

RESOLUTION NO. 09-2020

To Authorize the City Manager to Enter into an Agreement with National Church Residences Concerning Affordable Housing Units and Tax Increment Financing for Stafford Village Redevelopment.

WHEREAS, National Church Residences Stafford Worthington OH (NCR) is planning to redevelop the property located at the Northeast Corner of Hartford Street and East Stafford Avenue to provide 34 affordable housing units and 51 market rate housing units; and,

WHEREAS, NCR has expressed its intention that the 34 affordable housing units will always be a component of the Stafford Village property and that it would provide the City an enforceable contractual guarantee that the 34 affordable housing units would remain at least thirty years; and,

WHEREAS, NCR, as part of the rezoning of the property, requested that the tree replacement fee in Worthington Codified Ordinance Section 1174.05(c)(2)(B) be reduced from \$450.00 per caliper inch to \$150.00 per caliper inch to be consistent with the tree replacement fee for the Wilson Bridge Corridor; and,

WHEREAS, Council adopted a \$150.00 per caliper inch tree replacement fee for the Wilson Bridge Corridor based on the tree replacement fees charged by surrounding communities; and,

WHEREAS, the City, on its own initiative, is considering the possibility of passing a Tax Increment Financing Ordinance, pursuant to and in accordance with Ohio Revised Code §§5709.41, 5709.42 and 5709.43, to provide additional funding for public infrastructure improvements that would benefit the Property and surrounding neighborhood;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the City Manager is hereby authorized to execute an agreement with National Church Residences Stafford Worthington OH guaranteeing at least 34 affordable housing units for the next thirty years and cooperation with tax increment financing for public infrastructure improvements, subject to approval to form by the Law Director.

SECTION 2. That the City Council hereby authorizes the City Manager to waive the requirements of Worthington Codified Ordinance Section 1174.05(c)(2)(B) for the Stafford Village redevelopment by reducing the tree replacement fee to \$150.00 per caliper inch from \$450.00 per caliper inch, conditioned upon the execution and recording of the affordable housing agreement authorized in Section 1.

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SECTION 3. That the Clerk be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted February 18, 2020

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (this “Agreement”) is made so as to be effective on the first date that it is executed by both parties hereto (the “Effective Date”), by NATIONAL CHURCH RESIDENCES STAFFORD WORTHINGTON OH, an Ohio not-for-profit corporation (“NCR Stafford”), and the CITY OF WORTHINGTON, an Ohio municipal corporation (“City”).

RECITALS:

WHEREAS, NCR Stafford is the owner of certain real property which it acquired by its acceptance of deeds which are of record with the Office of the Recorder of Franklin County, Ohio (the “Recorder”) as Instrument Numbers _____, and which is known on the Effective Date as Franklin County Auditor tax parcel numbers _____ (such real property as described in said deed to be referred to herein as the “Property”); and

WHEREAS, the Property was originally developed by Stafford Village Retirement Center (the “Original Owner”), an Ohio non-profit corporation initially formed by Worthington Presbyterian Church, in 1970 for the purpose of providing affordable senior housing apartments and has been operated in this manner since that time; and

WHEREAS, by 2014, the Original Owner did not have the resources or expertise necessary to address necessary physical repairs and was unable to continue operating the Property on an ongoing basis; and

WHEREAS, NCR Stafford acquired the Property from the Original Owner on December 22, 2015; and

WHEREAS, in conjunction with its acquisition of the Property, NCR Stafford agreed to ensure the ongoing availability of affordable senior apartments; and

WHEREAS, in accordance with legislation approved by Worthington City Council in Ordinance Number _____, NCR Stafford seeks to redevelop a portion of the Property with a new 85-unit apartment building that will include 34 senior apartments to be designated as Affordable Housing, as more particularly defined and provided in this Agreement (the “Affordable Apartments”); and

WHEREAS, NCR Stafford has offered reassurances to the City of Worthington of its intentions to operate the Affordable Apartments as such on an ongoing basis; and

WHEREAS, NCR Stafford desires to memorialize its agreement with the City to provide that, during the Restriction Period (such term being defined in Section 2 below), the Affordable Apartments shall be marketed and leased as “affordable” rental units, as more particularly defined and contemplated in this Agreement; and

WHEREAS, the City, on its own initiative, is considering passing a Tax Increment Financing Ordinance (the “TIF Ordinance”), pursuant to and in accordance with Ohio Revised Code §§5709.41, 5709.42 and 5709.43 (the “TIF Statutes”) to require payments in lieu of taxes (the “Service Payments”) for the Property (and other real property as determined by the City in its sole discretion) to provide additional funding for public infrastructure improvements that would benefit the Property and surrounding neighborhood; and

WHEREAS, in accordance with legislation approved by Worthington City Council in Resolution Number _____, the City has authorized the City Manager to enter into this Agreement and to reduce the tree replacement fee requirements of Worthington Codified Ordinance Section 1174.05(c)(2)(B) for the Stafford Village redevelopment to be consistent with the \$150 per caliper inch tree replacement fee that applies to the Wilson Bridge corridor.

NOW, THEREFORE, NCR Stafford and City hereby agree as follows:

1. Restriction. NCR Stafford and City agree that, during the Restriction Period, all apartment units located on the Property (including associated improvements, the “Project”) shall be made available for rental and shall be rented on a continuous basis to members of the general public. NCR Stafford, for itself and all of its successors and assigns with respect to the Property, agrees that it shall maintain at least thirty-four (34) of the Units on the Property (i.e., the Affordable Apartments) as “Affordable Housing”. For purposes of this Agreement, the term “Affordable Housing” shall mean that for each particular Affordable Apartment, gross monthly rent shall not exceed a level which is sixty percent (60%) of the monthly area median income (AMI), adjusted for family size as determined by the United States Department of Housing and Urban Development.

2. Duration of Restriction. The Restriction provided in Section 1 of this Agreement shall begin on the date that NCR Stafford is issued a certificate of occupancy for the Stafford

Village redevelopment and shall end on that date that is thirty (30) years thereafter (such period of time to be referred to hereinafter as the “Restriction Period”).

3. City Enforcement. City shall be deemed to be the sole beneficiary of the terms, conditions, agreements, restrictions, and requirements of this Agreement and, as such, shall be permitted to enforce the same. During the Restriction Period and no more frequently than twice in any calendar year, City may request that NCR Stafford provide a written certification to City indicating that the Project has been compliant with this Agreement for the immediately preceding 12-month period, with such certification to be accompanied by reasonable written documentation to support the certification (the aforementioned certification and supporting documentation to be referred to herein as the “Certification”). Should NCR Stafford fail to provide a Certification within thirty (30) days after it receives a written request from City, then City shall be permitted to pursue an action in court to compel the delivery of the Certification, including but not limited to injunctive relief.

4. Term and Amendment. This Agreement shall be effective during the Restriction Period unless earlier terminated with the written recorded consent of the City and NCR Stafford. Upon the expiration of the Restriction Period, this Agreement shall terminate without further action required by NCR Stafford or City. Any amendment to this Agreement shall be provided only by a written instrument that is executed by both NCR Stafford and City and acknowledged in recordable form, with consent to the amendment to be provided by action of its City Council and attached to the amendment. Notwithstanding the foregoing, NCR Stafford shall be permitted to execute and record a written amendment to this Agreement with the prior written consent of City staff in order to correct a scrivener’s error in this Agreement or to make other reasonable revisions which are not material in nature.

5. Tree Replacement Fee. The City agrees to waive the requirements of Worthington Codified Ordinance Section 1174.05(c)(2)(B) for the Stafford Village redevelopment by reducing the tree replacement fee to \$150.00 per caliper inch from \$450.00 per caliper inch, conditioned upon the execution and recording of this Agreement.

6. Tax Increment Financing. If the City decides to pass the TIF Ordinance, NCR Stafford agrees and consents to the City preparing and filing with necessary governmental authorities all necessary applications and supporting documents to obtain the exemption from real property taxation authorized by the TIF Statutes and the TIF Ordinance. NCR Stafford, on behalf of itself and each subsequent owner, agrees that it shall assist and cooperate with the City, and that it shall cause each subsequent owner by deed or declaration to assist and cooperate with the City, in the preparation and filing by the City of such applications and supporting documents that are necessary to enable the City to collect Service Payments thereunder (including, but not limited to, NCR Stafford signing and timely filing the Ohio Department of Taxation DTE Form 24), and NCR Stafford and each subsequent owner shall cooperate with the City in connection with the preparation and filing of the initial and any further applications required to accomplish that purpose, and will not undertake any acts which would prohibit, prevent, delay or hinder the

City from obtaining the Service Payments. NCR Stafford agrees, for itself and its successors and assigns, to pay all Service Payments with respect to the Property pursuant to and in accordance with the TIF Statutes and the TIF Ordinance. Each semiannual payment of Service Payments shall be in the same amount as the real property taxes that would have been charged and payable against the Property had an exemption from taxation not been granted. Notwithstanding the foregoing, nothing in this provision shall be read or implied to compel NCR Stafford or City to enter into any separate written agreement relating to the creation of the contemplated tax increment financing district or the use of Service Payments generated therefrom, it being acknowledged by both parties that such an agreement, if mutually desired, shall be the subject of a separate negotiation between them and will require separate action by City Council.

7. Cost of Enforcement. If an action is brought by the City for the enforcement of any provision of this Agreement, NCR Stafford, and only to the extent that NCR Stafford is found to be in default or breach of this Agreement, will pay to the City all costs and other expenses that become payable as a result thereof, including without limitation, reasonable attorneys' fees and expenses.

8. Effective Date. This Agreement shall be executed by the parties promptly following the first date when City Council action to approve it becomes legally effective, and the parties shall exchange written versions of the executed Agreement for their respective records. The City shall then hold the executed version of this Agreement until such time as the first building permit for the Project has been issued. Following such issuance, the City shall record the executed version of this Agreement with the Office of the Recorder of Franklin County, Ohio and then deliver written notice of the recording to NCR Stafford. The terms, conditions, agreements, restrictions, and requirements contained in this Agreement shall be effective on the Effective Date, provided, however, that no enforcement action may be taken by the City hereunder until such time as this Agreement is recorded.

9. Venue and Law. City's rights to enforce the terms of this Agreement shall be enforceable only in the Court of Common Pleas of Franklin County, Ohio, by applying the laws of the State of Ohio.

10. Subordination. This Agreement shall, upon the recording of a mortgage or other lien on the Property, be deemed to be subordinate to such mortgage or lien without further action by NCR Stafford or City. City agrees to timely execute any subordination, non-disturbance, and attornment agreement (an "SNDA") or similar instrument if requested by NCR Stafford, its successors or assigns, or their respective lenders.

11. Restriction Runs with the Property. It is the intent of that the covenants, restrictions, agreements, and obligations in this Agreement shall constitute covenants that run with the Property and therefore shall be binding upon all of NCR Stafford's successors and assigns in interest with respect to ownership of the Property. The term "NCR Stafford", as used herein, shall mean the business entity that originally signs this Agreement while that entity has

ownership of the Property, and shall mean the successors and assigns of that entity with respect to ownership of the Property after such time as NCR Stafford no longer owns any portion of the Property.

12. Recording. Upon execution of this Agreement, an original counterpart of this Agreement shall be placed of record in the real estate records of the Recorder of the County of Franklin, Ohio with respect to each parcel comprising the Project.

13. Conflicts with Laws. In the event of any conflict between this Agreement and the requirements of applicable law, the requirements of applicable law shall prevail.

14. Severability. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions.

[Signature page follows]

IN WITNESS WHEREOF, NCR Stafford has caused this Agreement to be executed by duly authorized representative as of the date set forth below, so that this Agreement shall be effective on the Effective Date.

NCR Stafford:

NATIONAL CHURCH RESIDENCES
STAFFORD WORTHINGTON OH,
an Ohio not-for-profit corporation

By: _____

Print Name

Title

Date

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

Before me, a Notary Public for the State of Ohio, appeared the above named _____, who acknowledged that he/she signed the foregoing instrument as the _____ of National Church Residences Stafford Worthington OH, an Ohio not-for-profit corporation, and that his/her signing was his/her free act on behalf of said corporation.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my seal this ___ day of _____, 2020.

Notary Public

IN WITNESS WHEREOF, City has caused this Agreement to be executed by duly authorized representative as of the date set forth below, so that this Agreement shall be effective on the Effective Date.

City:

CITY OF WORTHINGTON,
an Ohio municipal corporation

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

Before me, a Notary Public for the State of Ohio, appeared the above named _____, who acknowledged that he/she signed the foregoing instrument as the _____ of the City of Worthington, an Ohio municipal corporation, and that his/her signing was his/her free act on behalf of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my seal this ____ day of _____, 2020.

Notary Public

Approved as to Form:

By: _____
Tom Lindsey, Law Director

This instrument prepared by:
Aaron L. Underhill, Esq.
Underhill & Hodge LLC
8000 Walton Parkway, Suite 260
New Albany, Ohio 43054