terminates this Agreement, the Village may, in its discretion, recover any benefits already provided hereunder in any manner allowed by law.

Section 9. Local Legislative Action

The Developer and the Village acknowledge that this Agreement must be approved by appropriate formal action of the Village Council as a condition for the Agreement to take effect.

Section 10. Assignment, Transfer, and Modification

This Agreement is not transferable or assignable without the express written approval of the Village and all formal action necessary to provide such approval. This Agreement may only be modified by mutual consent set forth in writing and executed by the Parties after appropriate formal action. Notwithstanding the foregoing, the Developer may assign this Agreement with notice to, and consent (not to be withheld unreasonably) from, the Village to: (a) a parent, subsidiary, affiliate, or successor (by merger, consolidation, transfer of assets, assumption, or otherwise) of the Developer; (b) an entity which purchases substantially all of the interests in, or assets of, an operating division, group, or department of the Developer, or which purchases the majority of the Developer business as conducted at the Site; or (c) in connection with the transfer of a majority or controlling interest in the Developer.

Section 11. Falsification

The Developer covenants that it has not knowingly made any false or fraudulent statement in the Application, or otherwise to the Village, in the process of obtaining approval for the Exemption. If the Developer knowingly made a materially false or fraudulent statement to the Village to obtain the Exemption, the Developer shall be required to return immediately all benefits received under the Agreement and may be ineligible for any future economic development assistance from the State of Ohio or any agency or political subdivision thereof.

Section 12. Notices

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given (a) when personally delivered to the receiving party, (b) on the third business day following the date of deposit in the United States mail if such notice or other communication is sent by certified or registered mail with return receipt requested and postage fully prepaid, (c) on the business day following the day such notice or other communication is sent by reputable overnight courier or (d) on the same day such notice is sent by electronic/email delivery per an authorized email address below without a return notice of delivery failure, provided that one of the other three (3) methods of delivery must also be utilized, to the following:

If to the Village: Village Administrator
Fairfax Municipal Building
5903 Hawthorne Avenue
Fairfax, Ohio 45227
Attn: Jennifer M. Kaminer
Email Address: jkaminer@fairfaxoh.org

With a copy to: Alan H. Abes
Dinsmore & Shohl LLP
255 E. 5th St., Ste. 1900
Cincinnati, Ohio 45202
Email Address: alan.abes@dinsmore.com

If to Developer: Robert Gerwin
P.O. Box 43121
Cincinnati, Ohio 45243
Email Address: rfgerwin@cs.com
-and-
Craig Rassi
4710 Suite T
West Chester, Ohio 45246
Email Address: rassic@maronda.com

Notice may be provided to any different address as the Parties may designate in writing from time-to-time.

Section 13. Execution

This Agreement may be executed in counterparts. An electronic signature on this Agreement, and any copy, fax, scan, or electronic image of this Agreement, shall be treated as an original.

ONLY SIGNATURES TO FOLLOW

AGREED:

VILLAGE OF FAIRFAX, OHIO, an
Ohio municipal corporation

Jennifer M. Kaminer, Village Administrator

Date

Approved as to Form:

Alan H. Abes, Village Solicitor

Date

Birkdale, LLC

By (signature): _____

Print Name: _____

Title: _____

Date: _____

Maronda Homes of Cincinnati, LLC

By (signature): _____

Print Name: _____

Title: _____

Date: _____

Mer Land Development LLC

By (signature): _____

Print Name: _____

Title: _____

Date: _____