



CITY COUNCIL
Regular Meeting – October 24, 2016 6:00 p.m.
Council Chambers

PROCLAMTIONS

- ◆ Retirement of DJ, K-9 Unit Beavercreek Police Department

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Council Member Wallace
- IV. APPROVAL OF AGEND
- V. APPROVAL OF MINUTES
 - A. October 10, 2016 Regular Meeting
- VI. PRESCHEDULED PRESENTERS
 - A. Issue 22 - Jeff Brock, Greene Memorial Hospital
- VII. PUBLIC HEARING PUD 16-1 SSP #1 Cottages of Beavercreek (Tabled from the October 10, 2016 meeting)
 - A. Council Input
 - B. Motion
- VIII. PUBLIC HEARING PUD 91-2 MOD 9/16 BSM Development
 - A. Application Presentation
 - B. Staff Presentation
 - C. Public Input
 - D. Council Input
 - E. Motion
- IX. ORDINANCES, RESOLUTIONS AND PUDS
 - A. Ordinance 16-22 Repealing Current Section 132.13 “Panhandling” and Adopting New Section 132.13 “Panhandling” (Second Reading)
 - B. Ordinance 16-23 Repealing Current Chapter 112 “Peddling, and Soliciting, and Distribution” and Adopting New Chapter 112 “Peddling, Soliciting, and Distribution” (Second Reading)
 - C. Ordinance 16-24 Adopting New Section 76.17 “Parking of Large and Oversize Vehicles on Streets (First Reading)
 - D. Ordinance 16-25 Repealing Current Section 70.01 “Definitions” and Adopting New Section 70.01 “Definitions” (First Reading)
 - E. Ordinance 16-26 Repealing Current Section 76.99 “Penalty” and Adopting New Section 76.99 “Penalty” (First Reading)
 - F. Ordinance 16-30 Additional Appropriations (Single Reading)
 - G. Resolution 16-26 Authorize Submittal of Funding Applications for PDAC (Dayton Region Priority Development and Advocacy Committee) Funding
 - H. Resolution 16-27 Approval of Petitions for Ohio Energy Special Improvement District
 - I. Resolution 16-28 Declaring the Necessity of Certain Public Improvements
 - J. Ordinance 16-27 Determining to Proceed with Acquisition, Construction and Improvement of Certain Public Improvements (First Reading)
 - K. Ordinance 16-28 Levying Special Assessments for the Purpose of Acquiring, Constructing and Improving Certain Public Improvements. (First Reading)
 - L. Ordinance 16-29 Authorize City’s Participation in Financing Special Energy Improvement Projects (First Reading)
- X. CITY MANAGER’S REPORT
- XI. MAYOR’S REPORT
- XII. COUNCIL TIME
- XIII. CITIZEN COMMENTS
- XIV. EXECUTIVE SESSION
- XV. ADJOURNMENT

BEAVERCREEK CITY COUNCIL
REGULAR MEETING October 10, 2016 6:00 p.m.

PROCLAMATIONS

◆ Domestic Violence Awareness Month

CALL TO ORDER

Mayor Stone called the meeting to order followed by roll call.

PRESENT: Council Member Jarvis, Council Member Litteral, Council Member Upton, Council Member Wallace, Council Member Whilding, Vice Mayor Vann, Mayor Stone

ABSENT: None

TARDY: None

ALSO IN ATTENDANCE: Jill Bissinger, Human Resources; Randy Burkett, City Planner; Michael Cornell, City Manager; Dennis Evers, Chief of Police; Dianne Lampton, Clerk of Council; Jeff McGrath, Planning & Zoning Director; Steve McHugh, Legal Counsel; Jeff Moorman, City Engineer; Nick Smith, Assistant City Engineer

PLEDGE

Council Member Upton led the pledge and a moment of silence

APPROVAL OF AGENDA

Council Member Upton MOVED to amend the agenda by removing agenda item VII. C. and adding a pre-scheduled presenter, Vicki Giambrone after the approval of minutes, seconded by Vice Mayor Vann. Motion PASSED by majority voice vote.

Council Member Litteral MOVED to approve the agenda as amended, seconded by Council Member Wallace. Motion PASSED by majority voice vote.

APPROVAL OF MINUTES

Council Member Upton MOVED to approve the minutes of the September 20, 2016 Joint Work Session with Beavercreek Township and Greene County, seconded by Vice Mayor Vann. Motion PASSED by majority voice vote. (Abstained - Jarvis, Litteral, Wallace)

Council Member Litteral MOVED to approve the minutes of the September 26, 2016 Regular Meeting, seconded by Council Member Upton. Motion PASSED by majority voice vote. (Abstained – Vann, Wallace)

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PRE-SCHEDULED PRESENTER

Vicki Giambrone, Past Mayor

Ms. Giambrone explained the Ohio Veterans Hall of Fame has inducted more than 400 veterans since inception in 1992, including Council Member Jarvis. She said each year an executive committee made up of representatives of Ohio veterans select up to 20 inductees from applications received from all across the state. She said these people are leaders in their community and have made significant impact on the lives of their fellow veterans. She said our Debborah Wallace has demonstrated outstanding leadership as an entrepreneur, community leader and public servant. Ms. Giambrone was proud to join State Representative Rick Perales and others to nominate Council Member Wallace to the Ohio Veterans Hall of Fame. She said anybody who knows her knows that she has always wanted a life of service which she has accomplished. She uses every volunteer effort in public service to demonstrate extraordinary leadership on behalf of veterans and disabled citizens. She has a deep and abiding commitment to her country, profession and all of those she serves. Ms. Giambrone welcomed Council Member Wallace to the 2016 Class of the Ohio Veterans Hall of Fame. Ms. Giambrone thought Beavercreek as one of the only cities in the State of Ohio that can account two members of the Veterans Hall of Fame on City Council. She congratulated Council Member Wallace. The induction ceremony will be held on November 3rd in Columbus.

PUBLIC HEARING PUD 16-1 SSP #1 Cottages of Beavercreek

Clerk Lampton read an application filed by Charles Simms Development, 2785 Orchard Run Road, Dayton, Ohio 45449. The application requests specific site plan approval to allow for the construction of 14 single-story condominium buildings totaling 85 units to be constructed on 20.03 acres. The property is located on the east side of County Line Road approximately 700 feet south of the intersection of County Line Road and Weber Drive. The property is further described as Book 3, Page 3, Parcel 72 on the Greene County Property Tax Atlas.

Mr. Cornell excused himself from the meeting.

Applicant Presentation

Charles Simms, 2785 Orchard run Road, Dayton, OH 45449

Mr. Simms said this would be their third development in Beavercreek. He said this was approved through the Planning Commission and was available for any questions following the Staff Presentation.

Staff Presentation

Mr. Burkett summarized the staff report dated October 6, 2016, which stated the

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applicant is requesting approval of a specific site plan to allow for the construction 84 residential units on 20 acres. Mr. Burkett discussed the location of the lot and the existing site conditions. He explained this was still within the 30 day referendum period however there was a condition should a referendum come forward any approvable this evening would be null and void until the referendum was considered. He reviewed the surrounding properties' zoning districts, the site plan, the emergency access points, the detention facility, parking, the architectural elevations, the landscaping plan and ground signage. Mr. Burkett explained condition #22 referred to the collapsible bollard for emergency access on Terrance Drive but also wished to add Quill Road to the language as well. He said it is on the plans but wished to reiterate this in the conditions. Staff and Planning Commission recommended approval of the applicant's request with 25 conditions.

Public Input

Jennifer Tomak, 4312 Straight Arrow Rd, Beavercreek, Ohio

Ms. Tomak explained she had just bought a condominium in the Cinnamon Ridge complex and was not aware of this construction. She was concerned about the forest on the south side of the new complex. She was not sure if this had been addressed.

David Asadorian, 4281 Maple Hill Terrace, Beavercreek, Ohio

Mr. Asadorian questioned how much of the wood would be left between the single family homes and where the buildings start.

Sean Simmons, 4282 Weber Drive, Beavercreek, Ohio

Mr. Simmons said he has spoken with staff, the developer and Council Members regarding this plan. He thanked everyone for taking the time and listening to the neighbors and felt they had reached a compromise.

The public hearing was closed.

Mayor Stone asked staff to address the concerns of the wooded area.

Mr. Burkett explained there was a 50 foot buffer/building setback along the southern property line. He said there was a large portion of the wooded area that would be dedicated to the City to connect to a reserve. He said there would be trees preserved on both the north and south side of the property line.

Council Input

Council Member Whilding was concerned about creating an island at Quill Road to the north. He said there is an emergency access by not a roadway. He said it didn't help with traffic congestion or help connect the neighborhoods. He said if

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they are compatible neighborhoods they should have neighborhoods connect with each other. He said this helps disperse traffic to the two stop lights on County Line Road. He thought this was one thing they were overlooking at this point to not have through traffic at Quill Road to help all of these neighborhoods move in and out.

Council Member Wallace thanked the staff and developer for working with the neighborhood. She questioned the location of the light on Quill Road. Mr. Burkett explained the location of Quill Road on the north and south side of the development. He explained the left turn light was at Straight Arrow and County Line Road. He explained the other light was at Weber Drive and County Line Road. Council Member Whilding said there is a bus stop at Straight Arrow and Quill which has concern because when this is built out, all the traffic is being sent out to the light through the bus stop. He said if you have two ways out you won't send all the traffic through one bus stop where the students come from Cinnamon Ridge. He said if you have a dispersion of traffic to the north and south and there is safety for all. Mr. Burkett explained there was a condition to add a street light at the bus stop to illuminate the area.

Vice Mayor Vann verified there was a road going to County Line Road for the new development and would easily be able to make right turns onto County Line Road. Mr. Burkett replied that was correct. Vice Mayor Vann said it was the people who have to turn left that would chose to go to the light.

Council Member Wallace verified Council Member Whilding was recommending access north on Quill also. Council Member Whilding replied he was recommending a street access point. Council Member Wallace asked if they added this as a condition how would it affect the building plans. Mr. Burkett explained the road between north and south Quill Road would become a public road versus a private road and would create challenges. He said this was a compromise assess point with the neighbors because there was less of a desire for the neighbors to the north to have through traffic going through their neighborhood. The emergency access point was the compromise. Mr. Burkett said the entire road in the new development is a private street. Council Member Wallace asked if they change it to open up to Quill to the north then the road in between would become public. She said they would then have to maintain the street.

Mayor Stone asked if there was a right-of-way for the emergency access. Mr. Burkett said at this point it would be privately maintained and there would not be any right-of-way dedicated. He explained the emergency access would also be privately maintained. Mayor Stone asked if people thought ten years from now it

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would be wise to connect the two could a right-of-way be added with a 50 foot access. Mr. Burkett said if that was so desired it could be added at the sub-division stage.

Vice Mayor Vann asked if this is a private street and children are living in that neighborhood would they have to walk to the public street to catch the bus. Mr. Burkett said that would be a question for the school but it would be the same situation as Cinnamon Ridge. Mr. Burkett explained this development is marketed towards retirees and empty nesters.

Mayor Stone said he would like to see at the next phase to reserve a 50 foot opening at that access. Mr. Burkett said the fire department would like a wide easement so they can maintain the access.

Council Member Wallace said she would like to the cost of maintaining the street if they chose to connect Quill Road and make it a public street. Mr. Moorman said he would put that information together and have it available in a couple of days.

Council Member Wallace MOVED to amend Condition 22 by adding Quill Road, seconded by Vice Mayor Vann. Motion PASSED by majority voice vote.

Council Member Whilding said if they are considering additional data regarding the cost of maintaining the street and adding a 50 foot buffer, they would need to table this case.

Mayor Stone said it was a possibility. He said when you talk of changing part of it to a public street, the whole thing needs to go public. He said most of the condo complexes are setup as private streets. He said this was discussed in length at the zoning process and it was decided to not make it a condition that it be connected. He said there was a lot of public input along with input from staff.

Council Member Whilding MOVED to table PUD 16-1 SSP #1 to the October 24, 2016 Regular Meeting, seconded by Council Member Wallace. Motion PASSED by majority voice vote. (Against – Vann, Stone)

Mr. Cornell returned to the meeting.

ORDINANCES, RESOLUTIONS AND PUDS

Ordinance 16-22 Repealing Current Section 132.13 “Panhandling” and adopting New Section 132.13 “Panhandling” (First Reading)

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Clerk Lampton read an Ordinance repealing current Section 132.13 "Panhandling" of the City of Beavercreek Code of Ordinances, and adopting new Section 132.13 "Panhandling" of the City of Beavercreek Code of Ordinances.

Mr. McHugh explained the next two Ordinances were updates based on case law decisions. He said there was clarification of the definitions of panhandling and solicitation.

Council Member Upton appreciated the updates.

Council Member Jarvis MOVED to approve Ordinance 16-22 and move to the second and third readings, seconded by Council Member Wallace. Motion PASSED by majority voice vote.

Ordinance 16-23 Repealing Current Chapter 112 "Peddling, and Soliciting, and Distribution" and Adopting new Chapter 112 "Peddling, and Soliciting, and Distribution (First Reading)

Clerk Lampton read an Ordinance repealing current Chapter 112 "Peddling and Soliciting" of the City of Beavercreek Code of Ordinances and adopting new Chapter 112 "Peddling, Soliciting, and Distribution" of the City of Beavercreek Code of Ordinances.

Mr. McHugh said this is the companion Ordinance that deals with solicitation.

Vice Mayor Vann MOVED to approve Ordinance 16-23, seconded by Council Member Whilding and move to the second and third readings. Motion PASSED by majority voice vote.

Resolution 16-20 Agreement with ODOT for Municipal Bridge Inspection Program

Clerk Lampton read a Resolution giving consent to the Director of the Ohio Department of Transportation to proceed with bridge inspection program services project; PID No., 102554.

Mr. Moorman explained the city currently maintains 24 bridges and has historically been the city's responsibility to inspect each of the bridges on an annual basis. He said three years ago the Ohio Department of Transportation voluntarily said they would do the inspections for a three year period. Mr. Moorman said the three years has past and ODOT said they would renew the program for another three years. He said these inspections are only for bridges that carry cars and pedestrian bridges remain the responsibility of the city. He said this program saves the city an estimated \$6,500 per year.

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Vice Mayor Vann MOVED to approve Resolution 16-20, seconded by Council Member Upton. Motion PASSED by majority voice vote.

Resolution 16-24 Submittal of MVRPC MAP-21 Funding Applications

Clerk Lampton read a Resolution authorizing the submittal of applications for Federal MAP-21 Funds through the Miami Valley Regional Planning Commission.

Mr. Smith explained the Resolution was to allow for the submittal of applications for project funding through the Miami Valley Regional Planning Commission. He said staff had six projects that should be eligible for financial assistance. Those projects included North Fairfield Road Resurfacing from North Drive to Kemp Road, Factory Road Widening from Nutter Park to Creekside Trail, Grande Hall Road Widening from Summerfield Drive to Kemp Road, Indian Ripple Road Resurfacing from Stroop to Sylvania, Kemp Road Widening from North Fairfield Road to Hanes Road and Col. Glenn Highway Enhancement-Phase II from Zink Road to west of Presidential Drive.

Vice Mayor Vann asked what category the funds were being requested from. Mr. Smith replied the category for resurfacing were Surface Transportation Program (STP) funds. Vice Mayor Vann asked if they were requesting any Transportation Alternative (TA) funds. Mr. Smith replied they were for the Col. Glenn Highway Enhancement – Phase II.

Vice Mayor Vann MOVED to approve Resolution 16-24, seconded by Council Member Litteral. Motion PASSED by majority voice vote.

LIQUOR PERMITS

81 Magnolia Ln Inc., dba La Cantina (New)

Chief Evers said the Ohio Division of Liquor Control sent police notification referencing a new D1, D2, D3 liquor permit for 81 Magnolia Ln. LLC DBA La Cantina Ln. 81 Magnolia Ln., Beaver Creek, Ohio 45440. The records checks required by the Ohio Department of Commerce – Division of Liquor Control were conducted on the business officers/shareholders of this application request. Staff recommended this application request move forward with no comment.

Council Member Litteral MOVED to accept without comment, seconded by Council Member Upton. Motion PASSED by majority voice vote.

Lake Ventures, LLC dba Fresh Thyme Farmers Market (Stock)

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Chief Evers said the Ohio Division of Liquor Control sent police notification of a request regarding a change of corporate stock on a C1, C2, D6, D8 liquor permit for Lakes Venture LLC DBA Fresh Thyme Farmers Market, 2850 Centre Drive, Suite E, Beavercreek, Ohio 45324. The record checks required by the Ohio Department of Commerce – Division of Liquor Control were conducted on the applicant/shareholders for this application request. Staff recommended this application request move forward with no comment.

Council Member Litteral MOVED to accept without comment, seconded by Council Member Whilding. Motion PASSED by majority voice vote.

CITY MANAGER'S REPORT

Mr. Cornell said Try A Truck would be held Saturday, October 15th from 10:00 a.m. – 1:00 p.m. along with an Open House at Fire Station 61 and DayAir Credit Union. Mr. Moorman explained the road closure occurring on Saturday, October 22nd at Grange Hall and Oxmoor Road. He said Greene County Sanitary Department would be making sanitary sewer repairs which requires to dig up the road to replace piping. He said the closure will be at Kemp and Grange Hall Roads. The detour will take drivers to North Fairfield Road to Pentagon Blvd. The road should be reopened Monday morning.

Mr. Cornell said Drug Take Back Day will be October 22nd from 10:00 a.m. to 2 p.m. at the police department. Beggars Night will be October 31st from 6:00 p.m. – 8:00 p.m.

MAYOR'S REPORT

Mayor Stone said the Haunted Classic will be held this weekend which is one of the largest soccer tournaments in the country. He thanked the Greene County Commissioners and staff and the Beavercreek Township Trustees and staff along with the City for coming to an agreement with regards to the superstreet.

COUNCIL TIME

Council Member Upton said early voting starts this week. He said Issue 1 is a charter amendment to create a direct election of mayor. He said to know all the issues before you vote.

Council Member Wallace said MVRPC placed two projects for recommendation to ODOT. She said the first is U.S. 35 from Livingston to I-675 to make it a three lane highway and the second is the U.S. 35 Superstreet. She would be in attendance on October 13th to petition the recommendation for the safety of our communities.

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Council Member Jarvis said the Shakertown and Grange Hall Road project is almost complete.

CITIZEN COMMENTS

There being no citizen comments, citizen comments was closed.

EXECUTIVE SESSION

Council Member Jarvis MOVED to enter into Executive Session at 7:02 p.m. pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of the appointment or employment of public employee or official, seconded by Council Member Whilding . Motion PASSED by a roll call vote of 5-0.

Council Member Upton MOVED to adjourn executive session at 7:43 p.m., seconded by Council Member Wallace . Motion was PASSED by roll call vote of 7-0.

Council Member Whilding MOVED to reconvene the meeting, seconded by Council Member Upton . Motion PASSED by majority voice vote.

ADJOURNMENT

Council Member Litteral MOVED to adjourn the meeting at 7:44 p.m., seconded by Council Member Whilding. Motion PASSED by majority voice vote.

Bob Stone, Mayor

ATTEST:

Dianne Lampton
Clerk of Council
Cmin101016

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: October 10, 2016	Reference Topic: PUD 16-1 SSP #1 Cottages of Beaver Creek
Agenda Reference No. VI. A - E	Motion

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input checked="" type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input checked="" type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

REQUEST:

The applicant is requesting approval of a specific site plan on 20.03 acres, located on the east side of County Line Road, approximately 700 feet south of the intersection of County Line Road and Weber Drive. Specifically the applicant is proposing a site plan that shows the construction of 84 multi-family dwelling units contained within 14 buildings.

RECOMMENDATION:

Planning Commission and Staff are recommending approval of this rezoning request as outlined in the attached Resolution.

PROCEDURAL OPTIONS FOLLOWING ACTION:

City Council may choose to recommend approval, disapproval, or tabling of the attached application for further review.

Burkett

October 20, 2016

MOTION TO APPROVE
PUD 16-1, SSP #1
COTTAGES OF BEAVERCREEK

"I move, for the purpose of taking administrative action, approval of a PUD Specific Site Plan for the Cottages of Beaver Creek, PUD 16-1, SSP #1, on the basis that City Council finds the facts submitted with the application and accompanying materials and modifications, amendments and supplementary conditions satisfy the standards and criteria for a PUD Specific Site Plan approval as per §158.066 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. I further move that this motion with all conditions be fully recorded in the minutes of this council meeting."

1. The approved site plan and architectural elevations shall be the plans dated "Received August 31, 2016" except as modified herein.
2. A PUD Agreement must be signed by the owner and a bond or letter of credit for the site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
3. The final landscape plan shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the building.
4. Prior to any grading on site, the applicant shall install a temporary grading limit fence, as shown on the approved site plan. If any landscaping/grading is disturbed outside of the grading limit, the applicant shall submit and received approval of an amended landscape plan showing mitigation for the disturbed areas, prior to the release or reduction of any landscaping bonds.
5. Any portion of the site disturbed by grading, and on which no construction occurs within three months after completion of the site grading, shall be planted with appropriate ground cover free of noxious weeds and construction debris and shall be properly maintained.
6. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally installed, within three months weather permitting.
7. Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project including the storm drainage facilities. The City reserves the right to require more frequent collection as necessary.
8. Aeration and water circulation devices and/or fountains are required for the

retention pond(s) and shall be maintained by the owner of the development in perpetuity.

9. Prior to the issuance of a zoning permit, final cut sheet details, showing the design of wall pack or sconce lighting, and photometric plans for lighting of the buildings and site shall be reviewed and approved by the Planning Department.
10. Final topography and grading plans shall be submitted for review and approval by the City Engineer prior to submission of application for final subdivision and must be approved prior to the issuance of a site-grading permit.
11. A final subdivision shall be approved by Planning Commission and recorded with the Greene County Auditor's Office prior to the release of any zoning permits for this project.
12. Final drainage calculations shall be approved by the City Engineer prior to the release of the record plan for recording.
13. Prior to the release of the record plan for recording, the applicant shall sign a Subdivider's Contract and submit a bond or letter of credit for the public improvements if required by the City Engineer.
14. The construction hours shall be limited to 7:00 AM to 7:00 PM, Monday thru Saturday.
15. All residential style trash totes shall be stored within or immediately adjacent to a primary structure, and shall be out of ordinary public view on days when trash collection is not occurring (except the night before scheduled pick-up is to occur).
16. Prior to the release of the record plan, park fees shall be paid in-lieu of dedication of parkland as determined at the subdivision stage.
17. There shall be a minimum of 8 handicap designated parking spaces on the site.
18. The approval of this request is contingent upon the associated PUD Rezoning PUD 16-1 being approved and becoming effective. Should R-PUD 16-1 be disapproved, this site plan shall be null and void.
19. The developer shall pay all costs associated with the installation of a street light at the intersection of Quill Road and Straight Arrow Road.
20. The developer shall pay all costs associated with the design and construction of necessary modifications to the existing traffic signal at the intersection of Straight Arrow Road and County Line Road.

21. The south side of Quill Road, connecting to Straight Arrow Road, shall be constructed to City standards for public roadways.
22. The emergency access at Terrance Drive and Quill Drive shall be restricted by collapsible bollards or a gate.
23. The row of evergreen trees along the northern property line shall be continued up to the existing woods.
24. The side drive access to Unit 4 from Quill Road shall be reviewed and moved to a front entry garage if feasible.
25. There shall be a 20-foot setback from the back of the sidewalk to the front of the garage to allow vehicle parking and to maintain a free and clear access on the sidewalks.

CITY OF BEAVERCREEK STAFF REPORT

October 6, 2016

PROJECT: The Cottages of Beavercreek
CASE NO.: PUD 16-1 SSP #1

APPLICANT: Simms Development
c/o Charlie Simms (Agent for owner)
2785 Orchard Run Road
Dayton, OH 45449

REQUEST

The applicant is requesting approval of a specific site plan on 20.03 acres, located on the east side of County Line Road, approximately 700 feet south of the intersection of County Line Road and Weber Drive. Specifically the applicant is proposing a site plan that shows the construction of 84 multi-family dwelling units contained within 14 buildings.

EXISTING CONDITIONS

Current Uses

As noted on the aerial photo, the 20.03-acre area consists of an extremely long parcel, with approximately 200 feet of frontage along County Line Road. The property was previously used as a horse farm/stable. That use has ceased, and the property currently stands vacant. The western portion of the property has the 1825 square foot Cape Cod farm house, built in 1950, and several outbuildings, including sheds, barns and trough feeders.



The middle portion of the property has approximately 8.5 acres of pasture for the horses. The easternmost 6.5 acres consists of woods, with trails throughout.

Zoning

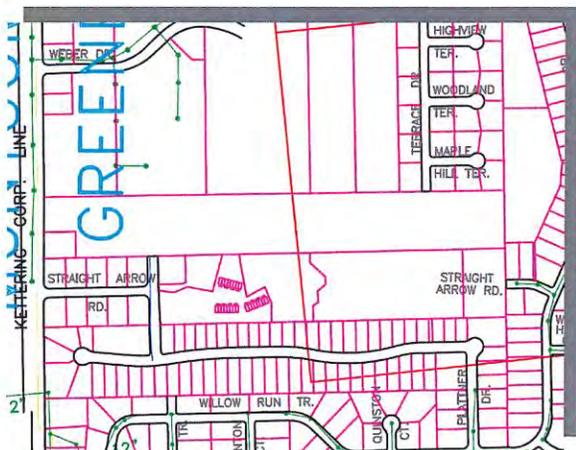
This property was recently rezoned by the applicant to allow for this specific site plan. Staff has added a condition that should the zoning case not be approved (i.e. a successful petition for a referendum), then this application shall be considered null and void, and will need to come back at the appropriate time.

The chart below shows all surrounding properties zoning and usage:

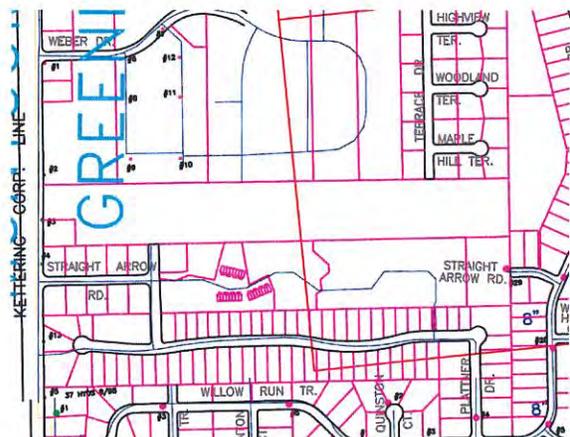
Direction	Zoning Classifications	Current Usages
North	R-PUD 91-1; R-PUD 95-2; R-PUD 03-3, R-1A (AHEPA 10.3 du/ac; Stonegate Commons 9.6 du/ac; Stonegate II 4.22 du/ac)	Multi-Family Residential; Single Family Residential
South	R-1A; R-PUD 99-7 (Cinnamon Ridge 6.96 du/ac)	Single Family Residential; Multi-family Residential
East	R-PUD 548 (Cinnamon Creek Farm 1.78 du/ac)	Single Family Residential
West	OUTSIDE CITY	Reynolds and Reynolds Inc.

Availability of Utilities

Public water and sewer are available.



Sewer



Water

Access, Circulation and Transportation Improvements

The proposed plan shows two full access points to the PUD, as well as two emergency access points. The main entry to the site, which will be complimented with entryway landscaping, hardscaping and signage, will be directly off of County Line Road. This proposed access point is approximately 800 feet from the traffic sign at Weber Drive to the north, and approximately 450 feet from the traffic sign at Straight Arrow Drive to the south. An additional access point, as shown on the original concept plan included as part of the rezoning, will be located off of Quill Road to the south. Quill Road connects to Straight Arrow Drive, and ultimately out to the signal at Straight Arrow Drive and County Line Road. Staff is working with the City of Kettering to establish a dedicated left turn (to the south) arrow at this traffic signal, to help those attempting to go north, so as to not be impeded with drivers coming out of Reynolds and Reynolds, also heading south, with the right-of-way right turn.

Emergency Access Points

The Fire Department has asked for, at a minimum, a single lane-asphalt drive at both Quill Road and Terrance Drive, capable of holding the required 72,000 pound heavy apparatus they own. The proposed plans show this lane, with collapsible bollards.

Throughout the site, there is a multitude of sidewalks and pedestrian facilities. The emergency access points will also be utilized as a pedestrian cut-through between the neighborhoods.

Parking

The applicant is providing 237 parking stalls for the 84 residential units in the development. Each unit will be provided with its own two car garage parking, which accounts for 168 parking spaces. An additional 69 surface parking stalls are shown on the proposed plan. ADA guidelines for a parking lot of this size requires at least seven be handicap designated. Staff has added a condition that they designate eight parking spaces as ADA compliant, so as to exceed minimum guidelines, as we have done in the past, particularly because the target market for this site is empty nesters and retirees.

Building Design

The proposed buildings are single story and are approximately 17.58 feet tall (midpoint between the fascia and the peak). The buildings will be constructed of a combination of either a brick base or faux stone base, variable colors of cement lap board/Hardie Plank, vinyl and shake

siding, and white painted fascia and accent features. The roof of the proposed structures will be constructed out of grey fiberglass dimensional shingles. Each of the units will have either a front loaded two car garage, or a side loaded two car garage, with an aluminum garage door. Of the 14 buildings, most will have either five or six units, except building #13, which will have nine units.

Building Setbacks/Buffers

At the establishment of the zoning of this PUD, several building setbacks and buffers were created. A 50-foot building setback/buffer was established around the perimeter of most of the project. The exception to this is where the project abuts the high density multi-family residential project to the northwest, where there is a 25-foot building setback. The conditions in the Ordinance currently under review furthers the setback/buffering by requiring the follow:

- Where the woods exist along the southern property line abutting the multi-family residential properties, maintain a 50-foot buffer from the property line. No grading or removal of vegetation permitted with the southern 25 feet of this 50-foot buffer, or as regulated by Planning Commission and/or City Council at the specific site plan stage.
- Where there are no woods along the southern property line abutting the multi-family residential properties, construct a 4-foot mound, complimented with dense evergreens trees. In areas where grading of adjacent properties prohibit a four foot mound, or where the mound tapers down, shall be supplanted with 8-foot dense evergreen trees.
- Where the woods exist along the northern property line abutting the single family residential properties, maintain a 50-foot buffer from the property line. No grading or removal of vegetation permitted within this 50-foot buffer, except within the southern two feet, or as regulated by Planning Commission and/or City Council at the specific site plan stage.
- Where there are no woods along the northern property line abutting the single family residential properties, construct a 6-foot mound, complimented with dense evergreens trees.

The plans included in your packet meet all of the above established buffers and building setbacks.

Lighting

Included in your packet is a photometric plan that calls for the use of building/wall lighting for the site. Staff has added a condition that the final fixtures be reviewed and approved prior to the release of a permit.

Stormwater Management

All concerns of the City Engineer regarding stormwater management shall be addressed prior to the release of the record plat for recording. The applicant is proposing to create a

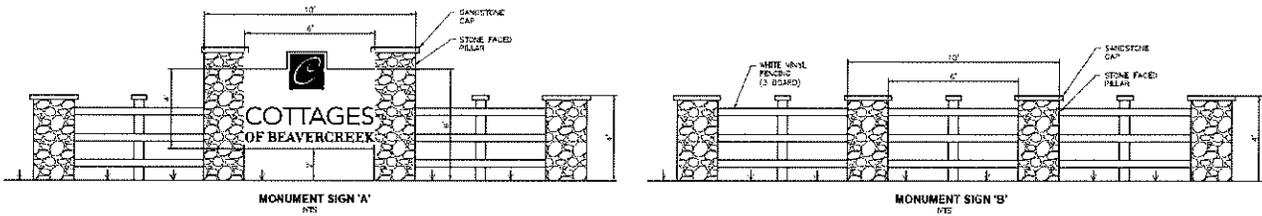
retention pond near the southwest corner of the property. A condition has been added that fountains and/or other aeration and water circulation devices are constructed and maintained in a working manner so as to discourage stagnation and/or excessive algae growth.

Landscaping

Included in your packet is a proposed landscape plan. The proposed plan shows the inclusion of several species of shade trees, as well as decorative shrubs and perennials to be used around the perimeter of the buildings as well as throughout the site. Around the perimeter of the site, dense plantings of six foot evergreen trees are shown where required by the Ordinance. Along future Cottage Park Drive, the plans show 10-foot shade trees.

Signage

The applicant has included plans for ground signage with this application. The proposed ground sign is located north of the entrance off of County Line Road. The sign face is shown at 4 feet by 6 feet, or 24 square feet, and will be located between stone pillars, which will be capped by a sandstone cap. A matching structure, without a sign face will be located on the south side of



the entrance.

RECOMMENDATION

Planning Commission and staff recommend approval of this specific site plan request subject to the conditions outlined in the attached Motion.

RESOLUTION

CITY OF BEAVERCREEK
PLANNING COMMISSION
September 7, 2016

RE: PUD 16-1, SSP #1
Cottages of Beavercreek

WHEREAS, Charles Simms Development, 2785 Orchard Run Road, Dayton Ohio 45449, agent for the property owner, has filed an application requesting approval of a specific site plan to allow the construction of 14 single-story condominium buildings totaling 84 units to be constructed on 20.03 acres on property located on the east side of County Line Road approximately 700 feet south of the intersection of County Line Road and Weber Drive, further described as Book 3, Page 3, Parcel 72 on the property tax maps of Greene County, Ohio; and

WHEREAS, public hearing was held on September 7, 2016 by the Beavercreek Planning Commission at which time all people who wished to testify gave their comments at the public hearing; and

WHEREAS, the Planning Commission finds that the facts submitted with this specific site plan application and presented at the public hearing and any modifications, amendments, or supplementary conditions satisfy the standards and criteria for specific site plan approval as per Section 158.066 of the Zoning Code; and

WHEREAS, the Beavercreek Planning Commission is taking administrative action in approving this portion of the specific site plan.

NOW, THEREFORE BE IT RESOLVED,

SECTION I

The Beavercreek Planning Commission recommends to Beavercreek City Council approval of this specific site plan for Cottages of Beavercreek, PUD 16-1, Specific Site Plan #1 with the following conditions and requirements.

SECTION II

1. The approved site plan and architectural elevations shall be the plans dated "Received August 31, 2016" except as modified herein.
2. A PUD Agreement must be signed by the owner and a bond or letter of credit for the site landscaping must be submitted prior to issuance of a

zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.

3. The final landscape plan shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the building.
4. Prior to any grading on site, the applicant shall install a temporary grading limit fence, as shown on the approved site plan. If any landscaping/grading is disturbed outside of the grading limit, the applicant shall submit and received approval of an amended landscape plan showing mitigation for the disturbed areas, prior to the release or reduction of any landscaping bonds.
5. Any portion of the site disturbed by grading, and on which no construction occurs within three months after completion of the site grading, shall be planted with appropriate ground cover free of noxious weeds and construction debris and shall be properly maintained.
6. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally installed, within three months weather permitting.
7. Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project including the storm drainage facilities. The City reserves the right to require more frequent collection as necessary.
8. Aeration and water circulation devices and/or fountains are required for the retention pond(s) and shall be maintained by the owner of the development in perpetuity.
9. Prior to the issuance of a zoning permit, final cut sheet details, showing the design of wall pack or scone lighting, and photometric plans for lighting of the buildings and site shall be reviewed and approved by the Planning Department.
10. Final topography and grading plans shall be submitted for review and approval by the City Engineer prior to submission of application for final subdivision and must be approved prior to the issuance of a site-grading permit.
11. A final subdivision shall be approved by Planning Commission and recorded with the Greene County Auditor's Office prior to the release of

any zoning permits for this project.

12. Final drainage calculations shall be approved by the City Engineer prior to the release of the record plan for recording.
13. Prior to the release of the record plan for recording, the applicant shall sign a Subdivider's Contract and submit a bond or letter of credit for the public improvements if required by the City Engineer.
14. The construction hours shall be limited to 7:00 AM to 7:00 PM, Monday thru Saturday.
15. All residential style trash totes shall be stored within or immediately adjacent to a primary structure, and shall be out of ordinary public view on days when trash collection is not occurring (except the night before scheduled pick-up is to occur).
16. Prior to the release of the record plan, park fees shall be paid in-lieu of dedication of parkland as determined at the subdivision stage.
17. There shall be a minimum of 8 handicap designated parking spaces on the site.
18. The approval of this request is contingent upon the associated PUD Rezoning PUD 16-1 being approved and becoming effective. Should R-PUD 16-1 be disapproved, this site plan shall be null and void.
19. The developer shall pay all costs associated with the installation of a street light at the intersection of Quill Road and Straight Arrow Road.
20. The developer shall pay all costs associated with the design and construction of necessary modifications to the existing traffic signal at the intersection of Straight Arrow Road and County Line Road.
21. The south side of Quill Road, connecting to Straight Arrow Road, shall be constructed to City standards for public roadways.
22. The emergency access at Terrance Drive shall be restricted by collapsible bollards or a gate.
23. The row of evergreen trees along the northern property line shall be continued until the existing woods.
24. The side drive access to Unit 4 from Quill Road shall be reviewed and moved to a front entry garage if feasible.

25. There shall be a 20-foot setback from the back of the sidewalk to the front of the garage to allow vehicle parking and to maintain a free and clear access on the sidewalks.

SECTION III

These plans and all papers relating to the approved plan shall be submitted with this resolution to City Council.

The Clerk is directed to transmit the case to City Council for further determination as required by law.

ADOPTED: September 7, 2016

VOTING FOR ADOPTION: Daniel Archibald
Charles Curran
Troy Erbes
Nicholas Loftis

VOTING AGAINST: None

RECUSED: Michael Self

Chairman

Attest:

PUD 16-1 SSP 1 Cottages of Beaver Creek Resolution

ORDINANCE NO. 16-19

CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER UPTON ON THE 8TH DAY OF AUGUST, 2016.

AN ORDINANCE AMENDING THE ZONING MAP, BY REZONING APPROXIMATELY 20.03 ACRES OF LAND LOCATED AT 2358 COUNTY LINE ROAD FROM A-1 AGRICULTURAL TO R-PUD, RESIDENTIAL PLANNED UNIT DEVELOPMENT, FURTHER DESCRIBED AS BOOK 3, PAGE 3, PARCEL 72 ON THE GREENE COUNTY PROPERTY TAX ATLAS. (PUD 16-1)

Whereas, Charlie Simms, Simms Development, 2785 Orchard Run Road, Dayton OH 45449, agent for the property owner, requests rezoning and concept plan approval; and

Whereas, the City of Beavercreek Planning Commission has recommended approval of the rezoning amendment with conditions and requirements; and

WHEREAS, Beavercreek City Council finds that the facts submitted with the application and presented at the public hearing and any modifications, amendments, or supplementary conditions satisfy the standards and criteria for Planned Unit Development approval as per §158.065 of the Zoning Code; and

WHEREAS, Beavercreek City Council finds that, pursuant to §158.071 of the Zoning Code, each and all of the included uses are appropriate for this specific Planned Unit Development; and

WHEREAS, Beavercreek City Council has voted to adopt the recommendation of the Planning Commission with modifications, this being a decision that requires approval by four members of Council.

NOW THEREFORE THE MUNICIPALITY OF BEAVERCREEK HEREBY ORDAINS:

SECTION I

That the Zoning Map referenced in §158.018 of the Zoning Code is hereby further amended to change approximately 20.03 acres of land, located at 2358 County Line Road, known as B42000300030007200 and as further described in the attached "Exhibit A" be rezoned to R-PUD Residential Planned Unit Development.

9. All principal dwellings shall be limited to one story.

10. Buffers and grading limits for the project shall be as follows:

- a) Where the woods exist along the southern property line abutting the multi-family residential properties, maintain a 50-foot buffer from the property line. No grading or removal of vegetation permitted with the southern 25 feet of this 50-foot buffer, or as regulated by Planning Commission and/or City Council at the specific site plan stage.
- b) Where there are no woods along the southern property line abutting the multi-family residential properties, construct a 4-foot mound, complimented with dense evergreens trees. In areas where grading of adjacent properties prohibit a four foot mound, or where the mound tapers down, shall be supplemented with 8-foot dense evergreen trees.
- c) Where the woods exist along the northern property line abutting the single family residential properties, maintain a 50-foot buffer from the property line. No grading or removal of vegetation permitted within this 50-foot buffer, except within the southern two feet, or as regulated by Planning Commission and/or City Council at the specific site plan stage.
- d) Where there are no woods along the northern property line abutting the single family residential properties, construct a 6-foot mound, complimented with dense evergreens trees.
- e) If acceptable to Beavercreek Fire Department, maintain natural barrier (tree) that dead-ends on Quill Drive to the north by curving the emergency access road.
- f) Emergency access roads shall be constructed from grass pavers, the final design and location subject to review and approval at the specific site plan stage.
- g) No construction traffic shall be permitted on Quill Road, Terrace Drive, or Straight Arrow Road.

11. At the specific site plan stage, all plans shall be made available to Beavercreek Police and Fire Departments, for their determination whether or not it is necessary that the emergency access point at Quill Drive be made a standard access point so as to make the development more accessible for emergency vehicles.

SECTION III

It is hereby 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

EXHIBIT A

Legal Description for 2358 County Line Road, Dayton, Ohio:

Situate in the Township (now City) of Beavercreek, County of Greene and State of Ohio, being part of Southwest Quarter of Section Seven (7), Town Two (2) and Range Seven (7) M.R.S:

Bounded and described as follows: Beginning at a corner in the West line and S. 5 deg. 00 min. W. 60.80 poles from a stone at the Northwest corner of the said Quarter Section, the said corner being in the County Line Road and the Southwest corner of a tract of land belonging to Rosella R. Miller; thence with the South line of the said Miller tract S. 84 deg. 45 min. E. 162.00 poles to a concrete post in the West line of a tract of land belonging to Clarence Hawker et. al.; thence with the line of said Hawker tract S. 4 deg. 55 min. W. 20.06 poles to an iron pipe; thence N. 85 deg. 15 min. W. 162.01 poles to an iron pipe in the west line of the said Quarter Section and County Line Road; thence with the said line and road N. 5 deg. 00 min. E. 21.21 poles to the place of beginning and containing Twenty and Eighty-Eight Hundredths (20.88) Acres be it the same more or less according to a survey made by H. H. Warner Dec. 12, 1943.

EXCEPTING THEREFROM an easement of Seven Hundredths of an acre for highway purposes as recorded in Vol. 163, Page 262 in the Greene County Deed Records.

ALSO EXCEPTING 0.72 acres deeded from Audra A. Trangenstein, married, to Kettering Baptist Church on the 18th day of May, 1959, said deed being recorded in Vol. 309, at page 91, Greene County, Ohio Deed Records, said exception being described as follows:

Situate in the Township (now City) of Beavercreek, in the County of Greene and State of Ohio and being part of the Southwest Quarter of Section Seven (7), Town Two (2) and Range Seven (7) M.R.S., bounded and described as follows:

Beginning at a corner in the West line and South 5 deg. 00 min. West 82.01 poles from a stone at the Northwest corner of the said Quarter Section, the said corner being in the County Line Road and also being the Southwest corner of a 20.88 acre tract of land now owned by Audra A. Trangenstein; thence with the West line of said Trangenstein tract and the County Line Road North 5 deg. 00 min. East 150 feet to an iron pin in the center of said Road; thence South 85 deg. 15 min. East 210 feet to an iron pin; thence South 5 deg. 00 min. West 150 feet to an iron pin in the South line of the said Trangenstein tract; thence with the South line of said Trangenstein

It is understood the above contains a total of 0.129 of an acre, more or less, including the present road which occupies 0.126 of an acre, more or less.

The description for parcel number 61WD above was calculated and derived from a centerline survey made by Shaw, Weiss & De Naples, Registered Surveyor Number 6819.

Said stations being the Station numbers as stipulated in the hereinbefore mentioned survey and as shown by plans on file in the Department of Transportation, Columbus, Ohio.

Grantor claims title by instrument of recorded in Volume 544, Page 902, Greene County, Ohio Deed Records.

Leaving for the part hereby conveyed 20.031 acres, more or less.

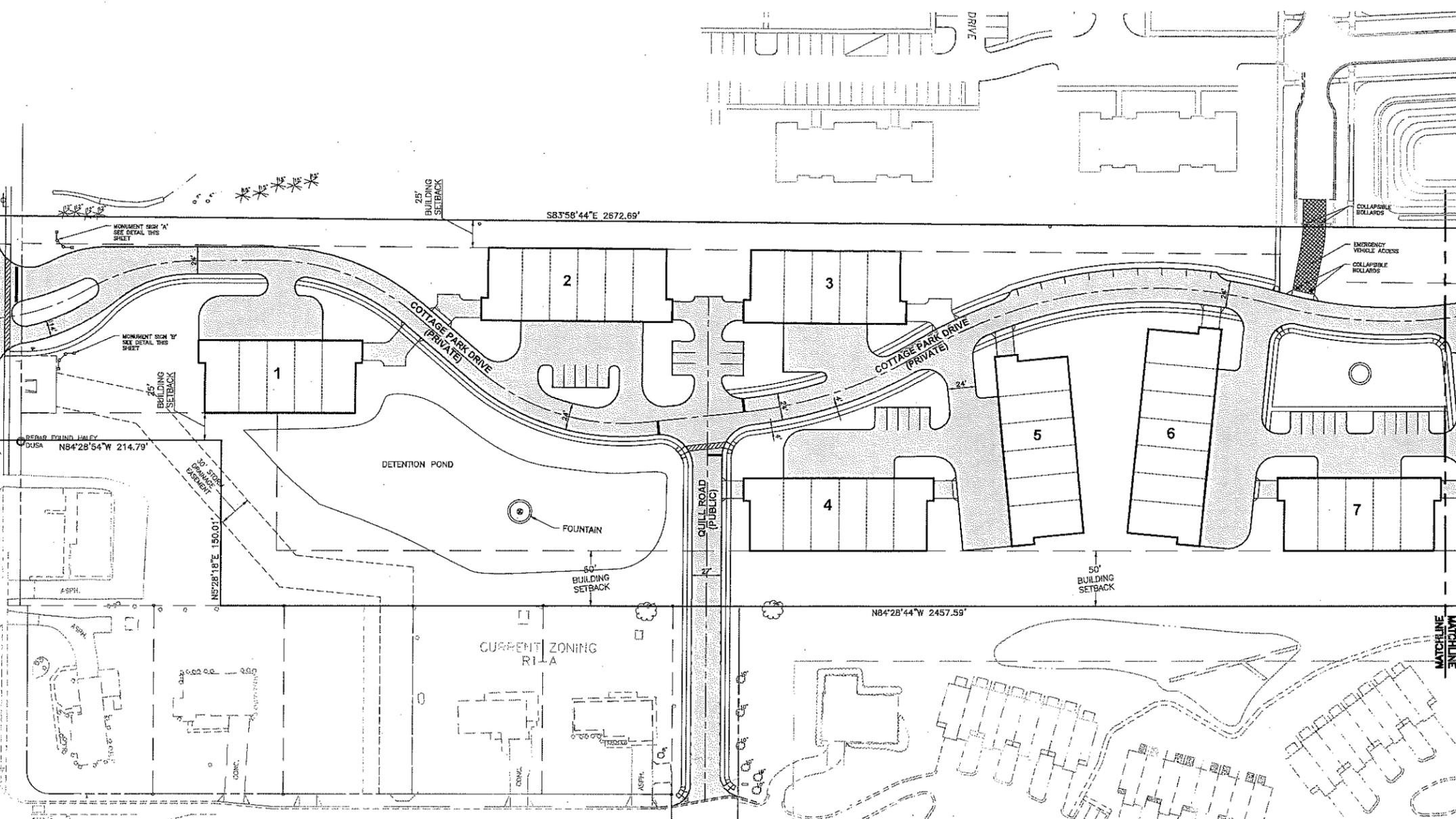
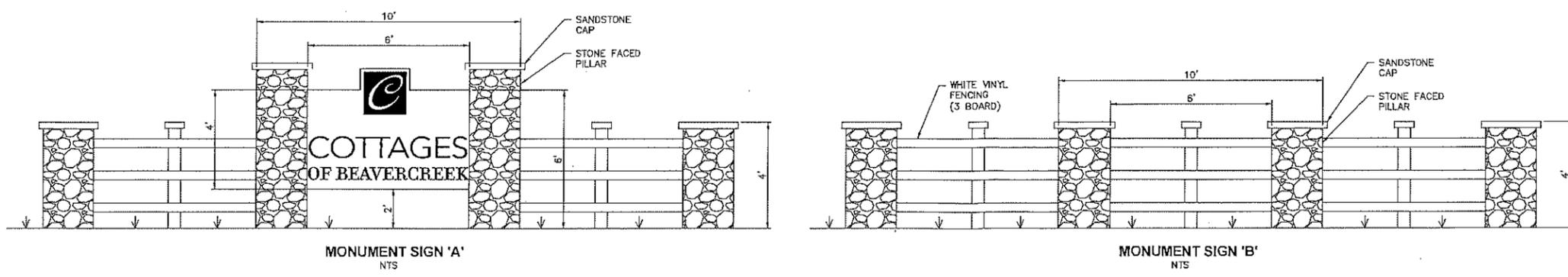
Last Deed References: Volume 180, Page 451 and Volume 544, Page 902, Greene County, Ohio Deed Records.

Parcel I.D. No. B42-3-3-72.

Description Check
Greene County Engineer's Tax Map Dept.
 Legally Sufficient As Described
 Legally Sufficient With Corrections Noted
 Legally Insufficient, New Survey Required
By [Signature] T 9726
Par ID No. BK PG PAR

*Before Next
Trial*

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SITE DATA

- PROJECT DESCRIPTION:**
 APPROXIMATELY 20.03 ACRES (GROSS) OF MULTI-FAMILY HOUSING.
 EXISTING ZONING: AGRICULTURE
 PROPOSED ZONING: R-PUD
- TOTAL SITE AREA:**
 TOTAL SITE = 20.03 ACRES (GROSS)
- CURVE NUMBERS:**
 PRECONSTRUCTION: CN = 61
 POST-CONSTRUCTION: CN = 75.69
- PARKING DATA:**
 TOTAL
 PARKING REQUIRED 185 SPACES* PARKING PROVIDED OPEN PARKING-69 SPACES
 GARAGE-170 SPACES
 TOTAL-239 SPACES
- OPEN SPACE:**
 TOTAL PROPOSED: - 59% OPEN SPACE
 GROSS AREA OF STRUCTURES = 160,157 SF
- STRUCTURE DATA:**
 TOTAL UNITS: 84 UNITS
 PROPOSED DENSITY: 4.19 UNITS PER ACRE
 BLDG. HEIGHT: 17'-2"

NOTES:

- ACCESS TO THE SITE SHALL BE MAINTAINED THROUGHOUT ALL PHASES OF CONSTRUCTION.
- PROPER PERMITS MUST BE OBTAINED FROM THE CITY OF BEAVERCREEK FIRE DEPARTMENT PRIOR TO THE BEGINNING OF CONSTRUCTION.
- ALL CONSTRUCTION SHALL CONFORM TO THE UNIFIED FIRE CODE, OHIO FIRE CODE AND THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARDS.
- LIGHTING WILL BE PROVIDED BY COACH LIGHTS MOUNTED TO THE BUILDINGS (FOUR TOTAL AT EACH BUILDING) LIGHTS WILL BE EQUIPPED WITH PHOTOCELLS.
- ALL GROUND SIGNS SHALL BE LANDSCAPED AROUND THE BASE IN ACCORDANCE WITH SECTION 158.148(C)(3) OF THE BEAVERCREEK ZONING CODE.
- PROVIDE ORANGE SNOW FENCE AROUND ALL TREES TO BE PRESERVED.
- CONSTRUCTION HOURS: MONDAY-SATURDAY 7AM-7PM



PROJECT NO:	NO.	DATE	REVISION
		8/31/16	REVISE TO CITY COMMENTS
DATE	DES.	BS	
	DR.	RWJ	
CKD.	JAP		

4454 Idea Center Blvd
 Dayton, OH 45430-1500
 937.461.6660
 FAX: 937.461.0743

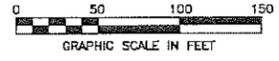
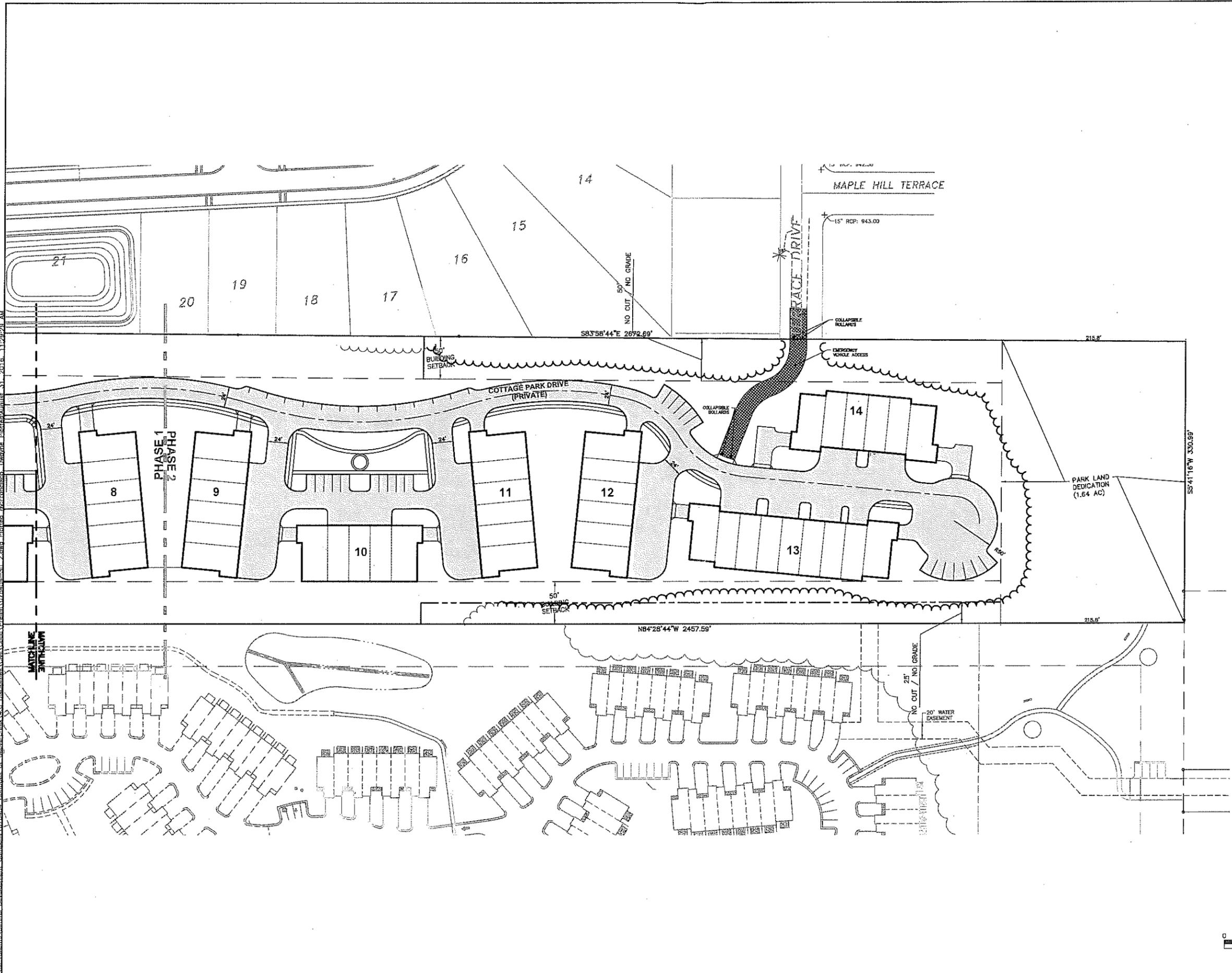
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COTTAGES OF BEAVERCREEK
 CHARLES V. SIMMS DEVELOPMENT
 CITY OF BEAVERCREEK
 GREENE COUNTY, OHIO

SITE PLAN

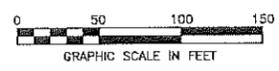
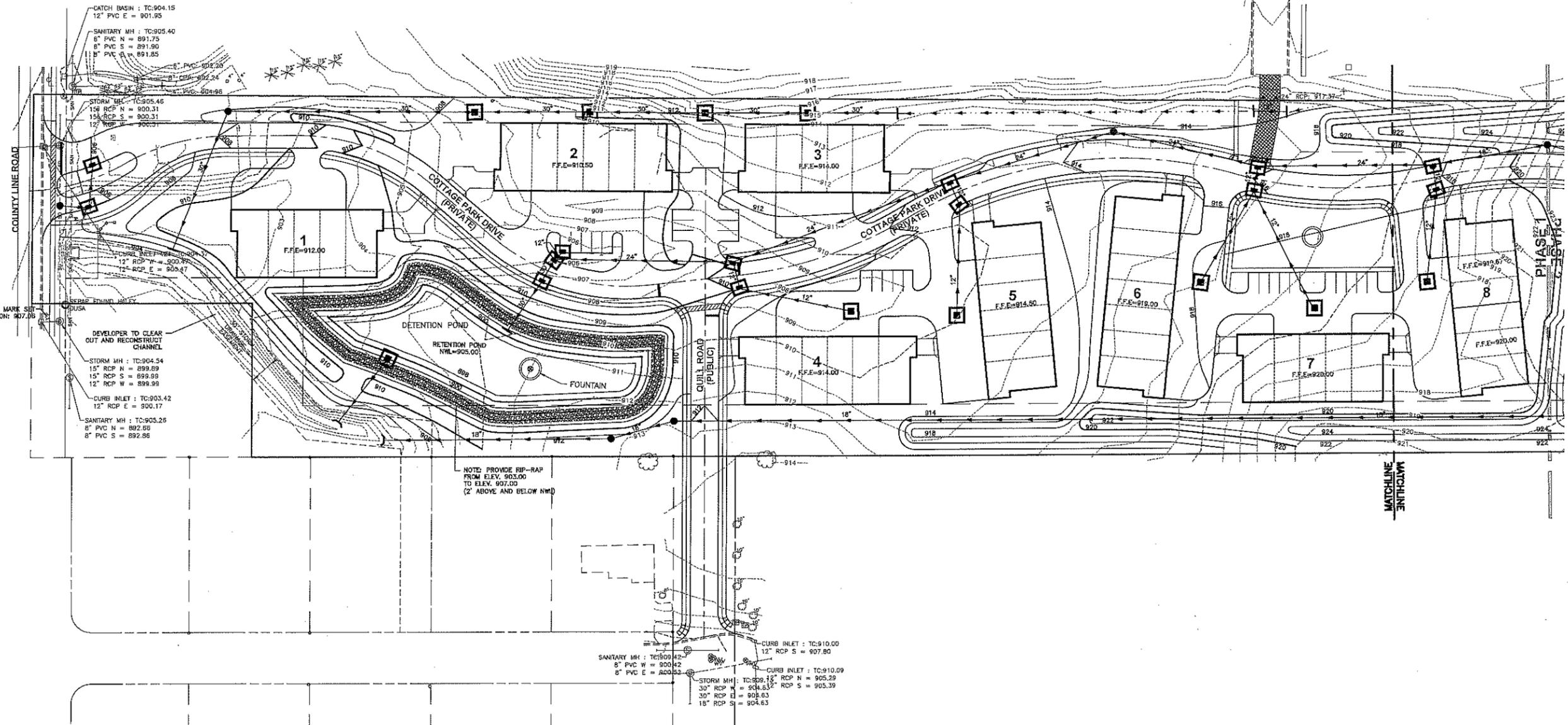
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PROJECT NO.: DATE: DES. BS: DR. RWJ: CKD. JAP		No. DATE 8/31/16	REVISION
			REVISE TO CITY COMMENTS
4454 Idea Center Blvd Dayton, OH 45430-1500 937.461.5660 FAX: 937.461.0743		WOOLPERT	
COTTAGES OF BEAVERCREEK CHARLES V. SIMMS DEVELOPMENT CITY OF BEAVERCREEK GREENE COUNTY, OHIO		SITE PLAN	
SHEET NO.		DP-2	

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No.	DATE	REVISION
1	8/31/16	REUSE TO CITY COMMENTS

PROJECT No.:
 DATE: _____
 DES. BY: BS
 DR. BY: DLF
 CKD. BY: JAP

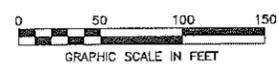
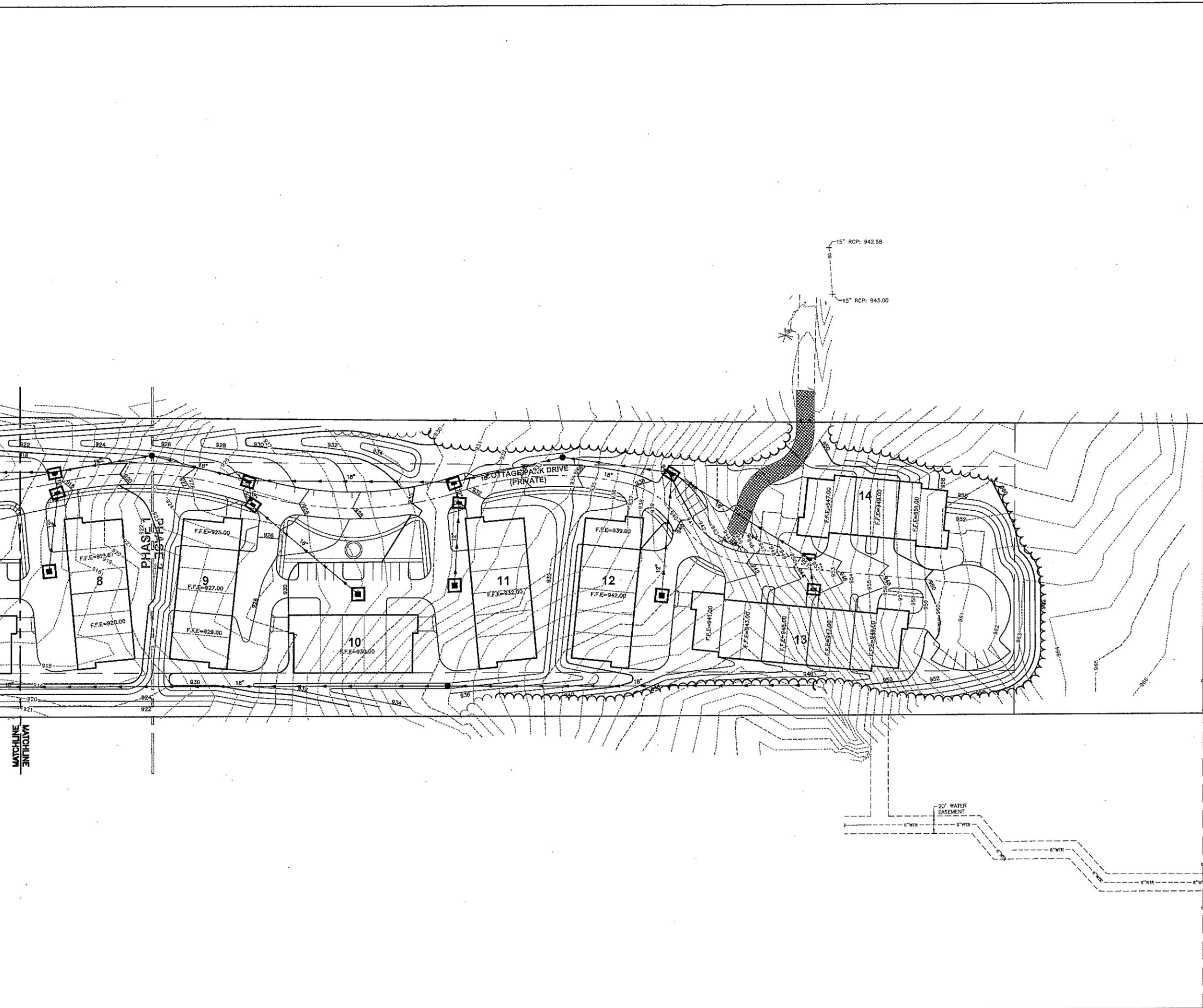
4454 Idea Center Blvd
 Dayton, OH 45430-1500
WOOLPERT
 937.461.5660
 FAX: 937.461.0743

COTTAGES OF BEAVERCREEK
CHARLES V. SIMMS DEVELOPMENT
 CITY OF BEAVERCREEK
 GREENE COUNTY, OHIO

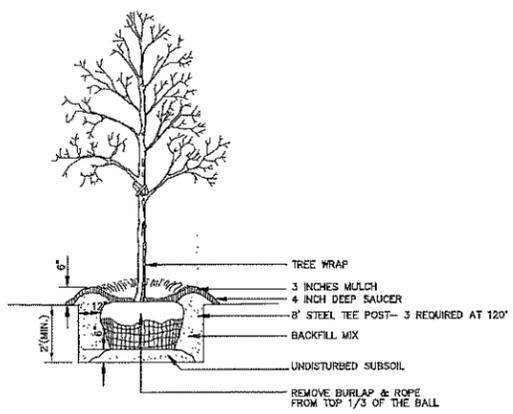
GRADING PLAN

SHEET NO.
DP-3

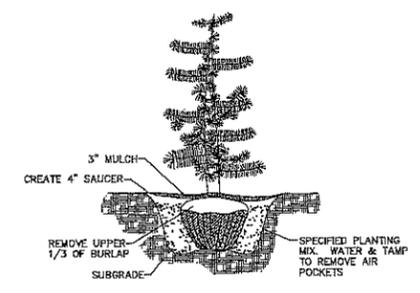
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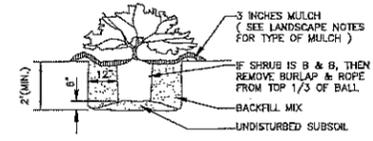
<p>COTTAGES OF BEAVERCREEK CHARLES V. SIMMS DEVELOPMENT CITY OF BEAVERCREEK GREENE COUNTY, OHIO</p>		<p>GRADING PLAN</p>	
<p>PROJECT No: _____ DATE: _____ DES. BY: _____ DR. BY: _____ CKD. BY: _____</p>		<p>No. DATE 8/23/16</p>	
<p>4454 Idea Center Blvd Dayton, OH 45430-1500 937.461.5660 937.461.0743</p>		<p>REVISION REVISE TO CITY COMMENTS</p>	
<p>SHEET NO. DP-4</p>		<p>956</p>	



TREE PLANTING
N.T.S.

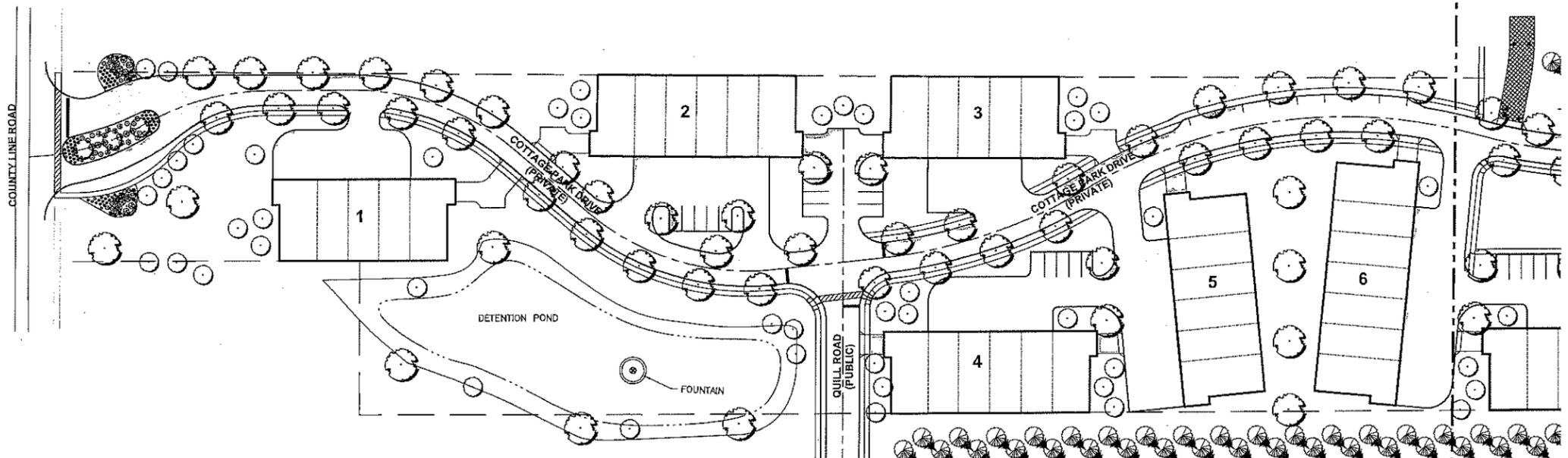


EVERGREEN PLANTING DETAIL
N.T.S.



SHRUB PLANTING
N.T.S.

NOTE: SEE LANDSCAPE NOTES FOR THE TYPE OF MULCH MATERIAL TO USE.



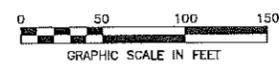
SYMBOL	NAME	QTY.	ROOT	SIZE
CANOPY TREES				
[Symbol]	Green Norway Maple	119	B&B	2.5" CAL. 10' HT.
	Red Maple			
	Heritage Blue Birch			
	Skylark Honeylocust			
EVERGREEN TREES				
[Symbol]	Norway Spruce	106	B&B	6' HT.
	Baby Blue Spruce			
	Eastern White Pine			
INDUSTRIAL TREES				
[Symbol]	Fraxino Fraxinea Hornbeam	80	B&B	2" CAL. 8' HT.
	Adiantum Umbrella			

LANDSCAPE NOTES

- LOCATING AND PROTECTING ALL UNDERGROUND UTILITIES, PRIOR TO DIGGING, IS RESPONSIBILITY OF THE LANDSCAPE CONTRACTOR.
- PRIOR TO INSTALLATION, THE LANDSCAPE CONTRACTOR SHALL INSPECT THE SUB GRADE, GENERAL SITE CONDITIONS, VERIFY ELEVATIONS, UTILITY LOCATIONS, IRRIGATION, APPROVE TOPSOIL PROVIDED BY GENERAL CONTRACTOR AND OBSERVE THE SITE CONDITIONS UNDER WHICH THE WORK IS TO BE DONE. NOTIFY GENERAL CONTRACTOR OF ANY UNSATISFACTORY CONDITIONS. WORK SHALL NOT PROCEED UNTIL SUCH CONDITIONS HAVE BEEN CORRECTED AND ARE ACCEPTABLE TO THE LANDSCAPE CONTRACTOR AND/OR CONSTRUCTION MANAGER.
- GENERAL AND LANDSCAPE CONTRACTOR ARE RESPONSIBLE FOR PROTECTING EXISTING TREES FROM DAMAGE DURING CONSTRUCTION. GENERAL CONTRACTOR TO INSTALL TREE PROTECTION FENCING PRIOR TO ANY SITE WORK.
- ALL SHRUB AND GROUND COVER BEDS TO BE MULCHED WITH A MINIMUM OF 3 INCHES OF CLEAN SHREDDED HARDWOOD MULCH.
- PLANTING HOLES TO BE DUG A MINIMUM OF TWICE THE WIDTH AND 6-12 INCHES DEEPER THAN THE SIZE OF THE ROOT BALL OF BOTH SHRUB AND TREE. AMEND BACKFILL WITH TOPSOIL MIX. BACKFILL AND TAMP BOTTOM OF HOLE PRIOR TO PLANTING SO TOP OF ROOT BALL DOES NOT SETTLE BELOW SURROUNDING GRADE.
- TOPSOIL MIX TO BE 4 PARTS SCREENED TOPSOIL AND 1 PART ORGANIC MATERIAL (I.E. NATURE'S HELPER OR PRO MIX).
- EXISTING GRASS IN PROPOSED PLANTING AREAS TO BE REMOVED AND AREA TO BE HAND RAKED TO REMOVE ALL ROCKS AND DEBRIS LARGER THAN 1 INCH IN DIAMETER PRIOR TO PLANTING SHRUBS.
- SOIL TO BE TESTED TO DETERMINE FERTILIZER AND LIME REQUIREMENTS. LIME AND FERTILIZER TO BE DISTRIBUTED PRIOR TO SPREADING SEED.
- ALL CHANGES TO DESIGN AND/OR PLANT SUBSTITUTIONS TO BE AUTHORIZED BY LANDSCAPE ARCHITECT.
- ALL PARKING ISLANDS TO BE BERMED UP 6"-10" WITH CLEAN FRIABLE TOPSOIL PRIOR TO PLANTING.
- ALL LANDSCAPING SHALL BE INSTALLED IN CONFORMANCE WITH ANSI Z60.1 THE AMERICAN STANDARD FOR NURSERY STOCK, AND THE ACCEPTED STANDARDS OF THE AMERICAN ASSOCIATION OF NURSERYMEN.
- THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL PLANTS INSTALLED FOR ONE FULL YEAR FROM DATE OF ACCEPTANCE BY THE OWNER. ALL PLANTS SHALL BE ALIVE AND AT A VIGOROUS RATE OF GROWTH AT THE END OF THE GUARANTEE PERIOD. THE LANDSCAPE CONTRACTOR SHALL NOT BE RESPONSIBLE FOR ACTS OF GOD OR VANDALISM.
- ANY PLANT THAT IS DETERMINED DEAD, IN AN UNHEALTHY OR UNSIGHTLY CONDITION, LOST ITS SHAPE DUE TO DEAD BRANCHES OR OTHER SYMPTOMS OF POOR, NON-VIGOROUS GROWTH SHALL BE REPLACED BY THE LANDSCAPE CONTRACTOR WITH THE COST OF THE REPLACEMENT INCLUDED IN THE BID OR PROPOSAL PRICE.
- WATER THOROUGHLY TWICE IN THE FIRST 24 HOURS AND APPLY MULCH IMMEDIATELY.

PERMANENT SEEDING

- ALL FILL AND CUT SLOPES SHOULD BE SEEDED IMMEDIATELY AFTER CONSTRUCTION. SEED TO THE FOLLOWING GRASS MIXTURES:
- (1) 6# TURF TYPE TALL FESCUE (TRIPLE BLEND)
 - 8# 12-12-12 FERTILIZER
 - 1 1/2 BALES OF STRAW PER 1000 SQUARE FEET ON 2:1 OR STEEPER SLOPES USE:
 - (2) 2# CROWN VETCH
 - 1 1/2# TALL FESCUE
 - 1 1/2# PERENNIAL RYEGRASS
 - 20# 5-10-10 FERTILIZER
 - 2 BALES OF STRAW PER 1000 SQUARE FEET



N

REVISION	No.	DATE	REVISION
		8/31/16	REVISE TO CITY COMMENTS
PROJECT No:	DATE	DES.	DR.
		BS	DLF
			JAP
			CKD.

4454 Idea Center Blvd
Dayton, OH
45430-1500
837.461.5660
FAX: 937.461.0743

WOOLPERT

COTTAGES OF BEAVERCREEK
CHARLES SIMMS DEVELOPMENT
CITY OF BEAVERCREEK
GREENE COUNTY, OHIO

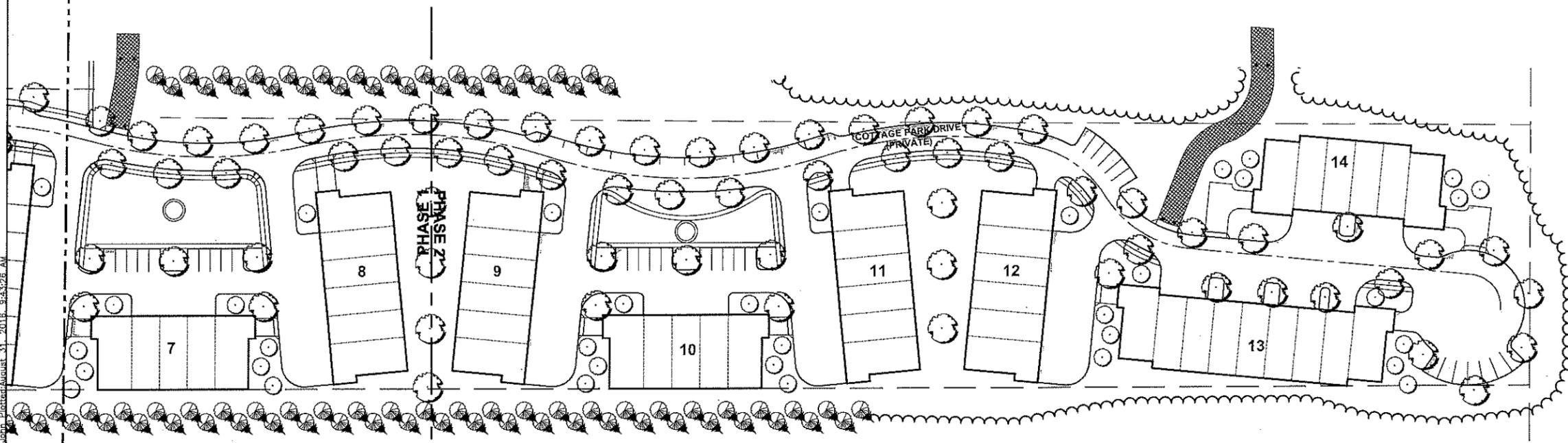
LANDSCAPE PLAN

SHEET NO.

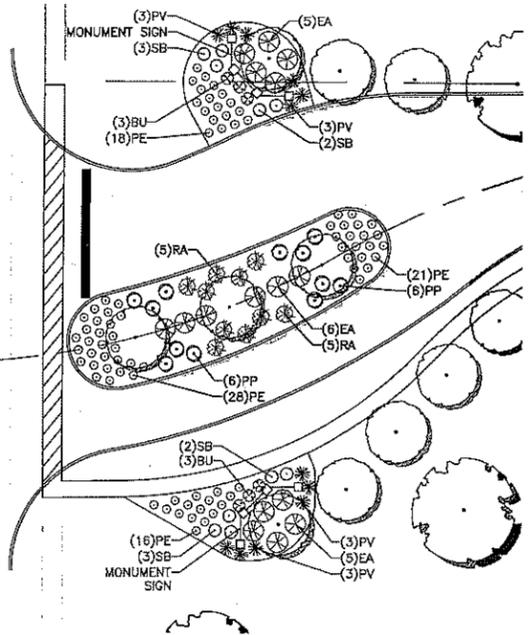
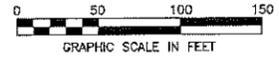
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MATCHLINE
MATCHLINE



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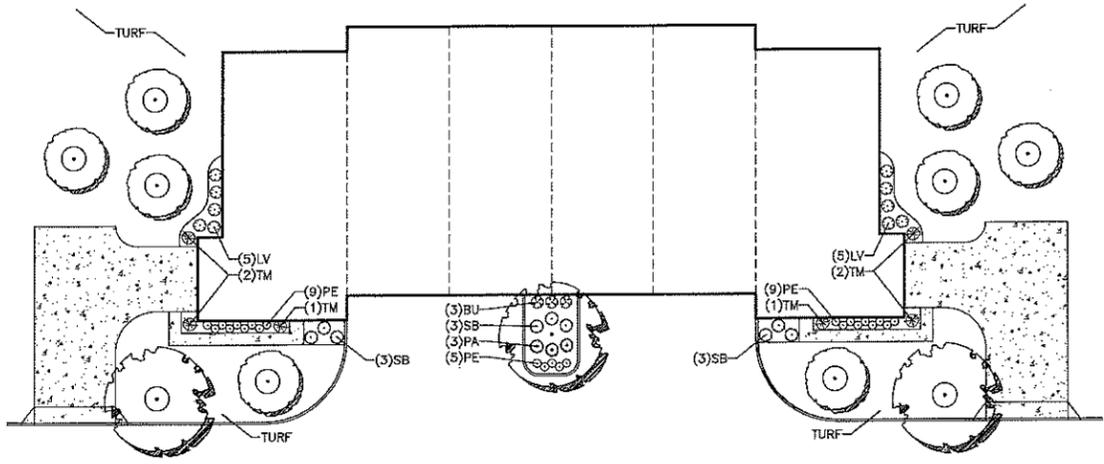


1 ENTRY WAY LANDSCAPE ENLARGEMENT
SCALE: 1" = 20'-0"

TAG	SCIENTIFIC NAME	COMMON NAME	COND.	SIZE	REMARKS
BU	Buxus x 'Green Velvet'	Green Velvet Boxwood	#3 cont.	18"ht. x 18"wd.	Full, vigorous
EA	Euonymus alatus 'Compacta'	Dwarf Burning Bush	#3 cont.	18"ht. x 18"wd.	Full, vigorous
LV	Ligustrum vicaryi	Vicary Golden Privet	#3 cont.	18"ht. x 18"wd.	Full, vigorous
PA	Picea abies 'Pumila'	Dwarf Nest Spruce	#3 cont.	12"ht. x 18"wd.	Full, vigorous
PP	Picea pungens 'Glauc Globosa'	Globe Blue Spruce	#3 cont.	18"ht. x 18"wd.	Full, vigorous, low graft
RA	Rhus aromatica 'Gro-Low'	Gro-Low Fragrant Sumac	#3 cont.	12"ht. x 18"wd.	Full, vigorous
SB	Spiraea x bumalda 'Anthony Waters'	Anthony Waters' Spirea	#3 cont.	18"ht. x 18"wd.	Full, vigorous
TM	Taxus x media 'Fastigiata'	Pyramid Yew	#3 cont.	18"ht. x 18"wd.	Full, vigorous
PV	Panicum virgatum 'Ruby Slippers'	Ruby Slippers Switchgrass	#2 cont.		Full, vigorous
PE	Assorted Perennials	Liriope, Salvia, Hosta, Daylily	#1 cont.		

* ALL PERENNIALS ARE GROUPED BY SPECIES.
 ** SEE LANDSCAPE PLAN FOR TREE SPECIES.

2 PROTOTYPE & ENLARGEMENT PLANT KEY



3 BUILDING FOUNDATION PLANTING PROTOTYPE
SCALE: 1" = 20'-0"

PROJECT No.:	DATE	DES.	DR.	CKD.	JAP

4454 Idea Center Blvd
 Dayton, OH
 45430-1500
 937.461.5660
 FAX: 937.461.0743



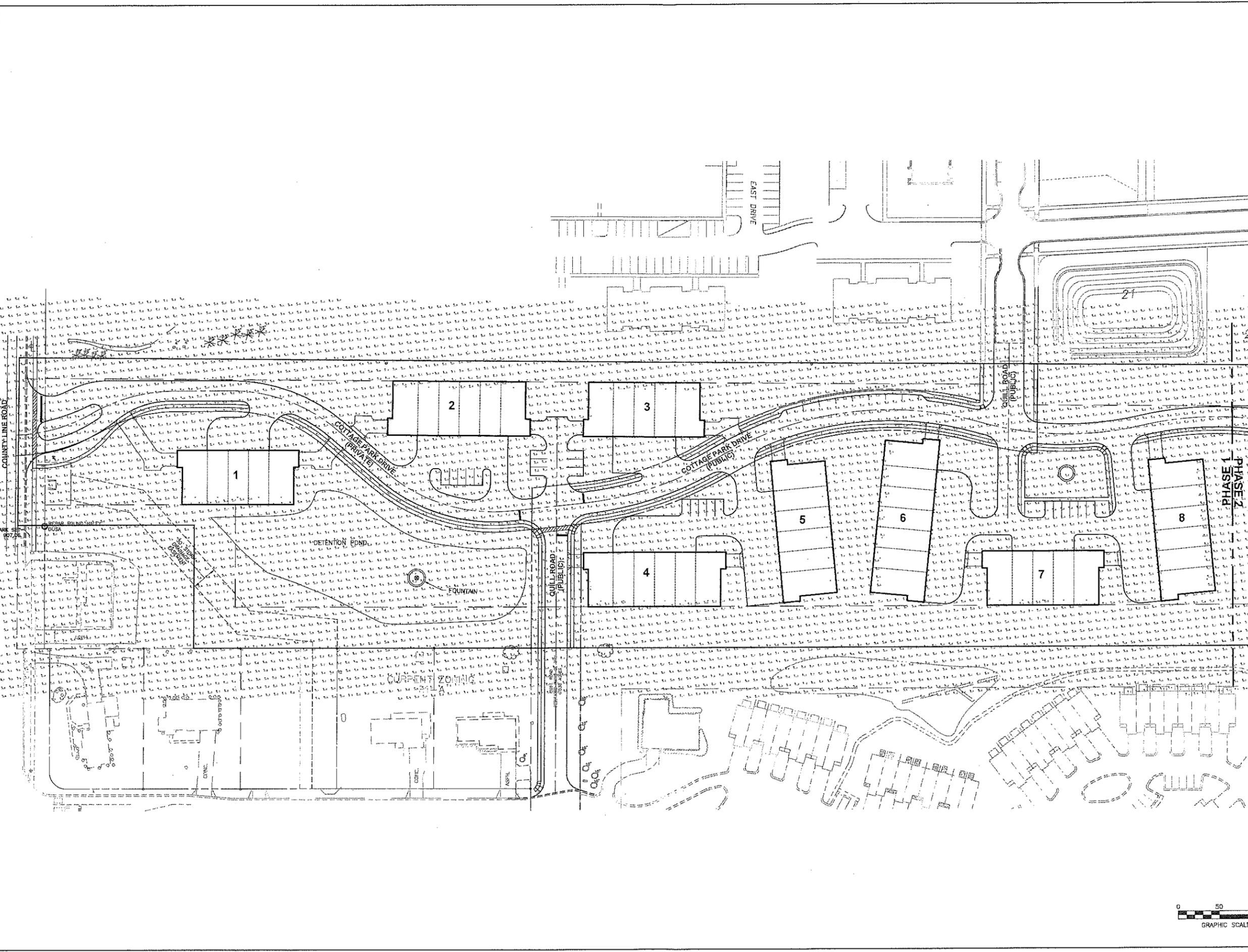
COTTAGES OF BEAVERCREEK
CHARLES SIMMS DEVELOPMENT
 CITY OF BEAVERCREEK
 GREENE COUNTY, OHIO

LANDSCAPE PLAN

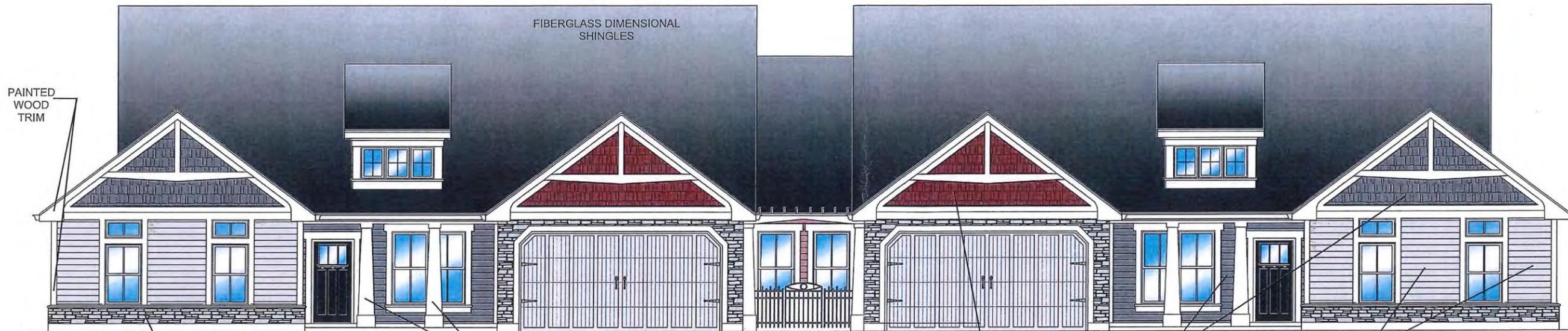
SHEET NO.

LP-2

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PROJECT No:		No.		DATE		REVISION	
DATE		8/24/16		REVISE TO CITY COMMENTS			
DES: BS							
DR: DJF							
CKD: JAP							
4454 Idea Center Blvd Dayton, OH 45430-1500 WOOLPERT 937.461.5660 FAX: 937.461.0743				COTTAGES OF BEAVERCREEK CHARLES SIMMS DEVELOPMENT CITY OF BEAVERCREEK GREENE COUNTY, OHIO			
PHOTOMETRICS PLAN				SHEET NO. LT-1			



FIBERGLASS DIMENSIONAL SHINGLES

PAINTED WOOD TRIM

FAUX STONE

PAINTED WOOD COLUMNS

FRONT ELEVATION
SCALE: 1/4"=1'-0"

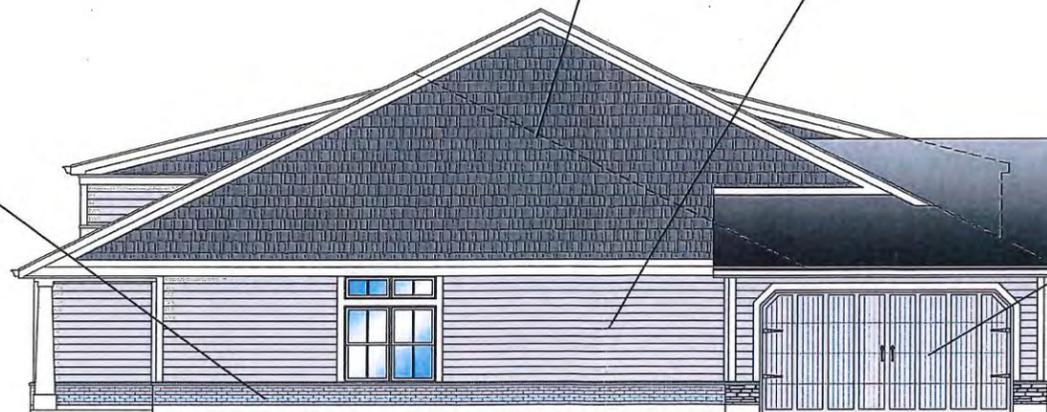
CONCRETE FIBER SHAKE SIDING OR PREMIUM VINYL SIDING

CONCRETE FIBER OR PREMIUM LAP SIDING



REAR ELEVATION
SCALE: 1/4"=1'-0"

BRICK



ALUMINUM OVERHEAD DOOR

SIDE ELEVATION
SCALE: 3/16"=1'-0"

RECEIVED

AUG 31 2016

CITY OF BEAVERCREEK
PLANNING DEPARTMENT

ATELIER DESIGN LLC
Architects
1035 East Centerville Station Road
Centerville, Ohio 45459
937-433-0252
Fax: 937-433-5032



A PROPOSED BUILDING FOR:
COTTAGES OF BEAVERCREEK
CHARLES V. SIMMS DEVELOPMENT

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No.	Revisions/Submissions	Date

DRAWN: J.M.
CHECKED: A.L.
COMPLETION DATE: 7/8/2016

DRAWING TITLE:
PRE-LIM PLANS

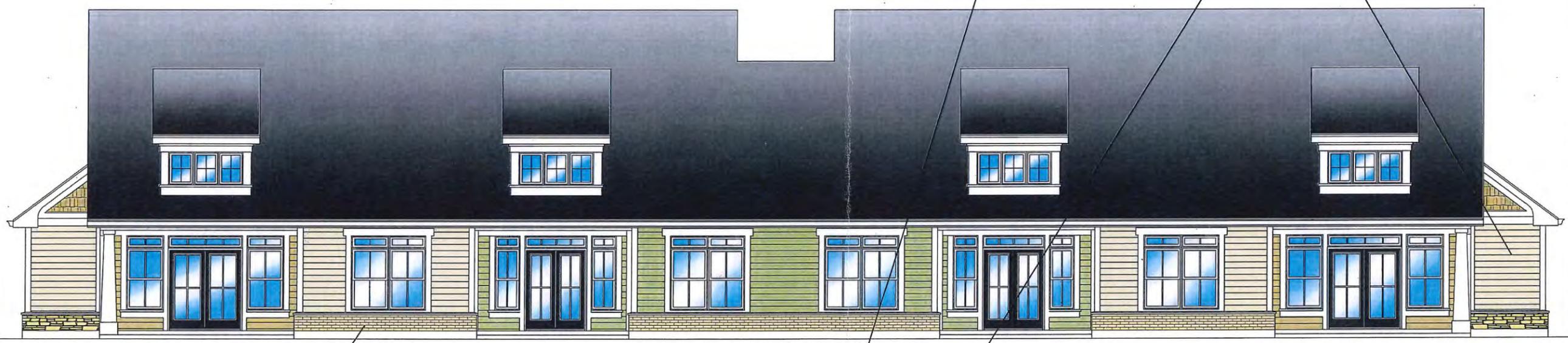
FILE NUMBER 4379

SHEET NO.

A-1.0



FRONT ELEVATION
SCALE: 1/4"=1'-0"



REAR ELEVATION
SCALE: 1/4"=1'-0"



SIDE ELEVATION
SCALE: 3/16"=1'-0"

ATELIER DESIGN LLC
Architects
1035 East Centerville Station Road
Centerville, Ohio 45459
937-433-0252
Fax 937-433-5032



A PROPOSED BUILDING FOR:
COTTAGES OF BEAVERCREEK
CHARLES Y. SIMMS DEVELOPMENT

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No.	Revisions/Submissions	Date

DRAWN: JM
CHECKED: AL
COMPLETION DATE: 7/8/2016

DRAWING TITLE:
PRE-LIM PLANS

FILE NUMBER **4379**

SHEET NO.
A-1.0

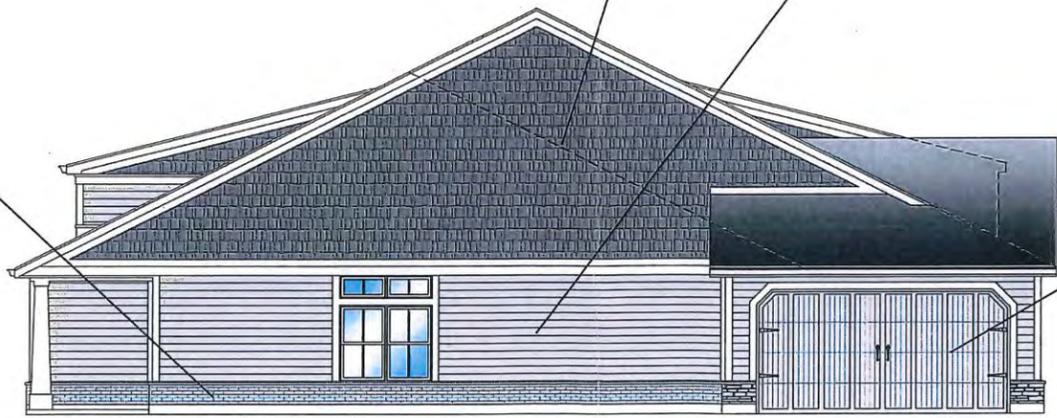




FRONT ELEVATION
SCALE: 1/4"=1'-0"



REAR ELEVATION
SCALE: 1/4"=1'-0"



SIDE ELEVATION
SCALE: 3/16"=1'-0"

ATELIER DESIGN LLC
Architects
1035 East Centerville Station Road
Centerville, Ohio 45459
937-433-0252
Fax: 937-433-5032



A PROPOSED BUILDING FOR:
COTTAGES OF BEAVERCREEK
CHARLES V. SIMMS DEVELOPMENT

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No.	Date	Revisions/Submissions

DRAWN: J.M.
CHECKED: A.L.
COMPLETION DATE: 7/8/2016

DRAWING TITLE:
PRE-LIM PLANS

FILE NUMBER 4379

SHEET NO.
A-1.0

RECEIVED
AUG 31 2016
CITY OF BEAVERCREEK
PLANNING DEPARTMENT

CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT

MAC 10/27/16

Meeting Date: October 24, 2016 Agenda Reference No. VIII. A-E	Reference Topic PUD 91-2 MOD 9-16 (MAJOR) BSM Development Motion
--	---

ACTION REQUESTED		
<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Disapproval	<input type="checkbox"/> Table
<input type="checkbox"/> Review and Comment	<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Other

REQUEST BY APPLICANT:

The applicant is requesting approval to modify the existing site plan for PUD 91-2, in order to allow for the construction of a 4,800 square foot retail building within the Shoppes at Fairfield Commons.

STAFF RECOMMENDATION:

Planning Commission and Staff are recommending approval of this Major Modification as outlined in the attached Motion.

PROCEDURAL OPTIONS FOLLOWING ACTION:

City Council may choose to approve, disapprove, modify or table the attached application for further review.

CITY OF BEAVERCREEK STAFF REPORT

October 20, 2016

CASE NUMBER: PUD 91-2 MOD 9/16 (Major) BSM Development
Major Modification 02/13

APPLICANT: BSM Development LLC
3011 Armory Dr. Suite 120
Nashville TN 37204

REQUEST

The applicant is requesting approval to modify the existing site plan for PUD 91-2, in order to allow for the construction of a 4,800 square foot retail building within the Shoppes at Fairfield Commons.

Zoning Approval

The specific site plan for the Shoppes at Fairfield Commons was granted approval in 1996 and included 31.332 acres. Because that approval is still in effect, the applicant is seeking a major modification to make additional changes to the original approved plan, which is attached. The 1996 plan shows that there was intended to be a total of 40,000 square feet in outlot building space dispersed among three buildings. With this submission, should it be approved, the total square footage in outlot buildings would be 26,709 square feet. Although this is a significant decrease in square footage, because the number of buildings has increased and no architectural plans were previously approved, this request requires major modification approval.

ANALYSIS

Building Design

As seen in the attached architectural elevations, the applicant is proposing to construct a single-story, primarily brick and EIFS retail building. The majority of the construction material used will be a dark red brick veneer. The remaining portion of the building will be constructed of tan colored EIFS. The base consists of a lighter brick that extends to all four elevations. The proposed materials are consistent with the other recently approved structures within this Planned Unit Development. The applicant has including a sight line study demonstrating that the roof top units will be screened by the EIFS parapet and will not be visible from either North Fairfield Road or the access roads.

Access and Transportation Improvements

The proposed ingress and egress point for this site will be off of the existing IHOP access. No new access points are permitted due to the close proximity of this site to the North Fairfield access road. The proposed sidewalk will be connected from the IHOP property line and will extend along the access road and up to the existing side path on North Fairfield Road.

Parking

The Zoning Code's parking calculation for a retail building requires that retail sites maintain one parking space for each 250 square feet of floor area. By subtracting 15% in order to exclude mechanical areas, hallways, and restrooms, this development must have at least 16 parking spaces and 1 handicap accessible space. The applicant is proposing 24 spaces which exceeds that requirement. PUD 91-2 also has cross parking and cross access easements in place which allow all tenants of the PUD to utilize all of the parking within the entire development.

Screening, Landscaping and Open Space

Because there is a significant amount of landscaping already in place at the entrance to the Shoppes at Fairfield comments, the proposed landscaping is minimal but adequate. The final landscape plan will need to be reviewed and approved by staff prior to the release of a zoning permit.

Lighting

The applicant is proposing wall sconces on three elevations of the building as well as three light poles within the parking field. A condition of approval will require that the light poles match in height and design those that were installed at the IHOP development. All light poles are also required to be located within landscape islands and not within any parking area. The final photometric plan will require additional review and approval prior to the release of the zoning permit.

Signage

Wall signs will be permitted on three of the four elevations: the North, West, and East. Signage will be prohibited on the back of the building which faces the IHOP. Wall Signage shall be limited to two square feet of sign area per linear foot of store frontage, per the original SSP approval. The applicant has also included a proposed ground sign, which will not be allowed to be any taller than 4 feet, in order to be consistent with other ground signs within the PUD. No temporary signage will be permitted with the exception of a construction sign prior to opening, and per the Code, only 50% of the interior of any window may be covered by signage.

RECOMMENDATION

Based on this analysis, Planning Commission and staff recommend approval of this request subject to the conditions outlined in the attached Motion.

October 24, 2016

MOTION TO APPROVE
BSM DEVELOPMENT MAJOR MOD
PUD 91-2 MOD 9-16

"I move, for the purpose of taking administrative action, approval of a PUD Major Modification for BSM Development, PUD 91-2, MOD 9/16, on the basis that City Council finds the facts submitted with the application and accompanying materials, and modifications, amendments and supplementary conditions satisfy the standards and criteria for a PUD Major Modification approval as per §158.070 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. I further move that this motion with all conditions be fully recorded in the minutes of this Council meeting."

1. All conditions contained within PUD 91-2, SSP #1 and all subsequent modifications to PUD 91-2 are incorporated herein by reference to the extent they are not specifically amended or altered by any plans and conditions with this Major Modification.

2. The approved site plan, architectural elevations and landscape plan shall be those plans dated "Received September 28, 2016" except as modified herein.

3. All roof top units are to be screened from all directions with architectural features (roof forms or parapet walls) on each building. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.

4. A PUD Agreement must be signed by the owner/occupant and a bond or letter of credit for the required site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.

5. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months, weather permitting.

6. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same materials used to construct the building. The dumpster enclosure's gate shall be constructed of a vinyl or composite material, or other material, to be approved by the Planning Department.

7. Temporary signs shall not be permitted within this development with the exception of a construction sign that will be allowed during construction of the project.

8. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.

9. The façade shall not be painted or altered without the express permission of the Planning Department and/or the Planning Commission.

10. A final landscape plan and final photometric plan shall be reviewed and approved by the Planning Department prior to the execution of the required PUD Agreement and the release of a zoning permit for the building.

11. The proposed light fixtures must match, in height and design, those of the IHOP development. No light poles may be located outside of any landscape area.

12. This outlot shall be allowed one ground sign that can be up to 4 feet tall with 32 square feet per sign face. The design of the ground sign shall include a masonry base and sides that shall be constructed of similar material to those on the proposed building.

13. This outlot shall be allowed two square feet of wall signage for each linear foot of building frontage not to exceed 250 square feet with a maximum letter height of 48". Wall signs shall only be permitted on the North, West, and East elevations.

14. The westernmost parking space shall be removed and replaced with a landscape island containing additional landscaping consistent with the rest of the development.

15. A replat of Lot 9A of the Shoppes at Fairfield Commons shall be recorded with all water and sewer easements accepted by the County prior to the issuance of a zoning permit.

RESOLUTION

CITY OF BEAVERCREEK
PLANNING COMMISSION
October 5, 2016

RE: PUD 91-2 MOD 9/16
BSM Development

WHEREAS, BSM Development, LLC, 3100 Armory Drive, Suite 120, Nashville TN 37204, has filed an application requesting approval of a Major Modification of the Specific Site Plan for The Shoppes at Fairfield Commons for the construction of a 4800 square foot retail building; and

WHEREAS, public hearing was held on October 5, 2016 by the Beaver Creek Planning Commission at which time all people who wished to testify gave their comments at the public hearing; and

WHEREAS, the Planning Commission finds that the facts submitted with this Major Modification application and presented at the public hearing and any modifications, amendments, or supplementary conditions satisfy the standards and criteria for a Major Modification to a Specific Site Plan approval as per §158.070 of the Zoning Code; and

WHEREAS, the Beaver Creek Planning Commission is taking administrative action in approving this Major Modification to the Specific Site Plan.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission recommends to the Beaver Creek City Council:

SECTION I

The Beaver Creek Planning Commission recommends to Beaver Creek City Council approval of this Major Modification to the Specific Site Plan for the Shoppes at Fairfield Commons to allow for the construction of a 4800 square foot retail building, with the following conditions and requirements.

SECTION II

1. All conditions contained within PUD 91-2, SSP #1 and all subsequent modifications to PUD 91-2 are incorporated herein by reference to the extent they are not specifically amended or altered by any plans and conditions with this Major Modification.

2. The approved site plan, architectural elevations and landscape plan shall be those plans dated "Received September 28, 2016" except as modified herein.
3. All roof top units are to be screened from all directions with architectural features (roof forms or parapet walls) on each building. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.
4. A PUD Agreement must be signed by the owner/occupant and a bond or letter of credit for the required site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
5. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months, weather permitting.
6. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same materials used to construct the building. The dumpster enclosure's gate shall be constructed of a vinyl or composite material, or other material, to be approved by the Planning Department.
7. Temporary signs shall not be permitted within this development with the exception of a construction sign that will be allowed during construction of the project.
8. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.
9. The façade shall not be painted or altered without the express permission of the Planning Department and/or the Planning Commission.
10. A final landscape plan and final photometric plan shall be reviewed and approved by the Planning Department prior to the execution of the required PUD Agreement and the release of a zoning permit for the building.

11. The proposed light fixtures must match, in height and design, those of the IHOP development. No light poles may be located outside of any landscape area.
12. This outlot shall be allowed one ground sign that can be up to 4 feet tall with 32 square feet per sign face. The design of the ground sign shall include a masonry base and sides that shall be constructed of similar material to those on the proposed building.
13. This outlot shall be allowed two square feet of wall signage for each linear foot of building frontage not to exceed 250 square feet with a maximum letter height of 48". Wall signs shall only be permitted on the North, West, and East elevations.
14. The westernmost parking space shall be removed and replaced with a landscape island containing additional landscaping consistent with the rest of the development.
15. A replat of Lot 9A of the Shoppes at Fairfield Commons shall be recorded with all water and sewer easements accepted by the County prior to the issuance of a zoning permit.

SECTION III

These plans and all papers relating to the approved plan shall be submitted with this resolution to City Council.

The Clerk is directed to transmit this case to City Council for further determination as required by law.

ADOPTED: October 5, 2016

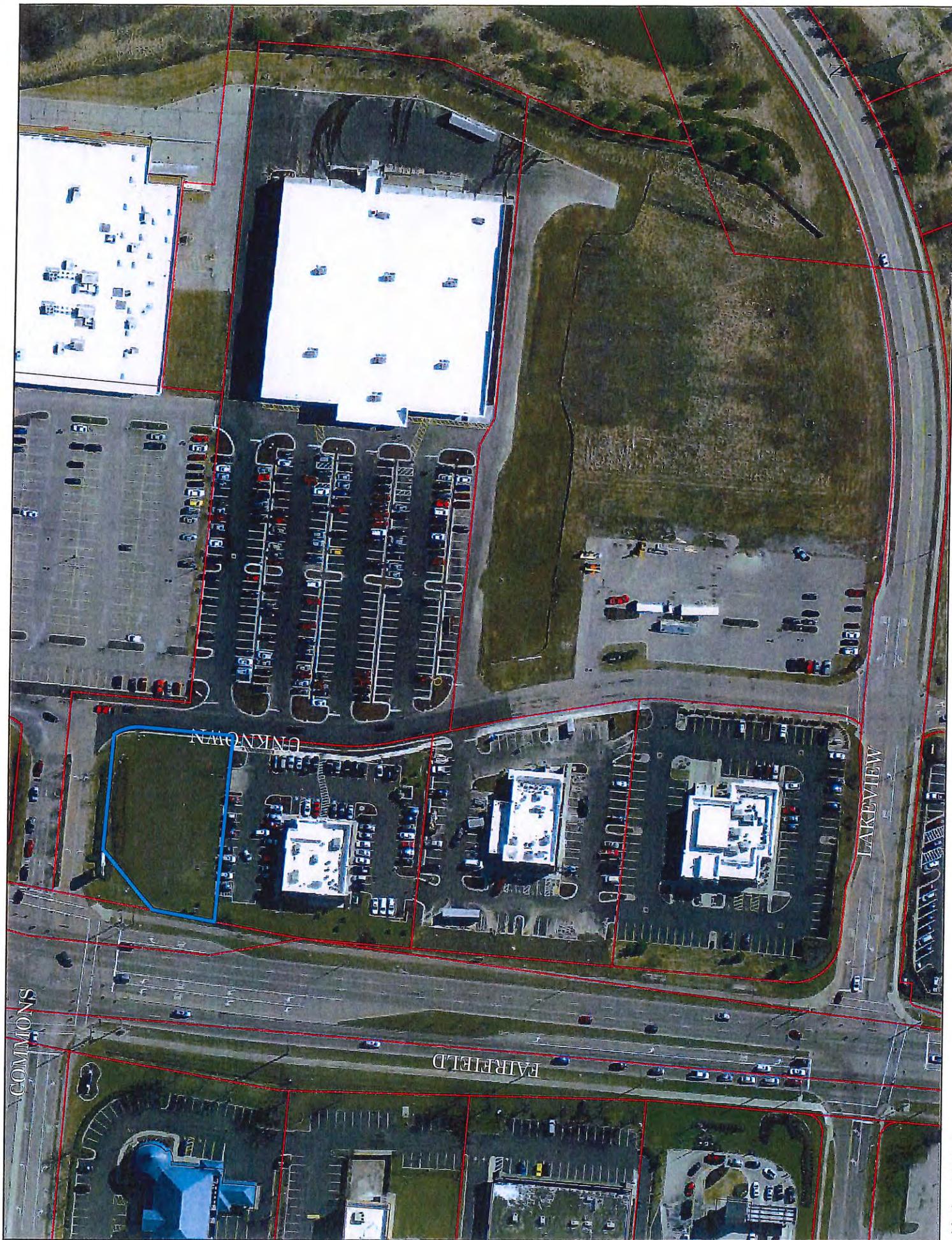
VOTING FOR ADOPTION: Charles Curran
 Nicholas Loftis
 Michael Self

VOTING AGAINST: Daniel Archibald

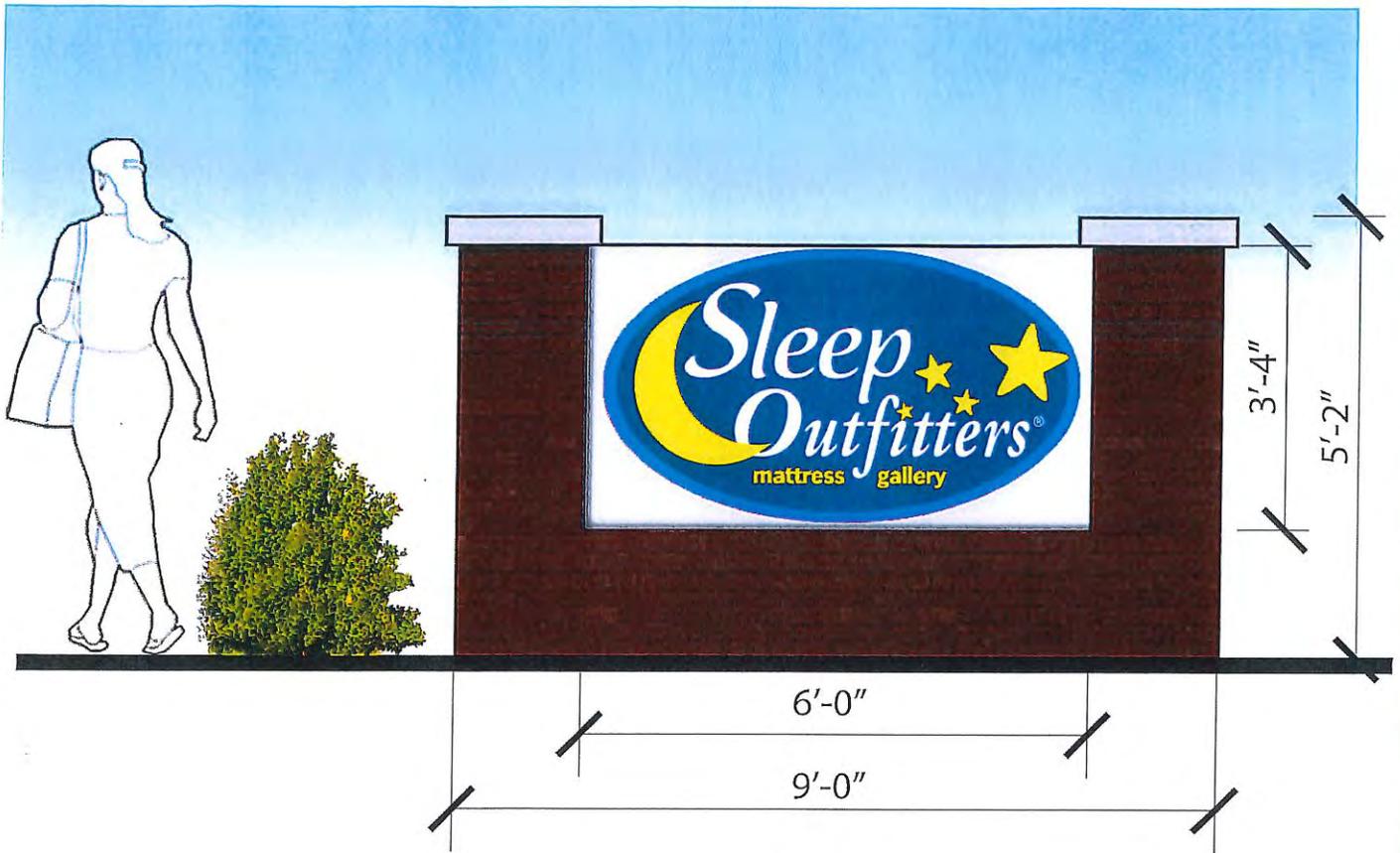
ABSENT: Troy Erbes

Chairman

Attest:



1 inch = 125 feet



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SEP 28 2016

CITY OF BEAVERCREEK
PLANNING DEPARTMENT

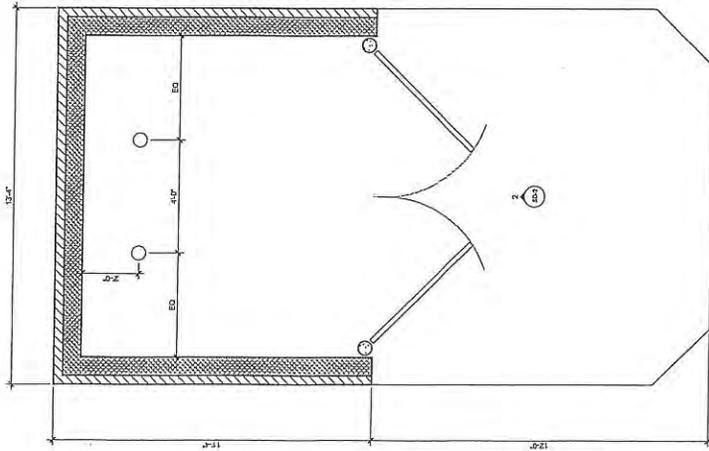
SLEEP OUTFITTERS
BEAVERCREEK, OH
09.28.16

Baker Storey McDonald
Properties

Baker Storey McDonald Properties, Inc.
3011 Armory Drive
Suite 120
Nashville, TN 37204

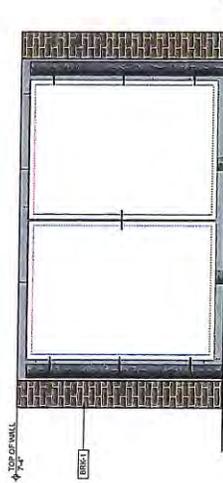


MJM ARCHITECTS 712 4th Ave S Nashville, TN 37210
Phone: 615-244-8170 Fax: 615-244-8141 www.mjmarsh.com



1 SD - FINISHED FLOOR - Callout 1
1/8" = 1'-0"

EXTERIOR FINISH SCHEDULE			
MARK	MATERIAL	MANUFACTURER	COLOR
AW-1	ALUMINUM T-9000 EXTERIOR FRAME	ALUMINUM	SLATE ANODIZED ALUMINUM
AW-2	GLASS WINDOW	TRIPLEX	CLEAR GLASS 1/8"
BR-1	BRICK VENEER	PAVING TO BRICK OR EQUAL	SMOOTH
BR-2	BRICK VENEER	PAVING TO BRICK OR EQUAL	SMOOTH
BR-3	2" X 4" PREFINISHED METAL DOWNSPOUT	VARIES	PANT COLOR #14
BR-4	2" X 4" PREFINISHED METAL DOWNSPOUT	VARIES	PANT COLOR #14
LA-1	LAMINATE	VARIES	TEXTURE LANGFORDS EASE UP
LA-2	LAMINATE	VARIES	TEXTURE LANGFORDS EASE UP
LA-3	STANDING SEAM METAL ROOF	VARIES	PAINT COLOR #14
PA-1	PAINT	VARIES	PAINT COLOR #14
PA-2	PAINT	VARIES	PAINT COLOR #14
PA-3	PAINT	VARIES	PAINT COLOR #14
PA-4	PAINT	VARIES	PAINT COLOR #14
PA-5	PAINT	VARIES	PAINT COLOR #14
PA-6	PAINT	VARIES	PAINT COLOR #14
PA-7	PAINT	VARIES	PAINT COLOR #14
PA-8	PAINT	VARIES	PAINT COLOR #14
PA-9	PAINT	VARIES	PAINT COLOR #14
PA-10	PAINT	VARIES	PAINT COLOR #14
PA-11	PAINT	VARIES	PAINT COLOR #14
PA-12	PAINT	VARIES	PAINT COLOR #14
PA-13	PAINT	VARIES	PAINT COLOR #14
PA-14	PAINT	VARIES	PAINT COLOR #14
PA-15	PAINT	VARIES	PAINT COLOR #14
PA-16	PAINT	VARIES	PAINT COLOR #14
PA-17	PAINT	VARIES	PAINT COLOR #14
PA-18	PAINT	VARIES	PAINT COLOR #14
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PA-20	PAINT	VARIES	PAINT COLOR #14
PA-21	PAINT	VARIES	PAINT COLOR #14
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PA-97	PAINT	VARIES	PAINT COLOR #14
PA-98	PAINT	VARIES	PAINT COLOR #14
PA-99	PAINT	VARIES	PAINT COLOR #14
PA-100	PAINT	VARIES	PAINT COLOR #14



2 Elevation 2-a
1/2" = 1'-0"



MJM ARCHITECTS | 712 4th Avenue South | Nashville, TN 37210
 Phone: 615-244-8170 Fax: 615-244-8141 www.mjmach.com

SLEEP OUTFITTERS
 BEAVERCREEK, OH
 09.28.16

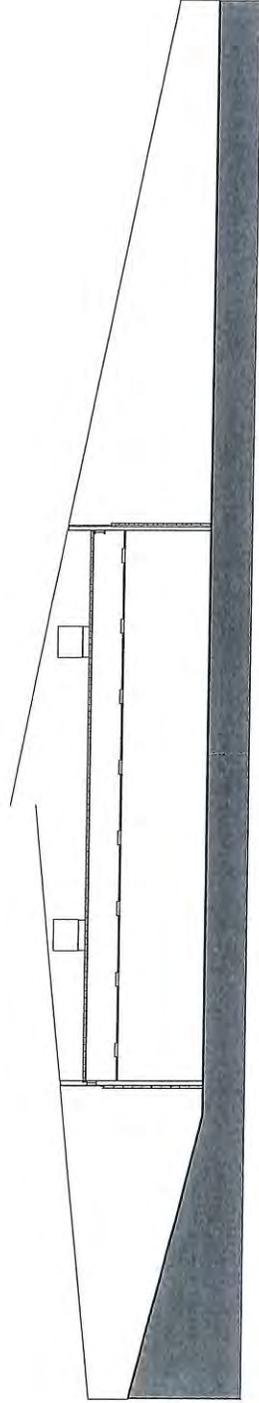
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SEP 28 2016

CITY OF BEAVERCREEK
 PLANNING DEPARTMENT



Baker Storey McDonald Properties, Inc.
 3011 Armory Drive
 Suite 120
 Nashville, TN 37204



① SIGHT LINE STUDY
1/8" = 1'-0"

RECEIVED

SEP 28 2016

CITY OF BEAVERCREEK
PLANNING DEPARTMENT

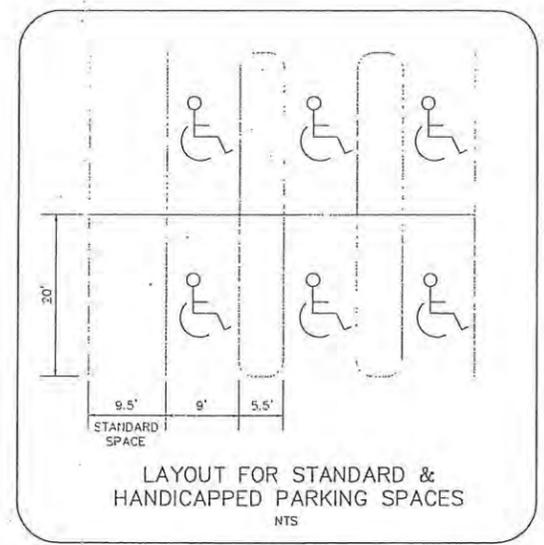
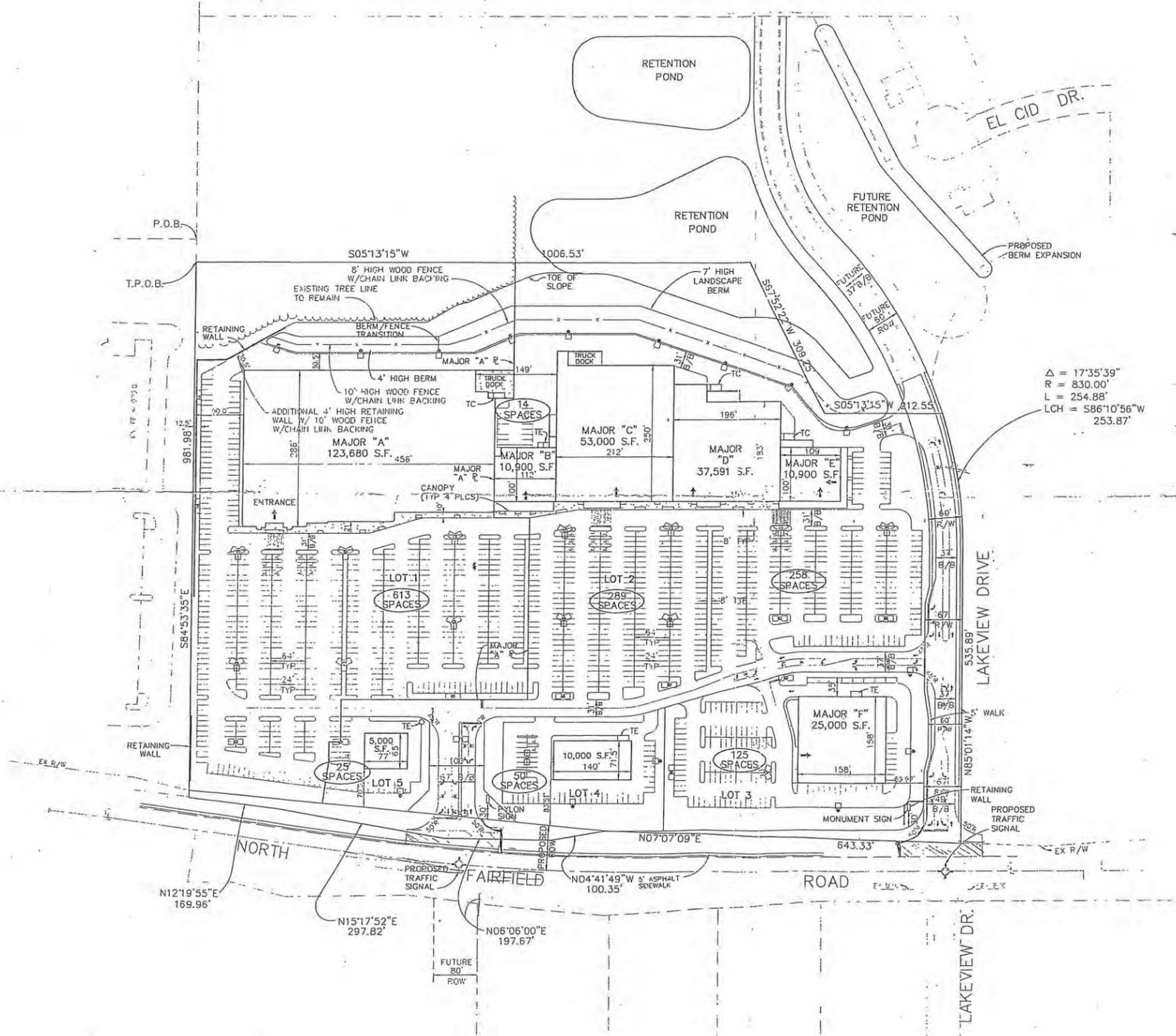
SLEEP OUTFITTERS
BEAVERCREEK, OH
09.28.16



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Phone: 615-244-8170 Fax: 615-244-8141 www.mjmach.com



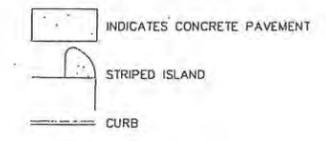
Baker Storey McDonald Properties, Inc.
3011 Armory Drive
Suite 120
Nashville, TN 37204



NOTES

- 1.) MAXIMUM PROPOSED HEIGHT OF BUILDING STRUCTURES ARE 35 FEET.
- 2.) THE INTENDED USE OF THIS PLAN IS AS A SHOPPING CENTER COMPLEX. GENERALLY, IT IS ANTICIPATED THAT THE DEVELOPMENT WILL INCLUDE RETAIL STORES AS WELL AS RESTAURANTS AND OTHER SERVICE BUSINESSES. ULTIMATELY, SPECIFIC USES ARE TO BE IN COMPLIANCE WITH THE USES APPROVED AS PART OF BEAVERCREEK ORDINANCE 91-21 WHICH REPRESENTS THE MOST CURRENT ZONING OF THIS TRACT.
- 3.) TRASH COMPACTOR AND DUMPSTER ENCLOSURES ARE SHOWN IN THEIR APPROXIMATE LOCATIONS. TC = TRASH COMPACTOR TE = TRASH ENCLOSURE w/ 6' HIGH WOOD FENCE OR BRICK WALL TO MATCH BUILDING
- 4.) RETAINING WALLS TO BE NEWCASTLE MODULAR BLOCK CONSTRUCTION OR APPROVED EQUAL.

STAKING/PAVEMENT LEGEND



LOT AREA TABLE

LOT No.	AREA
1	11.81 ACRES
2	14.38 ACRES
3	2.97 ACRES
4	1.49 ACRES
5	0.67 ACRES
R/W	1.76 ACRES
TOTAL	31.32 ACRES

BUILDING AREA DATA

MAXIMUM ALLOWABLE BUILDING AREA: 35%
 31.32 ACRES x 35% = 10.96 ACRES = 477,505 SQ. FT.
 BUILDING AREA PROVIDED = **276,071 SQ. FT.**

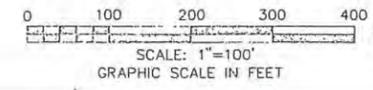
LAND USE INTENSITY

MAXIMUM COVERAGE BY ALL BUILDINGS AND IMPERVIOUS SURFACES: 75% (EXCLUDING PROP. R/W)
 OPEN SPACE REQUIRED:
 29.56 ACRES x 25% = 7.39 ACRES
 OPEN SPACE PROVIDED = 7.51 ACRES (25.4%)

PARKING DATA

TOTAL PARKING REQUIRED:
 276,071 S.F. x 5.0/1000S.F. = 1381
 TOTAL PARKING PROVIDED = 1374
 HC REQUIRED (@ 2%) = 28
 HC PROVIDED = 33

APPROVED PLAN
 PLANNING COMMISSION/DATE: *[Signature]*
 CITY COUNCIL/DATE: 4/17/96
 CASE # *Plan 91-2 (SSP)*
 CITY OF BEAVERCREEK BY: *[Signature]*



PROJECT No.	DATE	REVISION
10-21344-04	11/2/95	ISSUED FOR CITY REVIEW
	11/15/95	REVISED PER CITY COMMENTS
	12/19/95	REVISED PER CITY COMMENTS
	1/28/96	REVISED PER CITY COMMENTS
	1/12/96	REVISED PER CITY COMMENTS
	2/13/96	REVISED PER CITY COMMENTS
	3/25/96	REVISED PER CITY COMMENTS

409 East Monument Avenue
 Dayton, Ohio
 45402-1261
 513.461.5660
 513.461.0743



**SHOPPES AT FAIRFIELD COMMONS
 P.U.D. PACKAGE
 NORTH FAIRFIELD ROAD
 CITY OF BEAVERCREEK, GREENE COUNTY, OHIO
 DEVELOPMENT PLAN**

SHEET NO.

C3

ORIGINAL APPROVED SSP

C:\SIMPL\10\10\10\21344\PRF.dwg - MAR 25 1996 - 10:52:16

BEAVERCREEK BSM DEVELOPMENT, LLC

COMMERCIAL LAND DEVELOPMENT PLAN AT THE SHOPPES AT FAIRFIELD COMMONS CITY OF BEAVERCREEK, GREENE COUNTY OH, 45431

ENGINEER:
CESO, INC.
2800 CORPORATE EXCHANGE DR.
SUITE 160
COLUMBUS, OHIO 43231
CONTACT: ZACH FRESHNER
PHONE: (614) 942-3032
EMAIL: FRESHNER@CESOINC.COM

SURVEYOR:
CESO, INC.
8534 YANKEE ST., SUITE 2B
DAYTON, OHIO 45458
CONTACT: BRYANT ABT
PHONE: (937) 401-3599
EMAIL: ABT@CESOINC.COM

DEVELOPER:
BSM DEVELOPMENT LLC
CONTACT: DAVID A. RITTER
PHONE: (615) 252-2345

ARCHITECT:
TBD

GOVERNING AGENCIES AND UTILITY COMPANIES:
VARIOUS UTILITIES THAT DO WORK WITHIN VARIOUS PARTS OF THE CITY/COUNTY ARE LISTED BELOW AS AN INITIAL AID TO THE ENGINEER. PLEASE VERIFY LOCAL UTILITIES IN THE VICINITY OF THE SITE AND INCLUDE THEIR CONTACT INFORMATION ON THE PLANS ACCORDING TO THE FOLLOWING FORMAT.

SEWER:
GREENE COUNTY SANITARY ENGINEERING
667 DAYTON XENIA RD
BEAVERCREEK TWP, OH 45385
PHONE: (937) 562-7450

GAS SERVICE:
VECTREN OF OHIO
1335 E. DYTIN YLW SPGS RD.
FAIRBORN, OH 45324
PHONE: (800) 227-1376

WATER:
GREENE COUNTY SANITARY ENGINEERING
667 DAYTON XENIA RD
BEAVERCREEK TWP, OH 45385
PHONE: (937) 562-7450

COMMUNICATIONS:
TW TELECOM INC.
1 S MAIN ST.
DAYTON, OH 45402
PHONE: (937) 228-9165

STORMWATER:
CITY OF BEAVERCREEK
ENGINEERING DEPARTMENT
1368 RESEARCH PARK DR.
BEAVERCREEK, OH 45432
PHONE: (937) 427-5513

ELECTRIC:
DAYTON POWER AND LIGHT
1065 WOODMAN RD.
DAYTON, OH 45432
PHONE: (800) 433-8500

ZONING:
CITY OF BEAVERCREEK
ZONING DEPARTMENT
1368 RESEARCH PARK DR.
BEAVERCREEK, OH 45432
PHONE: (937) 427-5512

PROPERTY DATA:

PARCEL OWNER:	JFAL HOLDING COMPANY LLC	
PARCEL ID:	B42000400060011300	
ADDRESS:	THE SHOPPES AT FAIRFIELD COMMONS CITY OF BEAVERCREEK GREENE COUNTY, OHIO	
PROPERTY AREA:	0.5262 ACRES (22,922 SQ.FT.)	
ZONING:	COMMERCIAL PLANNED DEVELOPMENT (C-PUD)	
EXISTING USE:	VACANT LOT	
PROPOSED USE:	COMMERCIAL/ RETAIL USE	
	<u>REQUIRED/ PERMITTED</u>	<u>PROPOSED</u>
BUILDING SETBACKS FRONTAGE ALONG STREET:	40' (N. FAIRFIELD RD.)	40'
PARKING SETBACKS:	10'	10'
SIGN SETBACKS:	N/A	N/A
MAXIMUM BUILDING HEIGHT:	70'	25'
BUILDING COVERAGE:	35%	20%
IMPERVIOUS COVERAGE:	75% MAX.	69%
PARKING:		
TOTAL PARKING SPACES:	20	24
ADA PARKING SPACES:	1	1

PARKING REQUIREMENTS ARE AS FOLLOWS:
RETAIL: ONE SPACE FOR EACH 250 SQUARE FEET OF GROSS FLOOR AREA.
4,800 / 250 = 20



SHEET INDEX			
SHEET	SHEET DESCRIPTION	REVISION	ISSUE DATE
C1.0	TITLE SHEET		09/28/2016
C2.0	EXISTING CONDITIONS AND DEMOLITION PLAN		09/28/2016
C4.0	SITE PLAN		09/28/2016
C5.0	GRADING PLAN		09/28/2016
C6.0	UTILITY PLAN		09/28/2016
C8.0	LANDSCAPE PLAN		09/28/2016
C9.0	SITE LIGHTING PLAN		09/28/2016

RECEIVED

SEP 28 2016

**CITY OF BEAVERCREEK
PLANNING DEPARTMENT**

BENCHMARK DATUM: NAVD83
BM "A": CHISELED SQUARE IN LIGHT POLE BASE
977.16'

FLOODPLAIN DESIGNATION:
ACCORDING TO F.I.R.M. NO. 39057C00180, BEARING AN EFFECTIVE DATE OF 3/17/2011, THE SUBJECT PROPERTY IS LOCATED IN A ZONE "X" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL FLOOD PLAIN)

OHIO Utilities Protection SERVICE
811 or 1-800-362-2764 Call Before You Dig

FORTY-EIGHT (48) HOURS BEFORE DIGGING IS TO COMMENCE, THE CONTRACTORS SHALL NOTIFY THE FOLLOWING AGENCIES: OHIO UTILITIES PROTECTION SERVICE AT 811 OR 1/800/362-2764 AND ALL OTHER AGENCIES WHICH MIGHT HAVE UNDERGROUND UTILITIES INVOLVING THIS PROJECT AND ARE NONMEMBERS OF OHIO UTILITIES PROTECTION SERVICE

REVISIONS NO.	DATE	DESCRIPTION

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Engineering • Architecture • Survey • Construction Mgmt • Environmental

TITLE SHEET
BSM DEVELOPMENT, LLC
BEAVERCREEK, OH

ISSUE: PLANNING RESUBMITTAL
DATE: 09/28/2016
JOB NO.: 751510-02
DESIGN: NBH
DRAWN: NBH
CHECKED: ZDF
SHEET NO. C1.0



DEMOLITION PLAN NOTES

1. THE CONTRACTOR IS RESPONSIBLE FOR THE DEMOLITION, REMOVAL, AND DISPOSING IN A LOCATION APPROVED BY ALL GOVERNING AUTHORITIES, OF ALL STRUCTURES, PADS, WALLS, FLUMES, FOUNDATIONS, PARKING, DRIVES, DRAINAGE, STRUCTURES, UTILITIES, ETC., SUCH THAT THE IMPROVEMENTS SHOWN ON THE REMAINING PLANS CAN BE CONSTRUCTED. ALL FACILITIES TO BE REMOVED SHALL BE UNDERCUT TO SUITABLE MATERIAL AND BROUGHT TO GRADE WITH SUITABLE COMPACTED FILL MATERIAL.
2. THE CONTRACTOR IS RESPONSIBLE FOR REMOVING ALL DEBRIS FROM THE SITE AND DISPOSING THE DEBRIS IN A LAWFUL MANNER. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL PERMITS REQUIRED FOR DEMOLITION AND DISPOSAL.
3. THE CONTRACTOR SHALL COORDINATE WITH RESPECTIVE UTILITY COMPANIES PRIOR TO THE REMOVAL AND/OR RELOCATION OF UTILITIES. THE CONTRACTOR SHALL COORDINATE WITH THE UTILITY COMPANY CONCERNING PORTIONS OF WORK WHICH MAY BE PERFORMED BY THE UTILITY COMPANY'S FORCES AND ANY FEES WHICH ARE TO BE PAID TO THE UTILITY COMPANY FOR THEIR SERVICES.
4. THE LOCATIONS OF ALL EXISTING UTILITIES SHOWN ON THIS PLAN HAVE BEEN DETERMINED FROM THE BEST INFORMATION AVAILABLE AND ARE GIVEN FOR THE CONVENIENCE OF THE CONTRACTOR. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR THEIR ACCURACY. PRIOR TO THE START OF ANY DEMOLITION ACTIVITY, THE CONTRACTOR SHALL NOTIFY THE UTILITY COMPANIES FOR ONSITE LOCATIONS OF EXISTING UTILITIES. THE DEMOLITION PLANS IS INTENDED TO SIMPLIFY THE DRAWINGS, AND DOES NOT GUARANTEE THAT ALL ITEMS ARE ADDRESSED.
5. ALL EXISTING SEWERS, PIPING AND UTILITIES SHOWN ARE NOT TO BE INTERPRETED AS THE EXACT LOCATION, OR AS THE ONLY OBSTACLES THAT MAY OCCUR ON THE SITE. VERIFY EXISTING CONDITIONS AND PROCEED WITH CAUTION AROUND ANY ANTICIPATED FEATURES. GIVE NOTICE TO ALL UTILITY COMPANIES REGARDING DESTRUCTION AND REMOVAL OF ALL SERVICE LINES AND CAP ALL LINES BEFORE PROCEEDING WITH THE WORK. ALL UTILITIES UNDERNEATH THE BUILDING PAD SHALL BE REMOVED COMPLETELY.
6. ELECTRICAL, TELEPHONE, CABLE, WATER, FIBER OPTIC CABLE AND/OR GAS LINES NEEDING TO BE REMOVED OR RELOCATED SHALL BE COORDINATED WITH THE AFFECTED UTILITY COMPANY. ADEQUATE TIME SHALL BE PROVIDED FOR RELOCATION AND CLOSE COORDINATION WITH THE UTILITY COMPANY IS NECESSARY TO PROVIDE A SMOOTH TRANSITION IN UTILITY SERVICE. CONTRACTOR SHALL PAY CLOSE ATTENTION TO EXISTING UTILITIES WITHIN THE ANY ROAD RIGHT OF WAY DURING CONSTRUCTION.
7. CONTRACTOR IS RESPONSIBLE FOR REPAIRING THE DAMAGE DONE TO ANY EXISTING ITEM DURING CONSTRUCTION, SUCH AS, BUT NOT LIMITED TO, DRAINAGE, UTILITIES, PAVEMENT, CURB, ETC. REPAIRS SHALL BE EQUAL TO, OR BETTER THAN, EXISTING CONDITIONS. CONTRACTOR IS RESPONSIBLE TO DOCUMENT ALL EXISTING DAMAGE AND NOTIFY CONSTRUCTION MANAGER AND LOCAL JURISDICTION PRIOR TO CONSTRUCTION START.
8. CONTINUOUS ACCESS SHALL BE MAINTAINED FOR THE SURROUNDING PROPERTIES AT ALL TIMES DURING DEMOLITION OF THE EXISTING FACILITIES.
9. PRIOR TO DEMOLITION OCCURRING, ALL EROSION CONTROL DEVICES ARE TO BE INSTALLED. REFER TO STORMWATER POLLUTION PREVENTION PLAN.
10. SHOULD REMOVAL AND/OR RELOCATION ACTIVITIES DAMAGE FENCING, LIGHTING AND/OR STORM INLET STRUCTURES, THE CONTRACTOR SHALL PROVIDE NEW MATERIALS/ STRUCTURES IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. EXCEPT FOR MATERIALS DESIGNED TO BE RELOCATED ON THIS PLAN, ALL OTHER CONSTRUCTION MATERIALS SHALL BE NEW.
11. CONTRACTOR MAY LIMIT SAW-CUT & PAVEMENT REMOVAL TO ONLY THOSE AREAS WHERE IT IS REQUIRED AS SHOWN ON THESE CONSTRUCTION PLANS BUT IF ANY DAMAGE IS INCURRED ON ANY OF THE SURROUNDING PAVEMENT, ETC. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ITS REMOVAL AND REPAIR. SAWCUT SHOWN IS FOR REFERENCE ONLY. THE CONTRACTOR IS RESPONSIBLE FOR REMOVING THAT WHICH IS NECESSARY TO COMPLETE THE INTENT OF THE PROPOSED IMPROVEMENTS.
12. DAMAGE TO ANY EXISTING STRUCTURES OR SITE FEATURES TO REMAIN MUST BE REPLACED AT CONTRACTOR'S EXPENSE.
13. GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL REQUIRED DEMOLITION PERMITS, AND ALL REQUIRED INSPECTIONS.
14. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL PHASING OF DEMOLITION, WHEN THAT DEMOLITION MAY IMPACT TRAFFIC, ACCESS OF UTILITIES TO NEIGHBORS, OR FACILITIES TO REMAIN, AND OTHER SURROUNDING INFRASTRUCTURE OR FACILITIES.

CODED NOTES:

1. CONTRACTOR TO PROTECT EXISTING STORM PIPE TO REMAIN IN PLACE. REFER TO GRADING PLAN FOR PROPOSED STORM IMPROVEMENTS.
2. CONTRACTOR TO PROTECT EXISTING EXISTING SANITARY SEWER TO REMAIN IN PLACE.
3. CONTRACTOR TO PROTECT EXISTING EXISTING ELECTRICAL STRUCTURES AND LINES TO REMAIN IN PLACE.
4. CONTRACTOR TO PROTECT EXISTING EXISTING GAS AND LINES TO REMAIN IN PLACE.
5. CONTRACTOR TO PROTECT EXISTING TREE TO REMAIN IN PLACE.
6. CONTRACTOR TO PROTECT EXISTING SHRUBS TO REMAIN IN PLACE.
7. EXISTING SIGN TO BE REMOVED.
8. EXISTING TREE TO BE REMOVED, SEE LANDSCAPE PLAN FOR DETAILS. IF POSSIBLE, TREE TO BE REUSED AND RELOCATED IN PROPOSED LOCATIONS SHOWN ON LANDSCAPE PLAN.
9. EXISTING ENCRoACHING LIGHT POLE TO BE RELOCATED. CONTRACTOR TO COORDINATE WITH OWNER REPRESENTATIVE ON RELOCATION. PROPOSED LOCATION PROVIDED ON SITE PLAN, SHEET C4.0.
10. EXISTING ENCRoACHING SPRINKLER HEADS TO BE PROTECTED IN PLACE. CONTRACTOR TO CONFIRM LOCATION SPRINKLER SYSTEM LINE BEFORE FOOTER EXCAVATION.

LEGEND

EXISTING	PROPOSED



OHIO Utilities Protection SERVICE
 811 or 1-800-362-2764 Call Before You Dig

FORTY-EIGHT (48) HOURS BEFORE DIGGING IS TO COMMENCE, THE CONTRACTORS SHALL NOTIFY THE FOLLOWING AGENCIES: OHIO UTILITIES PROTECTION SERVICE AT 811 OR 1 (800) 362-2764 AND ALL OTHER AGENCIES WHICH MIGHT HAVE UNDERGROUND UTILITIES INVOLVING THIS PROJECT AND ARE NONMEMBERS OF OHIO UTILITIES PROTECTION SERVICE

BENCHMARK DATUM: NAVD83
 BM "A" CHISELED SQUARE IN LIGHT POLE BASE 977.10

REVISIONS	NO.	DATE	DESCRIPTION

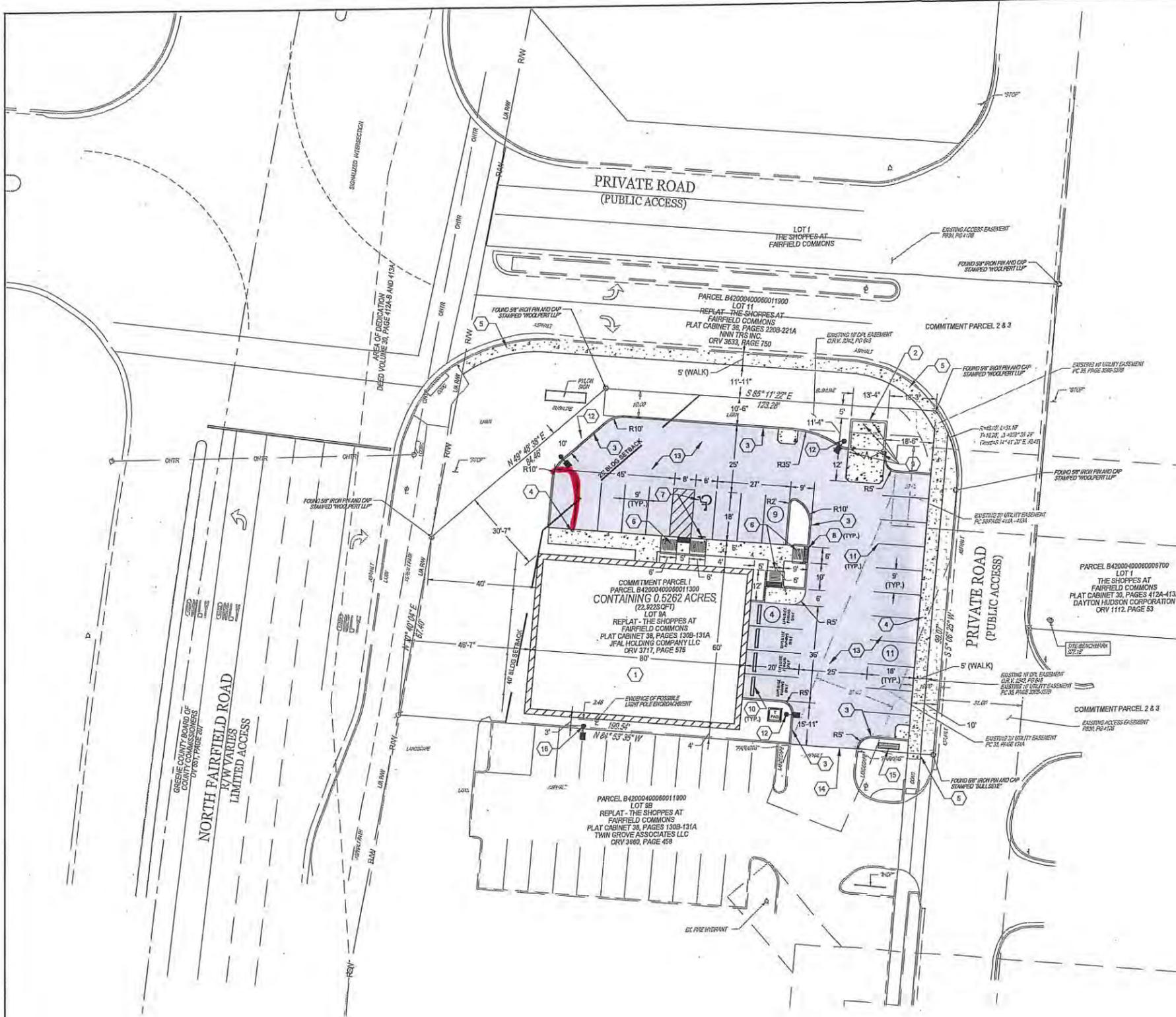
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EXISTING CONDITIONS AND DEMOLITION PLAN
 BSM DEVELOPMENT, LLC
 BEAVERCREEK OH

ISSUE: PLANNING RESUBMITTAL
DATE: 09/28/2016
JOB NO.: 751510-02
DESIGN: NBH
DRAWN: NBH
CHECKED: ZDF
SHEET NO. C2.0



SITE GENERAL NOTES

1. ALL WORK AND MATERIALS SHALL COMPLY WITH ALL CITY OF BEAVERCREEK, ODOT AND O.S.H.A. STANDARDS. THE CONTRACTOR SHALL OBTAIN FINAL APPROVALS/PERMITTING AND INSPECTION AS NECESSARY PRIOR TO CONSTRUCTION.
2. CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF EXIT PORCHES, PRECISE BUILDING DIMENSIONS, EXACT BUILDING UTILITY ENTRANCE LOCATIONS AND SITE LIGHTING ELECTRICAL LAYOUT.
3. ALL DIMENSIONS ARE MEASURED TO THE FACE OF CURB OR FACE OF BUILDING, WHERE APPLICABLE.
4. REFER TO CONSTRUCTION DETAILS/ GEOTECHNICAL REPORT FOR PAVEMENT SECTION RECOMMENDATIONS.
5. ALL LIGHTPOLES TO BE LOCATED 3' FROM THE BACK OF CURB, AS MEASURED FROM THE FACE OF POLE FOUNDATION, UNLESS OTHERWISE DENOTED ON PLANS.
6. CONTRACTOR IS RESPONSIBLE FOR PROVIDING TRAFFIC CONTROL. ALL TRAFFIC CONTROL MEASURES SHALL BE IN ACCORDANCE WITH THE OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (LATEST EDITION), ODOT ITEM 614.
7. CONTRACTOR IS RESPONSIBLE FOR PLACING AND MAINTAINING CONSTRUCTION FENCE, SIGNS, ETC. TO WARN AND KEEP UNAUTHORIZED PEOPLE OFF SITE FOR THE DURATION OF THE PROJECT.
8. CONTRACTOR IS RESPONSIBLE FOR PROVIDING JOB SITE SAFETY PER OSHA REQUIREMENTS. AT ALL TIMES DURING DEMOLITION AND CONSTRUCTION, CONTRACTOR SHALL PROVIDE SAFETY RAILINGS AT ALL AREAS WHERE FALL PROTECTION IS REQUIRED.
9. ALL SIGNAGE SHALL COMPLY WITH THE OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (O.M.U.T.C.D.)
 - a. STOP SIGN (R1-1 PER SECTION 28.06 O.M.U.T.C.D.)
7. ALL PAVEMENT MARKINGS AND STRIPING SHALL COMPLY WITH ODOT ITEM 641 AND OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (O.M.U.T.C.D.)
 - a. LANE LINE: 6" WHITE (PER SECTION 38.04 O.M.U.T.C.D.)
 - b. PARKING STALLS: 4" YELLOW (PER SECTION 38.19 O.M.U.T.C.D.)
 - c. STOP LINE: 12" WHITE (PER SECTION 38.16 O.M.U.T.C.D.)
 - d. CROSSWALKS: TRANSVERSE LINES WITH DIAGONAL MARKINGS PER SECTION 38.17 (GAP BETWEEN TRANSVERSE LINES SHALL BE 4') ALL PAINTED WHITE.
8. BOLLARDS SHALL BE PLACED TO PROTECT GAS METER, ELECTRICAL AND TELEPHONE EQUIPMENT, AND DUMPSTER ENCLOSURE.
9. ALL DISTURBED AREAS ARE TO RECEIVE 4" INCHES OF TOPSOIL, SEED, MULCH AND WATER UNTIL A HEALTHY STAND OF GRASS IS ESTABLISHED.
10. ALL CURBED RADII ARE TO BE 5' UNLESS OTHERWISE NOTED.

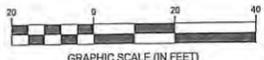
CODED NOTES:

1. PROPOSED 4,800 SF BUILDING. REFER TO ARCHITECTURAL PLANS FOR DETAILS.
2. PROPOSED TRASH ENCLOSURE PER LOCAL REQUIREMENTS. DUMPSTER BUILDING MATERIALS SHALL MATCH BUILDING. SEE ARCHITECTURAL PLANS FOR DETAIL.
3. PROPOSED 6" STRAIGHT CURB. REFER TO CONSTRUCTION DETAILS.
4. PROPOSED INTEGRAL CONCRETE CURB AND SIDEWALK.
5. PROPOSED CONCRETE SIDEWALK. SIDEWALK IN RIGHT OF WAY SHALL BE CONSTRUCTED PER CITY REQUIREMENTS.
6. PROPOSED CURB RAMP. REFER TO CONSTRUCTION DETAILS.
7. ADA ACCESSIBLE PARKING SPACE WITH SIGNAGE. REFER TO CONSTRUCTION DETAILS.
8. ADA ACCESSIBLE RAMP WITH DETECTABLE WARNING STRIP. REFER TO CONSTRUCTION DETAILS.
9. PROPOSED 6" CONCRETE BOLLARD. REFER TO CONSTRUCTION DETAILS.
10. PROPOSED CONCRETE BUMPER BLOCK. REFER TO CONSTRUCTION DETAILS.
11. PROPOSED PARKING LOT PAVEMENT MARKINGS.
12. PROPOSED LIGHT POLE. REFER TO CONSTRUCTION DETAILS.
13. PROPOSED ASPHALT PAVEMENT. REFER TO CONSTRUCTION DETAILS.
14. PROPOSED PAVEMENT TRANSITION. REFER TO TYPICAL SAWCUT DETAIL.
15. PROPOSED MONUMENT SIGN.
16. PROPOSED RELOCATED LIGHT POLE LOCATION. CONTRACTOR TO COORDINATE WITH OWNER BEFORE CONSTRUCTION.

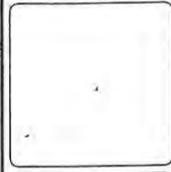
LEGEND

- EXISTING**
REFER TO EXISTING CONDITIONS PLAN
- PROPOSED**
- BUILDING
 - CONCRETE CURB
 - PAVEMENT/WALK
 - PROPOSED ASPHALT PAVEMENT.
 - PROPOSED CONCRETE WALK AND PAVEMENT
 - PARKING SPACE COUNT
 - SIGN
 - DETECTABLE WARNING MAT.
 - LIGHT POLE
 - CONCRETE BUMPER BLOCK

NOTE: REFER TO CONSTRUCTION DETAILS SHEET



REVISIONS NO.	DATE	DESCRIPTION



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SITE PLAN

BSM DEVELOPMENT, LLC

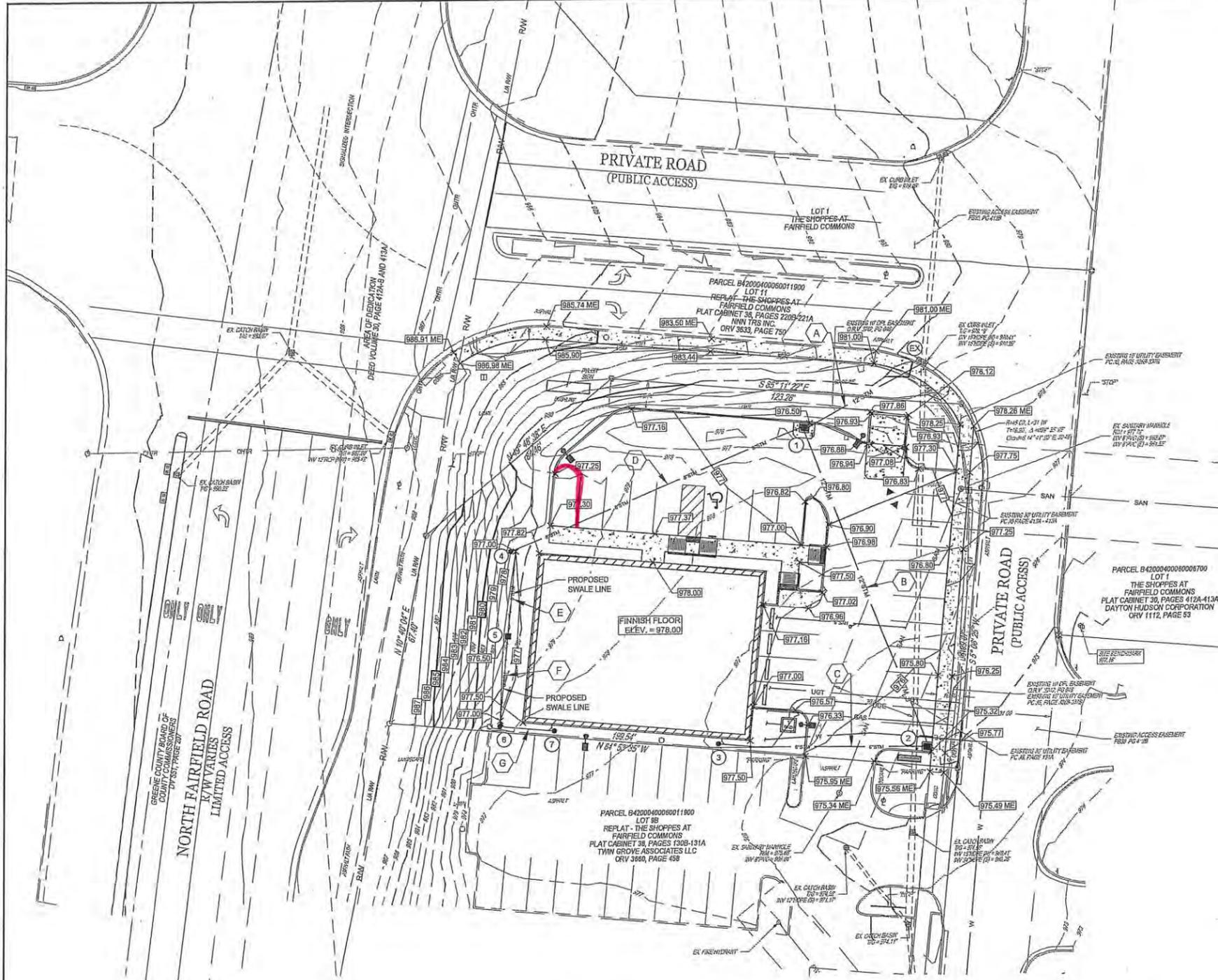
BEAVERCREEK

ISSUE:	PLANNING RESUBMITTAL
DATE:	09/28/2016
JOB NO.:	751510-02
DESIGN:	NBH
DRAWN:	NBH
CHECKED:	ZDF
SHEET NO.	C4.0

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FORTY-EIGHT (48) HOURS BEFORE DIGGING IS TO COMMENCE, THE CONTRACTORS SHALL NOTIFY THE FOLLOWING AGENCIES: OHIO UTILITIES PROTECTION SERVICE AT 811 OR 1 (800) 362-2764 AND ALL OTHER AGENCIES WHICH MIGHT HAVE UNDERGROUND UTILITIES INVOLVING THIS PROJECT AND ARE NONMEMBERS OF OHIO UTILITIES PROTECTION SERVICE

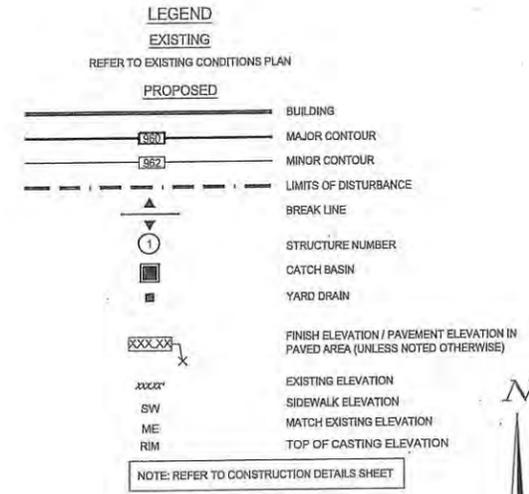
BENCHMARK DATUM: NAVD88
BM "A": CHISELED SQUARE IN LIGHT POLE BASE
977.16'



- ### GRADING PLAN NOTES
- CONTRACTOR IS RESPONSIBLE FOR THE REMOVAL OF EXISTING UNSUITABLE FILL WHERE ENCOUNTERED. ALL ABANDONED UTILITIES UNDERNEATH THE PROPOSED BUILDING SHALL BE REMOVED IN THEIR ENTIRETY.
 - THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON RECORDS OF THE VARIOUS UTILITY COMPANIES, AND WHERE POSSIBLE, MEASUREMENTS TAKEN IN THE FIELD. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR COMPLETE. THE CONTRACTOR MUST CALL THE APPROPRIATE UTILITY COMPANIES AT LEAST 72 HOURS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATION OF UTILITIES. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO RELOCATE ALL EXISTING UTILITIES WHICH CONFLICT WITH THE PROPOSED IMPROVEMENTS SHOWN ON THE PLANS.
 - ALL TOPSOIL MUST BE REMOVED BEFORE FILL IS PLACED. PRIOR TO GRADING, ALL EROSION CONTROL DEVICES ARE TO BE INSTALLED. REFER TO STORMWATER POLLUTION PREVENTION PLAN.
 - ALL WET, OR OTHERWISE UNSUITABLE, SOILS MUST BE STABILIZED. THIS MAY BE ACCOMPLISHED BY DRYING, REMOVAL & REPLACEMENT, REMOVAL & DRYING & RECOMPACTION, OR SOIL TREATMENT (LIME/CEMENT).
 - ALL CUT OR FILL SLOPES SHALL BE 3H:1V OR FLATTER UNLESS OTHERWISE NOTED.
 - THE CONTRACTOR SHALL ADHERE TO ALL TERMS & CONDITIONS AS OUTLINED IN THE EPA OR APPLICABLE STATE GENERAL N.P.D.E.S. PERMIT FOR STORM WATER DISCHARGE ASSOCIATED WITH CONSTRUCTION ACTIVITIES AND THE STORM WATER POLLUTION PREVENTION PLAN.
 - CONTRACTOR SHALL ASSURE POSITIVE DRAINAGE AWAY FROM BUILDINGS FOR ALL NATURAL AND PAVED AREAS.
 - ALL DISTURBED AREAS ARE TO RECEIVE 4"-6" OF TOPSOIL, SEED, MULCH AND WATER UNTIL A HEALTHY STAND OF GRASS IS ESTABLISHED.
 - CONSTRUCTION SHALL COMPLY WITH ALL APPLICABLE GOVERNING CODES AND BE CONSTRUCTED TO SAME.
 - CONTRACTOR SHALL CONSTRUCT SIDEWALKS SUCH THAT 2% IS THE MAXIMUM CROSS SLOPE, AND 5% IS THE MAXIMUM TRANSVERSE SLOPE, AND CURB RAMP SHALL BE CONSTRUCTED PER ODOT DETAILS, AND THE MAXIMUM SLOPES SHALL NOT BE EXCEEDED. FORMS SHALL BE PLACED FOR SIDEWALK AREA AND THE SLOPES ARE TO BE VERIFIED PRIOR TO PLACING CONCRETE. IF SLOPES BECOME AN ISSUE, CONTRACTOR SHALL CONTACT THE ENGINEER.
 - CURB AND GUTTER SHALL PITCH OUT WHERE GRADING IS SLOPED AWAY FROM THE CURB AND SHALL PITCH IN WHEN GRADING IS SLOPED TOWARDS THE CURB. THE PITCH OF THE GUTTER SHALL MATCH PARKING LOT GRADES.
 - CONTRACTOR SHALL MAINTAIN A MAXIMUM 2% SLOPE IN ADA ACCESSIBLE/HANDICAPPED PARKING LOT AREA.

- ### STORM SEWER NOTES:
- ALL STORM SEWER PIPES SHALL BE MANUFACTURED WITH INTEGRAL BELL AND SPIGOT JOINTS INCLUDING A GASKET, SO AS TO PROVIDE A WATERTIGHT SEAL.
 - ALL STORM SEWER PIPES LESS THAN 12" DIAMETER SHALL BE PVC SDR 35 WATERTIGHT PIPE CONFORMING TO ASTM SPECIFICATION D3034, UNLESS DENOTED OTHERWISE ON PLANS.
 - ALL STORM SEWER PIPES 12" DIAMETER AND GREATER SHALL BE HDPE N-12, WATERTIGHT PIPE AS MANUFACTURED BY ADS, OR APPROVED EQUAL, UNLESS OTHERWISE NOTED ON PLANS.
 - CONNECTIONS TO STRUCTURES SHALL BE MADE WATERTIGHT WITH NON-SHRINKING AND NON-CORROSIVE GROUT.
 - STORM PIPE SHALL BE AS FOLLOWS UNLESS OTHERWISE NOTED:
 REINFORCED CONCRETE PIPE (RCP) (PER ASTM C-76 CLASS IV)
 POLYVINYL CHLORIDE (PVC SDR 35)
 HIGH DENSITY POLYETHYLENE PIPE (HDPE)
 - ALL STORM STRUCTURES SHALL HAVE A SMOOTH UNIFORM POURED MORTAR INVERT FROM INVERT IN TO INVERT OUT.
 - CONCRETE COLLARS ARE TO BE INSTALLED AROUND ALL STORM STRUCTURES.
 - ALL MANHOLES IN PAVED AREAS SHALL BE FLUSH WITH PAVEMENT, AND SHALL HAVE TRAFFIC BEARING RING & COVERS. MANHOLES IN UNPAVED AREAS SHALL BE 3" ABOVE FINISH GRADE.
 - ALL DOWNSPOUT DRAINS ARE TO HAVE A 1.00% MINIMUM SLOPE UNLESS OTHERWISE NOTED.
 - EXISTING DRAINAGE STRUCTURES TO BE INSPECTED AND REPAIRED AS NEEDED, AND EXISTING PIPES TO BE CLEANED OUT TO REMOVE ALL SILT AND DEBRIS.
 - IF ANY EXISTING STRUCTURES TO REMAIN ARE DAMAGED DURING CONSTRUCTION IT SHALL BE THE CONTRACTORS RESPONSIBILITY TO REPAIR AND/OR REPLACE THE EXISTING STRUCTURE AS NECESSARY TO RETURN IT TO EXISTING CONDITIONS OR BETTER.
 - ALL PROPOSED MODIFICATIONS TO EXISTING CATCH BASINS AND/OR MANHOLES SHALL BE IN ACCORDANCE WITH ODOT STANDARDS AND SPECIFICATIONS.

- ### STORMWATER QUANTITY AND QUALITY NOTES:
- AS PART OF AN PLANNING DEVELOPMENT, THE STORMWATER RUNOFF FROM THIS SITE HAS BEEN ACCOUNTED FOR IN THE EXISTING WET DETENTION BASIN TO THE SOUTHEAST OF THE SITE. THEREFORE, NO DETENTION FACILITIES ARE PROPOSED IN THIS SITE.
 - PER CITY OF BEAVERCREEK AND OHIO EPA REQUIREMENTS, PROPOSED IMPROVEMENTS WILL REQUIRE WATER QUALITY TREATMENT OF STORM WATER RUNOFF. THEREFORE, A WATER QUALITY DEVICE HAS BEEN PROPOSED FOR THE TREATMENT OF RUNOFF BEFORE RELEASING INTO THE EXISTING STORMWATER SYSTEM.



STORM SEWER STRUCTURE SCHEDULE

NO.	STRUCTURE	RIM	INVERT(S)
EX	EXISTING CATCH BASIN	979.19	EX. 15" (N) = 970.41 EX. 15" (S) = 970.29 PROP. 12" (SW) = 971.50
1	PROPOSED WATER QUALITY UNIT W/ GRATED INLET	976.50	8" (SW) = 973.00 12" (SE) = 971.33 12" (NE) = 971.93
2	PROPOSED 2X2' CATCH BASIN	975.30	6" (W) = 973.20 12" (NW) = 972.80
3	CLEAN OUT	977.25	8" = 975.30
4	CLEAN OUT	977.00	8" = 974.18
5	YARD DRAIN	976.50	6" (S) = 974.50 8" (N) = 974.50
6	CLEAN OUT	977.25	6" = 974.80
7	CLEAN OUT	977.25	6" = 975.00

STORM SEWER PIPE SCHEDULE

PIPE	LINE	TYPE	SIZE	SLOPE	LENGTH
A	1-EX	HDPE	12"	0.73%	45'
B	2-1	HDPE	8"	0.73%	120'
C	3-2	HDPE	8"	3.00%	70'
D	4-1	HDPE	8"	1.07%	110'
E	5-4	HDPE	8"	1.07%	30'
F	6-5	PVC	6"	1.00%	30'
G	7-6	PVC	6"	1.00%	18'



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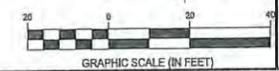
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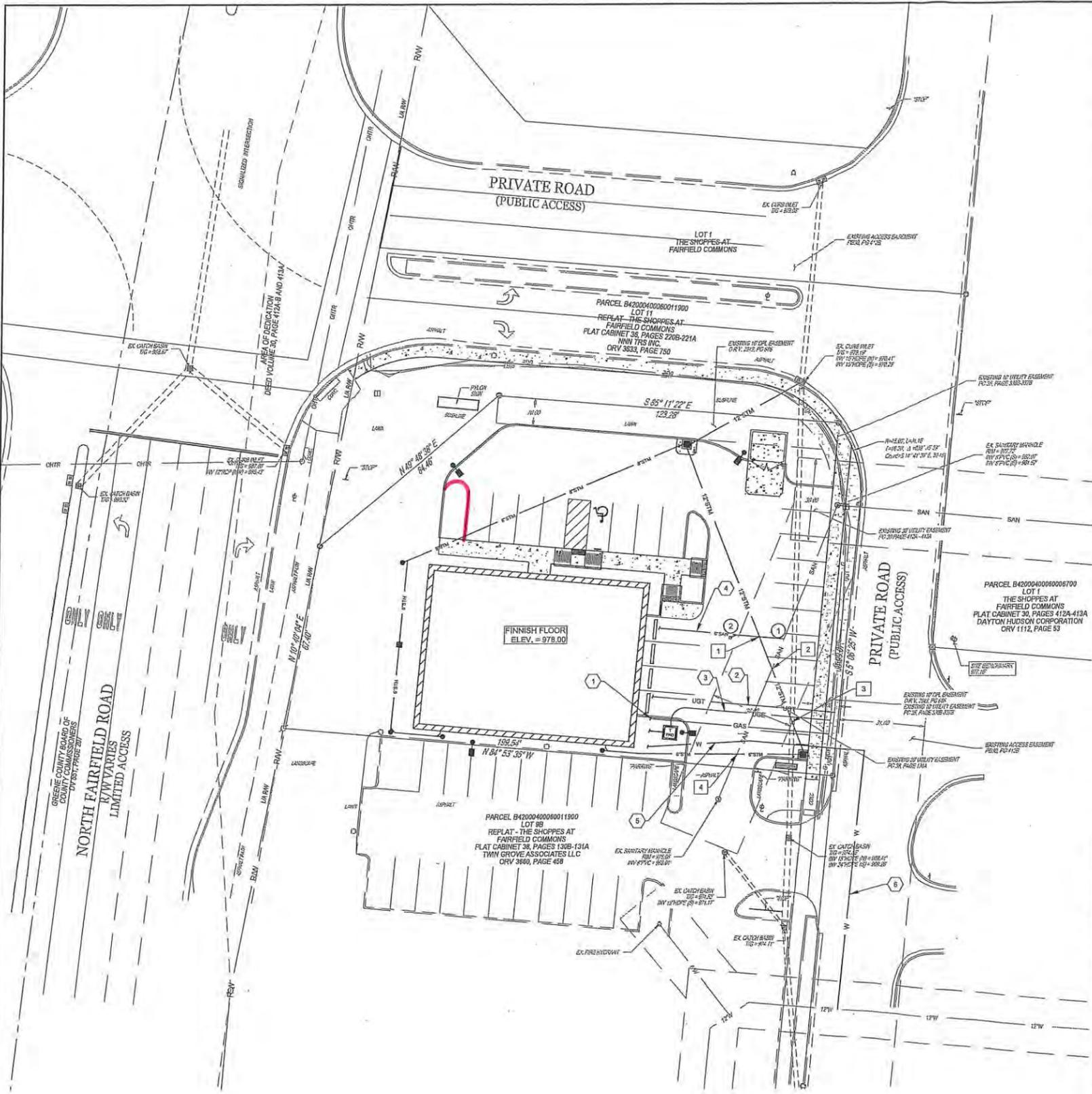
REVISIONS NO.	DATE	DESCRIPTION

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GRADING PLAN
 BSM DEVELOPMENT, LLC
 OH
 BEAVERCREEK

ISSUE: PLANNING RESUBMITTAL
 DATE: 09/28/2016
 JOB NO.: 751510-02
 DESIGN: NBH
 DRAWN: NBH
 CHECKED: ZDF
 SHEET NO. C5.0





GENERAL UTILITY NOTES:

- BOLLARDS SHALL BE PLACED TO PROTECT GAS METER, ELECTRICAL AND TELEPHONE EQUIPMENT, BUILDING EQUIPMENT AT THE DRIVE THROUGH, AND DUMPSTER ENCLOSURE.
- COORDINATE ALL SITE UTILITY WORK WITH THE MECHANICAL AND ELECTRICAL DRAWINGS.
- THE LOCATIONS OF UNDERGROUND FACILITIES SHOWN ON THESE PLANS ARE BASED ON FIELD SURVEYS, AS-BUILT PLANS, AND LOCAL UTILITY COMPANY RECORDS. IT SHALL BE THE CONTRACTOR'S FULL RESPONSIBILITY TO CONTACT THE VARIOUS UTILITY COMPANIES TO LOCATE THEIR FACILITIES PRIOR TO STARTING CONSTRUCTION. NO ADDITIONAL COMPENSATION SHALL BE PAID TO THE CONTRACTOR FOR DAMAGE AND REPAIR TO THESE FACILITIES CAUSED BY CONTRACTOR'S WORK FORCE.
- CONTRACTOR IS RESPONSIBLE FOR OBTAINING AND PAYING FOR ALL FEES ASSOCIATED WITH PERMITS REQUIRED TO PERFORM THE WORK PROPOSED ON THESE PLAN (I.E. TAPPING, INSPECTION, ETC.).
- ALL FILL MATERIAL IS TO BE IN PLACE, AND COMPACTED BEFORE INSTALLATION OF PROPOSED UTILITIES.
- CONTRACTOR SHALL NOTIFY THE UTILITY AUTHORITIES INSPECTORS 72 HOURS BEFORE CONNECTING TO ANY EXISTING LINE.
- SANITARY AND WATER LINE SHALL BE KEPT TEN (10') APART (PARALLEL) OR WHEN CROSSING 18" VERTICAL CLEARANCE (OUTSIDE EDGE OF PIPE TO OUTSIDE EDGE OF PIPE.)
- UTILITIES UNDERGROUND SHALL BE INSTALLED, INSPECTED AND APPROVED BEFORE BACKFILLING.
- RIMS OF EXISTING STRUCTURES SHALL BE RAISED OR LOWERED AS NECESSARY TO BE FLUSH WITH PROPOSED PAVEMENT ELEVATIONS WITH WATER TIGHT LIDS.
- DRAWINGS DO NOT PURPORT TO SHOW ALL EXISTING UTILITIES. EXISTING UTILITIES SHALL BE VERIFIED IN FIELD PRIOR TO INSTALLATION OF ANY NEW LINES.
- CONTRACTOR IS RESPONSIBLE FOR COMPLYING TO THE SPECIFICATIONS OF THE LOCAL AUTHORITIES WITH REGARDS TO MATERIALS AND INSTALLATION OF THE WATER AND SEWER LINES.
- CONTRACTOR SHALL COMPLY TO THE FULLEST EXTENT WITH THE LATEST STANDARDS OF OSHA DIRECTIVES OR ANY OTHER AGENCY HAVING JURISDICTION.
- ALL NECESSARY INSPECTIONS AND/OR CERTIFICATIONS REQUIRED BY CODES AND/OR UTILITY SERVICE COMPANIES SHALL BE PERFORMED PRIOR TO ANNOUNCED BUILDING POSSESSION AND THE FINAL CONNECTION OF SERVICE.
- CONTRACTOR SHALL COORDINATE WITH ALL UTILITY COMPANIES FOR INSTALLATION REQUIREMENTS AND SPECIFICATIONS.
- CONTRACTOR SHALL REFER TO ARCHITECTURAL PLANS AND SPECIFICATIONS FOR ACTUAL LOCATION OF ALL UTILITY ENTRANCES TO INCLUDE SANITARY SEWER LATERALS, DOMESTIC AND FIRE PROTECTION WATER SERVICE, ELECTRICAL, TELEPHONE, AND GAS SERVICE.
- CONTRACTOR SHALL COORDINATE INSTALLATION OF UTILITIES, IN SUCH A MANNER AS TO AVOID CONFLICTS, AS WELL AS COORDINATING WITH THE AUTHORITY HAVING JURISDICTION UTILITY REQUIREMENTS AS TO ASSURE PROPER LOCATION AND SCHEDULING FOR TIE-INS/CONNECTIONS PRIOR TO CONNECTING TO EXISTING UTILITIES.
- THE CONTRACTOR SHALL CONDUCT ALL REQUIRED TESTS TO THE SATISFACTION OF THE RESPECTIVE UTILITY COMPANIES AND THE OWNER'S INSPECTING AUTHORITIES.

SANITARY SEWER NOTES:

- ALL SANITARY SEWERS SHALL BE PVC, SDR 23.5 MATERIAL, CONFORMING TO ASTM SPECIFICATION D3034, COLORED GREEN, WITH 3/4" IN STONE BEDDING.
- PVC PIPE SHALL HAVE AN INTEGRAL BELL AND JOINTS SHALL BE PREMIUM GASKETED JOINTS MEETING THE REQUIREMENTS OF ASTM D3212 TO PROVIDE A WATERTIGHT SEAL AND SHALL BE MADE IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.

STORM SEWER NOTES:

- SEE GRADING PLAN FOR STORM SEWER NOTES.

WATER NOTES:

- WATER SERVICE MATERIAL LARGER THAN 2" SHALL BE DUCTILE IRON IN CONFORMANCE WITH ANSI A21.51 (AWWA C151) DUCTILE IRON PIPE, CENTRIFUGALLY CAST IN METAL MOLDS OR SAND LINED MOLDS, FOR WATER OR OTHER LIQUIDS AND ANSI A21.50 (AWWA C150) THICKNESS DESIGN OF IRON PIPE. ALL SERVICE LINES 2" OR LESS SHALL BE COPPER TYPE K. SIZE TO BE AS NOTED IN PLAN VIEW. SERVICE CONNECTION TO HAVE MINIMUM COVER OF 60" COVER.
- ALL FITTINGS SHALL BE DUCTILE IRON IN CONFORMANCE WITH AWWA C110 OR AWWA C153. ALL FITTINGS SHALL BE RATED FOR 350 PSI WORKING PRESSURE, HAVE MECHANICAL JOINTS AND BE COATED AND CEMENT MORTAR LINED IN ACCORDANCE WITH AWWA C104. ALL BOLTS AND NUTS SHALL BE COR-TEN.
- WATER LINE SHALL HAVE A MINIMUM BURY DEPTH OF 4'.
- A SEPARATE GATE VALVE, THE SAME SIZE AS THE METER CONNECTIONS, SHALL BE PLACED ON THE SERVICE PIPE ON BOTH SIDES OF THE METER. SUCH VALVES SHALL BE EQUAL IN QUALITY TO THE SERVICE COCK.

CODED NOTES:

- PROPOSED GAS SERVICE. CONTRACTOR TO COORDINATE WITH SERVICE PROVIDER FOR CONNECTION. REFER TO MEP PLANS FOR EXACT STUB LOCATION.
- PROPOSED TELEPHONE SERVICE. CONTRACTOR TO COORDINATE WITH SERVICE PROVIDER FOR CONNECTION. REFER TO MEP PLANS FOR STUB LOCATION AND SERVICE REQUIREMENTS.
- PROPOSED ELECTRICAL SERVICE. CONTRACTOR TO COORDINATE WITH SERVICE PROVIDER INSTALLATION. REFER TO MEP PLANS FOR STUB LOCATION, LOADING AND ELECTRICAL PANEL REQUIREMENTS.
- PROPOSED SANITARY SEWER SERVICE PER GREENE COUNTY STANDARDS AND SPECIFICATIONS. SERVICE SHALL EXTEND BETWEEN EXISTING MAIN TO WITHIN 5' OF BUILDING. REFER TO MEP PLANS FOR EXACT STUB LOCATION.
- PROPOSED 2" WATER SERVICE PER GREENE COUNTY STANDARDS AND SPECIFICATIONS. 2" WATER LINE SHALL EXTEND BETWEEN EXISTING MAIN TO WITHIN 5' OF BUILDING. REFER TO MEP PLANS FOR EXACT STUB LOCATION.
- CONTRACTOR SHALL COORDINATE CONSTRUCTION ACTIVITY WITHIN THE STREET RIGHT-OF-WAY WITH THE CITY OF BEAVERCREEK AS APPLICABLE TO THE WORK. THIS INCLUDES PAVEMENT REMOVAL/ REPLACEMENT AND NECESSARY TRAFFIC CONTROL. OBTAIN PERMITS AS NECESSARY.

UTILITY CROSSING SCHEDULE			
NO.	UTILITY	INVERT ELEVATIONS	DIFF.
1	12" STORM	972.47	3.00
	6" SANITARY	969.47	
2	12" STORM	972.56	8.30
	8" SANITARY	964.26	
3	12" STORM	972.71	3.08
	15" STORM	969.63	
4	6" STORM	973.89	8.50
	8" SANITARY	965.39	

SANITARY SEWER STRUCTURE SCHEDULE			
NO.	STRUCTURE	RIM	INVERT(S)
1	CONNECTION	-	963.82
2	CLEAN OUT	GRADE	969.67

LEGEND

EXISTING
REFER TO EXISTING CONDITIONS PLAN

PROPOSED

- BUILDING
- CONCRETE CURB
- PAVEMENT/WALK
- STORM SEWER LINE
- SANITARY SEWER LINE
- DOMESTIC WATER SERVICE LINE
- GAS SERVICE LINE
- OVERHEAD ELEC. LINE
- UNDERGROUND ELEC. LINE
- UNDERGROUND TEL. LINE
- CATCH BASIN
- SANITARY CLEANOUT
- ELECTRICAL TRANSFORMER PAD

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BENCHMARK DATUM: NAVD88
BM "A": CHISELED SQUARE IN LIGHT POLE BASE 977.10

- SEE SHEET C6.1 FOR UTILITY NOTES & DETAILS
- SEE SHEET C5.0 FOR STORM SEWER DETAILS
- SEE ARCHITECTURAL PLANS FOR UTILITY STUB LOCATIONS

GRAPHIC SCALE (IN FEET)

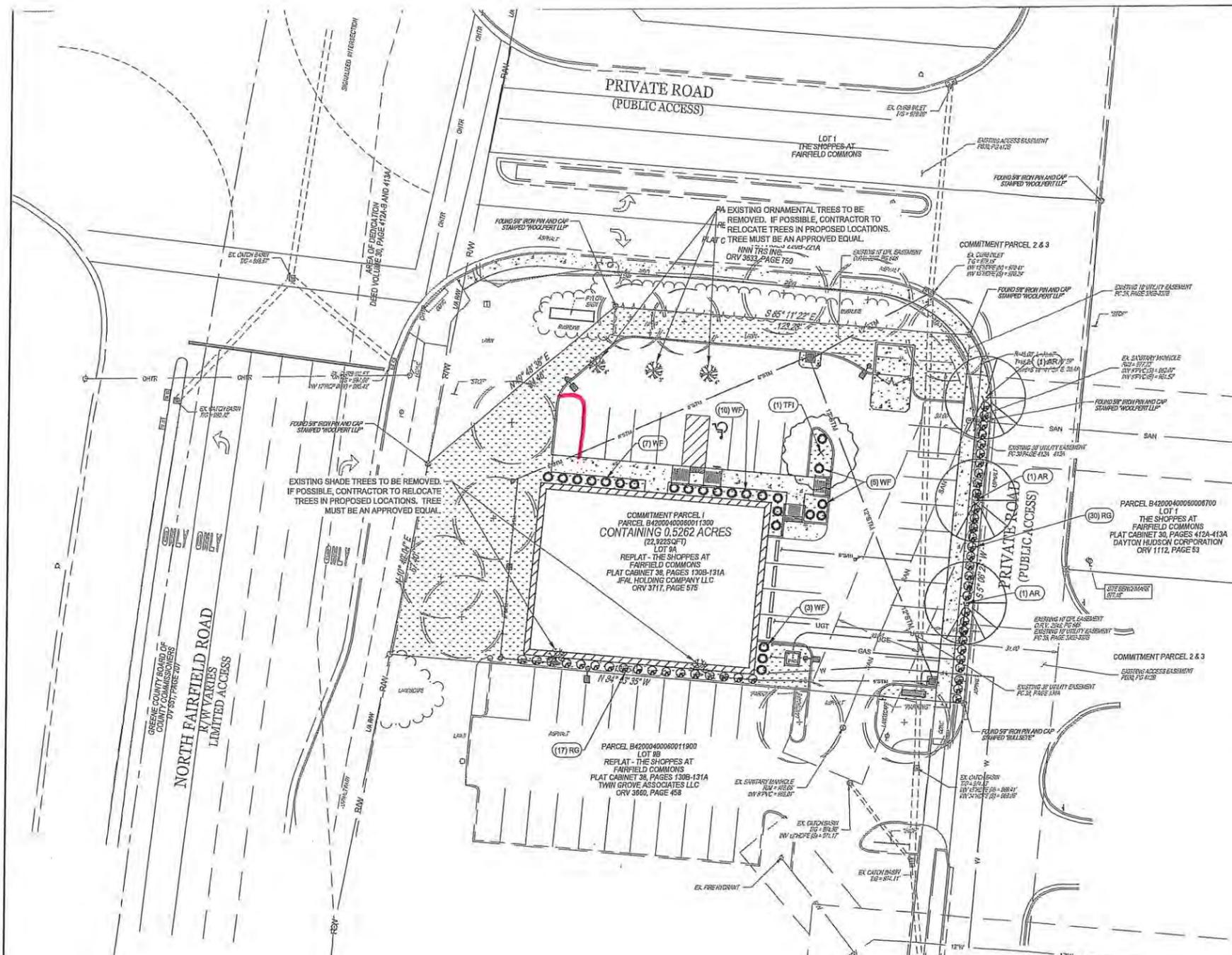
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ISSUE: PLANNING RESUBMITTAL DATE: 09/28/2016
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UTILITY PLAN
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PLANTING NOTES:

- ALL PLANT MATERIAL SHALL BE NORTHERN NURSERY GROWN NO. 1 GRADE AND INSTALLED ACCORDING TO ACCEPTED PLANTING PROCEDURES. ALL PLANT MATERIALS SHALL MEET CURRENT AMERICAN ASSOCIATION OF NURSERYMEN STANDARDS. DO NOT PLANT MATERIALS UNTIL DIRECTED BY OWNER/CONSTRUCTION MANAGER. THE OWNER RESERVES THE RIGHT TO REJECT ANY PLANT MATERIAL, FOR ANY REASON BEFORE OR AFTER IT IS INSTALLED.
- SIZES SPECIFIED ARE MINIMUM SIZES TO WHICH THE PLANTS ARE TO BE INSTALLED. ANY PLANT SUBSTITUTIONS SHALL BE APPROVED BY THE MUNICIPALITY AND OWNER.
- ALL LANDSCAPING SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH MUNICIPAL STANDARDS AND IN ACCORDANCE WITH CURRENT INDUSTRY STANDARDS IN A NEAT, HEALTH AND WEED FREE CONDITION. ANY DEAD, DISEASED OR DAMAGED PLANT MATERIALS ARE TO BE REPLACED IMMEDIATELY AFTER NOTIFIED TO DO SO. PLANT MATERIAL SHALL BE GUARANTEED FOR ONE YEAR AFTER PLANTING AND ACCEPTANCE.
- PLANT TREES AND SHRUBS IN ACCORDANCE WITH PLANTING DETAILS. DIG TREE PITS PER DETAILS. PLANT TREES AND SHRUBS AT THE SAME GRADE LEVEL AT WHICH THEY WERE GROWN AT THE NURSERY. IF HEAVY CLAY SOILS ARE EVIDENT, PLANT TREES AND SHRUBS HIGHER, APPROX. 1/4 OF THE ROOT BALL ABOVE GRADE.
- REMOVE ALL TWINE, WIRE, NURSERY TREE GUARDS, TAGS AND INORGANIC MATERIAL FROM ROOT BALLS. REMOVE THE TOP 1/3 OF BURLAP FROM EARTH BALLS AND REMOVE BURLAP FROM AROUND TRUNK.
- TWO LAYERS OF WEED BARRIER MADE FROM FIBERGLASS AND ULTRA-VIOLET LIGHT RESISTANT SHALL BE PLACED UNDER ALL PLANTING BEDS PRIOR TO MULCHING.
- MINIMUM TOPSOIL DEPTH IN LAWN AREAS SHALL BE FOUR (4) INCHES. MINIMUM TOPSOIL DEPTH IN LANDSCAPED AREAS SHALL BE TWELVE (12) INCHES.
- FINELY SHREDDED HARDWOOD BARK MULCH, NATURAL COLOR (NON-COLORED), IS REQUIRED FOR ALL PLANTINGS AND PLANTING BEDS. MULCH PER PLANTING DETAILS. MULCH IN PLANT BEDS SHALL BE 3" THICK AT TIME OF INSPECTION AND AFTER COMPACTED BY RAIN OR IRRIGATION.
- LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE VERIFICATION OF ALL UNDERGROUND AND OVERHEAD UTILITIES. IF A CONFLICT WITH UTILITIES EXISTS, NOTIFY OWNER/CONSTRUCTION MANAGER PRIOR TO PLANTING.

SEEDING NOTES:

- SEEDING METHOD - PER ALDI STANDARDS, SEED SHALL BE APPLIED BY HYDROSEEDING METHOD; APPLICATION FERTILIZER SHALL BE PLACES A MINIMUM OF 80 POUNDS PER ACRE, HYDROMULCH AT 1,200 POUNDS PER ACRE, WATER AT 500 GALLONS PER ACRE AND SEED AT A MINIMUM OF 220 POUNDS PER ACRE.
- REFER TO STORM WATER POLLUTION PREVENTION PLANS (SWPPP) FOR ADDITIONAL PERMANENT AND TEMPORARY SEEDING INFORMATION.

IRRIGATION NOTES:

- ALL PLANTING AREAS, LAWN AREAS AND LANDSCAPE ISLANDS SHOWN ARE TO HAVE A COMPLETE IRRIGATIONS SYSTEM. THE GC SHALL BE RESPONSIBLE FOR RETAINING A QUALIFIED FIRM FOR THE DESIGN OF THE IRRIGATION SYSTEM. THE GC SHALL SUBMIT THE IRRIGATION SYSTEM DESIGN TO THE ARCHITECT/OWNER FOR APPROVAL PRIOR TO COMMENCEMENT OF WORK.

LANDSCAPE REQUIREMENTS

TOTAL NUMBER OF TREES PER OPEN SPACE

- OVERALL TREE COUNT REQUIREMENT = OPEN SPACE SQFT / 2000 SQFT
- PROVIDED OPEN SPACE = 7,131 SQFT
- REQUIRED TREE COUNT = 7,131/2,000 = 3.56 = 4
- EXISTING TREE COUNT = 7
- PROPOSED TREE COUNT = 4
- TOTAL TREE COUNT = 11 (EXCEEDS REQUIREMENT)

STREET FRONTAGE LANDSCAPING

- (1) TREE AND 10 SHRUBS PER 35 LF OF FRONTAGE (EXCLUDING DRIVE OPENINGS)

STREET FRONTAGE (PRIVATE ROAD) = 89 LF

TREE REQUIREMENT = 99/35 = 2.82 = 3
PROPOSED = 3
TOTAL PROVIDED = 3 (MEETS REQUIREMENT)

SHRUB REQUIREMENT = 99/35 = 2.82 * 10 = 28.29 = 28
PROPOSED = 30
TOTAL PROVIDED = 30 (MEETS REQUIREMENT)

PARKING INTERIOR LANDSCAPING

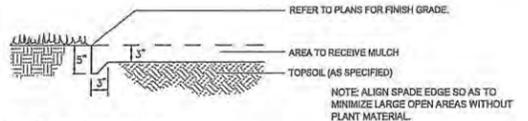
- 2 TREES WITHIN 50FT OF EVERY SPACE. (AS SHOWN - EXCEEDS REQUIREMENT)
- 75% OF ISLANDS LANDSCAPED WITH SHRUBS/PERENNIALS. (AS SHOWN - EXCEEDS REQUIREMENT)

BUILDING EXTERIOR LANDSCAPING

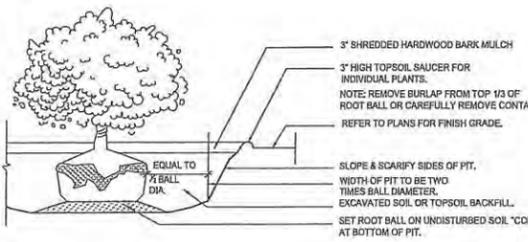
- 60% OF BUILDING PERIMETER LANDSCAPED WITH SHRUBS / PERENNIALS. (AS SHOWN - EXCEEDS REQUIREMENT)

LEGEND

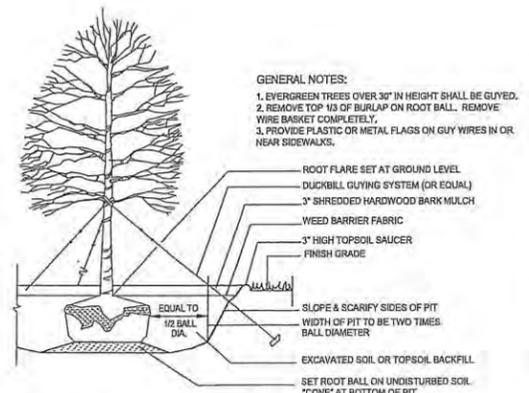
- EXISTING**
- REFER TO EXISTING CONDITIONS PLAN
- (Symbol: Circle with diagonal lines) EXISTING SHADE TREE
- PROPOSED**
- (Symbol: Circle with horizontal lines) RHEINGOLD ARBORVITAE (RG)
 - (Symbol: Circle with vertical lines) WINE & ROSE WEIGELA (WF)
 - (Symbol: Circle with diagonal lines) RED SUNSET MAPLE (AR)
 - (Symbol: Circle with cross-hatch) IMPERIAL HONEYLOCUST (TFI)
 - (Symbol: Dotted pattern) GRASS SEED AREA



1 SPADE EDGE
NO SCALE



2 SHRUB PLANTING
NO SCALE



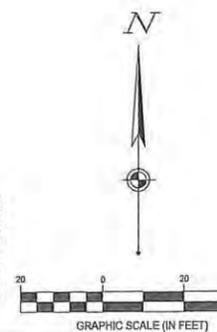
3 TREE PLANTING
NO SCALE

- GENERAL NOTES:**
- EVERGREEN TREES OVER 30" IN HEIGHT SHALL BE GUYED.
 - REMOVE TOP 1/3 OF BURLAP ON ROOT BALL. REMOVE WIRE BASKET COMPLETELY.
 - PROVIDE PLASTIC OR METAL FLAGS ON GUY WIRES IN OR NEAR SIDEWALKS.

PLANT LIST						
QTY.	ID	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	NOTE
TREES						
3	AR	ACER RUBRUM "RED SUNSET"	RED SUNSET MAPLE	2.5" B&B	AS SHOWN	OR APPROVED EQUAL
1	TFI	GLEDITSIA TRIACANTHOS INERMIS IMPERIAL	IMPERIAL HONEYLOCUST	2.0" B&B	AS SHOWN	OR APPROVED EQUAL
SHRUBS						
25	WF	WEIGELA FLORIDA "WINE & ROSES"	WINE & ROSES WEIGELA	24" # 5 CONT.	AS SHOWN	OR APPROVED EQUAL
47	RD	THUJA OCCIDENTALIS "RHEINGOLD"	RHEINGOLD ARBORVITAE	# 3 CONT.	AS SHOWN	OR APPROVED EQUAL



FORTY-EIGHT (48) HOURS BEFORE DIGGING IS TO COMMENCE, THE CONTRACTORS SHALL NOTIFY THE FOLLOWING AGENCIES: OHIO UTILITIES PROTECTION SERVICE AT 811 OR 1 (800) 362-2764 AND ALL OTHER AGENCIES WHICH MIGHT HAVE UNDERGROUND UTILITIES INVOLVING THIS PROJECT AND ARE NONMEMBERS OF OHIO UTILITIES PROTECTION SERVICE

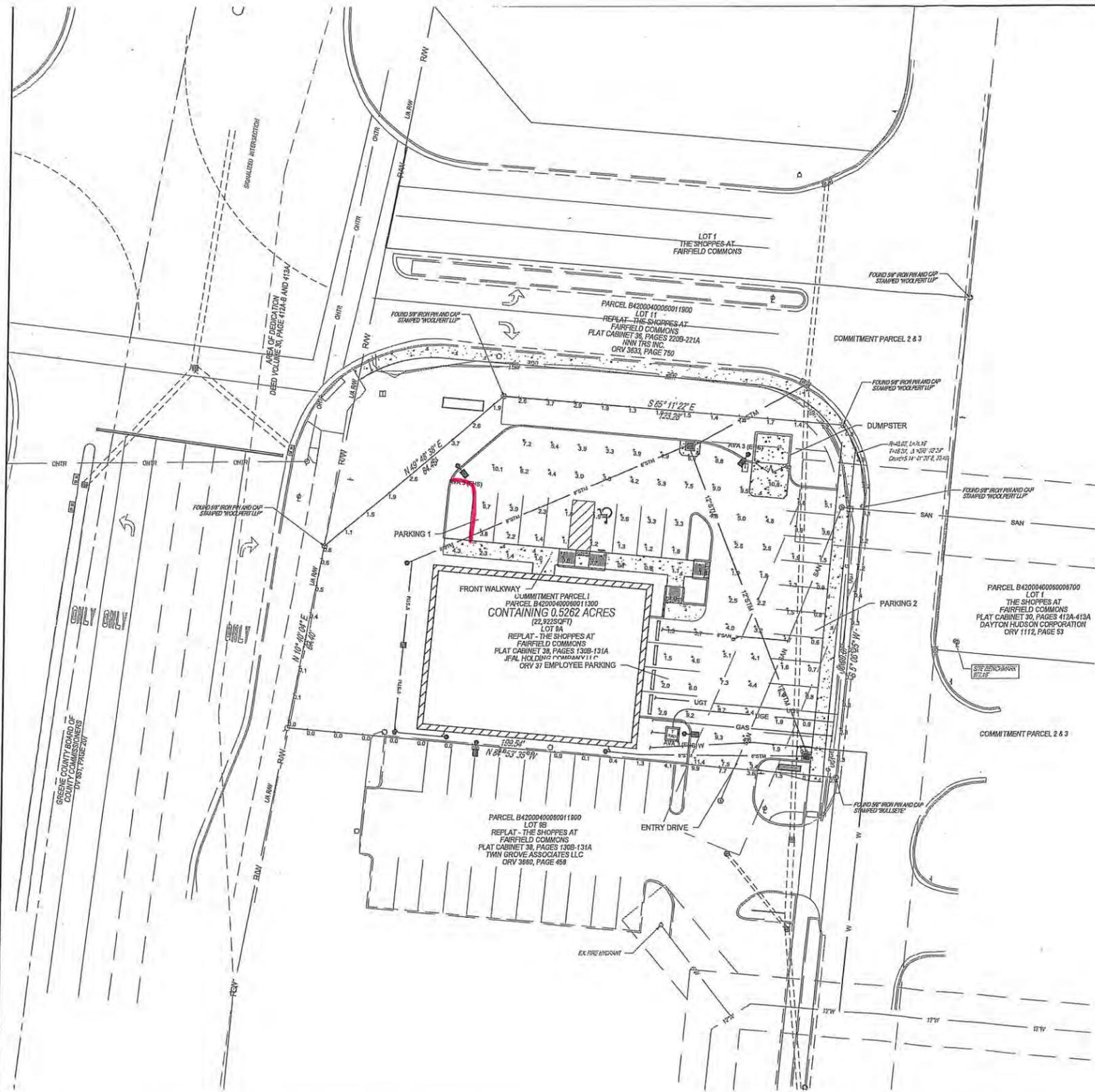


REVISIONS	NO.	DATE	DESCRIPTION

ceso
CREATION TO COMPLETION
www.cesoinc.com
Engineering • Architecture • Survey • Construction Mgmt • Environmental

LANDSCAPE PLAN
BSM DEVELOPMENT, LLC
BEAVERCREEK
OH

ISSUE: PLANNING RESUBMITTAL
DATE: 09/28/2016
JOB NO.: 751510-02
DESIGN: NBH
DRAWN: NBH
CHECKED: ZDF
SHEET NO. C8.0



Label	Avg	Max	Min	Avg/Min	Max/Min
Approach	5.12	10.1	1.8	2.84	5.61
Dumpster	10.80	10.8	10.8	1.00	1.00
Employee Parking	3.90	9.2	1.3	3.00	7.08
Entry Drive	7.43	11.4	3.4	2.19	3.35
Front Walkway	1.43	4.3	0.7	2.04	6.14
Horz Spill Prop Line @ Grade	1.45	9.9	0.0	N.A.	N.A.
Parking 1	2.48	6.7	1.1	2.25	6.09
Parking 2	2.00	6.6	0.6	3.33	11.00

Job:
Type:
Notes:

Avalume Horizontal Lamp

Page 1 of 3

The Avalume is a rectangular area luminaire defined by its sleek rounded profile and rugged construction. The housing is one-piece, die cast aluminum and mounts directly to a pole or wall without need of a separate support arm. The optical system provides IES Types III, IV and V distribution. The clear frame is single-piece die cast aluminum and makes an optically clear tempered glass lens. The luminaire is completely sealed and protected against intrusion from moisture, dust and insects. Avalume luminaires are finished with a fade and abrasion resistant TGIC powdercoat. Flat glass lens luminaires provide full useful performance.

Enter the order code on the appropriate line above. Note: Philips reserves the right to make changes in specifications, the combination and configurations or make. Refer to latest data for maximum and minimums for options or comments. Please consult the factory.

PREFIX	MOUNTING	DISTRIBUTION
AVA	1 Single Pole Mount 2 Twin Pole Mount at 180° 3 Twin Pole Mount at 90° 3 3-way Pole Mount at 90° 3 3-way Pole Mount at 120° 4 4-way Pole Mount W Wall Mount WS Wall Mount with Surface Conduit	Horizontal Lumen Luminaire (AVA) Only 3 IES Type III F IES Type IV Forward Throw S Type V MTS Medium Throw with Solis™ Lens (flange not req'd) Type 1 reflectors only in Type II. Removal of an insert converts the reflector to Type 2.

WATTAGE	VOLTAGE
Pole Mount MH Magnetic Ballast	120 208 240 277 347 480
Standard MH Magnetic Ballast	120 UNIV (90V only flange not req'd) 208 Accept 120V through 277V, 347V or 480V input
High Pressure Sodium Magnetic Ballast	
Compact Fluorescent	

PHILIPS
Stonco

Symbol	Qty	Label	Arrangement	LLF	Manufacturer	Fixture Series	Fixture Description	Mounting Height	Arr. Watts	Arr. Lum. Lumens	BUG Rating
☐	3	AVA 3 (EHS)	SINGLE	1.000	Philips Stonco	Avalume Horizontal Lamp	AVA-1-3-400MH-208-BRP-EHS	25 FEET	465	25551	B3-U0-G3



FORTY-EIGHT (48) HOURS BEFORE DIGGING IS TO COMMENCE, THE CONTRACTORS SHALL NOTIFY THE FOLLOWING AGENCIES: OHIO UTILITIES PROTECTION SERVICE AT 811 OR 1 (800) 362-2764 AND ALL OTHER AGENCIES WHICH MIGHT HAVE UNDERGROUND UTILITIES INVOLVING THIS PROJECT AND ARE NONMEMBERS OF OHIO UTILITIES PROTECTION SERVICE



REVISIONS	NO.	DATE	DESCRIPTION

SITE LIGHTING PLAN
 BSM DEVELOPMENT, LLC
 BEAVERCREEK
 OH

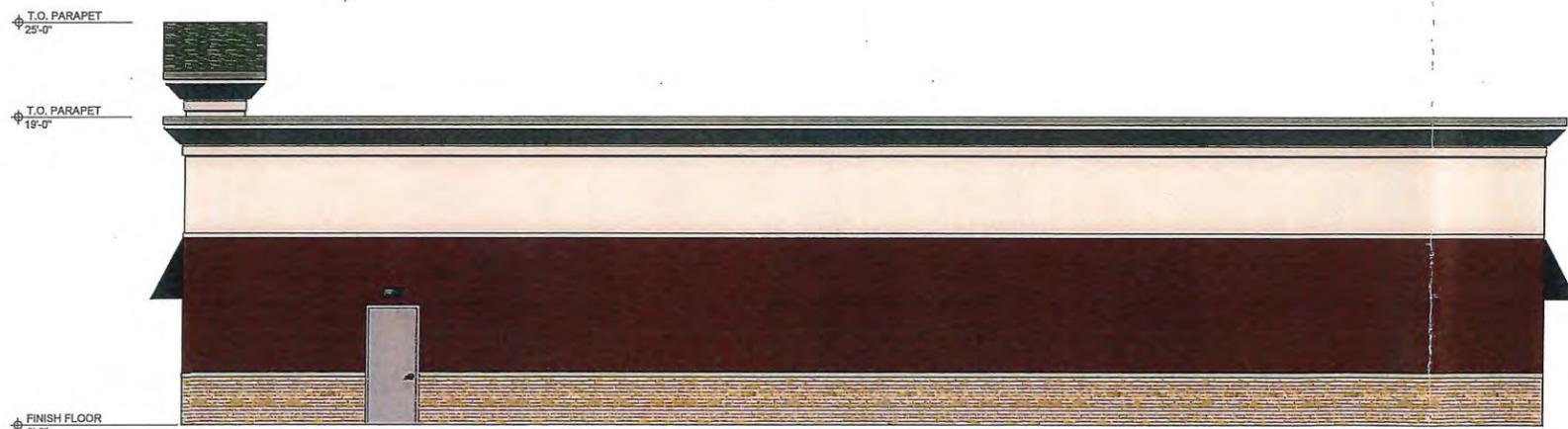
ISSUE: PLANNING RESUBMITTAL
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 DESIGN: NBH
 DRAWN: NBH
 CHECKED: ZDF
 SHEET NO. C9.0



① COLOR FRONT ELEVATION
NTS



③ COLOR SIDE ELEVATION A
NTS



② COLOR REAR ELEVATION
NTS



④ COLOR SIDE ELEVATION B
NTS

EXTERIOR FINISH SCHEDULE				
MARK	MATERIAL	MANUFACTURER	COLOR	REMARKS
ALUM-1	ALUMINUM & GLASS STOREFRONT FRAME	KAVNEER	CLEAR ANODIZED ALUMINUM	
AWN-1	CANVAS AWNING	TBD	BLACK	
BRK-1	BRICK VENEER	PALMETTO BRICK	GREYSTONE 1.25	SMOOTH
BRK-2	BRICK VENEER	PALMETTO BRICK OR EQUAL	MATCH .25 GREYSTONE	SMOOTH
DS-1	6" X 6" PREFINISHED METAL DOWNSPOUT	VARIES	PAINT COLOR PT-1	
EIFS-1	1-1/2" DRAINABLE EIFS	DRYVIT OR EQUAL	MATCH DRYVIT - 450 - "CLOVER"	TEXTURE: SANDPEBBLE FINE DPR
EIFS-2	EIFS CORNICE	DRYVIT OR EQUAL	MATCH DRYVIT - 449 - "BUCKSKIN"	TEXTURE: SANDPEBBLE FINE DPR
PT-1	PAINT	PPG	MATCH "JEFFERSON HOUSE" 621 (PPG PAINTS)	
SHNG-1	DIMENSIONAL FIBERGLASS SHINLE ROOF	TBD	WEATHERED WOOD	



MJM ARCHITECTS | 712 4th Avenue South | Nashville, Tn 37210
Phone: 615-244-8170 Fax: 615-244-8141 www.mjmach.com

SLEEP OUTFITTERS
BEAVERCREEK, OH
09.28.16

RECEIVED
SEP 28 2016
CITY OF BEAVERCREEK
PLANNING DEPARTMENT



Baker Storey McDonald Properties, Inc.
3011 Army Drive
Suite 120
Nashville, TN 37204

ORDINANCE NO. 16-22

CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER JARVIS ON THE 10TH DAY OF OCTOBER, 2016.

**AN ORDINANCE REPEALING CURRENT SECTION 132.13
“PANHANDLING” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES, AND ADOPTING NEW SECTION 132.13
“PANHANDLING” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES.**

WHEREAS, Section 132.13 of the City of Beavercreek Code of Ordinances sets forth the regulations regarding panhandling within the City of Beavercreek; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Section 132.13 of the City of Beavercreek Code of Ordinances.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK,
HEREBY ORDAINS:**

SECTION I.

Current Section 132.13 “PANHANDLING” of the City of Beavercreek Code of Ordinances is hereby repealed, and new section 132.13 “PANHANDLING” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold** and text to be deleted in ~~strikeout~~.

SECTION II.

It is hereby 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 any and 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, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this _____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT SECTION 132.13 "PANHANDLING" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW SECTION 132.13 "PANHANDLING" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

EXHIBIT A

§ 132.13 PANHANDLING.

(A) *Definitions.* Whenever the following words are used in this section, they shall have the following meanings, unless otherwise provided:

AGGRESSIVE MANNER. Shall mean as follows:

(1) Before, during, or after attempting to engage in panhandling, any behavior that would cause a reasonable person to feel alarmed, intimidated, threatened, restrained, menaced, harassed, or coerced including but not limited to the use of any verbal threats, threatening gestures, abusive language, obscene gestures or obscene language, or screaming and other unreasonable noises;

(2) Before, during, or after attempting to engage in panhandling, blocking the passage of any person or vehicle that impedes the entrance into, or the exit out, of any vehicle, building, business, or establishment, or impedes the person's activities in the vehicle, building, business, or establishment;

(3) Any further attempt to ~~solicit for panhandling~~ **panhandle** after a person has given a negative response, verbally or physically, ~~to a solicitation for panhandling~~ that such **panhandling solicitation** should stop, or that it is unwelcome or offensive;

(4) Before, during, or after attempting to engage in panhandling, having any physical contact with the person that is being ~~solicited~~ **panhandled** by the person panhandling and/or touching or having physical contact with the clothing, purse, or other personal property of the person being ~~solicited~~ **panhandled** by the person panhandling without a statement or other communication that the person ~~being solicited~~ consents to the physical contact and/or touching of the person and/or the person's clothing, purse, or other personal property;

(5) Before, during, or after attempting to engage in panhandling, following behind, ahead, or alongside the person that is being **panhandled** ~~solicited~~;

(6) Any further attempt to ~~solicit for panhandling~~ **panhandle** after the owner or occupant of private property requests that the person cease all ~~solicitation for panhandling~~, or upon the request of the owner or occupant of the private property for the person panhandling to leave the property;

(7) Any type of panhandling which interferes or disrupts any activity or event occurring on public property, as defined in this section;

(8) By coming within three feet of the person ~~solicited~~ **being panhandled** after that person has indicated that he or she does not wish to make a donation;

(9) By following a person who walks or drives away from the ~~panhandlersolicitor~~ **panhandler**;

(10) By making unreasonable noise or offensively coarse utterance, gesture, or display or communicating unwarranted or grossly abusive language, either during the ~~solicitation~~ **panhandling** or following a refusal; or

(11) By panhandling in a group of two or more persons.

AUTOMATED-TELLER MACHINE. A bank or other financial institution's machine that is able to carry out financial transactions, including, but not limited to cash withdrawals, deposits, transfers, and other financial transactions or inquiries.

FALSE OR MISLEADING REPRESENTATIONS. Shall mean as follows:

(1) Making statements or representing, either verbally or in writing, that the person panhandling suffers from a medical condition, mental or physical disability, or deformity when the person does not suffer from a medical condition, mental or physical disability, or deformity;

(2) Making statements or representing, either verbally or in writing, that the person panhandling has a minor child or other family member they are supporting who suffers from a medical condition, mental or physical disability, or deformity, when in fact that child or other family member does not suffer from a medical condition, mental or physical disability, or deformity and/or the person panhandling does not support that minor child or other family member;

(3) Making statements or representing, either verbally or in writing, that the person panhandling is a military veteran or active duty military member, when the person is not a military veteran or active duty military member;

(4) Making statements or representing, either verbally or in writing, that the person panhandling needs a donation to meet a specific need, when the person panhandling does not have the specific need and/or that person already has sufficient funds to meet that need and does not disclose that the person already has sufficient funds;

(5) Making statements or representing, either verbally or in writing, that the person panhandling is unemployed when the person panhandling is not unemployed; or

(6) Making statements or representing, either verbally or in writing, that the person panhandling is homeless and/or is stranded when in fact the person is not homeless or stranded.

PANHANDLING. To request verbally, in writing, or by gesture or other actions, money, items of value, a donation, or other ~~personal~~ financial assistance **for the requestor's personal use**. Further, ~~panhandling shall include any request for a person to purchase an item for an amount that a reasonable person would consider to be in excess of its value.~~

PUBLIC PROPERTY. All property owned, controlled, or operated by any governmental entity, including but not limited to governmental offices or facilities, public streets, publicly owned parking lots, schools, libraries, post offices, transit facilities, and other public lands, parks, buildings, or grounds.

RIGHT-OF-WAY. Shall have the same meaning as in R.C. § 4511.01 (UU).

(B) *Panhandling restrictions and prohibitions.* No person shall ~~solicit for~~ **panhandle** in any of the following manners:

(1) In any type of aggressive manner as defined in division (A) of this section.

(2) On any private property in which there is any type of written notice prohibiting ~~solicitation and/or~~ panhandling;

(3) On any other private property, unless the person panhandling has obtained prior permission from the owner or occupant;

(4) From any operator or occupant of a motor vehicle or from any person entering or exiting a motor vehicle;

(5) Within 20 feet of any pedestrians waiting in line for service or waiting in line for an event;

(6) Within 20 feet of any pedestrians waiting in line to obtain access to a building;

(7) Within 20 feet of any entrance or exit of the building for any check cashing business, bank, credit union, or savings and loan during the hours of operation of any of these businesses;

(8) Within 20 feet of any automated-teller machine, as defined in division (A) of this section during its hours of operation;

(9) At any bus stops or bus shelters;

(10) In any vehicle within the right-of-way as defined in division (A) of this section;

(11) In any public transportation vehicle or any public transportation facility;

(12) Within 20 feet of the area of the sidewalk;

(13) Within 20 feet of the entrance or exit of any public facility;

(14) On public property within 20 feet of an entrance to a building;

(15) On public property within 20 feet of an entrance to a parking lot; or

(16) On a public street, by intentionally or recklessly blocking the safe or free passage of a person or vehicle.

(17) In any manner which involves the use of false or misleading representations as defined in division (A) of this section.

(C) *Panhandling by minors.* No parent, guardian, or other custodian of a minor child shall allow or cause, or direct a minor to engage in panhandling. Further, no other adult shall cause a minor to panhandle.

~~(D) *Exclusion.* Panhandling shall not include solicitations made for money or a donation by a charitable or civic organization which does so with the prior permission of the owner or occupant of the premise.~~

~~(DE) *Penalty.* Whoever violates this section is guilty of panhandling, a misdemeanor of the fourth degree. Whoever violates this section three times or more within one year is guilty of a third degree misdemeanor.~~

ORDINANCE NO. 16-23
CITY OF BEAVERCREEK

SPONSORED BY VICE MAYOR VANN ON THE 10TH DAY OF OCTOBER, 2016.

**AN ORDINANCE REPEALING CURRENT CHAPTER 112
“PEDDLING AND SOLICITING” OF THE CITY OF BEAVERCREEK
CODE OF ORDINANCES, AND ADOPTING NEW CHAPTER 112
“PEDDLING, SOLICITING, AND DISTRIBUTION” OF THE CITY
OF BEAVERCREEK CODE OF ORDINANCES.**

WHEREAS, Chapter 112 of the City of Beavercreek Code of Ordinances sets forth the regulations regarding peddling, soliciting, and distribution within the City of Beavercreek; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Chapter 112 of the City of Beavercreek Code of Ordinances.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK,
HEREBY ORDAINS:**

SECTION I.

Current Chapter 112 “PEDDLING AND SOLICITING” of the City of Beavercreek Code of Ordinances is hereby repealed, and new Chapter 112 “PEDDLING, SOLICITING, AND DISTRIBUTION” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold** and text to be deleted in ~~strikeout~~.

SECTION II.

It is hereby 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 any and 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, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this _____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT CHAPTER 112 "PEDDLING AND SOLICITING" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW CHAPTER 112 "PEDDLING, SOLICITING, AND DISTRIBUTION" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

Exhibit A

CHAPTER 112: PEDDLING, ~~AND~~ SOLICITING, AND DISTRIBUTION

§ 112.01 DEFINITIONS.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

~~HAWKER, OR PEDDLER OR SOLICITOR.~~ Any person who travels from house to house or place to place, or who on the streets or open places, or on public grounds or places, sells or offers for sale, or exposes for sale, any goods, wares or merchandise to any person not a dealer therein, or who takes orders for the purchase of any such items by sample, lists catalogue, or subscription. All ~~two~~ ~~three~~ terms shall be referred to herein as **PEDDLERSOLICITOR.**

§ 112.02 LICENSE REQUIRED.

~~Soliciting Peddling~~ within the city shall be permitted if the ~~peddler solicitor~~ **peddler** obtains a license from the city in the manner hereinafter directed.

§ 112.03 EXEMPTIONS.

This chapter shall not apply:

- (A) Where items are agricultural produce sold by the individual from his/her own farm;
- (B) To selling of newspapers;
- (C) To ~~solicitation~~ **peddling** activities of or sponsored by the city or educational institutions (i.e. Boy Scouts, Girl Scouts, band associations, PTA groups, youth sporting groups, etc.);
- (D) Where the items sold or presented are the result of an invitation by the individual home owner.

Statutory reference:

Local license power, exceptions, see R.C. § 715.63

§ 112.04 APPLICATION.

Any person desirous of obtaining a license as a ~~peddlersolicitor~~ **peddler** or as a helper or assistant thereto, shall apply to the city upon proper blanks to be furnished by the city and sworn to before a notary public or other officer authorized by law to take oaths, and signed by such applicant, stating in what manner he/~~she~~ intends to travel and trade or to conduct business, his/~~her~~ address, and, if employed, the name and address of his/~~her~~ employer, the applicant's physical description, the name and class of the license desired, a statement as to previous convictions for violations of the law, and two true photographs of the applicant. Such applicant shall pay to the city the amount hereinafter set forth.

§ 112.05 FEES.

Licenses issued for peddlers, ~~and hawkers and solicitors~~ shall be charged and paid for according to the following rates:

(A) If a person intends to travel on foot, \$5 per day for the first day, \$3 for each succeeding day, or \$15 for one year. An annual \$5 renewal fee is required if the license is extended by the same licensee for more than one year.

(B) If the person intends to use a hand or push car, \$5 per day for the first day, \$3 for each succeeding day, or \$15 for one year. An annual \$5 renewal fee is required if the license is extended by the same licensee for more than one year.

(C) If the person intends to use a vehicle drawn by animals or a mechanically propelled vehicle, \$20 per year, or any part thereof, per vehicle. Use of private vehicle exempted from this division if not used to sell products from within vehicle. (In this instance division (B) above applies only.)

(D) For helpers or assistants to those who use vehicles, \$5 per year.

(E) Persons selling or taking subscriptions for papers, books, magazines pertaining to religion or politics purposes are excluded from a license fee, but shall register pursuant to the conditions of this chapter.

§ 112.06 ISSUANCE OF LICENSES.

The city is required to issue licenses to those who have complied with the provisions of this chapter, and the license granted hereunder shall be in such form as to contain a true photograph of the licensee, his/**her** name, address, physical description and the name of the class of his/**her** license as designated in § 112.05. All licensees shall carry the license described above with them at all times while peddling. No licensee shall change, remove or obliterate any entry made on such license.

§ 112.07 HOURS, DAYS FOR SOLICITATION PEDDLING.

No licensee shall commence ~~soliciting~~ **peddling** before 9:00 a.m. and shall cease ~~soliciting~~ **peddling** no later than 9:00 p.m., Monday through Saturday, except in the case where a prearranged appointment has been made in agreement with the party being ~~peddled~~ **solicited**. No ~~solicitations~~ **peddling** shall be made ~~occur~~ on Sunday.

§ 112.08 RECORDS OF LICENSES.

A full, complete record of each license issued hereunder, including renewals, suspensions or revocations thereof, and serious complaints and charges against the licensee together with his/**her** photograph, shall be kept on file by the city.

§ 112.09 USE OF PEDDLER'S VEHICLE.

The vehicles used by licensed ~~solicitors~~ **peddlers**, when engaged in their licensed business on the streets or public places of the city, must be kept in motion, except when making sales, and their movements must be timed and executed so as to cause minimum interference with traffic. Such vehicle shall not occupy any street or any public park or place in the city as a temporary or permanent vendor's stand. No more than two persons shall sell or operate on or in connection

with any ~~seller~~**peddler's** wagon or truck. The owner or person in charge of such vehicle shall have a ~~seller~~**peddler's** license, as provided in this chapter.

§ 112.10 SELLER OF FOODSTUFFS.

(A) No license, under this chapter, shall be issued to anyone who sells or expects to sell foodstuffs, unless he/**she** shall have a permit from the Health Officer, and all meats shall be government inspected and refrigerated and properly labeled. Before issuing such permit, the Health Officer may require under oath, if desired, such information regarding the moral and physical fitness and the identification of the applicant, the kind, condition, ownership and place of storage of the vehicle used in peddling, the nature and scope of his/**her** business and such other similar information as he/**she** may deem necessary to protect the general welfare and health of the public. If, in securing such information, the knowledge of certain facts obtained shall make it seem that the applicant for a license under this chapter should not be granted such license, then a full report on the case shall be made to council for its consideration and disposition before a license is issued.

(B) All vehicles used in the sale of foodstuffs must be kept clean and in a sanitary condition at all times, and when containing loads or parts of loads of food products, they must be kept only in places which, in the opinion of the Health Officer, are sanitary and wholesome.

(C) The Health Officer shall have the authority to order, through notices mailed or delivered to the licensees or by publication, that food products which are not cooked or washed before eating, or which are not protected by a natural covering which is removed before eating, shall be covered or carried in a closed receptacle of approved kind so as to protect them from exposure to dust and insects, and it shall be the duty of all licensees, when so ordered, to comply with the provisions of this section.

§ 112.11 SUSPENSION OR REVOCATION OF LICENSE.

The City Manager shall have the power to suspend any license issued hereunder for violation of a city ordinance or any condition or regulation under which a license was granted, or for undesirable business practices. Such suspension may be accomplished summarily upon a sworn affidavit filed with the City Manager setting forth grounds for such suspension. The City Manager shall report all suspensions to Council, which may, for cause shown, revoke or reinstate the license after giving the licensee reasonable notice and an opportunity to be heard. No person whose license has been revoked shall receive another license for a period of one year thereafter. In the event of revocation, the license fee shall not be refunded.

§ 112.12 EXPIRATION DATES OF LICENSES.

All licenses issued for ~~seller~~**peddlers** shall expire on December 31, unless a prior date is fixed therein.

§ 112.13 NOISE PROHIBITIONS.

Any person who travels from house to house, or from place to place, whether doing so on foot or otherwise, or who on the streets, or public grounds or places, sells, or offers, or exposes for sale, any goods, wares, merchandise, foodstuffs, confections or refreshments to any person not a dealer therein, shall not make, or cause, permit or allow to be made, any noise of any kind by

personal outcry from any person or by the use of horns, bells or any other mechanical or electrical contrivance or device for the purpose of advertising such goods, for attracting attention to such person and his/**her** wares and to notify his/**her** presence in the vicinity as a seller of wares, when within 200 feet of any public, parochial or private school during the regular hours of operation thereof and when any of such schools are in operation with children or pupils in attendance. When in other areas of the city, no such person shall make, cause, permit or allow to be made, any loud, unusual or unnecessary noise in any manner or way so as to be annoying and disturbing to the inhabitants of the city, and in no event after 9:00 p.m.

§ 112.14 DEFINITIONS FOR SOLICITING.

(A) The terms “solicit” or “soliciting” mean “the spoken, written, or printed word or such other acts or bodily gestures as are conducted in furtherance of the purposes of immediately obtaining money or any other item of value.”

(B) The term “distribution” means “an exchange or an attempt to exchange a physical item between two or more individuals.”

§ 112.15 PLACE OF SOLICITING.

No person shall solicit another person in any of the following places:

- (1) In any public transportation vehicle or facility;**
- (2) In or at any sports stadium owned or operated by a political subdivision;**
- (3) In or at any hall or theater owned or operated by a political subdivision;**
- (4) On private property, after an owner, lessee, resident, or agent thereof has given notice to the solicitor that he or she is not permitted to solicit on that property.**

§ 112.16 FALSE OR MISLEADING DISTRIBUTION

(A) No person who is engaging in or attempting to engage in distribution shall knowingly make a false or misleading statement or representation with the purpose to defraud or knowing that the person is facilitating a fraud.

(B) Words or phrases used in this section that are not otherwise defined in this Chapter shall have the same meanings as defined in Chapter 2913 of the Ohio Revised Code.

§ 112.17 DISTRIBUTION IN A RIGHT-OF-WAY.

(A) No person shall engage in distribution with the occupant of a vehicle in a right-of-way unless such vehicle is lawfully stopped, standing, or parked in compliance with Chapter 4511 of the Ohio Revised Code and Title VII of the Code of Ordinances.

(B) No person who is within a right-of-way shall engage in distribution with the occupant of a vehicle stopped in a right-of-way in obedience to a traffic control signal.

However, a person may engage in distribution with the occupant of a vehicle in the right-of-way so long as he or she remains on the surrounding sidewalks or unpaved shoulders and not in or on the right-of-way itself, including any medians or traffic islands within the right-of-way.

(C) For the purpose of this section, the terms “stop,” “stand,” and “park” shall have the same meanings as defined in section 70.01 of the Code of Ordinances.

(D) All other words or phrases used in this section that are not otherwise defined in this Chapter shall have the same meanings as defined in Section 4511.01 of the Ohio Revised Code.

§ 112.18 AGGRESSIVE DISTRIBUTION.

No person shall engage or attempt to engage in distribution in the following manners:

- (1) By knowingly touching or grabbing another person without that person’s consent.**
- (2) By knowingly following another person or continuing to engage or attempt to engage in distribution with that person after that person has made an affirmative communication that he or she is unwilling or unable to engage in distribution.**
- (3) By knowingly approaching within three feet of another person and continuing to engage or attempt to engage in distribution with that person after he or she has made an affirmative communication that her or she is unwilling or unable to engage in distribution.**

§ 112.19 ATM PRIVACY.

No person shall knowingly approach within three feet of any person who is actively using an automated teller machine without that person’s consent.

§ 112.99 PENALTY.

Whoever violates any provision of this chapter shall be deemed guilty of a fourth degree misdemeanor and shall be fined not more than \$250 and imprisoned not more than 30 days or both. Each additional violation within 12 months shall constitute a third degree misdemeanor subject to a fine not to exceed \$500 and imprisoned not more than 60 days, or both. Each day's continued violation shall constitute a separate offense.

ORDINANCE NO. 16-24
CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

AN ORDINANCE ADOPTING NEW SECTION 76.17 "PARKING OF LARGE AND OVERSIZE VEHICLES ON STREETS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES.

WHEREAS, the City Council has determined that it would be in the best interest of the City to adopt a new Section 76.17 in Chapter 76 "Parking Regulations" of the City of Beavercreek Code of Ordinances.

NOW, THEREFORE, THE CITY OF BEAVERCREEK, COUNTY OF GREENE, OHIO, HEREBY ORDAINS:

SECTION I.

New Section 76.17 "PARKING OF LARGE AND OVERSIZE VEHICLES ON STREET" is hereby enacted as follows.

§ 76.17 PARKING OF LARGE AND OVERSIZE VEHICLES ON STREETS.

(a) It shall be unlawful for the driver, owner or operator of an oversized commercial vehicle to park or permit to be parked, stand or remain motionless:

(1) On a public street, including right-of-way, in any area zoned residential under the comprehensive zoning ordinance or used for residential purposes unless the vehicle is being actively loaded or unloaded; or

(2) For more than two hours on a public street, including right-of-way, in any area not zoned residential under the comprehensive zoning ordinance or not used for residential purposes.

(b) It shall be unlawful for the driver, owner or operator of a large recreational vehicle to park or permit to be parked, stand or remain motionless:

(1) On a public street, including right-of-way, in any area zoned residential under the comprehensive zoning ordinance or used for residential purposes; or

(2) On a public street, including right-of-way, in any area not zoned residential under the comprehensive zoning ordinance or not used for residential purposes.

(c) It is an exception to subsection (a) that the oversized commercial vehicle is being parked or allowed to be parked for use at an active construction site for no more than 15 hours in any 24-hour period.

(d) It is an exception to subsection (b)(1) above that the large recreational vehicle is being parked or allowed to be parked, stand or remain motionless for loading, unloading, maintenance, or any combination thereof, for no more than 24 hours in any seven-day period. Relocation of the large recreational vehicle to a location on private property, as long as compliant with the Zoning Code, stops the running of the 24-hour period. Relocation of the large recreational vehicle to an adjoining public street does not stop the running of the 24-hour period.

SECTION II.

It is hereby 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 any and 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, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this _____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE ADOPTS NEW SECTION 76.17 "PARKING OF LARGE AND OVERSIZE VEHICLES ON STREETS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

ORDINANCE NO. 16-25

CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

AN ORDINANCE REPEALING CURRENT SECTION 70.01 “DEFINITIONS” OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES, AND ADOPTING NEW SECTION 70.01 “DEFINITIONS” OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES.

WHEREAS, Section 70.01 of the City of Beavercreek Code of Ordinances sets forth the definitions for Title VII, Traffic Code of the City of Beavercreek Code of Ordinances; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Section 70.01 of the City of Beavercreek Code of Ordinances.

NOW, THEREFORE, THE CITY OF BEAVERCREEK, HEREBY ORDAINS:

SECTION I.

Current section 70.01 “DEFINITIONS” of the City of Beavercreek Code of Ordinances is hereby repealed, and new section 70.01 “DEFINITIONS” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold**.

SECTION II.

It is hereby 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 any and 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, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this _____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT SECTION 70.01 "DEFINITIONS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW SECTION 70.01 "DEFINITIONS" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

EXHIBIT A

§ 70.01 DEFINITIONS.

(A) Except as otherwise provided, the definitions set forth in R.C. § 4501.01 shall apply to this Title, Chapter 90, and the penal laws of the municipality.

(B) For the purpose of this Title and Chapter 90, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGRICULTURAL TRACTOR. Every self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery, but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.

ALLEY. A street or highway intended to provide access to the rear or side of lots or buildings in urban districts, and not intended for the purpose of through vehicular traffic, and any street or highway that has been declared an **ALLEY** by the Legislative Authority of the municipality in which the street or highway is located.

ARTERIAL STREET. Any United States or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

BEACON. A highway traffic signal with one or more signal sections that operate in a flashing mode.

BICYCLE. Every device, other than a device that is designed solely for use as a play vehicle by a child, that is propelled solely by human power upon which a person may ride, and that has two or more wheels, any of which is more than 14 inches in diameter.

BUS. Every motor vehicle designed for carrying more than nine passengers, and used for the transportation of persons other than in a ridesharing arrangement, and every motor vehicle, automobile for hire, or funeral car, other than a taxicab or motor vehicle used in a ridesharing arrangement, designed and used for the transportation of persons for compensation.

BUSINESS DISTRICT. The territory fronting upon a street or highway, including the street or highway, between successive intersections within the municipality, where 50% or more of the frontage between successive intersections is occupied by buildings in use for business, or within or outside the municipality where 50% or more of the frontage for a distance of 300 feet or more is occupied by buildings in use for business, and the character of the territory is indicated by official traffic-control devices.

CHAUFFEURED LIMOUSINE. A motor vehicle that is designed to carry nine or fewer passengers and is operated for hire pursuant to a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route. "Prearranged contract" means an agreement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine. **CHAUFFEURED LIMOUSINE** does not include any vehicle that is used exclusively in the business of funeral directing. (R.C. § 4501.01(LL))

CHILD DAY-CARE CENTER and **TYPE A FAMILY DAY-CARE HOME**. These terms shall have the same meanings as set forth in R.C. § 5104.01.

COMMERCIAL VEHICLE.

(1) A vehicle designed or used primarily to transport property. The term includes a passenger car reconstructed and used primarily for delivery purposes; or

(2) A vehicle displaying the registrant's name, business name, business logo or other contact information affixed on the vehicle.

COMMERCIAL TRACTOR. Every motor vehicle having motive power designed or used for drawing other vehicles, and not so constructed as to carry any load thereon, or designed or used for drawing other vehicles while carrying a portion of the other vehicles, or the load thereon, or both.

CONTROLLED-ACCESS HIGHWAY. Every street or highway in respect to which owners or occupants of abutting lands and other persons have no legal right or access to or from the same except at certain points only and in a manner as may be determined by the public authority having jurisdiction over the street or highway.

CROSSWALK.

(a) That part of a roadway at intersections ordinarily included within the real or projected prolongation of property lines and curb lines or, in the absence of curbs, the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(c) Notwithstanding the foregoing provisions of this definition, there shall not be a crosswalk where the Legislative Authority has placed signs indicating no crossing.

DRIVER or **OPERATOR.** Any person who drives or is in actual physical control of a vehicle.

EMERGENCY VEHICLE. Emergency vehicles of municipal, township or county departments or public utility corporations, when identified as such as required by law, the Director of Public Safety, or local authorities, and motor vehicles when commandeered by a police officer.

EXPLOSIVES. Any chemical compound or mechanical mixture that is intended for the purpose of producing an explosion that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases, such that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb. Manufactured articles shall not be held to be explosives when the individual units contain explosives in limited quantities of such nature or in such packing that it is impossible to procure a simultaneous or a destructive explosion of the units, to the injury of life, limb, or property by fire, friction,

concussion, percussion, or by a detonator, such as fixed ammunition for small arms, firecrackers, or safety fuse matches.

EXPRESSWAY. A divided arterial highway for through traffic with full or partial control of access with an excess of 50% of all crossroads separated in grade.

FLAMMABLE LIQUID. Any liquid which has a flash point of 70°F or less, as determined by a tagliabue or equivalent closed cup test device.

FREEWAY. A divided multi-lane highway for through traffic with crossroads separated in grade and with full control of access.

FUNERAL ESCORT VEHICLE. Any motor vehicle, including a funeral hearse, while used to facilitate the movement of a funeral procession.

GROSS WEIGHT. The weight of a vehicle plus the weight of any load thereon.

HIGHWAY MAINTENANCE VEHICLE. A vehicle used in snow and ice removal or road surface maintenance, including a snow plow, traffic line striper, road sweeper, mowing machine, asphalt distributing vehicle, or other such vehicle designed for use in specific highway maintenance activities.

HIGHWAY TRAFFIC SIGNAL. A power-operated traffic control device by which traffic is warned or directed to take some specific action. The term does not include a power-operated sign, steadily illuminated pavement marker, warning light, or steady burning electric lamp.

HYBRID BEACON. A type of beacon that is intentionally placed in a dark mode between periods of operation where no indications are displayed and, when in operation, displays both steady and flashing traffic control signal indications.

INTERSECTION.

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways that join at any other angle might come into conflict. The junction of an alley or driveway with a roadway or highway does not constitute an intersection unless the roadway or highway at the junction is controlled by a traffic control device.

(b) If a highway includes two roadways that are 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway constitutes a separate intersection. If both intersecting highways include two roadways 30 feet or more apart, then every crossing of any two roadways of such highways constitutes a separate intersection.

(c) At a location controlled by a traffic control signal, regardless of the distance between the separate intersections as described in division (b) of this definition:

1. If a stop line, yield line, or crosswalk has not been designated on the roadway within the median between the separate intersections, the two intersections and the roadway and median constitute one intersection.

2. Where a stop line, yield line, or crosswalk line is designated on the roadway on the intersection approach, the area within the crosswalk and any area beyond the designated stop line or yield line constitute part of the intersection.

3. Where a crosswalk is designated on a roadway on the departure from the intersection, the intersection includes the area that extends to the far side of the crosswalk.

LANED HIGHWAY. A highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

LARGE RECREATIONAL VEHICLE.

- (1) A recreational vehicle which exceeds 20 feet in length;**
- (2) A boat trailer or other trailer which exceeds 20 feet in length; or**
- (3) A converted or partially converted bus which exceeds 20 feet in length.**

LOCAL AUTHORITIES. Every county, municipal, and other local board or body having authority to adopt police regulations under the Constitution and laws of this state.

MEDIAN. The area between two roadways of a divided highway, measured from edge of traveled way to edge of traveled way, but excluding turn lanes. The width of a median may be different between intersections, between interchanges, and at opposite approaches of the same intersection.

MOTOR VEHICLE. Every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes and other equipment used in construction work, and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.

MOTORCYCLE. Every motor vehicle, other than a tractor, having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as “motor-driven cycle,” “motor scooter,” “cab-enclosed motorcycle”, or “motorcycle” without regard to weight or brake horsepower.

MOTORIZED BICYCLE or MOPED. Any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that may be pedaled, and that is equipped with a helper motor of not more than 50 cubic centimeters piston displacement that produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of not greater than 20 miles per hour on a level surface.

MOTORIZED WHEELCHAIR. Any self-propelled vehicle designed for, and used by, a person with a disability and that is incapable of a speed in excess of eight miles per hour.

MULTI-WHEEL AGRICULTURAL TRACTOR. A type of agricultural tractor that has two or more wheels or tires on each side of one axle at the rear of the tractor, is designed or used for drawing other vehicles or wheeled machinery, has no provision for carrying loads independently of the drawn vehicles or machinery, and is used principally for agricultural purposes.

OPERATE. To cause or have caused movement of a vehicle.

OVERSIZE COMMERCIAL VEHICLE.

(1) Any vehicle designed for the transport of more than 15 passengers, inclusive of the driver;

(2) Trailers which are more than 14 feet in length from end to end, more than seven feet in width at their widest point, or more than seven feet in height at their highest point; or

(3) Any motor vehicle with a gross weight, registered weight or gross weight rating, as those terms are defined in state law, of more than 15,000 pounds, including but not limited to the following:

- a. Dump truck;
- b. Truck-tractor;
- c. Concrete-mixing truck;
- d. Stake-bed truck;
- e. Flat-bed tow truck; or
- f. Panel truck.

PARKING or **PARKED.** The standing of a vehicle upon a street, road, alley, highway or public ground, whether accompanied or unaccompanied by a driver, but does not include the temporary standing of a vehicle for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

PEDESTRIAN. Any natural person afoot.

PERSON. Every natural person, firm, partnership, association or corporation.

POLE TRAILER. Every trailer or semitrailer attached to the towing vehicle by means of a reach, pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

POLICE OFFICER. Every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

PREDICATE MOTOR VEHICLE OR TRAFFIC OFFENSE. Any of the following:

(a) A violation of R.C. §§ 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.214, 4511.22, 4511.23, 4511.25, 4511.26,

4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78, or 4511.84;

(b) A violation of R.C. §§ 4511.17(A)(2), 4511.51(A) to (D), or 4511.74(A);

(c) A violation of any provision of R.C. §§ 4511.01 to 4511.76 for which no penalty otherwise is provided in the section that contains the provision violated;

(c) A violation of a municipal ordinance that is substantially equivalent to any section or provision set forth or described in division (a), (b), or (c) of this definition.

PRIVATE ROAD OPEN TO PUBLIC TRAVEL. A private toll road or road, including any adjacent sidewalks that generally run parallel to the road, within a shopping center, airport, sports arena, or other similar business or recreation facility that is privately owned but where the public is allowed to travel without access restrictions. The term includes a gated toll road but does not include a road within a private gated property where access is restricted at all times, a parking area, a driving aisle within a parking area, or a private grade crossing.

PRIVATE ROAD OR DRIVEWAY. Every way or place in private ownership used for vehicular travel by the owner, and those having express or implied permission from the owner, but not by other persons.

PUBLIC SAFETY VEHICLE. Any of the following:

(a) Ambulances, including private ambulance companies under contract to a municipality, township, or county, and private ambulances and nontransport vehicles bearing license plates issued under R.C. § 4503.49;

(b) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state;

(c) Any motor vehicle when properly identified as required by the Director of Public Safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The State Fire Marshal shall be designated by the Director of Public Safety as the certifying agency for all public safety vehicles described herein;

(d) Vehicles used by fire departments, including motor vehicles when used by volunteer firefighters responding to emergency calls in the fire department service when identified as required by the Director of Public Safety;

(e) Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a ***PUBLIC SAFETY VEHICLE***, shall be considered such a vehicle when transporting an ill or injured person to a hospital, regardless of whether such vehicle has already passed a hospital;

(f) Vehicles used by the Motor Carrier Enforcement Unit for the enforcement of orders and rules of the Public Utilities Commission as specified in R.C. § 5503.34.

RAILROAD. A carrier of persons or property operating upon rails placed principally on a private right-of-way.

RAILROAD SIGN OR SIGNAL. Any sign, signal, or device erected by authority of a public body or official or by a railroad, and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

RAILROAD TRAIN. A steam engine or an electric or other motor, with or without cars coupled thereto, operated by a railroad.

RECREATIONAL VEHICLE. Any vehicle used for recreational purposes. The term includes a travel trailer, camping trailer, truck camper, motor home, snowmobile, all-terrain vehicle, boat, personal watercraft and any trailer used to haul such vehicle.

RESIDENCE DISTRICT. The territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of 300 feet or more, the frontage is improved with residences or residences and buildings in use for business.

RIDESHARING ARRANGEMENT. Includes the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of a volunteer driver, and includes **RIDESHARING ARRANGEMENTS** known as carpools, vanpools, and buspools.

RIGHT-OF-WAY. Either of the following, as the context requires:

(a) The right of a vehicle or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it, he or she is moving, in preference to another vehicle or pedestrian approaching from a different direction into its, his or her path;

(b) A general term denoting land, property, or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, **RIGHT-OF-WAY** includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority.

ROAD SERVICE VEHICLE. Means wreckers, utility repair vehicles, and state, county, and municipal service vehicles equipped with visual signals by means of flashing, rotating, or oscillating lights.

ROADWAY. That portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a highway includes two or more separate roadways, the term **ROADWAY** means any roadway separately, but not all the roadways collectively.

RURAL MAIL DELIVERY VEHICLE. Every vehicle used to deliver United States mail on a rural mail delivery route.

SAFETY ZONE. The area or space officially set apart within a roadway for the exclusive use of pedestrians, and protected or marked or indicated by adequate signs so as to be plainly visible at all times.

SCHOOL BUS. Every bus designed for carrying more than nine passengers which is owned by a public, private, or governmental agency or institution of learning, and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function; provided **SCHOOL BUS** does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipality, or within such limits and the territorial limits of municipalities immediately contiguous to the municipality, nor a common passenger carrier certified by the Public Utilities Commission unless the bus is devoted exclusively to the transportation of children to and from a school session or a school function, and **SCHOOL BUS** does not include a van or bus used by a licensed child day-care center or Type A Family Day-Care Home to transport children from the child day-care center or Type A Family Day-Care Home to a school if the van or bus does not have more than 15 children in the van or bus at any time.

SEMITRAILER. Every vehicle designed or used for carrying persons or property with another and separate motor vehicle so that in operation a part of its own weight or that of its load, or both, rests upon and is carried by another vehicle.

SHARED-USE PATH. A bikeway outside the traveled way and physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent alignment. A shared-use path also may be used by pedestrians, including skaters, joggers, users of manual and motorized wheelchairs, and other authorized motorized and non- motorized users.

SIDEWALK. That portion of a street between the curb lines, or the lateral line of a roadway, and the adjacent property lines, intended for the use of pedestrians.

STATE HIGHWAY. A highway under the jurisdiction of the Department of Transportation, outside the limits of municipalities, provided that the authority conferred upon the Director of Transportation in R.C. § 5511.01 to erect state highway route markers and signs directing traffic shall not be modified by R.C. §§ 4511.01 through 4511.79 and 4511.99.

STATE ROUTE. Every highway which is designated with an official state route number and so marked.

STOP. When required, means a complete cessation of movement.

STOP INTERSECTION. Any intersection at one or more entrances of which stop signs are erected.

STOPPING or **STANDING.** When prohibited, means any halting of a vehicle, even momentarily, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

STREET or **HIGHWAY.** The entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

THROUGH HIGHWAY. Every street or highway as provided in R.C. § 4511.65, or a substantially equivalent municipal ordinance.

THRUWAY. A through highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.

TRAFFIC. Pedestrians, ridden or herded animals, vehicles, streetcars, and other devices, either singly or together, while using for purposes of travel any highway or private road open to public travel.

TRAFFIC-CONTROL DEVICE. A flagger, sign, signal, marking, or other device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.

TRAFFIC-CONTROL SIGNAL. Any highway traffic signal by which traffic is alternately directed to stop and permitted to proceed.

TRAILER. Every vehicle designed or used for carrying persons or property wholly on its own structure, and for being drawn by a motor vehicle, including any vehicle when formed by or operated as a combination of a semitrailer and a vehicle of the dolly type, such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed greater than 25 miles per hour and a vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of more than ten miles or at a speed of more than 25 miles per hour.

TRUCK. Every motor vehicle, except trailers and semitrailers, designed and used to carry property.

URBAN DISTRICT. The territory contiguous to and including any street or highway which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-quarter of a mile or more, and the character of the territory is indicated by official traffic-control devices.

VEHICLE. Every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that **VEHICLE** does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power.

ORDINANCE NO. 16-26
CITY OF BEAVERCREEK

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

**AN ORDINANCE REPEALING CURRENT SECTION 76.99
“PENALTY” OF THE CITY OF BEAVERCREEK CODE OF
ORDINANCES, AND ADOPTING NEW SECTION 76.99 “PENALTY”
OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES.**

WHEREAS, Section 76.99 of the City of Beaver Creek Code of Ordinances sets forth the penalties for Chapter 76, Parking Regulations of the City of Beaver Creek Code of Ordinances; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to update Section 76.99 of the City of Beaver Creek Code of Ordinances.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK,
HEREBY ORDAINS:**

SECTION I.

Current section 76.99 “PENALTY” of the City of Beaver Creek Code of Ordinances is hereby repealed, and new section 76.99 “PENALTY” is hereby enacted as shown in the document attached to this Ordinance as Exhibit “A” with new language in **bold** and text to be deleted in ~~strikeout~~.

SECTION II.

It is hereby 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 any and 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, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III.

This Ordinance shall take effect at the earliest date allowed by law.

PASSED this _____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

PREPARED BY: CITY ATTORNEY

SUMMARY

THIS ORDINANCE REPEALS CURRENT SECTION 76.99 "PENALTY" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES AND ADOPTS NEW SECTION 76.99 "PENALTY" OF THE CITY OF BEAVERCREEK CODE OF ORDINANCES. THIS IS NOT AN EMERGENCY ORDINANCE AND WILL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

Exhibit A

§ 76.99 PENALTY.

Violation of this chapter shall constitute a minor misdemeanor, and the fines for such violations shall be set forth below:

(A) The fine shall be ~~\$4~~ **\$50** for violating §§ 76.01, 76.04 through 76.12, as long as the fine is paid at the Beavercreek Police Department within 48 hours after the parking ticket was issued. Otherwise the fine shall be increased to the amount of ~~\$8~~ **\$75**, also to be paid at the Police Department.

(B) The fine for any overtime parking in the business district under § 76.04(N) shall be **\$2** ~~\$50~~, as long as the fine is paid at the Beavercreek Police Department within 48 hours after the parking ticket issued. Otherwise the fine shall be increased to the amount of ~~\$4~~ **\$75**, also to be paid at the Police Department.

~~(C) The fine for parking in handicapped zones in violation of §§ 76.05(E) or (F) shall be \$50.~~

(C) The fine for parking in violation of § 76.13 shall be ~~\$10~~ **\$50**, as long as the fine is paid at the Beavercreek Police Department within 48 hours after the parking ticket was issued. Otherwise the fine shall be increased to the amount of ~~\$20~~ **\$75**, also to be paid at the Police Department.

(D) Violation of § 76.17 shall constitute a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to a violation of § 76.17, whoever violates § 76.17 is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more violations of § 76.17, whoever violates § 76.17 is guilty of a misdemeanor of the third degree.

~~(DE)~~ The violation of any provision of this chapter for which no penalty is provided shall constitute a minor misdemeanor.

~~(EF)~~ Any person receiving a citation for a violation of this chapter may request, after the parking ticket is issued, at the Beavercreek Police Department a uniform traffic citation for violation of Ohio Revised Code Chapter 4511 giving a court date to appear in a court of competent jurisdiction to contest the violation.

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

JAC 10/20/16

Meeting Date: OCTOBER 24, 2016	Reference Topic: ORDINANCE NO. 16-30 TO APPROVE SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2016, AND ENDING DECEMBER 31, 2016, AND TO AMEND ORDINANCES 15-31, 16-03, 16-08, 16-10 AND 16-16.
Agenda Reference No.: IX. - F	

ACTION REQUESTED		
<input checked="" type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other Motion _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Human Resources
<input checked="" type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering/Planning	<input type="checkbox"/> Golf Course
<input checked="" type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager

Police Levy (202) – On September 26th, Council approved Resolution 16-22 authorizing the appointment of special legal counsel to represent the Police Officers in the Department of Justice investigation. It is estimated the cost of this representation could total \$200,000 in 2016. Therefore, this amount must be appropriated to cover the cost of the legal fees (202-52-2290-3199 Other Professional Services).

Park Levy Fund (279) – During recent weather events the Alpha Mill roof shingles have become loose and appear to be coming off. Therefore, the City needs to secure the damaged metal shingles and replace those that have been damaged. Bids were solicited and the estimated cost of the repair is \$7,000. Therefore, \$7,000 needs to be appropriated in order to cover the cost of repair and replacing where necessary the roof (279-54-7200-7200 Capital Improvements)

Both of these will be funded through the use of fund balance which is sufficient to maintain the required 15% fund balance policy.

STAFF RECOMMENDATION: Staff recommends adoption of Ordinance 16-30.

**CITY OF BEAVERCREEK, OHIO
ORDINANCE NO. 16-30**

SPONSORED BY COUNCIL MEMBER _____ ON THE 24th DAY OF OCTOBER, 2016.

TO APPROVE SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2016, AND ENDING DECEMBER 31, 2016, AND TO AMEND ORDINANCES 15-31, 16-03, 16-08, 16-10 AND 16-16.

WHEREAS, the annual appropriations for 2016 was authorized in Ordinances I5-31, 16-03, 16-08, 16-10 and 16-16 it is now the desire to supplement and amend these appropriations, and

NOW, THEREFORE, THE CITY OF BEAVERCREEK HEREBY ORDAINS:

SECTION I.

That to provide for current expenses and other expenditures of the City of Beavercreek during said fiscal year ending December 31, 2016, the following amendments to certain amounts appropriated in Ordinance 15-31, 16-03, 16-08, 16-10 and 16-16, are hereby authorized, while preserving all other appropriations as previously approved.

EXPENSE FUND (FUND #)	INCREASE APPROPRIATIONS
POLICE LEVY FUND (202)	\$ 200,000
PARKS LEVY FUND (279)	\$ 7,000
TOTAL	<u>\$ 207,000</u>

SECTION II

In order to conform to the amendments detailed in Section I with the schedule of 2016 annual appropriations previously approved, the Financial Administrative Services Director is hereby directed to prepare and certify a restatement of annual appropriations reflecting all approved appropriations.

SECTION III.

It is hereby 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 any and 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, including, but not limited to, Section 121.22 of the Ohio Revised Code.

SECTION IV.

This supplement to the Annual Appropriations Ordinance and certification of revenue shall take effect upon adoption, in accordance with Sections 10.04 and 10.10 of the Beavercreek City Charter.

PASSED this 24th day of October, 2016.

BOB STONE, MAYOR

ATTEST:

CLERK OF COUNCIL

ORD 16-30

SUMMARY

An Ordinance to approve supplemental appropriations for the Fiscal Year ending December 31, 2016.

This is a supplement to the Annual Appropriation Ordinance and in accordance with Sections 10.04 and 10.10 of the Beavercreek City Charter will become effective immediately upon its passage.

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

MA 10/20/16

Meeting Date: <u>October 24, 2016</u>	Reference Topic: Project Funding Applications to the Dayton Regional Priority Development and Advocacy Committee (PDAC)
Agenda Reference No.: <u>IX. C</u>	<u>Resolution 16-26</u>

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

In October 2016, staff was made aware of a November 11, 2016 deadline for submission of projects which benefit the Dayton region through the Dayton Regional Priority Development and Advocacy Committee. The intent of this process is to evaluate projects and establish a list of recommended projects that aids the community when pursuing funding opportunities. These projects are typically larger scale improvements that often exceed available funding through other sources, are critical to the economic development of the region and are of importance to the regional transportation system.

Staff has evaluated the requirements of this funding program and has determined that the following two (2) projects would be appropriate to submit for funding:

Grange Hall Road at I-675 Interchange Project – The City of Beavercreek desires to continue to implement the upgrading existing interchange at Grange Hall Road and I-675, which is currently only a half interchange providing only a southbound exit ramp and a northbound entrance ramp for I-675, to a full interchange. With the opening of Soin Medical Center on Pentagon Boulevard, the opening of the reconstructed gate to Wright-Patterson AFB on National Road, and the office and commercial land uses in the vicinity of Grange Hall Road at I-675, it is our belief that a full interchange is now warranted at this location. The first steps in getting a full interchange at this location would be to complete a Conceptual Alternatives Study and an Interchange Modification Study to evaluate the potential options for ramp locations and to evaluate the impact of a full interchange on both the local roadway network and on I-675.

The proposed application for this project will request the estimated \$500,000 necessary to complete these studies

Colonel Glenn Highway Corridor Enhancement Project – The City of Fairborn and the City of Beavercreek in partnership with Wright State University desire to continue to implement a transportation and visual enhancement of the Colonel Glenn Highway corridor from Paramount Place to the City's western corporation limit. The project is intended to spur business development, increase student enrollment, calm traffic conditions and improve aesthetics. Enhancements include sidewalks, lighting, signage, landscaping, hardscaping, and site furnishings.

The proposed application for this project will request the estimated \$7,316,276 necessary for the completion of the construction of this project.

STAFF RECOMMENDATION:

It is therefore recommend that City Council approve the attached resolution authorizing the submittal of applications for the above described projects for prioritization through the Dayton Regional Priority Development and Advocacy Committee.

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-26**

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

A RESOLUTION TO AUTHORIZE THE SUBMITTAL OF THE COL. GLENN HIGHWAY ENHANCEMENT PROJECT AND THE GRANGE HALL ROAD AT I-675 INTERCHANGE PROJECT FOR PRIORITIZATION THROUGH THE DAYTON REGIONAL PRIORITY DEVELOPMENT AND ADVOCACY COMMITTEE (PDAC).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

This Resolution shall serve to authorize the transmittal and submittal of an application, questionnaires and other project information for consideration of sponsorship in a regional initiative to obtain Federal Earmark funding. The applications authorized by this Resolution shall be for the Grange Hall Road at I-675 Interchange Project and the Colonel Glenn Highway Corridor Enhancement Project as further identified in the application/questionnaire submitted on behalf of the City of Beavercreek (the "City").

SECTION II.

The City Manager is hereby authorized to sign on behalf of the City the applications for prioritization as referred to in Section I of this Resolution.

SECTION III.

The City Manager is hereby directed and authorized to take or cause to be taken all other action necessary and proper to secure the funding sought by the applications referred to herein, and provide any additional information sought by reviewing agencies during the time these applications are under review. The City Manager is further directed and authorized to cause compliance will all reporting requirements of the Dayton Regional Priority Development and Advocacy Committee (PDAC) or any committees thereof, and as required as part of the prioritization process.

SECTION IV.

Upon application approval, the City hereby states its support for these projects to be funded by the State of Ohio and the Federal Highway Administration.

SECTION V.

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and 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, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION VI.

This Resolution shall become effective immediately upon its passage.

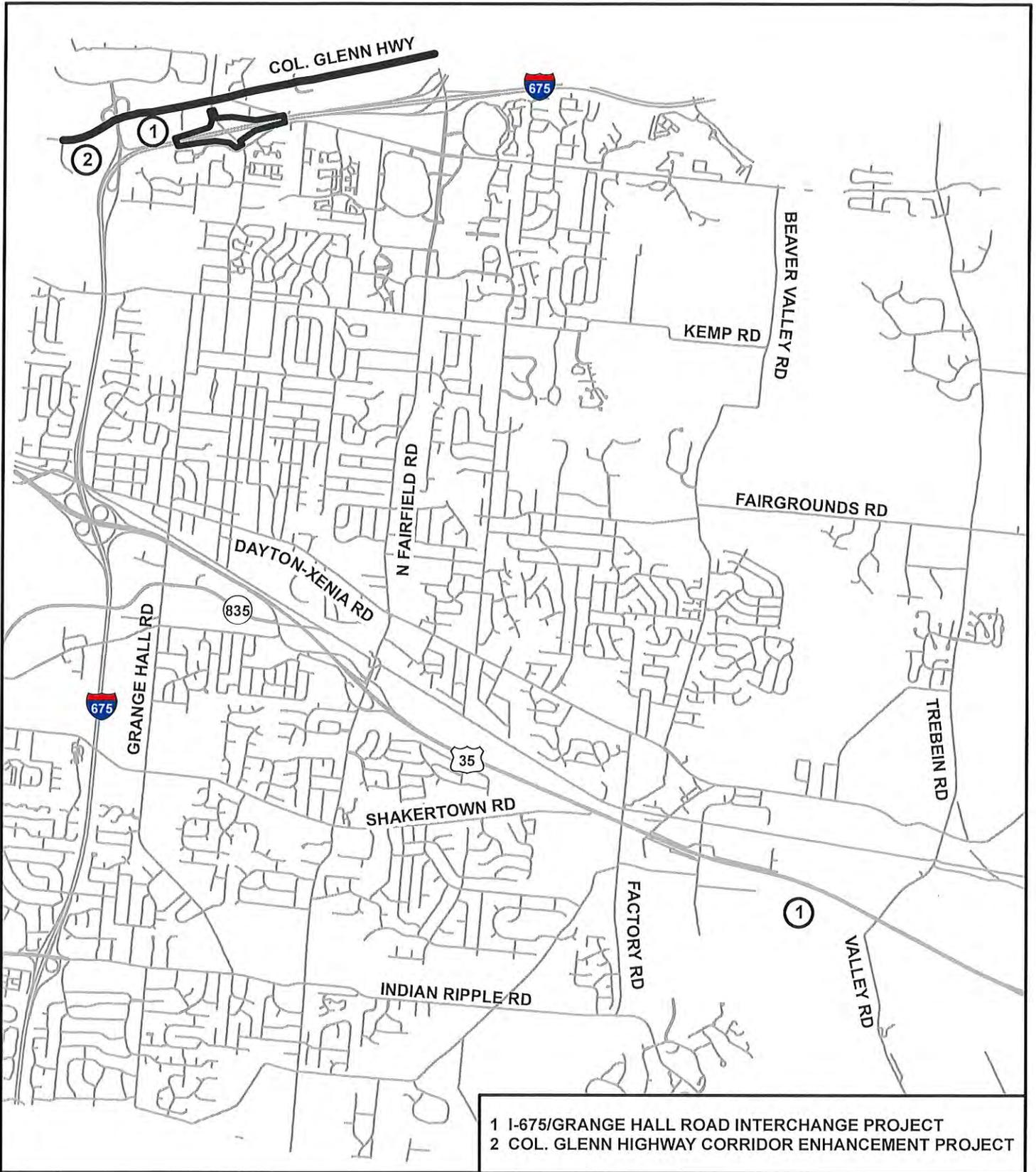
THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 24th day of October, 2016.

Bob Stone, Mayor

ATTEST:

Clerk of Council

PDAC FY 2018 Project Map



1 I-675/GRANGE HALL ROAD INTERCHANGE PROJECT
 2 COL. GLENN HIGHWAY CORRIDOR ENHANCEMENT PROJECT

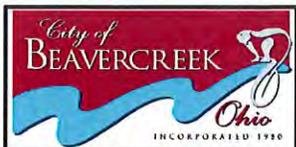
LEGEND

 Project Location



SCALE

0 0.25 0.5 1 1.5 2 2.5 Miles



MEMORANDUM

TO: Mayor and City Council

CC: Michael A. Cornell, City Manager
Bill Kucera, Financial Administrative Services Director
Diane Gould, Administrative Assistant

FROM: Stephen M. McHugh, Law Director

DATE: October 13, 2016

RE: Mall at Fairfield Commons/Energy SID (PACE Financing)

Handwritten signature in blue ink, possibly 'MK', followed by the date '10/13/16'.

Attached is a brief summary of the process to create an energy Special Improvement District (SID). The Mall owners are seeking this to provide funding for energy improvements to the Mall. The debt incurred for the energy improvements is not City debt and the City will have no obligation to pay the debt.

Representation will be in attendance Monday night to provide additional information.

PACE Financing Process Overview

Why?

- Special assessments are used to secure financing to fund improvements without requiring the property owner to directly take on debt.
- Long-term, fixed rate financing at favorable rates is available.
- Special assessment payments can be passed through to tenants; depending on lease terms.
- Energy savings resulting from improvements often fully offset the special assessments.
- Nonprofit and most governmental entities may use PACE, even though they otherwise may be exempt from real property taxes and charges on real property.

I. Overview of City Procedures

- a. Review Petition and Authorize Project
- b. Levying Special Assessments
- c. Approve Agreements Regarding Special Assessments
- d. Assessment Administration by creating an ESID

II. Authorizing Project

- a. Property owner submits a petition and required (ORC C. 1710) energy plan to the City for approval.
- b. The Petition and Plan:
 - i. Describe the energy special improvement project to be completed;
 - ii. Set forth the special assessments requested in order to pay the costs of the project; and
 - iii. Request that the City levy the special assessments on the property.
- c. Following the City's approval, the Petition and Plan are submitted to the City Council and chief executive of the City.
- d. The City Council reviews the petition and plan and must either approve or disapprove of them by legislation within 60 days.
- e. Once the project is authorized, the City moves to levy the special assessments described in the petition and plan.

III. Levying Special Assessments

- a. Under Ohio Revised Code Chapter 727, the legislative authority of the City must pass three pieces of legislation to levy the special assessments:
 - i. Resolution of Necessity
 - ii. Ordinance to Proceed
 - iii. Ordinance Levying Special Assessments
- b. Once passed, the City must certify each of the pieces of legislation to the County Auditor and receive a receipt of each piece of legislation from the County Auditor.

IV. Agreements Regarding Special Assessments

- a. In order to describe the financing, and secure the special assessments and pledge them to a lender (e.g. port authority) in exchange for up-front financing to pay the costs of a project, the City that levied the special assessments, the County Treasurer, the project owner, and the lender or lenders enter into a "Cooperative Agreement."
- b. This agreement assigns the special assessments from the City to the lender.
- c. It also provides the mechanism by which the County Treasurer pays the special assessments to the City for transfer to the lender, or the mechanism by which the County Treasurer pays the special assessments directly to the lender.
- d. The agreement contains provisions regarding the foreclosure process in the event the property owner does not pay the special assessments.
- e. The agreement reinforces that the City's obligation with respect to the transaction is **limited to only the special assessments it actually collects**. It is non-recourse to the City.
- f. The property owner also indemnifies the City with regard to the special assessments and the related proceedings.

V. Special Assessment Administration

- a. In order to administer the process set up in the Cooperative Agreement, the City that levied the special assessments takes certain administrative actions.
- b. It creates an energy special improvement district (ORC Section 1710.02).
- c. If it is to actually receive special assessment collections and transfer them, it may have to set up an account (could be an agency account with automatic distribution) for the collection and transfer of the special assessments to the lender.
- d. Energy SID has 5 board members, being the Mayor, one more appointed by the City, and 3 appointed by property owner.
- e. Energy SID meets annually thereafter.

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-27**

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

A RESOLUTION APPROVING A PETITION, ARTICLES OF INCORPORATION, AND INITIAL PLAN FOR THE CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT.

WHEREAS, Ohio law was amended by Ohio House Bill 1 of the 128th General Assembly, effective October 15, 2009 and Ohio Senate Bill 232 of the 128th General Assembly effective June 17, 2010, to authorize the creation of Special Improvement Districts (the "District") under Chapter 1710 of the Ohio Revised Code (collectively, the "Act") to allow property owners to petition for special assessments to be levied to pay costs of developing and implementing plans for public improvements and public services that benefit the District, including as provided for in the Act, special energy improvement projects which are defined in Ohio Senate Bill 232 to mean "any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a solar photovoltaic project, a solar thermal energy project, a geothermal energy project, a customer-generated energy project, or an energy efficiency improvement, whether such real or personal property is publicly or privately owned"; and

WHEREAS, specifically, the Act provides that a District may be created by petition of the owners of real property within the proposed District. No District may include any property of federal or state government or a county, City or municipal corporation, unless the county, City or municipal corporation specifically requests in writing that the property be included in the District. The Act further provides that any District created may contain non-contiguous parcels of real property if all parcels of real property included in the District contain at least one special energy improvement project and 100% of the owners of the parcels of real property in the District sign a petition requesting inclusion in the District. District boundaries can include parcels of real property located in multiple municipal corporations or townships, so long as each of the municipal corporations or townships is contiguous to one another; and

WHEREAS, MFC Beaver creek, LLC, the owner of real property in the City of Beaver creek, Greene County, Ohio known as the The Mall at Fairfield Commons has executed and delivered a petition attached hereto and addressed to the City Council of the City of Beaver creek, Greene County, Ohio and has submitted with the petition, articles of incorporation and an initial plan for the establishment of a special improvement district under the Act; and

WHEREAS, adoption of this legislation represents the first legislative step in the process of creating the City of Beavercreek (Greene County), Ohio Energy Special Improvement District ("ESID"). The Articles of Incorporation for the ESID provide that the initial participating political subdivision of the ESID will be the City of Beavercreek, Greene County, Ohio; and

WHEREAS, the Act requires that the City Council of the City of Beavercreek, Greene County, Ohio act on the petition within 60 days of the submission. This resolution therefore approves the Petition, the Articles of Incorporation, and the initial plan of the ESID, which approvals will permit the initial special energy improvement project petitioned for by MFC Beavercreek, LLC to be developed in the ESID.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

The City Council of the City of Beavercreek, Greene County, Ohio (the "City") hereby approves the Petition that has been submitted to the City on October __, 2016 and executed and delivered by MFC Beavercreek, LLC, the owner of real property in the City known as the The Mall at Fairfield Commons as the initial parcels of real property to be included in the ESID. The Petition includes a listing of the parcels of real property owned by MFC Beavercreek, LLC to be included in the ESID. The name of the non-profit corporation that will govern the ESID approved hereunder and shown on the articles of incorporation submitted with the petition is "City of Beavercreek (Greene County), Ohio Energy Special Improvement District, Inc."

SECTION II.

The City also hereby approves the Articles of Incorporation of the City of Beavercreek (Greene County), Ohio Energy Special Improvement District, Inc. submitted to the City on October __, 2016, and included with said Petition. The City hereby appoints _____ to the Board of Directors of the ESID. The City authorizes the City Council to submit the Articles of Incorporation, the Petition, and this Resolution to the Ohio Secretary of State pursuant to Ohio Revised Code Section 1710.02.

SECTION III.

The City also hereby approves the Initial Plan for the ESID submitted to the City on October __, 2016, included with said Petition (the "Initial Plan") and finds that the public improvements of said Initial Plan will benefit the ESID and will promote the welfare of the people of the City by providing energy efficiency improvements and promoting energy efficiency.

SECTION IV.

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements. This Resolution shall become effective immediately upon its passage.

SECTION V.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 24th day of October, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

**PETITION TO CREATE THE
CITY OF BEAVERCREEK (GREENE COUNTY), OHIO
ENERGY SPECIAL IMPROVEMENT DISTRICT,
ADOPT A SPECIAL ENERGY IMPROVEMENT PROJECT PLAN
AND REQUEST THE LEVY OF A SPECIAL ASSESSMENT**

To: The City Manager and City Council of the City of Beavercreek, Greene County, Ohio.

The undersigned do hereby respectfully petition the City of Beavercreek, Greene County, Ohio (hereinafter referred to as the “City” or the “Participating Political Subdivision”) for (1) the creation of the **City of Beavercreek (Greene County), Ohio Energy Special Improvement District** (the “District”) pursuant to Chapter 1710 of the Ohio Revised Code (the “Act”), (2) the adoption of a **Special Energy Improvement Project Plan** (the “Plan”) setting forth the development and implementation strategy for special energy improvement projects to be developed and implemented within the District, and (3) the levy of a special assessment as described in paragraphs 5 and 6 of this Petition. A copy of the Plan is attached hereto as Exhibit A and made a part hereof. The initial district boundaries to be assessed in accordance with the Plan will be as described and shown in Exhibit B attached hereto and made a part hereof (the “Assessed Property”). The Plan provides for additional territory (“Additional Territory”) to be added to the District for the purposes of developing and implementing special energy improvement projects and at least one special energy improvement project will be designated for each parcel of real property within such Additional Territory in the District all in accordance with the Act and the Plan.

The undersigned represents that he or she is the owner (hereinafter referred to individually or collectively as appropriate, the “Owner”), or the duly authorized signatory or officer of the Owner, of one hundred per cent of the property or properties as indicated as being applicable to that Owner as set forth in Exhibit B and that a special energy improvement project consisting of energy efficiency improvements, each as defined in the Act, will be developed and implemented on each parcel of real property as further described in Exhibit B with respect to the Owner.

In support of this petition, the undersigned petitioners approve the following:

1. Mission. The mission of the District will be to enhance the value of properties within the District and improve the environment through the development and implementation of special energy improvement projects initially being energy efficiency improvements in accordance with the Act and the Plan.

2. Corporate Entity and Governance. The operations and fiscal affairs of the District will be managed and administered by the Board of Directors (the “Board”) of the District, an Ohio not-for-profit corporation to be formed for such purpose. The Board will consist of five (5) individuals. The Board will have all powers authorized by the Act. Pursuant to the Act, one (1) board member will be a person to be appointed by the City Council of the City and another board member will be the City Manager of the City or an appointee of the City Manager of the City. The three (3) remaining board members will be elected at the first meeting of the membership of the District. Pursuant to the Act, the Owner as the sole property owner and member in the District hereby agrees with the City that it will cause one of the board members elected by the Owner as sole member of the District to appoint the person who holds the office of general

counsel as that director's designee to carry out that director's rights and responsibilities under the Act by the filing of a written designation form with the District's secretary. Pursuant to the Act, that designee will be authorized to vote at any meeting of the board of directors of the District. The Owner agrees with the City that it will cause that director not to change its designee by the filing of a new form with the District's secretary.

3. Authority. The District will be authorized to provide public improvements pursuant to the Act that will benefit property within the boundaries of the District. The Participating Political Subdivision will be authorized to levy a special assessment on property within the District that lies within the territorial boundaries of the Participating Political Subdivision to pay for such public improvements, based on the benefits conferred by those public improvements as further provided for in the Plan and this Petition.

4. Plan. In connection with this Petition and in furtherance of the purposes hereof, Owner acknowledges that it has reviewed or has caused to be reviewed the plans and specifications for the Owner Project (as defined below), which information is now on file with the City. The Owner requests that special energy improvement projects within the District be developed and implemented in accordance with the Project Plan in Exhibit A.

5. Assessment for Special Energy Improvement Project. Owner, in its capacity as a signatory of this Petition and as Owner of the real property as identified in attached Exhibit B (the "Assessed Property") hereby consents to, requests and agrees in writing that the Assessed Property be included within the District. Owner further petitions for 100% of the Assessed Property to be assessed by the City to pay costs of a "special energy improvement project" as defined in Ohio Revised Code Section 1710.01(I) (the "Owner Project") to be constructed on the Assessed Property as further described in Exhibit C, all in accordance with the Plan and Plans and Specifications now on file with the City.

6. Project Costs to be Assessed and Collected. Owner requests that (A) the whole cost of the Owner Project be specially assessed, in proportion to the benefits that may result from the Owner Project, upon the Assessed Property pursuant to Chapters 727 and 1710 of the Revised Code, and (B) those special assessments (the "Owner Special Assessments"), be collected in up to twenty-eight (28) semi-annual installments. The amount of the Owner Special Assessments shall include debt service on the special assessment revenue bonds issued to finance the Project and administrative costs which are to be assessed.

In connection with this Petition and in furtherance of the purposes hereof, Owner acknowledges that it has reviewed or has caused to be reviewed (A) the Plans and Specifications and the profiles for the Owner Project, and (B) the estimate of cost of the Owner Project, which are now on file with the Clerk of Council of the Participating Political Subdivision. A copy of the estimate of cost for Owner Project is attached hereto as Exhibit D. In connection with this Petition and in furtherance of the purposes hereof, Owner also acknowledges that it has reviewed or has caused to be reviewed the estimated special assessments to be levied for the Owner Project, which are now on file with the Clerk of Council of the Participating Political Subdivision and are set forth as follows:

<u>Date</u>	<u>Name</u>	<u>Parcel Number</u>	<u>Portion of Benefit and Special Assessment</u>	<u>Amount of Special Assessment</u>
June 1, 2018	City of Beavercreek, Ohio	B42000400030000400	100%	[\$4,386,704.00]

In consideration of the Owner Project, the Owner agrees (A) that the Special Assessments do not exceed the benefit to be received by the Assessed Property as a result of the Owner Project, (B) that the Assessed Property is benefited by the Owner Project in the proportionate amounts set forth above, (C) that the Assessed Property is the only property specially benefited by the Owner Project and the only property that should be assessed for the Owner Project, (D) that the Owner will pay promptly all installments of the Owner Special Assessments levied against the Assessed Property as they become due, (E) that the determination by the legislative authority of the Participating Political Subdivision of the Owner Special Assessments against the Assessed Property pursuant to and in accordance with this Petition will be final, conclusive and binding upon the Owner, their successors and assigns and grantees of the Assessed Property and (F) to include in each deed or other instrument conveying in fee all or any portion of the Assessed Property (i) a reference to the Owner Special Assessments allocable to the property or portion being conveyed, as determined and approved by the Participating Political Subdivision, and (ii) a covenant running with such property to be bound by the provisions of this Petition and to timely pay the installments of the Owner Special Assessments as they come due.

The Owner hereby certifies that the Owner Project constitutes a “special energy improvement project” and an “energy efficiency improvement” each as defined in Section 1710.01 of the Ohio Revised Code.

7. Waivers. The Owner consents and requests that the Owner Special Assessments be levied and collected, in the same manner as property taxes, without limitation as to the value of the Assessed Property, and waives all the following relating to the Owner Project and the Owner Special Assessments:

(1) Any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code or by any other provision restricting these special assessments to 33-1/3% of the actual improved value of the Assessed Property as enhanced by the Owner Project;

(2) Any and all rights, benefits and privileges specified by Section 727.04 of the Revised Code or by any other provision limiting special assessments for reimprovement when a special assessment has been levied and paid previously;

(3) Any and all damages or claims for damages of whatsoever kind, character or description resulting from the Owner Project or the construction and installation of the Owner Project, including but not limited to all rights, benefits

and privileges specified by Sections 727.18 through 727.22 and Section 727.43 of the Revised Code;

(4) Any and all resolutions, ordinances and notices required for the construction and installation of the Owner Project, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, any increase in the cost of labor and materials over the estimated cost, and the passage of the assessing ordinance, including but not limited to notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;

(5) Any and all irregularities and defects in the proceedings;

(6) The right to strict construction of proceedings specified by Section 727.40 of the Revised Code (the Owner hereby requesting and agreeing that the proceedings for the Owner Project and the levying of the Owner Special Assessments be liberally construed in all respects);

(7) Any waiver of the lien of the Owner Special Assessments after two years as specified by Section 727.34 of the Revised Code, (the Owner hereby requesting and agreeing that such lien against the property it owns continues in force so long as any of the Owner Special Assessments against it remains uncollected); and

(8) Any and all rights, benefits and privileges specified by Sections 727.12, 727.15, 727.23, 727.24, 727.25 and 727.251 of the Revised Code, including but not limited to the filing of plans, specifications, profiles and estimate of cost relating to the Owner Project, the preparation and filing of estimated assessments and the right to file objections to the proposed assessment or to the cost of the labor and materials for the Owner Project, and the right to request a deferment of payment of those Owner Special Assessments.

The Owner further consents and requests that (A) all legislation required to be enacted to permit the Owner Project to commence immediately, be enacted by the City Council of the City, including, without limiting the generality of the foregoing, the resolution of necessity specified in Section 727.12 of the Revised Code and the resolution to proceed specified in Section 727.23 of the Revised Code, and (B) notwithstanding Section 727.24 of the Revised Code, the Owner Project be undertaken.

The Owner agrees that it will not contest, in a judicial or administrative proceeding, the Owner Special Assessments levied against its properties for the Owner Project.

The Owner hereby covenants that it will disclose the existence of the Owner Special Assessments to any purchaser of any part of the Assessed Property in any purchase contract and will provide this petition and all related documentation to such purchaser.

8. Boundaries. A legal description of the parcels in the District and a definitive listing, as identified by parcel number, of properties to be included in the District are provided in Exhibit B.

9. Miscellaneous. The undersigned acknowledge that the District is being created using the single petition option under the Act and that no further authorization by property owners will be required for the District to be created and the Plan to be implemented.

This petition may be executed in several counterparts, each of which will be an original and all of which will constitute one and the same instrument.

The City Council of the City of Beavercreek, Ohio is hereby respectfully requested to approve, by resolution, this Petition to Create the City of Beavercreek (Greene County), Ohio Energy Special Improvement District, to adopt the Plan, levy the Owner Special Assessments and approve the Owner Project to be developed by the Owner in the District.

**PETITION TO CREATE THE
CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL
IMPROVEMENT DISTRICT**

Signatures of Property Owner

Date: _____, 2016

Property Owner:

OWNER, MFC BEAVERCREEK, LLC, a Delaware limited liability company, the sole member of which is GLIMCHER PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, the sole general partner of which is GLIMCHER PROPERTIES, LLC, a Delaware limited liability company, the sole member of which is WPG SUBSIDIARY HOLDINGS I, LLC, a Maryland limited liability company, the sole member of which is WASHINGTON PRIME GROUP, L.P., an Indiana limited partnership, the general partner of which is WASHINGTON PRIME GROUP INC., an Indiana corporation

Authorized Signatory:

(printed name of authorized signatory)

X _____
(signature)

Title of Authorized Signatory

Address for notices to Owner

180 E. Broad Street
21st Floor
Columbus, Ohio 43215
Attn: General Counsel

180 E. Broad Street
21st Floor
Columbus, Ohio 43215
Attn: Chief Financial Officer

180 E. Broad Street
21st Floor
Columbus, Ohio 43215
Attn: Senior Vice President, Property
Management

Commonly used property address: 2727 Fairfield Commons Drive, Beavercreek, OH 45431
Parcel Number(s) B42000400030000400
Front Footage: _____ Square Footage: 2,632,854

EXHIBIT A

**CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT
DISTRICT
(FAIRFIELD COMMONS ESID)**

PROJECT PLAN

This plan (the “Plan”) of the City of Beavercreek (Greene County), Ohio Energy Special Improvement District (“District”) describes the special energy improvement projects to be developed by MFC BEAVERCREEK, LLC (the “Owner”) as follows:

The Owner has agreed to include their property in the District and otherwise meet the terms and conditions of the District. These terms and conditions are addressed in this Project Plan, a real property and company information verification form, an application or petition (the “Petition”), and the governing documents forming the District (i.e. articles of incorporation, code of regulations, and resolutions duly adopted by the board of directors of the District and the applicable resolutions and ordinances of the Participating Political Subdivision where the Owner’s property is located, such documents are hereinafter collectively referred to as “Governing Documents”), each of which Owner must have reviewed and as necessary have agreed to or executed prior to participation. The Project Plan, the Petition, the Governing Documents and an Assessment Schedule to be executed by the Owner are hereinafter collectively referred to as the “District Documents.” The District Documents establish the terms of the Owner’s membership in the District, including the addition of additional territory to the District. By agreeing to or executing the District Documents, the Owner agrees to the terms of membership in the District. The City of Beavercreek, Greene County, Ohio (the “City”), as participating political subdivision in the District, and the Board of Directors of the District reserve the right to amend the Governing Documents and conditions from time to time as described in “Changes in the District’s Plan; Severability” below.

I. Purpose of the District

The District exists to assist the Owner with the financing of the acquisition, installation and improvement of energy efficiency improvements (the “Owner Project”). The City, as participating political subdivision has approved the creation of the district to provide the source of financing for the Owner Project. Special Assessment Revenue Bonds will be issued in conjunction with the District and its authorized purposes and proceeds from the sale of the special assessment revenue bonds will be used to finance the Owner Project that benefit the Owner. Debt service on the special assessment revenue bonds and the administrative costs of the District will be paid through special assessments levied by the City on the real property in the District. Special Assessment payments will be assessed pursuant to the documentation by which real property taxes are collected and will be due and payable by property owner(s) at the same time real property taxes are due.

II. District's Financing Process; Terms and Conditions; Statutory Requirements

As discussed in more detail below, in order for the Owner to receive financing and funding from the Special Assessment Revenue Bonds issued on behalf of the District, the following steps must occur:

First: Owner must have agreed to the levy and collection of special assessments against the Owner's real property as a member of the District in accordance with the Petition and the District Documents. Special Assessments will be levied and collected in any year however only in accordance with the Petition and only upon the sale of special assessment revenue bonds, the proceeds of which will be used to pay the costs of the Owner Project. The timing for the sale of special assessment revenue bonds to pay costs of the Owner Project will depend on the scope and cost of the Owner Project and market conditions.

Second: After filing of the Petition by the Owner and Owner's compliance with the District Documents, the District and its financial advisors, consultants and developers will notify Owner of the commencement of marketing of the special assessment revenue bonds that will determine the actual interest rate(s) to be paid on special assessment revenue bonds to pay costs of the Owner Project. The Special Assessments that will be payable by Owner annually are calculated based upon (a) the cost of the Authorized Improvements (as defined herein), (b) federal and state subsidies received by Owner as owner of the Authorized Improvements, (c) the interest rates payable on the Special Assessment Revenue Bonds and (d) administrative charges levied by a qualified trustee, the District and the participating political subdivision, if any, to pay administrative costs.

The Owner will not be obligated to pay any Special Assessments until the Owner executes an Assessment Schedule which will be prepared by the District or its agents and staff only after the pricing of special assessment revenue bonds the proceeds of which will be used to finance the Cost of the Owner Project. The Assessment Schedule will include a schedule of the annual or semiannual payments payable by the Owner as a member of the District. Unless the Owner agrees with and executes the Assessment Schedule, the Owner will not be responsible to pay Special Assessments under the District Documents. Upon execution by the Owner of the Assessment Schedule, the Owner has agreed to the levy and collection of Special Assessments in accordance with the District Documents. If the Owner does not execute the Assessment Schedule, the Owner may be responsible to pay certain administrative costs of the District to remove the lien of the Special Assessments from Owner's property.

Third: The proceeds of the sale of special assessment revenue bonds will be deposited with a qualified trustee. Disbursement of proceeds from such sale from the trustee held construction fund to pay the costs of the Authorized Improvement will require the signature of an officer of the District and the signature of an authorized officer of the Owner. A qualified installer must complete the installation of the Owner Project on Owner's property. See "Owner Project; Qualified Installers" below.

Fourth: This Plan provides that the City, as participating political subdivision of the District, has approved (i) the inclusion of the property of the Owner described in Exhibit C to the Petition in the territory of the District and (ii) the Owner Project to be constructed by the Owner on the applicable property in the District. Nothing herein shall prohibit the Owner from applying for and receiving any applicable federal and state grants and other tax benefits associated with the ownership of the Owner Project. The property owner should consult its own tax advisor as to the merits of owning the Owner Project.

Fifth: The Owner shall make special assessment payments in amounts and at the times as specified in the District Documents.

Disbursement of proceeds of special assessment revenue bonds or other obligations must be accomplished in accordance with the trust indenture and other documents securing the special assessment revenue bonds as well as the terms and conditions of the District Documents.

Special Assessments. The Owner must pay special assessments levied against its property and certified for collection once an Assessment Schedule has been executed regardless of personal financial circumstances, the condition of the property, or the performance of the Owner Project. Just as with any property-based debt such as a mortgage, the failure by Owner to pay special assessments — in full or in part — will result in financial repercussions, including penalties, interest and, eventually, foreclosure of Owner’s property by Greene County.

If Owner uses an escrow account to pay semi-annual property taxes, the Owner shall notify the applicable escrow company of Owner special assessment payments payable as a member of the District. Owner must increase its monthly payments to such escrow account by an amount equivalent to the annual special assessments payable as a member of the District divided by 12 months.

Board of the District

The Board of the District is comprised of five (5) persons (the “Board”). These Board members will approve an annual budget to administer the Plan and the annual administrative costs of the Board will be included in the special assessments levied annually against each parcel of real property included within the District. The District may share information with any agents or other third parties as necessary to administer the Plan. See “Disclosure of Property Owner Information” below.

The Board of Directors shall submit a quarterly report to the electric distribution utility that includes, but is not limited to, both of the following:

1. The total number and a description of each new and ongoing special energy improvement project located within the District that produces energy efficiency savings or reduction in demand; and
2. Any additional information that the electric distribution utility needs in order to obtain credit under Section 4928.66 of the Ohio Revised Code for energy efficiency savings or reduction in demand from such projects.

Statutory Requirements

As provided in the District Documents:

1. Additional territory may be added to the District. The District is formed for the purpose of developing the acquisition, installation and improvement of energy efficiency improvements (the "Authorized Improvements"). There will be designated at least one Authorized Improvement for each parcel of real property included within such additional territory to be added to the District. If Additional Territory is to be added to the District, such addition will be in accordance with the District Documents and the owner(s) of 100% of the real property to be added to the District will petition the applicable participating political subdivision where the real property is located for inclusion of such real property in the District. Prior to submission of the Petition to add territory, the Petition to add territory shall be approved by the Board of Directors of the District in accordance with rules established by the Board for such purposes. The Petition necessary to add territory to the District need not be approved by other participating political subdivisions in the District where such real property is not located. Additional territory will be added to the District with the approval of the Board of Directors of the District and the participating political subdivision where the real property is located all in accordance with the District Documents and the Act.
2. The District Documents may be amended with the majority vote of the board of directors of the District held at a meeting in accordance with the District Documents.
3. The board of directors of the District possesses authority to implement plans and amend plans for public improvements, including the Owner Project, in accordance with and as provided for in Sections 1710.02(F), 1710.02(G) and 1710.06(A) of the Ohio Revised Code.
4. The public improvements to be provided by the District are the Authorized Improvements included in each Petition; the area where the Authorized Improvements will be developed will be the area identified in each Petition requesting formation of the District or requesting additional territory be added to the District and the method of assessment shall be in proportion to the benefits that result from the Authorized Improvements, i.e. in proportion to the cost of each Authorized Improvement financed by special assessments to the cost of all Authorized Improvements financed by special assessments levied upon Authorized Improvements within the District.

III. Owner Project Qualified Installers; Maximum Funding

Board Waiver of Competitive Bidding. Due to the circumstances under which the Owner Project shall be financed and constructed, the Board shall adopt written rules that do not require competitive bidding with respect to the Owner Project in accordance with Section 1710.11 of the Ohio Revised Code.

Owner Project. Special assessment revenue bonds issued to finance this Plan and the Owner Project may only be used to finance energy efficiency improvements and administrative costs of the District. Owner is responsible for the Owner Project installed on its property. Owner will need to address performance and other system-related issues directly with the installer according to the terms of Owner's contract with the installer. **The District is a financing program only (such financing program described herein as the "Program"). Neither the District nor the City is responsible for the system or its performance.**

Qualified Installers. **The District's Program is a financing program only. Neither the District nor the City will participate in the resolution of any dispute between Owner and the installer of the Owner Project.**

IV. Compliance with Existing Mortgages

The filing of the Petition and the adoption by the participating political subdivision of a resolution to proceed under Ohio Revised Code Section 727.25 will establish a lien on the Owner's property as security for Owner's obligation to pay special assessments in accordance with the Petition and the District Documents. The lien securing the obligation to pay special assessments will be senior to all private liens, including Owner's purchase mortgage, if any. Many loan documents limit the ability of a property owner to place senior liens upon property without the consent of the lender, or authorize the lender to obligate a borrower to prepay the senior obligation. **Owner must confirm with its lender(s), if any, and provide written consent to the special assessments and to the lien securing the special assessments therefrom, including, without limitation, a statement that the financing of the Owner Project in accordance with this Plan will not adversely impact Owner's rights with respect to any existing loan documents, or obligate the Owner to prepay special assessments assessed under the District Documents.**

V. Transfer or Resale of the Subject Property

If Owner sells its property subject to the special assessments described in this Plan prior to the end of the special assessment period for the Owner Project, the new owner will assume the obligation to pay special assessments. Ownership of such subject property will transfer to the new owner at the close of the real estate sale.

VI. Grants and Tax Benefits

Owner has consulted with its tax advisors with respect to the state and federal tax consequences of the benefits and burdens incurred as a beneficiary of the financing under the Plan, including eligibility for federal energy tax credits as a result of installation of the Owner Project and whether the Owner can deduct the interest component of the special assessments from its state and federal income taxes.

Neither the District nor the City is responsible for the Owner's state or federal tax consequences resulting from the implementation of this Plan.

VII. Changes in State and Federal Law

The ability to issue bonds to finance the Owner Project is subject to a variety of state and federal laws. If those laws were to change, the issuer of the special assessment revenue bonds or other obligations may be unable to issue the bonds or other obligations and the District may be unable to fulfill its financing application described in this Plan. **The District shall have no liability as a result of any such change in law.**

VIII. Releases and Indemnification

Owner acknowledges that the District has been created with the approval of the City solely for the purpose of assisting the Owner with the financing of Owner Project, and that the District and the City shall have no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Owner Project. Owner agrees that Owner and its successors in interest to fee simple title in the subject property shall be solely responsible for the installation, operation, financing, refinancing and maintenance of the Owner Project. Participation in the Program does not in any way obligate the District or the City to protect solar access with respect to any proposed developments that may shade the system. Owner hereby acknowledges that the subject property will be responsible for payment of special assessments regardless of whether the Owner Project is properly installed or operated as expected.

Owner agrees to release, defend, indemnify, and hold harmless the District and the City, including their officers, directors, employees and agents, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with Owner's membership in, or role in the creation and operation of, the District.

IX. Changes in the District's Plan; Severability

The District reserves the right to change this Plan and the terms and conditions of the District Documents at any time upon no less than 30 days notice to the City and the Greene County Port Authority; however, no such change will affect the Owner's obligation to pay special assessments as set forth in Owner's petition and the District Documents. Owner's membership in the District and participation in this Plan will be subject to the District Document terms and conditions in effect from time to time during Owner's participation.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

X. Disclosure of Property Owner Information

Owner agrees that the District and any participating political subdivision may disclose Owner's personal information to any agent of the District or that participating political subdivision and that the District, participating political subdivisions and its agents may disclose Owner's information to third parties when such disclosure is essential to the conduct of the District's business or to provide services to Owner, including but not limited to where such disclosure is necessary to (i) comply with the law, legal process or our regulators, (ii) enable the District and participating political subdivisions and their employees or consultants to provide services to Owner and to otherwise perform their duties and (iii) obtain and provide credit reporting information. The District does not provide Owner's personal information to third parties for telemarketing, e-mail or direct mail solicitation.

In order to receive funding for this Program and to enable communication regarding the State of Ohio's energy programs, Owner consents to the release of its name and contact information to current electric utility provider of the Owner. Owner further agrees to the release of its name and contact information and Owner's property's utility usage data to the District, its grantors and designated contractors for the purpose of conducting surveys and evaluations of the District.

XI. Special Assessment Administration Services and Budget

Administrative services related to the Special Assessments are associated with the annual determination of the Special Assessments to be collected from the subject properties of the District, management of bond funds and accounts relating to Special Assessments, and providing public information. These services will be provided and paid pursuant to a Cooperative Agreement ("Cooperative Agreement") dated as of _____, 2016 between the City, the issuer of the special assessment revenue bonds and the District and the indenture securing repayment of the special assessment revenue bonds.

By November 1st of each year, the Treasurer of the Board, as directed by the Board, will produce or cause to be produced and make available to the members of the District and the Board an annual report describing the services delivered, revenues received, expenditures made, and other information about the activities of the District.

By November 1st of each year or as soon thereafter as possible, the Treasurer of the Board, as directed by the Board, will produce or cause to be produced an annual budget for the following calendar year.

EXHIBIT B

**CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL
IMPROVEMENT DISTRICT**

ASSESSED PROPERTY

LEGAL DESCRIPTION

Situated in the State of Ohio, County of Greene, City of Beavercreek and being all of Lot 1A, as shown and delineated upon the plat replat of Lots 1, 2, 5A, 5B and 6 the Mall at Fairfield Commons of record in Plat Cabinet 30, pages 564A, 564B and 565A, Recorder's Office, Greene County, Ohio.

EXHIBIT C
OWNER PROJECT
DESCRIPTION

- **Approximately 400,000 square feet of replacement roofing, including additional insulation to increase the R-Value**
- **Approximately twenty-one (21) rooftop HVAC units with a total of 427 tons capacity and high efficiency 10+ SEER equipment**

EXHIBIT D

**OWNER PROJECT
PLANS AND SPECIFICATIONS
ESTIMATE OF COST**

400,000 Square Feet of Replacement Roofing and HVAC improvements at a Total Estimated Cost of \$3,027,000.00 comprising the following:

- | | |
|---|-----------------------|
| 1. Materials and Labor: | \$2,400,000.00 |
| 2. Engineering and Design Costs: | \$240,000.00 |
| 3. Development Fee: | \$79,200.00 |
| 4. Capitalized Interest: | \$159,795.00 |
| 5. Estimated Issuance Costs: | \$148,005.00 |

0133667.0636155 4850-8237-9064v2
10/19/2016 5:00 pm

COOPERATIVE AGREEMENT

by and among

GREENE COUNTY PORT AUTHORITY

and

CITY OF BEAVERCREEK, OHIO

and

**CITY OF BEAVERCREEK (GREENE COUNTY), OHIO
ENERGY SPECIAL IMPROVEMENT DISTRICT**

and

MFC BEAVERCREEK, LLC, AS OWNER

and

THE HUNTINGTON NATIONAL BANK, AS TRUSTEE

\$[3,027,000]
Greene County Port Authority
Property Assessed Clean Energy Taxable Revenue Bonds
(Mall at Fairfield Commons Project)
Series 2016

Dated as of _____, 2016

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Cooperative Agreement") is made and entered into as of _____, 2016, between the GREENE COUNTY PORT AUTHORITY, a port authority and a body corporate and politic (the "Authority") duly created, organized and existing under the laws of the State of Ohio (the "State"), CITY OF BEAVERCREEK, OHIO, a City duly organized and validly existing under the constitution and laws of the State and its Charter (the "City"), CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT, a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State (the "ESID"), MFC BEAVERCREEK, LLC, a Delaware limited liability company, as owner of the Site, together with its permitted successors and assigns (the "Owner"), and The Huntington National Bank, a national banking association organized and existing under and by virtue of the laws of the United States of America and authorized to exercise corporate trust powers in the State of Ohio, with its designated place of business located in Cincinnati, Ohio, as trustee, together with its permitted successors and assigns (the "Trustee") under the circumstances summarized in the following recitals (the capitalized terms not defined in the preamble and recitals being used therein as defined in Section 1.1 hereof):

A. The Owner owns the property constituting the Site (which Site lies within the corporate boundaries of the City and within the territory of the Authority).

B. The Owner intends to acquire, construct, equip, improve, and install energy efficiency improvements on the Site including, without limitation, the construction, acquisition, and installation of roof improvements, HVAC system improvements and related improvements all as generally described in Exhibit B attached hereto (the "Project").

C. In order to provide funds necessary to pay the costs of the Project, the Owner has requested that the Authority finance the costs of the Project.

D. The Authority has determined that the Project constitutes "port authority facilities" within the meaning of the Act, that financing the Project will further the "authorized purposes" of the Authority within the meaning of the Act, including economic development purposes, and will create and preserve jobs and employment opportunities for and otherwise improve the economic welfare of the residents of the City, Greene County, and the State.

E. The ESID has determined that the Project constitutes a "special energy improvement project" within the meaning of Ohio Revised Code Chapter 1710.

F. In order to secure financing for the Project and to create Special Assessment revenues available to the Authority to secure the Bonds, (i) the Owner petitioned the City Council of the City (the "City Council") to establish the ESID, and the City Council, by Resolution No. _____, adopted on _____, 2016, established the ESID.

G. The Authority, the City, and the ESID have each determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment,

improvement, and installation of the Project in order to further the public purposes set forth above is through this Cooperative Agreement, pursuant to the Act and on the terms set forth herein, with (i) the Authority agreeing to finance the Project and to issue the Bonds, (ii) the Owner acting to acquire, construct, equip, improve, and install the Project, and (iii) the Owner agreeing to make Special Assessment payments in an aggregate amount that will provide revenues sufficient to pay Debt Service Charges on the Bonds and other permitted costs of the Project.

H. The Authority has determined to issue, sell, and deliver the Bonds pursuant to Ohio Revised Code Sections 4582.31(A)(8) and 4582.48 and the Trust Agreement to finance the Project Costs and, in accordance herewith, to cause the Owner to acquire, construct, equip, improve, and install the Project.

I. The City has determined, as requested in the Petition, to cooperate with the Authority and the Owner, pursuant to this Cooperative Agreement, and the City has undertaken to adopt or pass all legislation required by the Special Assessments Act in order to establish the ESID and to levy, and has levied, the Special Assessments on the Assessed Properties proportionate to the benefits received by the Assessed Properties, all in accordance with the Petition and the Special Assessments Act.

J. The Authority, the City, the ESID, the Owner and the Trustee each have full right and lawful authority to enter into this Cooperative Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed and have determined to enter into this Cooperative Agreement to set forth their respective rights, duties, responsibilities, obligations, and contributions with respect to the implementation of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants, and agreements hereinafter contained, the Authority, the City, the ESID, the Owner and the Trustee agree as follows; provided, that any obligation of the Authority or the County created by or arising out of this Cooperative Agreement shall never constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the Authority, or give rise to any pecuniary liability of the Authority or the County, but any such obligation shall be payable solely out of Special Assessments actually received by the Authority, if any; and provided, further, that any obligation of the City created by or arising out of this Cooperative Agreement shall never constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the City, or give rise to any pecuniary liability of the City, but any such obligation shall be payable solely from the Special Assessments actually received by the City, if any:

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ARTICLE I

DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Cooperative Agreement or by reference to the Bond Proceedings or another document, words and terms used herein shall have the meanings set forth in this Section 1.1 unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

“*Act*” means Ohio Revised Code Sections 4582.21 through 4582.59, both inclusive, as enacted and amended at the time, and includes Article VIII, Section 13 of the Ohio Constitution and any other applicable law pertaining to the Bonds, as the same may be amended, modified, revised, supplemented, or superseded from time to time.

“*Administrative Expenses*” means (i) the reasonable fees and expenses of the Trustee, the Registrar, the Paying Agent, or the Authenticating Agent, (ii) the Authority’s scheduled administrative fees and any amounts other than Debt Service Charges required to be paid under the Transaction Documents, (iii) the City Expenses; and (iv) any other reasonable expenses incurred by the Authority, the City or the ESID including, without limitation, legal fees for counsel to the Authority, the City or the ESID, and fees and expenses incurred by the Authority, the City or the ESID to collect the Special Assessments or as part of the administration of duties and/or responsibilities under the Transaction Documents.

“*Authority Fee*” means one-half percent (0.5%) of the par amount of the Bonds.

“*Assessed Properties*” means the lots identified in the Petition and located within the boundaries of the ESID.

“*Authority*” means the Greene County Port Authority, together with its permitted successors and assigns.

“*Board*” means the Board of Directors of the Authority.

“*Bond*” or “*Bonds*” means any or all, as the case may be, of the Authority’s Property Assessed Clean Energy Taxable Revenue Bonds (Mall at Fairfield Commons Project), Series 2016, authorized by the Bond Resolution and the Trust Agreement.

“*Bond Proceedings*” means the Bond Resolution, the Trust Agreement, the Certificate of Award executed in connection with the issuance of the Bonds, and other resolutions and agreements, and amendments of and supplements to or any combination of them, authorizing or providing for the terms and conditions applicable to, or providing for the security for, or sale of, or the terms contained in, the Bonds.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement, dated _____, 2016, between the Authority and [HASI OBS OP A LLC].

“*Bond Resolution*” means Resolution No. 2016-__, adopted by the Board on _____, 2016, which Bond Resolution approved and authorized the Trust Agreement, this Cooperative Agreement, and the Bonds, and any bond resolution adopted by the Board to approve and authorize the issuance of Additional Bonds.

“*Capitalized Interest Account*” means the Capitalized Interest Account established in the Project Fund pursuant to the Trust Agreement, and it includes all accounts and subaccounts therein as may be created pursuant to the Trust Agreement.

“*CERCLA*” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“*City*” means the City of Beavercreek, Ohio.

“*City Council*” means the City Council of the City.

“*Closing Date*” means, for the Bonds, _____, 2016.

“*City Expenses*” means the annual expenses of the City incurred in connection with the receipt, transfer and payment of Special Assessments, which expenses are estimated to equal approximately \$[____.____].

“*Completion Date*” means the date of completion of the Project, being the date on which the Trustee shall have approved the final completion certificate with respect to the Project and all payments shall have been made from the Project Fund for the Project.

“*Condemnation*” means any condemnation, requisition, confiscation, seizure, or other taking or sale of the use, occupancy, or title to the Site, the Project, or any part thereof in, by or on account of any actual eminent domain proceeding or other action by any governmental authority or other Person under the power of eminent domain, or any transfer in lieu of or in anticipation thereof; provided, that Condemnation shall be deemed to have “occurred” on the earliest of the dates that use, occupancy, or title is taken.

“*Cooperative Agreement*” means this Cooperative Agreement, dated as of _____, 2016, among the Authority, the ESID, the City, the Trustee, and the Owner, as the same may be amended, modified, or supplemented from time to time.

“*Cooperative Parties*” means the Owner, the Authority, the City, the ESID, and the Trustee.

“*County*” means the County of Greene, Ohio.

“*County Auditor*” means the Auditor of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Debt Service Charges*” means, collectively, (i) the principal, accreted amount, interest, and any redemption premium required to be paid by the Authority on the Bonds, including any Mandatory Sinking Fund Requirements, (ii) the scheduled fees of the Trustee, and (iii) the scheduled administrative fees of the Authority, the City and the ESID.

“*Energy Project Account*” means the Energy Project Account established in the Project Fund pursuant to the Trust Agreement, and it includes all accounts and subaccounts therein that may be created pursuant to the Trust Agreement.

“*ESID*” means the City of Beavercreek (Greene County), Ohio Energy Special Improvement District, a nonprofit corporation and special improvement district organized under the laws of the State of Ohio.

“*Force Majeure*” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 hereof.

“*Holder*” or “*holder*” or “*registered owner*” or any similar term means the person in whose name a Bond is registered.

“*Net Proceeds*,” when used with respect to any insurance proceeds or Condemnation award means the gross proceeds thereof less the payment of all expenses, including reasonable attorneys’ fees incurred in connection with the collection of such gross proceeds.

“*Notice Address*” means:

(a) As to the Authority: Greene County Port Authority
35 Greene St.
Xenia, Ohio 45385
Attention: Executive Director

With a Copy To: Dinsmore & Shohl LLP
255 E. Fifth Street, Suite 1900
Cincinnati, Ohio 44520
Attention: Bradley N. Ruwe, Esq.

(b) As to the City: City of Beavercreek, Ohio
1368 Research Park Drive
2nd Floor
Beavercreek, Ohio 45432
Attention: City Manager

With a Copy To: Coolidge Wall Co., L.P.A
33 West First Street, Suite 600
Dayton, Ohio 45402-1289
Attention: Stephen M. McHugh

- (c) As to the ESID: City of Beavercreek (Greene County), Ohio Energy
Special Improvement District
c/o City of Beavercreek
1368 Research Park Drive
2nd Floor
Beavercreek, Ohio 45432
Attention: City Manager
- With a Copy To: Greene County Port Authority
35 Greene St.
Xenia, Ohio 45385
Attention: Executive Director
- (d) As to the Owner: MFC BEAVERCREEK, LLC
180 E. Broad St.
21st Floor
Columbus, Ohio 43215
Attn: General Counsel
- With a Copy To: MFC BEAVERCREEK, LLC
180 E. Broad St.
21st Floor
Columbus, Ohio 43215
Attn: Chief Financial Officer
- With a Copy To: MFC BEAVERCREEK, LLC
180 E. Broad St.
21st Floor
Columbus, Ohio 43215
Attn: Senior Vice President, Property Management
- (E) As to the Trustee: The Huntington National Bank
3805 Edwards Road, Suite 350
Cincinnati, OH 45209
Attention: Corporate Trust Department
- With a Copy To: Hannon Armstrong Sustainable
Infrastructure Capital, Inc.
1906 Towne Centre Blvd, Suite 370
Annapolis, MD 21401
Attention: General Counsel

“Outstanding Bonds” or *“Bonds outstanding”* or *“outstanding”* as applied to particular Bonds or to all Bonds, means, as of any date, the Bonds to which the reference applies and which

have been authenticated and delivered, or are then being authenticated and delivered, by the Trustee under the Trust Agreement except:

(i) Bonds canceled or retained in safekeeping upon surrender, exchange or transfer, or cancelled by reason of payment or redemption on or prior to that date;

(ii) Bonds, or the portion of Bonds, for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to that date with the Trustee or Paying Agents (whether upon or prior to the maturity or redemption date of those Bonds), or which are deemed to have been paid or caused to be paid, as provided in Article X of the Trust Agreement; provided (a) that if those Bonds are to be redeemed prior to their stated maturity, notice of that redemption has been given or arrangements satisfactory to the Trustee have been made for giving that notice, or waiver of that notice satisfactory in form to the Trustee has been filed with the Trustee, and (b) that if those Bonds are to be purchased for cancellation, a firm offer for sale stating the price has been received and accepted; and

(iii) Lost, stolen, mutilated, or destroyed Bonds in lieu of which others have been authenticated (or payment when due of which is made without replacement) under the Trust Agreement.

“*Owner*” means MFC BEAVERCREEK, LLC, a Delaware limited liability company, authorized to do business in the State of Ohio as owner of the Assessed Properties, and its respective successors in title to all or any portion of the Assessed Properties.

“*Person*” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, political subdivisions, other legal entities, and natural persons.

“*Petition*” means the petition of the Owner as owner of the Site, dated _____, 2016, as amended, for the establishment of the ESID, approval of the ESID plan for public improvements (within the meaning of Ohio Revised Code Section 1710.01(G)) consisting of the financing of the Project, acquisition, construction, equipping, improvement, and installation of the Project by the Owner, and the levy of Special Assessments in aggregate amount sufficient to pay for the costs of the Project.

“*Pledged Revenues*” means the following receipts:

(i) the Special Assessments, including, without limitation, all moneys paid by the City under the Cooperative Agreement;

(ii) all other payments, moneys, or amounts received or to be received by or otherwise pledged to the Authority or the Trustee and intended to be used for Debt Service Charges, including without limitation, all moneys and investments

in the Bond Fund, the Revenue Fund, and the Surplus Fund (each as defined in the Trust Agreement);

(iii) any proceeds from the sale, lease, use or disposition of the Project by the Trustee, the ESID, the City, or the Authority, and any proceeds realized from the enforcement of the Cooperative Agreement or the foreclosure of any lien of delinquent Special Assessments;

(iv) all right, title, and interest of the Authority in the proceeds derived from the sale of the Bonds; and

(v) all income and profit from the investment of the foregoing moneys.

“*Project*” means “port authority facilities” consisting of energy efficiency improvements to be constructed on the Site including, without limitation, the construction, acquisition, and installation of roof improvements, HVAC system improvements and related improvements all as generally described in Exhibit B hereto.

“*Project Costs*” means the Costs of the Project described in Section 3.5 of the Cooperative Agreement, which such Project Costs are to be paid or reimbursed from the proceeds of the Bonds pursuant to Section 3.5 of the Cooperative Agreement.

“*Required Commercial General Liability Insurance Coverage*” means commercial general liability insurance, or alternative arrangements for insurance or self-insurance approved by the Authority and the Trustee, with coverage limits in the minimum amount of \$[3,027,000] in each occurrence and \$[3,027,000] in the general aggregate amount. All Required Commercial General Liability Insurance Coverage shall be procured from sound and reputable insurers admitted to do business in the State, rated “A” or better by A.M. Best Co. or a successor to its national insurance rating business.

“*Required Property Insurance Coverage*” means with respect to the Project, at any time, insurance in an amount sufficient to cover loss of or damage to the Project in an amount not less than one hundred percent (100%) of its replacement value, exclusive of land, insuring the Project against loss or damage by fire and those hazards ordinarily covered in all-risk property insurance policies in the State for improvements similar to the Project. All Required Property Insurance Coverage will be procured from sound and reputable insurers admitted to do business in the State, rated “A” or better by A.M. Best Co. or a successor to its national insurance rating business. Until the Completion Date, “all-risk builder’s risk insurance” covering the insurable value of the Project shall be provided in lieu of “all-risk property” insurance.

“*Security Agreement*” means the Security Agreement, dated as of _____, 2016, between the ESID and the Trustee.

“*Site*” means certain real property located at 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431, and initially owned by the Owner.

“*Special Assessments*” means all special assessment payments paid with respect to the Site and received by the City for the purpose of the Project pursuant to the Special Assessments Act.

“*Special Assessments Act*” means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws, Ordinance No. _____ of the City Council adopted on _____, 2016, approving financing, Resolution No. _____ of the City Council adopted on _____, 2016 approving the Petition and the establishment of the ESID, Resolution No. _____ of the City Council adopted on _____, 2016 as a resolution of necessity for the Special Assessments, Ordinance No. _____ of the City Council passed on _____, 2016 as an ordinance to proceed with the Special Assessments, and Ordinance No. _____ of the City Council passed on _____, 2016 as an ordinance levying the Special Assessments.

“*Special Funds*” means the Bond Fund and accounts therein; the Revenue Fund and the accounts therein; the Surplus Fund and the accounts therein (each as defined in the Trust Agreement); or any other fund or account established under the Trust Agreement and identified as a Special Fund.

“*State*” means the State of Ohio.

“*Transaction Documents*” means, collectively, the Trust Agreement, this Cooperative Agreement, the Security Agreement, the Bond Purchase Agreement, and any other agreements, documents, or certificates related to the Bonds.

“*Trust Agreement*” means the Trust Agreement, dated as of _____, 2016, between the Authority and the Trustee, approved by the Bond Resolution, as it may from time to time be amended and supplemented in accordance with its terms.

“*Trustee*” means the Trustee appointed and qualified under the Trust Agreement, initially The Huntington National Bank, duly organized and validly existing under the laws of the United States of America and qualified to exercise trust powers in the State, and shall include any successor Trustee thereunder.

“*Unassigned Authority Rights*” means all of the rights of the Authority to be held harmless and indemnified under Section 5.2 hereof, be reimbursed for attorneys’ fees and expenses under Section 7.4 hereof, to make requests, to receive notice and to give or withhold consent including, without limitation, notices pursuant to Section 7.1 of the Cooperative Agreement and consents to amendments, changes, modifications, alterations, and termination of the Cooperative Agreement under Section 8.5 hereof.

Section 1.2. Interpretation. Any reference herein to the Authority, the City, the Board, or the City Council, or to any member or officer of any of the foregoing, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, however, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Authority, the City, the Trustee, the ESID, or the Owner under this Cooperative Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Cooperative Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.3. Captions and Headings. The captions and headings in this Cooperative Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 2.1. Representations of the Authority. The Authority represents that:

- (a) It is a port authority, and a body corporate and politic, duly created and organized and validly existing under the Act and the other applicable laws of the State.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Authority that would impair its ability to carry out its obligations contained in this Cooperative Agreement.
- (c) It is legally empowered to execute, deliver and perform this Cooperative Agreement and to enter into and carry out the transactions contemplated by this Cooperative Agreement and the other Transaction Documents to which it is a party. To the knowledge of the Authority, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the Authority, and does not and will not conflict with or result in a default under any agreement or instrument to which the Authority is a party or by which it is bound.
- (d) This Cooperative Agreement and the other Transaction Documents to which it is a party have, by proper action, been duly authorized, executed and delivered by the Authority and all steps necessary to be taken by the Authority have been taken to establish this Cooperative Agreement, and the other Transaction Documents to which it is a party, or by which it is bound, and the covenants and agreements of the Authority contemplated herein and therein, as valid and binding obligations of the Authority, enforceable in accordance with their terms.
- (e) There is no litigation pending, or to its knowledge threatened, against or by the Authority wherein an unfavorable ruling or decision would materially adversely affect the Authority's ability to carry out its obligations under this Cooperative Agreement or any other Transaction Documents to which it is a party or by which it is bound.
- (f) The Bond Resolution has been duly adopted and is in full force and effect.

Section 2.2. Representations and Covenants of the City. The City represents and covenants that:

- (a) It is a City duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City that would impair its ability to carry out its obligations contained in this Cooperative Agreement.

(c) It is legally empowered to execute, deliver and perform this Cooperative Agreement and to enter into and carry out the transactions contemplated by this Cooperative Agreement and the other Transaction Documents to which it is a party. To the knowledge of the City, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the City and does not and will not conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(d) This Cooperative Agreement and any other Transaction Documents to which it is a party have, by proper action, been duly authorized, executed and delivered by the City, and all steps necessary to be taken by the City have been taken to establish this Cooperative Agreement, and any other Transaction Documents to which it is a party, or by which it is bound, and the covenants and agreements of the City contemplated herein and therein, as valid and binding obligations of the City, enforceable in accordance with their terms.

(e) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Cooperative Agreement and any other Transaction Documents to which it is a party by any successor public body.

(f) There is no litigation pending, or to its knowledge threatened, against or by the City wherein an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations under this Cooperative Agreement or any other Transaction Documents to which it is a party.

(g) The City legislation and each of the resolutions and ordinances approving the Petition, the establishment of the ESID, establishing the necessity of and authorizing and levying the Special Assessments and approving this Cooperative Agreement has been duly adopted or passed, as the case may be, is in full force and effect, and is not subject to repeal by referendum.

Section 2.3. Representations and Covenants of the ESID. The ESID represents and covenants that:

(a) It is a nonprofit corporation and special improvement district duly organized and validly existing under the Constitution and applicable laws of the State.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the ESID that would impair its ability to carry out its obligations contained in this Cooperative Agreement.

(c) It is legally empowered to execute, deliver and perform this Cooperative Agreement and to enter into and carry out the transactions contemplated by this Cooperative Agreement and the other Transaction Documents to which it is a party. To the knowledge of the ESID, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the ESID and does not and

will not conflict with or result in a default under any agreement or instrument to which the ESID is a party or by which it is bound.

(d) This Cooperative Agreement and the other Transaction Documents to which it is a party have, by proper action, been duly authorized, executed and delivered by the ESID, and all steps necessary to be taken by the ESID have been taken to establish this Cooperative Agreement, and the other Transaction Documents to which it is a party, or by which it is bound, and the covenants and agreements of the ESID contemplated herein and therein, as valid and binding obligations of the ESID, enforceable in accordance with their terms.

(e) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Cooperative Agreement and the other Transaction Documents to which it is a party by any successor public body or special improvement district.

(f) There is no litigation pending, or to its knowledge threatened, against or by the ESID wherein an unfavorable ruling or decision would materially adversely affect the ESID's ability to carry out its obligations under this Cooperative Agreement or any other Transaction Documents to which it is a party.

(g) The ESID resolution approving the Petition, authorizing the execution of this Cooperative Agreement, and requesting the levy of the Special Assessments has been duly adopted and is in full force and effect.

Section 2.4. Representations and Covenants of the Owner. The Owner represents and covenants that:

(a) It is a limited liability company duly organized and validly existing under the laws of the State of Delaware authorized to do business in the State of Ohio.

(b) It is not in violation of or in conflict with any provisions of the laws of the United States of America or the State applicable to the Owner which would impair its ability to carry out its material obligations contained in this Cooperative Agreement.

(c) It has adequate power and authority to execute, deliver and perform this Cooperative Agreement and the other Transaction Documents to which the Owner (or any affiliate) is a party and to enter into and perform the transactions contemplated by the Transaction Documents. To the knowledge of the Owner, the execution, delivery and performance of this Cooperative Agreement and the other Transaction Documents to which the Owner (or any affiliate) is a party does not and will not violate any provision of law applicable to the Owner or the Owner's governing documents, and does not and will not conflict with or result in a default under any material agreement or instrument to which the Owner (or any affiliate) is a party or by which it is bound.

(d) This Cooperative Agreement and the other Transaction Documents to which the Owner (or any affiliate) is a party have, by proper action, been duly authorized, executed and delivered by the Owner, and all steps necessary to be taken by the Owner have been taken to establish this Cooperative Agreement and the other Transaction Documents to which it (or any affiliate) is a party, or by which it is bound, and the covenants and agreements of the Owner contemplated herein and therein, as valid and binding obligations of the Owner, enforceable in accordance with their respective terms, as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

(e) There is no litigation pending against or by the Owner or any affiliate thereof, wherein an unfavorable ruling or decision is reasonably likely to have a material adverse effect on the Owner's ability to carry out its obligations under this Cooperative Agreement or any other Transaction Documents to which it (or any affiliate) is a party or by which it is bound.

(f) The provision of financial assistance to be made available under this Cooperative Agreement and the Transaction Documents, and commitments therefor made by the Authority, the City, and the ESID, have induced the Owner to undertake the transactions contemplated by this Cooperative Agreement and the other Transaction Documents to which it is a party, including to undertake the Project, and those transactions will preserve jobs and employment opportunities within the jurisdiction of the Authority through the enhancement and fostering of economic development.

(End of Article II)

ARTICLE III

COOPERATIVE ARRANGEMENTS; CONSTRUCTION OF THE PROJECT; ISSUANCE OF THE BONDS

Section 3.1. Cooperative Agreement Between the City and the Authority. The Owner has heretofore requested the assistance of the City and the Authority in the financing of the Project. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Cooperative Agreement and the intended cooperative arrangements among the Cooperative Parties, the City and the ESID have each requested the assistance and cooperation of the Authority in the financing of the Project, all in accordance with this Cooperative Agreement. This Cooperative Agreement is intended as and shall be an agreement among the Cooperative Parties to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of "port authority facilities" pursuant to the Act, particularly Ohio Revised Code Sections 4582.43 and 4582.431, and the agreements contained herein are intended to and shall be construed as agreements to further effective cooperative action and safeguard the respective interests of the parties thereto.

To the extent, if any, necessary to implement the intent of this Cooperative Agreement, insofar as the same may be necessary, desirable, or appropriate to the implementation of the Project and in accordance with the Act, the Authority undertakes to, and is authorized by the City and the ESID to, exercise any power, perform any function, and render any service on behalf of the City or the ESID, together with all powers necessary or incidental thereto, to the fullest extent that the City or the ESID are authorized to exercise, perform, or render such power, function, or service. Each power exercised, function performed, or service rendered by the Authority hereunder, to the extent if any necessary to the implementation of the Project in the manner set forth herein, is undertaken by the Authority in cooperation with or for the benefit of the City or the ESID pursuant to the Act.

Based upon the foregoing, and upon and subject to the terms and conditions of this Cooperative Agreement, the Authority, in cooperation with or for the benefit of the Cooperative Parties, shall finance the Project by issuing Bonds to pay the Project Costs. In consideration of that undertaking by the Authority, the City shall assign, transfer, set over, and pay the Special Assessments received by the City to the Trustee, for the account of the Authority, for the payment of Debt Service Charges on the Bonds at the times and in the manner provided herein; provided, that the obligation of the City to transfer the Special Assessments is limited to the Special Assessments received by or on behalf of the City. The ESID hereby agrees to such assignment and transfer. In consideration of its undertaking the obligations prescribed by this Cooperative Agreement, the Authority shall be paid the Authority Fee upon the issuance of the Bonds from proceeds received from the sale of the Bonds.

Anything in this Cooperative Agreement to the contrary notwithstanding, any obligations of the City under this Cooperative Agreement, including the obligation to transfer the Special Assessments received by the City to the Trustee for the account of the Authority, shall be a special obligation of the City and shall be required to be made only from Special Assessments received by or on behalf of the City, if any. The obligations of the City under this Cooperative Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by

taxation. The obligations of the City under this Cooperative Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the Authority, the ESID, the Owner, the Trustee, and the Holders of the Bonds do not have and shall not have any right to have taxes levied by the City for the transfer of the Special Assessments.

In consideration of its undertaking the obligations set forth in this Cooperative Agreement, the ESID shall be paid annually its Administrative Expenses (payable as part of the Debt Service Charges due on the Bonds in accordance with the Trust Agreement). In addition, the Owner agrees to pay to the ESID any Administrative Expenses for the reasonable costs incurred by the ESID in connection with its compliance with the requirements of Ohio Revised Code Section 1710.061, or any successor provision of law, should the scheduled Administrative Expense payment to the ESID be insufficient to pay such costs, which payment shall be made to the ESID upon demand of the Owner.

Section 3.2. Acquisition and Construction of the Project. The City, the Authority, and the Owner agree to acquire, construct, and otherwise improve and implement the Project with all reasonable dispatch and in accordance with the following:

- (a) Construction of the Project. Pursuant to the Act and in order to implement the Project, the Authority, the City, the ESID, and the Owner agree that the Owner shall be responsible for constructing the Project.
- (b) Authority's Responsibility for Project Costs. The Authority, acting in cooperation with or for the benefit of the Cooperative Parties pursuant to the Act, shall make the proceeds of the sale of the Bonds available to the Owner for the payment of Project Costs in accordance with this Cooperative Agreement and the Bond Proceedings.
- (c) Taxes on the Project. The Owner shall pay (or cause to be paid), on or before the dates due, all real estate taxes and Special Assessments with respect to the Site, if any, and shall file (or cause to be filed) all appropriate information and returns required in connection therewith.

Section 3.3. Reserved.

Section 3.4. Issuance of the Bonds; Application of Proceeds. To provide funds to pay the Project Costs, pursuant to the Act and the Bond Proceedings, the Authority shall issue, sell and deliver the Bonds to the Original Purchaser, as defined in, and in accordance with the Bond Purchase Agreement. The Bonds shall be issued pursuant to the Bond Proceedings in the principal amount, bear interest, mature, and be subject to redemption as set forth in the Bond Proceedings. The City, the ESID, and the Owner hereby approve the terms of the Bond Proceedings, and agree that in the event of any inconsistency or conflict between this Cooperative Agreement and the terms of the Bond Proceedings, the terms of the Bond Proceedings shall control. The proceeds from the sale of the Bonds shall be paid to the Trustee for the benefit of the Authority and, to the extent set forth in the Trust Agreement, the Holders of the Bonds; and those proceeds shall be used and deposited as provided in or pursuant to the Bond Proceedings.

(a) In conjunction with the issuance and sale of the Bonds, the Authority shall certify that, as of the Closing Date:

(i) There is no litigation pending, or to its knowledge threatened, against or by the Authority wherein an unfavorable ruling or decision would materially adversely affect the Authority's ability to carry out its obligations with respect to the Bonds, this Cooperative Agreement, the Bond Proceedings or any other Transaction Document to which it is a party or by which it is bound.

(ii) The Bond Resolution has been duly adopted and is in full force and effect.

(b) In conjunction with the issuance and sale of the Bonds, the City shall certify that, as of the Closing Date:

(i) There is no litigation pending, or to its knowledge threatened, against or by the City wherein an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations with respect to the Bonds, this Cooperative Agreement, or any other Transaction Document to which it is a party or by which it is bound.

(ii) The legislation establishing the necessity of and authorizing and levying the Special Assessments, approving the Petition, and the establishment of the ESID and the legislation approving this Cooperative Agreement has been duly adopted or passed, as the case may be, is in full force and effect, and is not subject to repeal by referendum.

(c) In conjunction with the issuance and sale of the Bonds, the Owner shall certify that, as of the Closing Date, there is no litigation pending against or by the Owner or any affiliate thereof, wherein an unfavorable ruling or decision is reasonably likely to have a material adverse effect on the Owner's ability to carry out its obligations with respect to the Bonds, this Cooperative Agreement, or any other Transaction Document to which it (or any affiliate) is a party or by which it is bound.

Section 3.5. Disbursements from the Energy Project Account. No disbursement shall be made from the Energy Project Account except in accordance with the Bond Proceedings and this Section 3.5. Subject to the provisions set forth below and in the Bond Proceedings, disbursements from the Energy Project Account shall be made only to reimburse or pay the Owner, or any person designated by the Owner, for the following Project Costs:

(a) Costs incurred directly or indirectly for or in connection with the acquisition, construction, installation, equipping or improvement of the Project, including costs required to be paid under the Transaction Documents, costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;

- (b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained with respect to the Project;
- (c) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project;
- (d) Financial, legal, accounting, printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance, and delivery of the Bonds and any other costs of issuance, including, without limitation, the fees of any underwriter, remarketing agent, or placement agent for the Bonds and the fees and expenses of the Trustee, the Authority, the City, the ESID and any agents properly incurred under the Trust Agreement;
- (e) Any other costs, expenses, fees and charges properly chargeable to the cost of the acquisition, construction, equipping, improvement, or installation of the Project;
- (f) Payment of Administrative Expenses pursuant to the Bond Proceedings;
- (g) Payment of capitalized interest pursuant to the Bond Proceedings; and
- (h) Payment of costs of issuance of the Bonds pursuant to the Bond Proceedings.

Except as specifically provided in Section 7.2(a) hereof or in the Bond Proceedings with respect to disbursements to be made on the Closing Date by the Trustee (without the need for further direction beyond that provided in the Bond Proceedings), any disbursements from the Energy Project Account for the payment of Project Costs shall be made by the Trustee only upon the written order of the Owner; provided, however, that (i) transfers from the Capitalized Interest Account to pay capitalized interest on the Bonds shall be made by the Trustee without further direction of the Authority or the Owner, and (ii) transfers from the Energy Project Account on the Closing Date to pay costs of issuance of the Bonds shall be made by the Trustee without further direction of the Authority or the Owner.

Each such written order shall be in substantially the form of the disbursement request attached as Exhibit C to this Cooperative Agreement and shall be numbered consecutively and accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. Any moneys in the Energy Project Account remaining after the Completion Date, and payment, or provision for payment, in full of the appropriate Project Costs shall be used as provided in Section 4.04 of the Trust Agreement.

Section 3.6. Completion Date. The Owner shall notify the Authority, the City, the ESID, and the Trustee, of the Completion Date by a certificate of the Owner delivered to the Authority establishing the Completion Date and stating that the acquisition, construction, equipping, installation, and improvement of the Project has been completed, and that, except for items payable from amounts retained by the Trustee in the Energy Project Account, all Project

Costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with such Project and then payable out of the Energy Project Account have been paid or discharged.

(End of Article III)

ARTICLE IV

SPECIAL ASSESSMENTS

Section 4.1. ESID; Special Assessments; City Transfer of Special Assessments.

(a) Petition. The Owner, prior to the execution and delivery of this Cooperative Agreement, has signed and delivered to the City Council, a Petition for the establishment of the ESID, the financing of the Project by the Authority, and the acquisition, construction, equipping, improvement, and installation of the Project by the Owner in cooperation with the Authority and the ESID, and evidencing the intent of the Owner and the ESID to the levy by the City of the Special Assessments on the Site as indicated in the Petition. The Owner agrees that its delivery of the Petition and the requests, waivers, and agreements made therein are irrevocable and that the Authority, the City, the ESID, and the Trustee have been requested by the Owner to act, are permitted to act, have acted, and will continue to act, throughout the term of this Cooperative Agreement, in reliance on the requests, information, representations, waivers, and agreements of the Owner contained in the Petition.

(b) The Special Assessment Proceedings. The City shall take all necessary actions required by the Special Assessments Act to levy and collect the Special Assessments on the Site, which Site is specially benefited by the Project, in amounts sufficient, in the aggregate, to pay Debt Service Charges on the Bonds so that the aggregate amount of the Special Assessments levied by the City and expected to be collected in a particular year shall be equal to the Debt Service Charges due in that year. It is expressly acknowledged and agreed by the parties to this Cooperative Agreement that any obligation of the City created by or arising out of this Cooperative Agreement shall never constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the City, or give rise to any pecuniary liability of the City, but any such obligations shall be payable solely from the Special Assessments actually received by the City, if any.

The legislation of the City authorizing and levying the Special Assessments included a provision whereby the City Council determined that the costs of the Project, including interest at the rate borne by the Bonds, may be assessed in accordance with the Special Assessments Act. On _____, 2016, the City Council passed an ordinance establishing the ESID, and on _____, 2016, the City Council adopted the legislation necessary to approve and levy the Special Assessments pursuant to the requirements of Ohio Revised Code Sections 727.12, 727.23, and 727.25, and other provisions of the Special Assessments Act. At least three (3) business days before the Closing Date, the Owner shall, consistent with the Petition, provide the City with a proposed list of Special Assessments with respect to the Assessed Properties and, based on that list of proposed Special Assessments, the Fiscal Officer of the City shall certify (or caused to be certified) the Special Assessments to the County Auditor not later than the Closing Date for collection by the County Treasurer pursuant to Ohio Revised Code Section 727.33 in twenty-eight (28) semiannual installments, such amounts being agreed by the Owner and the Cooperative Parties to be equal in amount to the Special Assessments necessary for the payment of Debt Service Charges payable with respect to

each such semiannual period. Pursuant to Ohio Revised Code Section 727.33, the City shall certify the Special Assessments to the County Auditor of Greene County, Ohio for collection, and the County Auditor of Greene County, Ohio shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. It is the intent of the parties to this Cooperative Agreement that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

(c) Recordation of Caveat. Upon the execution of this Agreement, the Owner, for the benefit of the Authority, will provide notice to the County Recorder and the County Recorder shall place a caveat on the land records indicating that a Special Assessment and lien against the Property is anticipated upon the levying of the Special Assessment. A copy of the caveat is attached hereto as Exhibit D. The Owner covenants that it will not contest the validity of the caveat after it is filed on the land records of the County in accordance with the terms of this Agreement.

(d) Owner Required to Pay Special Assessments. The Owner shall pay the Special Assessments to the County Treasurer in full on or before the semiannual dates for the payment of installments of real property taxes specified by the County Treasurer in the same manner and on or before the final date for payment of each installment of real property taxes in each year in accordance with Ohio Revised Code Chapter 323, and the Special Assessments shall be subject to the same delinquency procedures, penalties, and interest as the payment of real property taxes in accordance with Ohio Revised Code Chapter 323. Except as otherwise provided in the Petition, the owners of the Assessed Properties shall have no right to appeal, contest, protest, challenge or otherwise seek redress for any claimed error in a calculation or other determination made with respect to the Special Assessments to be levied and collected unless Special Assessments materially exceed amounts needed to pay Debt Service Charges and fund the Administrative Expense Fund, as described in the Trust Agreement, it being understood and agreed that such rights were knowingly waived in the Petition in consideration of the Cooperative Parties undertaking the Project pursuant to this Cooperative Agreement. Nothing herein is intended to constitute a waiver by the Owner of its rights to appeal, contest, protest or challenge the assessed value of the Site as determined by any party for any purpose.

(e) Collection of Delinquent Special Assessments. The Authority and the Trustee, as assignee of the Authority, are each hereby authorized to take any and all actions as assignee of and, to the extent required by law, in the name of and for and on behalf of the City, to collect delinquent Special Assessments levied by the City pursuant to the Special Assessments Act and to cause the lien securing the delinquent assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Cooperative Agreement and the Trust Agreement. It is expressly acknowledged and

agreed by the parties to this Cooperative Agreement that any obligation of the City created by or arising out of this Cooperative Agreement shall never constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the City or the Authority, or give rise to any pecuniary liability of the City or the Authority, but any such obligations shall be payable solely from the Special Assessments actually received by the City. Notwithstanding the foregoing, neither the City nor the Authority shall be responsible for the costs and expenses of any collection or enforcement actions. Owner will not enter into any delinquent tax contract with the County Treasurer whereby the Owner may repay delinquent or unpaid current taxes over a period of up to five years (a "Delinquent Payment Plan"), in connection with delinquent Special Assessments without the consent of the City, the Trustee and the Authority.

(f) Prepayment of Special Assessments. The Cooperative Parties agree that all or any of the Special Assessments assessed against the Assessed Properties and payable to the City pursuant to the Petition and the Special Assessments Act may be prepaid by the Owner at any time on or after _____, 2016, by paying to the City, in immediately available funds, the applicable redemption price set forth below, which redemption price shall be a percentage of the par amount of the Outstanding Bonds to be redeemed (provided that any partial prepayment shall be in a principal amount of at least \$1,000,000.00) plus interest accrued to the redemption date (provided, however, that no prepayment penalty shall be due in the event of a prepayment due to damage at or destruction of the Project; and in such event the redemption price shall be 100% of the par amount of the Outstanding Bonds to be redeemed plus accrued interest to the redemption date).

<u>Date(s) of Redemption</u>	<u>Redemption Price</u>
_____, 2016 to _____, 20__	103%
_____, 20__ to _____, 20__	102%
_____, 20__ and thereafter	101%

In the event of a prepayment of Special Assessments, all amounts paid on account of a payment of Special Assessments shall only be transferred by the City to the Trustee, for the account of the Authority, promptly upon receipt and used to redeem Bonds pursuant to any applicable optional or mandatory redemption provisions contained in the Trust Agreement.

If at any time Special Assessments have been transferred to the Trustee, or the Trustee otherwise holds sufficient moneys available for that purpose in an aggregate amount sufficient to cause the redemption or defeasance of all of the Bonds in accordance with the Trust Agreement so that, after such payment or defeasance, none of the Bonds will be outstanding under the Trust Agreement, and the City, the ESID and the Owner are not in default hereunder, then the Authority, at the written request of the Owner, shall direct the Trustee to cause that redemption or defeasance in accordance with the Trust Agreement.

The Authority has the exclusive right to effect redemption of all or part of the then outstanding Bonds on any available redemption date on which such redemption may be made under the applicable provisions of the Bonds and the Trust Agreement. Nothing herein is intended to or shall give any Person the right to redeem Bonds except in accordance with the terms thereof and of the Trust Agreement.

Upon the redemption or defeasance of all of the Bonds, and the payment of all other amounts due under the Trust Agreement, including but not limited to Administrative Expenses due and unpaid, this Cooperative Agreement shall be terminated. Except as specifically provided in this Cooperative Agreement to the contrary, no other action pursuant to any provision of this Cooperative Agreement shall abate in any way the payment of the Special Assessments by the Owner or the transfer of the Special Assessments by the City to the Trustee, for the account of the Authority.

(g) Fund for Special Assessments; Assignment of Special Assessments. The City agrees that it shall establish its fund for the collection of the Special Assessments as a separate fund maintained on the books and records of the City and to be held in the custody of a bank with which the City maintains a depository relationship. All monies received by the City with respect to the Special Assessments shall be held by the City in trust for the Trustee for the purpose for which they were paid, shall be segregated from any other monies of the City and may not be deposited by the City in any general account maintained by it, but shall be deposited in a separate account for such purposes. To the extent permitted by law, to secure its obligations hereunder, so long as any Bonds shall be outstanding under the Trust Agreement and amounts shall be due and owing under the Trust Agreement, the City assigns to the Authority all of its right, title and interest in and to, and assigns, transfers and grants to the Authority a security interest in, the Special Assessments received by the City and in the City's special assessment fund, and acknowledges that, pursuant to the Trust Agreement, the Authority grants to the Trustee all right, title and interest of the Authority in and to the Special Assessments, the City's special assessment fund, and in any other property received or to be received from the City under this Cooperative Agreement.

(h) Transfer of Special Assessments. The City, immediately upon receipt of such moneys and, in any event, not later than fourteen (14) calendar days after the receipt of such moneys and the corresponding final settlement from the County Auditor, shall deliver to the Trustee, for the account of the Authority, all moneys received by the City as Special Assessments. Immediately after the deposit of any Special Assessments with the Trustee, the Trustee shall transfer the amounts so deposited (together with any investment earnings thereon) into the Revenue Fund. If the moneys delivered to the Trustee as described in the preceding sentence are sufficient to cause the release of the Trust Agreement pursuant to Section 10.01 of the Trust Agreement, including such amounts as are necessary, in accordance with Section 10.02 of the Trust Agreement, to cause all Bonds to be deemed paid in accordance with and subject to the requirements of Section 10.02 of the Trust Agreement, then this Cooperative Agreement shall be terminated.

Section 4.2. Obligations Unconditional; Place of Payments. The obligation of the City to assign, transfer and grant the Special Assessments to the Trustee, for the account of the Authority, shall be absolute and unconditional, and the City shall make such transfers without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the City may have or assert against the Authority, the ESID, the Owner, the Trustee, or any other Person; provided, that the obligation of the City to transfer the Special Assessments is limited to the Special Assessments received by or on behalf of the City. All of the obligations of the City hereunder are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the City within the meaning of Ohio Revised Code Section 2731.01 and shall be enforceable by mandamus.

Section 4.3. Appropriation by the City; No Further Obligations. Upon the City's execution and delivery of this Cooperative Agreement, all of the Special Assessments received or to be received by the City shall be deemed to have been appropriated to pay the City's obligations hereunder. During the years during which this Cooperative Agreement is in effect, the City shall take such further actions as may be necessary or desirable in order to appropriate the transfer of the Special Assessments received by the City in such amounts and at such times as will be sufficient to enable the City to satisfy its obligations under this Cooperative Agreement; provided that the City shall not be responsible for the costs and expenses of any collection or enforcement actions. The City has no obligation to use or apply to the payment of the Special Assessments any funds or revenues from any source other than the moneys received by the City as Special Assessments. Nothing herein, however, shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Cooperative Agreement.

Section 4.4. Security for Bonds. To secure the payment of Debt Service Charges, the Authority shall assign to the Trustee, by the Trust Agreement, its rights under and interest in this Cooperative Agreement (except for the Unassigned Authority Rights) and the Pledged Revenues. The City, the ESID, and the Owner hereby agree and consent to those assignments.

To secure the payment of Debt Service Charges, the ESID shall by the Security Agreement assign, transfer, set over, and pay all of its right, title, and interest in and to the Special Assessments received by or on behalf of the City to the Trustee, for the account of the Authority. The Authority and the Owner hereby agree and consent to that assignment.

The Authority, the City, the ESID, and the Owner each acknowledge that none of the parties hereto has any interest in the Special Funds created under the Trust Agreement; and any moneys deposited in those funds shall be in the custody of and held by the Trustee in trust for the benefit of the Holders.

(End of Article IV)

ARTICLE V

ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1. Ownership of the Project. In consideration of the agreement by the Owner to pay the Special Assessments, the City hereby transfers to the Owner any and all current and future right, title and interest it may have in the Project materials in accordance with Ohio Revised Code Section 1710.02(G). The Cooperative Parties agree that the Owner shall own, maintain, repair, operate, and use the Project during the term of this Cooperative Agreement for the intended purposes thereof. Subject to the conditions of the Trust Agreement, the Owner will use Net Proceeds to repair, rebuild, restore or replace portions of the Project under the circumstances stated therein. The obligations of the Authority under this paragraph are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the Authority within the meaning of Ohio Revised Code Section 2731.01 and shall be enforceable by mandamus, but only by the express beneficiaries of that covenant.

Section 5.2. Indemnification by Owner.

(a) The Owner releases each of the Cooperative Parties from, agrees that the Cooperative Parties shall not be liable for, and shall indemnify each of the Cooperative Parties against all liabilities, claims, all reasonable costs and expenses imposed upon, incurred or asserted against any of the Cooperative Parties on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, equipping, improvement, and installation of the Project; (ii) any breach or default on the part of the Owner in the performance of any covenant, obligation or agreement of the Owner under this Cooperative Agreement or any other Transaction Documents to which it is a party, or arising from any act or failure to act by the Owner, or any of its agents, contractors, servants, employees or licensees; (iii) the authorization, issuance, sale, redemption or servicing of the Bonds, except to the extent caused by the gross negligence or willful misconduct by one of the Cooperative Parties, the provision of any information or certification furnished in connection therewith concerning the Bonds or the Project or the Owner, any information furnished by the Owner for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Authority; (iv) the Owner's failure to comply with any requirement of the Owner under this Cooperative Agreement or any of the Transaction Documents to which it is a party; (v) any failure of compliance with the provisions of Ohio Revised Code Section 4115.05; (vi) any action taken or to be taken by the City, the Authority, the ESID, or the Trustee pursuant to any Transaction Document to collect the Special Assessments, to enforce the payment of the Special Assessments, or to foreclose upon the Collateral (as such term is defined in the Security Agreement), including, without limitation, actions under Section 7.2(c) hereof; (vii) any action taken or omitted to be taken by any of the Cooperative Parties pursuant to the terms of this Cooperative Agreement, the Security Agreement, the Bonds, the Trust Agreement, any other Transaction Documents or any other related instrument or document, if such action is taken or omitted to be taken by the Authority or the City at the request of or with the consent of the Owner; and (viii) any claim, action or

proceeding brought with respect to any matter set forth in clauses (i), (ii), (iii), (iv), (v), (vi) or (vii) above.

(b) The Owner agrees to indemnify and hold each of the Cooperative Parties harmless from and against all liabilities, and all reasonable costs and expenses, including attorneys' fees, arising out of any federal, state or local environmental laws, regulations or resolutions, incurred by any of the Cooperative Parties as a result of the existence on, or release from, the Site of hazardous materials. The Owner further covenants and agrees with each of the Cooperative Parties that neither the Owner nor any of its agents, employees, independent contractors, invitees, licensees, successors, assigns or tenants will store, release or dispose of, or permit the storage, release or disposal of any hazardous materials at or on the Site at any time from and after the effective date of this Cooperative Agreement other than in accordance with applicable federal, state and local law and regulation. In the event that the Authority receives a notification or clean up requirement under CERCLA or comparable State or local statutes, resolutions or regulations, the Authority shall promptly notify the City and the Owner of such receipt, together with a written statement of the Authority setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of the Authority's knowledge. On receipt by the Authority of any such notification or clean up requirement, the Authority shall, at the expense of the Owner, either proceed with appropriate diligence to comply with such notification or clean up requirement or shall commence and continue negotiation concerning or contest the liability of the Authority with respect to such notification or clean up requirement. The Owner agrees to indemnify and hold each of the Cooperative Parties harmless from and against any and all liabilities and all reasonable costs and expenses, including reasonable attorneys' fees, arising out of any federal, state or local environmental laws, regulations or resolutions, incurred by any of the Cooperative Parties as a result of any such notification or clean up requirement, as a result of actions taken or not taken pursuant to this paragraph with respect thereto or as a result of the presence of hazardous materials at or on the Site.

(c) The Owner agrees to indemnify and hold the Trustee harmless, except in cases where the Trustee is found to be negligent or found to have exercised willful misconduct, against all liabilities, claims, costs and expenses imposed on the Trustee for following any instructions or other directions upon which the Trustee is authorized to rely pursuant to the terms of the Trust Agreement, this Cooperative Agreement, or any other Transaction Document including, without limitation, any action taken or to be taken by the City, the Authority, or the Trustee pursuant to any Transaction Document to enforce the payment of the Special Assessments or to foreclose upon the Collateral (as such term is defined in the Security Agreement). In addition and not in limitation of the immediately preceding sentence, the Owner also agrees to indemnify and hold the Trustee harmless from and against any and all losses that may be imposed on, incurred by, or asserted against, the Trustee in connection with or arising out of the Trustee's performance under this Cooperative Agreement, the Trust Agreement, or any other Transaction Document as a result of Owner's action or inaction; provided the Trustee has not acted with negligence or engaged in willful misconduct.

(d) In case any claim or demand is at any time made, or action or proceeding is brought, against the Cooperative Parties in respect of which indemnity may be sought hereunder, the Person seeking indemnity promptly shall give notice of that action or proceeding to the Owner, and the Owner upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Owner from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Owner. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the indemnified party unless (i) the employment of such counsel has been specifically authorized by the Owner in writing, the consent to which will not be unreasonably withheld, conditioned, or delayed, or (ii) the Owner has failed to assume the defense and employ counsel. The Person seeking indemnity agrees to fully cooperate with the Owner and lend the Owner such assistance as the Owner shall reasonably request in defense of any claim, demand, action or proceeding. The Owner shall not be liable for any settlement made without its consent, which shall not be unreasonably withheld.

(e) Nothing in this Cooperative Agreement is meant to release, extinguish or otherwise alter or interfere with any rights which any of the Cooperative Parties may now or hereafter have against the Owner or any other person for any environmental liabilities as a result of the Owner's former, present, or future ownership, occupancy, or use of or interest in any real property included in or in the vicinity of the Site.

(f) The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, and employees of the Cooperative Parties, as applicable, and their successors and assigns. That indemnification is intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Cooperative Agreement.

Section 5.3. Quarterly Reports. The Owner shall prepare, and the ESID shall submit to the applicable electric distribution utility, a quarterly report that includes, but is not limited to, both of the following:

(a) The total number and a description of each new and ongoing special energy improvement project located within the ESID that produces energy efficiency savings or reduction in demand; and

(b) Any additional information that the electric distribution utility needs in order to obtain credit under Section 4928.66 of the Ohio Revised Code for energy efficiency savings or reduction in demand from such projects.

Section 5.4. Reserved.

Section 5.5. Litigation Notice. The City, the ESID, and the Owner shall give the Trustee and the Authority prompt notice of any action, suit or proceeding by or against the City, the ESID, or the Owner, as applicable, at law or in equity, or before any governmental

instrumentality or agency, of which the City, the ESID, or the Owner, as applicable, has notice, which, if adversely determined, would materially impair the right or ability of the Cooperative Parties to finance the Project, or would materially impair the right or ability of the Owner to construct, operate, maintain, and use the Project on the Site, or would materially and adversely affect any of their respective businesses, operations, properties, assets or condition (financial or otherwise), together with a written statement setting forth the details thereof and any actions with respect thereto taken or proposed to be taken by the City, the ESID, or the Owner, as applicable, in response thereto.

Section 5.6. Reserved.

Section 5.7. Assignment by Owner. This Cooperative Agreement may not be assigned by the Owner in connection with the sale of all or any portion of the Site or otherwise without the written consent of the Authority, the City, and the ESID, which consent shall not be unreasonably withheld, except that such consent shall not be needed for an assignment to an affiliate or subsidiary of the Owner, subject however to the following conditions:

- (a) Any assignee from the Owner shall assume in writing, for the benefit of the Cooperative Parties, the obligations of the Owner hereunder and under any other Transaction Documents to which it is a party;
- (b) The Owner shall be released from any obligations hereunder (to the extent of the interest assigned and the obligation assumed) without the consent of the Cooperative Parties upon any such assignment; and
- (c) The Owner shall, within thirty (30) days subsequent to the execution of the assignment, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of each such assignment together with any instrument of assumption.

Such consent shall not be needed for an assignment to an unaffiliated third party if the following conditions are met:

- (a) Any assignee from the Owner shall assume in writing, for the benefit of the Cooperative Parties, the obligations of the Owner hereunder and under any other Transaction Documents to which it is a party;
- (b) For the Owner to be released from any obligations hereunder (to the extent of the interest assigned and the obligation assumed) without the consent of the Cooperative Parties, any such assignment shall be to an entity with a net worth determined in accordance with generally accepted accounting principles; immediately subsequent to the assignment that is greater than or equal to that of the Owner both immediately before the assignment and immediately after the issuance of the Bonds.
- (c) The Owner shall, within thirty (30) days, or as soon thereafter as is practicable, prior to the date of execution thereof, furnish or cause to be furnished to the Authority and the Trustee a copy of the proposed form of each such assignment together with any

instrument of assumption, and the Owner shall within thirty (30) days subsequent to the execution thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of each such assignment together with any instrument of assumption.

And, anything herein to the contrary notwithstanding, the obligations of the Owner under Sections 5.2 and 7.4 hereof are personal to the Owner and are unassignable without the prior written consent of all of the Cooperative Parties; provided, that, if the Owner shall sell all of its interest in the Site and assign its obligation hereunder under circumstances permitted by subparagraphs (a) through (c) above, those obligations shall be assignable, but the obligations of the Owner under those Sections with respect to any events, occurrences, claims or other matters that arise from or relate to events that occurred during the period at or prior to the consummation of the sale and assignment shall survive that sale and assignment.

The Owner agrees that in the event that it shall convey all or any part of its interest in the Site that is subject to the levy of Special Assessments, the Owner shall (i) include in any purchase agreement relating to that conveyance, and in any deed or other instrument conveying such property, an express requirement that the purchaser of such property fully pay all such Special Assessments levied, and (ii) shall include in the deed or other instrument conveying that property a requirement that the purchaser, and any successor purchaser, include the covenant described in clause (i) of this paragraph in any future instrument conveying title to such property.

Section 5.8. Owner to Maintain Its Existence. As long as the Owner shall remain the owner of any portion of the Site, the Owner shall do all things necessary to preserve and keep in full force and effect its existence, rights, and franchises.

Section 5.9. Insurance; Damage to or Destruction of the Project; Eminent Domain; Net Proceeds. The Owner shall maintain Required Property Insurance Coverage, providing for the Authority as a loss payee under such coverage for as long as the Bonds are outstanding, and Required Commercially General Liability Insurance Coverage, providing for the Authority as an additional insured under such coverage for as long as the Bonds are outstanding and such coverage requirement shall be required of the Owner, with respect to the Project while the Bonds remain outstanding.

In case of any damage or destruction of the Project or any part thereof, the Owner (or its successor or successors thereto as owner of the Assessed Properties) will give prompt written notice to the Trustee, the City, [HASI OBS OP A LLC] (or its successor or successors thereto as Holder of the Bonds) and the Authority generally describing the extent of such damage or destruction. In such event, there shall be no abatement of the Special Assessments payable with respect to the properties subject thereto. Any Net Proceeds received by the Authority, the ESID, the City, the Owner, or any other Person shall be, at Owner's option, applied to either: (i) the payment of the costs of repair, rebuilding or restoration of the Project; or (ii) to the redemption of Bonds, and, if after such redemption, all of the Bonds have been discharged and retired, to or on the direction of the Authority as provided in and subject to the Cooperative Agreement; provided, that the foregoing commitment of Owner to repair, restore or rebuild the Project is made only for the benefit of, and is only enforceable by the Holders of the Bonds (and the Trustee on their behalf) and, subject to the foregoing conditions is enforceable by any of the

foregoing express beneficiaries by mandamus, but only from and to the extent of Net Proceeds (and any other amounts deposited with the Authority or the Trustee and available therefor).

In the event either restoration of the Project, the Owner shall promptly proceed with the restoration, as the case may be. If said proceeds are insufficient to complete the restoration, the Owner shall pay for any work necessary to complete the restoration in accordance with the plans therefore that is not covered by such proceeds.

If title to or temporary use of the Project, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, the Owner shall give prompt written notice thereof to the City, the Trustee, and the Authority. In such event, there shall be no abatement of the Special Assessments payable with respect to the properties subject thereto. If the Owner, or an affiliate or member of the Owner, is not the owner of the Project and the Assessed Property upon such taking of the Project, any Net Proceeds, to the extent the amount of such Net Proceeds does not exceed the replacement cost of the taken portion of the Project, received from any such award made in such eminent domain proceedings shall be paid to and held by the Trustee, for the account of the Authority, and applied pursuant to Section 5.04 of the Trust Agreement. Unless (and except to the extent) used to restore, reconstruct or replace the portion of the Project so taken, such Net Proceeds shall be used to redeem Bonds and, if no Bonds then or after such redemption remain outstanding, shall be used by the Authority, as directed by the Owner. The Cooperative Parties and the Owner shall cooperate fully in the handling and conduct of any prospective or pending Condemnation proceedings with respect to the Project or any part thereof.

Section 5.1. Owner's Mortgage Financing. The other Cooperative Parties acknowledge that Owner may obtain a loan secured by a mortgage on the Assessed Property (a "*Loan*") prior to the maturity date for the Bonds and agree that nothing in this Cooperative Agreement shall prohibit Owner from so encumbering the Assessed Property. The Cooperative Parties agree to reasonably cooperate with Owner's efforts to obtain a Loan and to provide any documentation or information related to the Transaction Documents and the Bonds as reasonably requested by any lender for any Loan ("*Owner's Lender*") as a condition to providing any such Loan.

The other Cooperative Parties, upon serving Owner with any notice of default under the provisions of, or with respect to, this Cooperative Agreement or the other Transaction Documents, shall also serve a copy of such notice upon Owner's Lender at such address that Owner's Lender or Owner designates in writing to the Cooperative Parties in accordance with the notice provisions of this Cooperative Agreement. If an Event of Default by Owner occurs under this Cooperative Agreement, Owner's Lender shall have the right, but not the obligation, to remedy such Event of Default, or cause the same to be remedied, within thirty (30) days after the expiration of all applicable grace or cure periods provided to Owner in this Cooperative Agreement, or for such longer period as the other Cooperative Parties may agree to in writing; provided, that if such Event of Default is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, Owner's Lender shall have such longer period as is necessary to remedy the Event of Default so long as Owner's Lender institutes, or causes to be instituted, curative action within the applicable period and diligently

pursues that action to completion, and the other Cooperative Parties shall accept such performance by Owner's Lender as if the same had been made by Owner.

The other Cooperative Parties shall give Owner's Lender prompt notice of legal proceedings between Owner and any other Cooperative Party involving obligations under the Transaction Documents, at such address as Owner's Lender or Owner designates in writing to the Cooperative Parties in accordance with the notice provisions of this Cooperative Agreement. Owner's Lender shall have the right to intervene in any such proceeding to protect its interest in the Assessed Property and be made a party thereto, and the Cooperative Parties do hereby consent to such intervention. In the event that Owner's Lender shall not elect to intervene or become a party to any such proceedings, the other applicable Cooperative Parties shall give Owner's Lender notice of, and a copy of, any award or decision made in any such proceedings.

(End of Article V)

ARTICLE VI
RESERVED
(End of Article VI)

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. Each of the following shall be an “Event of Default” under this Cooperative Agreement:

- (a) The City shall fail to transfer, or cause the transfer of, any of the Special Assessments to the Trustee within the time specified in this Cooperative Agreement;
- (b) The City or the ESID shall fail to observe and perform any other agreement, term or condition contained in this Cooperative Agreement, and the continuation of such failure for a period of thirty (30) days after written notice thereof shall have been given to the City or the ESID, as applicable, by the Authority or the Trustee, or for such longer period as the Authority and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money, and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the City or the ESID, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;
- (c) The City or the ESID shall: (i) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (ii) make an assignment for the benefit of creditors; or (iii) consent to the appointment of a receiver for itself or for the whole or any substantial part of its property or have a receiver or trustee appointed for it or for the whole or any substantial part of its property;
- (d) The Owner shall fail to pay to the County Treasurer in full any of the Special Assessments due with respect to the Site on or before the semiannual dates for the payment of installments of real property taxes specified by the County Treasurer in the same manner and on or before the final date for payment of each installment of real property taxes in each year in accordance with Ohio Revised Code Chapter 323, all in accordance with the Special Assessments Act;
- (e) Any representation or warranty made by the Owner herein or in any report, certificate, financial statement, Transaction Documents to which they are a party, or any other instrument furnished in connection with this Cooperative Agreement or with the purchase of the Bonds shall, at any time, prove to have been false or misleading in any material respect when made or given;
- (f) The Owner shall fail to observe and perform any covenant, agreement, term, or condition contained in this Cooperative Agreement or any other Transaction Documents to which it (or any affiliate) is a party, and the continuation of such failure for a period of thirty (30) days after written notice thereof shall have been given to the Owner by the Authority, the City, the ESID, or the Trustee, or for such longer period as the Authority, the City, the ESID, and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long

as the Owner, institutes curative action within the applicable period and diligently pursues that action to completion; or

(g) The Owner shall: (i) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, (ii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days, (iii) make an assignment for the benefit of creditors, or (iv) have a receiver or trustee appointed for it or for the whole or any substantial part of its property.

Notwithstanding the foregoing, if, by reason of Force Majeure, the City, the ESID, the Owner or any affiliate of the foregoing is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) or (f) of this Section, none of the City, the ESID, or the Owner, as applicable, shall be deemed in default during the continuance of such inability. However, the City, the ESID or the Owner, as applicable, shall promptly give notice to the Trustee and the Authority of the existence of any such event of Force Majeure and shall use its best efforts to promptly remove the effects thereof; provided, that the settlement of strikes or other industrial disturbances shall be entirely within its discretion. The term Force Majeure shall mean, without limitation, the following:

- (i) acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or
- (ii) any cause, circumstance or event not reasonably within the control of the City, the ESID, the Owner, as applicable.

The declaration of an Event of Default under subparagraph (c) or (g) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 7.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken, subject to any rights of Owner's Lender pursuant to Section 5.10:

- (a) The Authority may refuse to approve, or may direct the Trustee to refuse to honor, requests or orders for the disbursement of funds from the Energy Project Account pursuant to Section 3.5 hereof;
- (b) The Trustee may exercise any or all or any combination of the remedies specified in the Trust Agreement or the Security Agreement;
- (c) Authority and the Trustee, as assignee of the Authority, are each hereby authorized to take any and all actions as assignee of and, to the extent required by law, in the name of and for and on behalf of the City, to collect delinquent Special Assessments levied by the City pursuant to the Special Assessments Act and to cause the lien securing the delinquent assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Cooperative Agreement and the Trust Agreement;
- (d) The Authority or the Trustee may, on reasonable notice and at reasonable times, have access to, inspect, examine and make copies of the books, records, accounts and financial data of the City, the ESID, and the Owner pertaining to the Special Assessments or the Project; or
- (e) The Authority or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Cooperative Agreement or to enforce the performance and observance of any other obligation or agreement of the City, the ESID or the Owner, as applicable, under this Cooperative Agreement or any Transaction Document to which any such entity is a party; provided, however, that nothing herein or in the Trust Agreement or the Bonds is intended to or shall give to the Authority or the Trustee and they shall not have, the right to accelerate or otherwise declare due and payable, any payments not otherwise then due and payable hereunder or thereunder.

Notwithstanding the foregoing, neither the Trustee nor the Authority shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it at no cost or expense. Any amounts then due or thereafter to become due under this Cooperative Agreement and collected, and any other amounts collected pursuant to action taken under this Section, shall be deposited and applied in accordance with the provisions of the Trust Agreement.

Section 7.3. No Remedy Exclusive. No remedy conferred upon or reserved to the Authority or the Trustee by this Cooperative Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Cooperative Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power

accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default should occur hereunder as a result of any action or omission or other default by the Owner, and the Authority, the City, the ESID, or the Trustee should incur expenses, including attorneys' fees, in connection with the enforcement of this Cooperative Agreement, the Owner shall reimburse the Authority, the City, the ESID, and the Trustee, as applicable, for the reasonable expenses so incurred promptly upon demand.

Section 7.5. No Waiver. No failure by the Authority or the Trustee to insist upon the strict performance by the City, the ESID or the Owner, and no failure by the Authority, the City, the ESID, or the Trustee to insist upon the strict performance by the Owner, of any provision hereof shall constitute a waiver of such party's right to strict performance; and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the City, the ESID, or the Owner to observe or comply with any provision hereof.

Section 7.6. Notice of Default. The City, the ESID, or the Owner shall notify the Authority and the Trustee immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

Section 7.7. Right of Cooperative Parties to Enforce Covenants of the Owner. If the Owner shall fail to observe and perform any obligation, agreement, term or condition contained in this Cooperative Agreement or any other Transaction Document to which it (or any affiliate) is a party, the Cooperative Parties shall, without notice to the Owner, have the rights to pursue all remedies now or hereafter existing at law or in equity to enforce the performance and observance of any such obligation or agreement under those instruments, subject to the cure and Force Majeure provisions set forth herein or therein. The Owner acknowledges that pursuant to the Security Agreement the ESID has assigned its rights to enforce the covenants of the Owner arising under this Cooperative Agreement to the Trustee, and the Owner consents to such enforcement by the Trustee.

(End of Article VII)

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Term of Agreement. This Cooperative Agreement shall be and remain in full force and effect from the date of execution and delivery thereof until such time as all Special Assessments to be transferred by the City under this Cooperative Agreement shall have been transferred in full or provided for and all Debt Service Charges due with respect to all Outstanding Bonds have been paid; and provided, further, that the obligations of the City, the ESID, and the Owner, as applicable, under Sections 5.2 and 7.4 hereof shall survive any termination of this Cooperative Agreement insofar as those relate to causes or events occurring on or prior to the date of termination of this Cooperative Agreement.

Section 8.2. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any of the Authority, the City, the ESID, the Owner, or the Trustee, shall also be given to all of the others. The Authority, the City, the ESID, the Owner, or the Trustee, by notice given hereunder to the others, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notices, certificates or requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Cooperative Agreement shall be given in such other manner as in the judgment of the Trustee shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Cooperative Agreement shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 8.3. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Authority and the City contained in this Cooperative Agreement or the Trust Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, director, officer, agent or employee of the Authority, the City, the Board, or the City Council in other than his official capacity; and none of the members of the Board or of the City Council, nor any official executing the Bonds, this Cooperative Agreement, or the Trust Agreement, shall be liable personally on the Bonds or this Cooperative Agreement or be subject to any personal liability or accountability by reason of the issuance of the Bonds or by reason of the covenants, obligations, or agreements of the City or the Authority contained in this Cooperative Agreement or the Trust Agreement. No covenant, obligation, or agreement of the Owner under this Cooperative Agreement, or any Transaction Documents to which it (or any affiliate) is a party, shall be deemed to be a covenant, obligation, or agreement of any present or future officer, partner, member, director, shareholder, employee, agent or advisor of the Owner and none of the foregoing shall be liable personally on this

Cooperative Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the Owner herein or in the Transaction Documents.

Section 8.4. Binding Effect. This Cooperative Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Authority, the City, the ESID, the Owner, the Trustee, and their respective permitted successors and assigns; provided, that this Cooperative Agreement may not be assigned by the City or the ESID except to the Trustee pursuant to the Security Agreement and may not be assigned by the Authority except to the Trustee pursuant to the Trust Agreement or as otherwise may be necessary to enforce or secure payment of the Special Assessments. This Cooperative Agreement may be enforced only by the parties, their assignees, and others who may, by law, stand in their respective places.

Section 8.5. Amendments and Supplements. Except as otherwise expressly provided in this Cooperative Agreement, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Trust Agreement for release of the Trust Agreement having been met, this Cooperative Agreement may not be effectively amended, changed, modified, altered or terminated except by unanimous agreement among the parties to this Cooperative Agreement.

Section 8.6. Execution Counterparts. This Cooperative Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute but one and the same instrument.

Section 8.7. Severability. If any provision of this Cooperative Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

Section 8.8. Reserved.

Section 8.9. Limitation of Rights. With the exception of rights conferred expressly in this Cooperative Agreement, nothing expressed or mentioned in or to be implied from this Cooperative Agreement or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, and the Holders of the Bonds any legal or equitable right, remedy, power, or claim under or with respect to this Cooperative Agreement or any covenants, agreements, conditions, and provisions contained herein. This Cooperative Agreement and all of those covenants, agreements, conditions, and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, and the Holders of the Bonds, as provided herein.

Section 8.10. Governing Law. This Cooperative Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

(End of Article VIII)

IN WITNESS WHEREOF, the Authority, the City, the ESID, the Owner, and the Trustee have each caused this Cooperative Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

GREENE COUNTY PORT AUTHORITY

By: _____

Name: _____

Title: _____

CITY OF BEAVERCREEK, OHIO

By: _____

Name: _____

Title: _____

CITY OF BEAVERCREEK (GREENE
COUNTY), OHIO ENERGY SPECIAL
IMPROVEMENT DISTRICT

By: _____

Name: _____

Title: _____

MFC BEAVERCREEK, LLC,
a Delaware limited liability company

By: Glimcher Properties Limited Partnership,
a Delaware limited partnership, its sole member

By: Glimcher Properties, LLC,
a Delaware limited liability company, its sole general
partner

By: WPG Subsidiary Holdings I, LLC,
a Maryland limited liability company, its sole
member

By: Washington Prime Group, L.P.,
an Indiana limited partnership, its sole member

By: Washington Prime Group, Inc.,
an Indiana corporation, its general partner

By: _____
Name: _____
Title: _____

THE HUNTINGTON NATIONAL BANK, as
Trustee

By: _____

Name: _____

Title: _____

AUTHORITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the Greene County Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2016 under the foregoing Cooperative Agreement have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Fiscal Officer
Greenc County Port Authority

Dated: _____, 2016

CITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, Financial Administrative Services Director of the City of Beavercreek, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2016 under the foregoing Cooperative Agreement have been lawfully appropriated by the City Council of City of Beavercreek, Ohio for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Financial Administrative Services Director
City of Beavercreek, Ohio

Dated: November 22, 2016

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

EXHIBIT B

DESCRIPTION OF THE PROJECT

The Project consists of the following:

- Approximately 400,000 square feet of replacement roofing, including additional insulation to increase the R Value; and
- Approximately twenty-one (21) rooftop HVAC units with a total of 427 tons capacity and high efficiency 10+ SEER equipment

EXHIBIT C

DISBURSEMENT REQUEST FORM

STATEMENT NO. [] REQUESTING DISBURSEMENT OF FUNDS FROM THE ENERGY PROJECT ACCOUNT PURSUANT TO SECTION 3.5 OF THE COOPERATIVE AGREEMENT DATED AS OF _____, 2016, AMONG THE GREENE COUNTY PORT AUTHORITY, CITY OF BEAVERCREEK, OHIO, CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT, AND MFC BEAVERCREEK, LLC.

Pursuant to Section 3.5 of the Cooperative Agreement (the "Cooperative Agreement") among the Greene County Port Authority (the "Authority"), City of Beavercreek, Ohio (the "City"), City of Beavercreek (Greene County), Ohio Energy Special Improvement District (the "ESID"), The Huntington National Bank, as trustee (the "Trustee"), and MFC Beavercreek, LLC (the "Owner") dated as of _____, 2016, the Owner, by the undersigned Authorized Owner Representative, hereby requests and authorizes the Trustee, and depository of the Energy Project Account created by the Trust Agreement and defined in the Cooperative Agreement, to pay out of the moneys deposited in the Energy Project Account the aggregate sum of \$[] to (i) the Owner to reimburse the Owner in full, as indicated in the Disbursement Schedule, for the advances, payments, and expenditures made by it in connection with the items listed in the Disbursement Schedule attached hereto, or (ii) directly to the person(s) listed on the Disbursement Schedule attached hereto. No disbursement may be made out of the Energy Project Account unless this Disbursement Request Form is accompanied by (i) a written invoice evidencing the cost of the work performed, and (ii) either (a) evidence of payment made by the Owner for which the Owner is seeking reimbursement, or (b) written instructions for payment by the Trustee directly to the payee listed on the invoice.

In connection with the foregoing request and authorization, the undersigned Authorized Owner Representative, hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Energy Project Account or such other accounts or subaccounts in the Project Fund in accordance with the terms and conditions of the Cooperative Agreement and the Trust Agreement and none of those items has formed the basis for any disbursement heretofore made from the Energy Project Account.

(b) Each such item is or was necessary in connection with the acquisition, construction, equipping, improvement, or installation of the Project, as defined in the Cooperative Agreement, or is otherwise authorized under Section 3.5 of the Cooperative Agreement.

(c) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection, and authority to the Trustee for its actions taken pursuant hereto.

(d) This statement constitutes the approval of the Owner of each disbursement hereby requested and authorized.

(e) The amount remaining in the Energy Project Account following the disbursement herein requested is sufficient to pay all of the remaining costs required to complete the Project.

This ___ day of _____, 20__.

MFC BEAVERCREEK, LLC,
a Delaware limited liability company

By: Glimcher Properties Limited Partnership,
a Delaware limited partnership, its sole member

By: Glimcher Properties, LLC,
a Delaware limited liability company, its sole general partner

By: WPG Subsidiary Holdings I, LLC,
a Maryland limited liability company, its sole member

By: Washington Prime Group, L.P.,
an Indiana limited partnership, its sole member

By: Washington Prime Group, Inc.,
an Indiana corporation, its general partner

By: _____

Name: _____

Title: _____

DISBURSEMENT SCHEDULE

TO STATEMENT NO. [] REQUESTING DISBURSEMENT OF FUNDS FROM THE ENERGY PROJECT ACCOUNT PURSUANT TO SECTION 3.5 OF THE COOPERATIVE AGREEMENT DATED AS OF _____, 2016, AMONG THE GREENE COUNTY PORT AUTHORITY, CITY OF BEAVERCREEK, OHIO, CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT, AND MFC BEAVERCREEK, LLC.

PAYEE

AMOUNT

PURPOSE

EXHIBIT D

CAVEAT

THIS CAVEAT (“Caveat”) made as of this _____, 2016, by MFC BEAVERCREEK, LLC, an Indiana limited liability company, with offices in 180 E. Broad St., Columbus, OH 43215 (“Owner”) for the benefit of the Greene County Port Authority, a body politic and corporate, constituting a political subdivision of the State of Ohio with offices at 35 Greene Street, Xenia, Ohio 45385 (“Authority”), its successors and assigns, to wit:

WHEREAS, Owner is the owner of a certain real property located at 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431, situated in the City of Beavercreek, County of Greene, and State of Ohio and which real property is more particularly designated and described as the Mall at Fairfield Commons, and as more particularly described on the attached Exhibit A (the “Property”); and

WHEREAS, Owner has agreed to place this Caveat upon the Property, which Caveat will run with the land and be notice to all future owners of, or any person or entity having or taking an interest in, said Property, their heirs, executors, administrators, successors and assigns for the benefit of Authority, its successors and assigns.

NOW THEREFORE, Owner, on behalf of itself, its successors and assigns, for the benefit of Authority, its successors and assigns, for the consideration of One Dollar (\$1) and other good and valuable consideration received to the full satisfaction of Owner and in order to carry out the purposes above set forth herein and in consideration of these premises, does hereby make known that the Property shall hereafter be subject to the following caveat, which shall run with the land and be notice to all future owners of, or any person or entity having or taking an interest in, the Property and their heirs, executors, administrators, successors and assigns.

1. CAVEAT - FUTURE BENEFIT ASSESSMENT AND LIEN, AND INSTALLMENT PAYMENTS OF SUCH ASSESSMENT. The Property shall be subject to a benefit assessment and lien in favor of the Trustee, for the benefit of the Authority and the holders of certain special assessment bonds, upon the completion of energy improvements being performed or to be performed to the Property, as more fully set forth in the Cooperative Agreement among the Authority, City of Beavercreek, Ohio (the "City"), the City of Beavercreek (Greene County), Ohio Energy Special Improvement District, Owner and The Huntington National Bank, as trustee (the "Trustee") dated _____, 2016 (the "Agreement") as such Agreement may be amended, which Agreement is attached hereto as Exhibit B. Such lien shall take precedence over all other liens or encumbrances except a statutory lien for taxes on the real property, which lien for taxes shall be pari passu with this lien.

2. The Caveat contained herein shall run with the land.

3. The Caveat shall be automatically released at such time as the principal amount of the benefit assessment is paid in full.

4. Notice is hereby given that in the Agreement the Owner has agreed not to enter into any Delinquent Payment Plan, as defined in the Agreement, in connection with delinquent Special Assessments, as defined in the Agreement, without the consent of the City and the Trustee.

[EXECUTION ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Owner has hereunder caused its hand to be set by its undersigned officer this ____ day of _____, 2016.

MFC BEAVERCREEK, LLC,
a Delaware limited liability company

By: Glimcher Properties Limited Partnership,
a Delaware limited partnership, its sole member

By: Glimcher Properties, LLC,
a Delaware limited liability company, its sole general partner

By: WPG Subsidiary Holdings I, LLC,
a Maryland limited liability company, its sole member

By: Washington Prime Group, L.P.,
an Indiana limited partnership, its sole member

By: Washington Prime Group, Inc.,
an Indiana corporation, its general partner

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
COOPERATIVE AGREEMENT

4820-7344-1063, v. 7

TRUST AGREEMENT

between

GREENE COUNTY PORT AUTHORITY

and

THE HUNTINGTON NATIONAL BANK

as Trustee

Dated as of

_____, 2016

SECURING

[\$3,027,000]

GREENE COUNTY PORT AUTHORITY
PROPERTY ASSESSED CLEAN ENERGY TAXABLE REVENUE BONDS
(MALL AT FAIRFIELD COMMONS PROJECT)
SERIES 2016

TRUST AGREEMENT

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TRUST AGREEMENT

THIS TRUST AGREEMENT (the “Trust Agreement”) dated as of _____, 2016, between the Greene County Port Authority (the “Authority”), a port authority and body both corporate and politic, duly created, organized and existing under and by virtue of the laws of the State of Ohio, including Ohio Revised Code Sections 4582.21 to 4582.59, with its principal office located in Xenia, Ohio, and The Huntington National Bank (the “Trustee”), a national banking association organized and existing under and by virtue of the laws of the United States of America and authorized to exercise corporate trust powers in the State of Ohio, with its designated place of business located in Cincinnati, Ohio, as Trustee, is entered into under the following conditions (with all terms used herein with initial capitalization when the rules of grammar would not otherwise so require having the meanings given them in Article I hereof):

WITNESSETH:

WHEREAS, pursuant to the laws of the State of Ohio, including, without limitation, the Act, and pursuant to the Bond Resolution, the Authority is authorized and empowered to, among other things, enter into this Trust Agreement and to do or cause to be done all the acts and things herein provided or required to be done, and to issue the Authority’s Property Assessed Clean Energy Taxable Revenue Bonds (Mall at Fairfield Commons Project), Series 2016 (the “Bonds”) as hereinafter provided for; and

WHEREAS, for the purposes of providing moneys to pay the costs of acquiring and constructing the Project, the Authority has determined to issue the Bonds and to enter into this Trust Agreement to secure the Bonds and any Additional Bonds issuable under this Trust Agreement as set forth and declared in this Trust Agreement; and

WHEREAS, the Bond Resolution as adopted by the Authority is incorporated herein by this reference; and

WHEREAS, all acts, conditions and things required to happen, exist, and be performed precedent to and in the execution and delivery of this Trust Agreement have happened, exist, and have been performed in order to make the Bonds, when authorized and issued in accordance with this Trust Agreement, legal and valid special obligations of the Authority, in accordance with the terms of the Bonds and of this Trust Agreement, and in order to make this Trust Agreement a valid, binding, and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, the text of the Bonds, and the authentication certificate to be endorsed on and other provisions to be included in the Bonds, are to be substantially in the form attached hereto as Exhibit A with appropriate omissions, insertions, designations, and other changes as provided in the Bond Resolution, the Certificate of Award, and this Trust Agreement; and

WHEREAS, the Trustee has accepted the trusts created by this Trust Agreement, and in evidence of that acceptance has joined in the execution of this Trust Agreement.

NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH, that in order to secure the payment of the Debt Service Charges on the Bonds according to their true intent and meaning, and to secure the performance and observance of all the covenants, agreements, and conditions contained in the Bonds and in this Trust Agreement and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, authenticated, delivered, accepted, held, secured, and enforced, the Authority, in consideration of the premises and the acceptance by the Trustee of the trusts created by this Trust Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, has executed and delivered this Trust Agreement, and has pledged, and by these presents does hereby pledge, as provided in this Trust Agreement, the Pledged Revenues, all right, title, and interest of the Authority in and to the Cooperative Agreement (except for the Unassigned Authority Rights), all right, title and interest of the Authority in the proceeds derived from the sale of the Bonds and, unless otherwise provided in any related Supplemental Trust Agreement, any further Bonds heretofore or hereafter issued, and any and all other real or personal property of every name and nature from time to time heretofore or hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security hereunder by the Authority or by anyone in its behalf, or with its written consent, unto the Trustee, and hereby covenants and agrees to apply the Pledged Revenues, the Special Funds, and any other rights and interests so pledged to the extent and in the manner provided in this Trust Agreement.

Subject to its provisions, this Trust Agreement is made for the equal and proportionate benefit, security and protection of all Holders of the Bonds issued under and secured by this Trust Agreement, and for the enforcement of the payment of the Debt Service Charges on the Bonds, according to the true intent and meaning thereof and of this Trust Agreement, and to secure the performance of and compliance with the covenants, terms, and conditions of this Trust Agreement, without preference, priority, or distinction of any one Bond over any other by reason of series designation, number, date of execution, authentication, issuance, sale, or delivery, date of the Bonds or of maturity, or otherwise, to the extent provided in and except as otherwise permitted by this Trust Agreement, it being intended that the security of this Trust Agreement shall take effect from its date without regard to the date of actual issue, sale, or disposition of the Bonds as though upon the date of this Trust Agreement all the Bonds were actually issued, sold, and delivered to purchasers for value; provided, however, that if all Debt Service Charges are paid or caused to be paid in accordance with Sections 10.01 and 10.02, and the Authority shall well and truly keep, perform, and observe all the covenants and conditions pursuant to the terms of this Trust Agreement to be kept, performed, and observed by it, and shall pay or cause to be paid to the Trustee, Registrar, Authenticating Agent, Paying Agent, and providers of Credit Support Instruments, if any, all moneys due or to become due to them in accordance with the terms and provisions of this Trust Agreement, then this Trust Agreement and the rights granted by this Trust Agreement shall cease, determine, and be void; otherwise this Trust Agreement shall be and remain in full force and effect as and to the extent provided in it.

It is expressly declared that all of the Bonds issued and secured under this Trust Agreement are to be issued, authenticated, and delivered and all Pledged Revenues and moneys held in the funds and accounts created herein are to be dealt with, disposed of, and applied under, upon, and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes provided in this Trust Agreement, and the Authority has agreed and covenanted, and

does hereby further agree and covenant, with the Trustee and with the respective Holders from time to time of the Bonds, as follows:

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ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Where capitalized words are used as defined terms in this Trust Agreement, to the extent that they are not defined in this Trust Agreement, they shall have the meanings ascribed to such terms in this Section 1.01 unless the context or use clearly indicates another or different meaning or intent.

“*Act*” means Ohio Revised Code Sections 4582.21 through 4582.59, both inclusive, as enacted and amended at the time, and includes Article VIII, Section 13 of the Ohio Constitution and any other applicable law pertaining to the Bonds, as the same may be amended, modified, revised, supplemented, or superseded from time to time.

“*Accreted Amount*” means, as of any date, the amount or portion of the amount payable on Bonds at maturity that is accrued to or payable on the particular date in accordance with the applicable Bond Proceedings and that is in excess of the Aggregate Outstanding Principal Amount described in clauses (i), (ii), and (iii) of the below definition of Aggregate Outstanding Principal Amount. Accreted Amount does not include interest payable on the outstanding principal amount of a Bond, except for interest on a Bond that is payable only at that Bond’s principal maturity.

“*Additional Bonds*” means bonds, notes or other evidences of indebtedness issued by the Authority in addition to the Bonds and pursuant to and in accordance with the terms of the Trust Agreement for the purposes of funding additional costs of the Project or refunding any Outstanding Bonds.

“*Aggregate Outstanding Principal Amount*” means, as of any date:

(i) With respect to any Outstanding Bonds on which no interest is payable, the aggregate discounted offering price at which the Bonds are initially sold to the public, disregarding any purchase price discount to the Original Purchaser if provided for pursuant to the Act or otherwise;

(ii) With respect to any Outstanding Bonds on which no interest is payable prior to principal maturity, their aggregate face amount;

(iii) With respect to any Outstanding Bonds involving other compound accreted amounts or accreted values, the Aggregate Outstanding Principal Amount of those Bonds in accordance with generally accepted accounting principles; and

(iv) With respect to any other Outstanding Bonds, their aggregate face amount.

“*Assessed Properties*” means the lots identified in the Petition and located within the boundaries of the ESID.

“Authenticating Agent” means the Trustee, which is a transfer agent registered in accordance with Section 17A(c) of the Securities Exchange Act of 1934, as amended.

“Authority” means the Greene County Port Authority, together with its permitted successors and assigns.

“Authorized Authority Representative” means the person at the time designated to act on behalf of the Authority by written certificate furnished to the Trustee containing the specimen signature of that person and signed on behalf of the Authority by an Authorized Officer. That certificate may designate an alternate or alternates and may be supplemented or changed from time to time by an Authorized Officer. In the event that all persons so designated become unavailable or unable to act and the Authority fails to designate a replacement within ten (10) days after such unavailability or inability to act, the Trustee may appoint an interim Authorized Authority Representative until such time as the Authority designates a replacement.

“Authorized Denomination” means, in the case of the Bonds, denominations of \$100,000 and integral multiples of \$1,000 in excess thereof.

“Authorized Officer” means any officer of the Authority authorized by or pursuant to a resolution of the Board to perform the particular act or sign the particular document, and, if there is no such authorization, means any Board Member.

“Board” means the Board of Directors of the Authority.

“Bond” or *“Bonds”* means any or all, as the case may be, of the Authority’s Property Assessed Clean Energy Taxable Revenue Bonds (Mall at Fairfield Commons Project), Series 2016, authorized by the Bond Resolution and the Trust Agreement.

“Bond Counsel” means Frost Brown Todd LLC or other attorneys-at-law satisfactory to the Trustee, the Owner and the Authority and nationally recognized as having expertise with respect to the exclusion of interest on obligations of states and local governmental units from the gross income of holders thereof for federal income tax purposes.

“Bond Fund” means the Bond Fund created pursuant to the Trust Agreement, and includes all accounts (including, without limitation, the Interest Account and the Principal Account) and subaccounts therein as may be created pursuant to the Trust Agreement.

“Bond Proceedings” means the Bond Resolution, the Trust Agreement, the Certificate of Award, and other ordinances, resolutions and agreements, and amendments of and supplements to or any combination of them, authorizing or providing for the terms and conditions applicable to, or providing for the security for, or sale of, or the terms contained in, the Bonds.

“Bond Resolution” means Resolution No. 2016-___, adopted by the Board on ____ __, 2016, which Bond Resolution approved and authorized the Trust Agreement and the Bonds, and any bond resolution adopted by the Board to approve and authorize the issuance of Additional Bonds.

“*Business Day*” means a day of the year, other than (a) a Saturday; (b) a Sunday; (c) a day on which commercial banks located in any city in which the principal corporate trust office of the Trustee is located are required or authorized by law to remain closed; or (d) a day on which the New York Stock Exchange is closed.

“*Capitalized Interest Account*” means the Capitalized Interest Account established in the Project Fund pursuant to the Trust Agreement, and it includes all accounts and subaccounts therein as may be created pursuant to the Trust Agreement.

“*Certificate of Award*” means the certificate authorized in the Bond Resolution to be executed by the Authorized Officer to award the Bonds to the Original Purchaser.

“*City*” means the City of Beavercreek, Greene County, Ohio.

“*Closing Date*” means, for the Bonds, November 22, 2016.

“*Completion Date*” means the date of completion of the Project, being the date on which the Trustee shall have approved the final completion certificate with respect to the Project delivered by the Owner pursuant to Section 3.6 of the Cooperative Agreement, and all payments shall have been made from the Project Fund for the Project.

“*Condemnation*” means any condemnation, requisition, confiscation, seizure, or other taking or sale of the use, occupancy, or title to the Site, the Project, or any part thereof in, by or on account of any actual eminent domain proceeding or other action by any governmental authority or other Person under the power of eminent domain, or any transfer in lieu of or in anticipation thereof; provided, that Condemnation shall be deemed to have “occurred” on the earliest of the dates that use, occupancy, or title is taken.

“*Conversion Proceeds*” means moneys received by the Authority as the result of a casualty to the Site or the Project or from a governmental authority or other Person as result of the Condemnation or sale under threat of Condemnation of any portion of the Site or the Project.

“*Cooperative Agreement*” means the Cooperative Agreement, dated as of _____, 2016, among the Authority, the ESID, the City, the Owner, and the Trustee, as the same may be amended, modified, or supplemented from time to time.

“*County*” means the County of Greene, Ohio.

“*County Auditor*” means the Auditor of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Credit Support Instrument*” means an insurance policy or surety, a letter of credit acceptable to the Authority, or other credit enhancement or support, interest rate swap, or cap or

other hedge or liquidity device that is used to enhance the security or liquidity of any Bonds, or to provide, in whole or in part, a reserve requirement.

“*Debt Service Charges*” means, collectively, (i) the principal, Accreted Amount, interest, and any redemption premium required to be paid by the Authority on the Bonds, including any Mandatory Sinking Fund Requirements, (ii) the scheduled fees of the Trustee, and (iii) the scheduled fees of the Authority.

“*Depository*” or “*Securities Depository*” means The Depository Trust Company (a limited purpose trust company), New York, New York, unless and until any successor Depository shall have become such pursuant to the applicable provisions of the Trust Agreement, and, thereafter, “*Depository*” shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry only system to record ownership of beneficial interests in the Bonds, including the principal and redemption price thereof, and interest due thereon, and to effect transfers of the Bonds, in a book-entry form.

“*Eligible Investments*” means any of the following:

- (i) Direct obligations of the United States of America;
- (ii) Obligations, whether representing principal and interest or either principal or interest, guaranteed as to payment by the United States of America or to the payment of which the faith of the United States of America is pledged;
- (iii) Direct obligations issued by any agency or instrumentality of the United States of America which are accepted by the Rating Services for refunding purposes generally to result in the particular refunded obligations being assigned the highest rating of the particular Rating Service;
- (iv) Certificates of deposit issued by a national bank located in the State or a bank (as defined in Ohio Revised Code Section 1101.01) subject to inspection by the State Superintendent of Banks, which bank has a combined capital and surplus of at least \$100,000,000 in dollars of the United States of America and is rated at least “A” (or its equivalent) by the Rating Services, provided that such certificates of deposit (a) do not exceed in the aggregate 10% of the combined capital, surplus and undivided profits of the issuing bank and (b) shall be in the possession of the Trustee and shall be (A) continuously and fully insured by the Federal Deposit Insurance Corporation or its successors and (B) to the extent not so insured, continuously and fully secured by securities described in clauses (i) through (iii) above which have a market value (exclusive of any accrued interest) at all times at least equal to the principal amount of the certificates of deposit. The bank issuing a certificate of deposit required to be secured as provided in clause (B) above shall furnish the Executive Director of the Authority with an undertaking that the aggregate market value of all such pledged securities securing each certificate of deposit will at all times be an amount at least equal to the principal amount of that certificate of deposit, and the

Executive Director of the Authority shall be entitled to rely on each such undertaking;

(v) Any no front end load money market fund that is rated at least “A” (or its equivalent) by the Rating Services, consisting primarily of obligations described in clauses (i) through (iii) above; and

(vi) Any repurchase agreements, including any issued by the Trustee, secured by obligations described in clauses (i) through (iii), above.

The pledged securities described in (iv) above are to be in the possession of the Trustee, and are to be free and clear of all liens or rights of any third party and in which securities the Trustee is to have a first and sole perfected security interest.

“*ESID*” means the City of Beavercreek (Greene County), Ohio Energy Special Improvement District, a nonprofit corporation and special improvement district organized under the laws of the State of Ohio.

“*Energy Project Account*” means the Energy Project Account established in the Project Fund pursuant to the Trust Agreement, and it includes all accounts and subaccounts therein that may be created pursuant to the Trust Agreement.

“*Event of Default*” means an Event of Default as defined in Section 7.01 hereof.

“*Federal Securities*” means: (i) direct obligations of, or obligations representing principal and interest, or principal or interest, the full and timely payment of which is guaranteed by, or to the full and timely payment of which is pledged the faith of, the United States of America; (ii) any certificates or other evidences of direct ownership interest in obligations of the character described in clause (i) or in specified portions of those obligations, including, without limitation, portions consisting solely of the principal of or solely of the interest on those obligations; or (iii) obligations of any state of the United States or any political subdivision thereof, the full payment of principal of and interest and any premium on which are provided for by an irrevocable deposit in trust of the Federal Securities described in clause (i) or (ii), to the extent such investments are permitted by applicable law, and which obligations carry the highest rating category of a Rating Service. With respect to Federal Securities described in clause (ii), the underlying obligations must be, as evidenced by a receipt held by the owner, held in safekeeping on behalf of the owner.

“*Fiscal Officer*” means the Secretary of the Board.

“*Holder*” or “*holder*” or “*registered owner*” or any similar term means the person in whose name a Bond is registered.

“*Interest Payment Date*” or “*Interest Payment Dates*” means June 1 and December 1 of each year, commencing [December 1, 2016].

“*Mandatory Sinking Fund Redemption Dates*” means June 1 and December 1 each year, commencing December 1, 2018 through December 1, 2031, inclusive.

“*Mandatory Sinking Fund Requirements*” means amounts required by the Bond Resolution, the Certificate of Award, or elsewhere in the Bond Proceedings for the Bonds to be deposited to the Bond Fund and credited to a particular account therein in any fiscal year for the purpose, as provided in the applicable Bond Proceedings, of retiring, at their stated maturities or by mandatory prior redemption or other prior retirement, principal or Accreted Amount maturities of the Bonds, or of paying interest or interest equivalent on the Bonds, which by the terms of the Bonds are due and payable in any subsequent fiscal year.

“*Net Proceeds*” when used with respect to any insurance proceeds or Condemnation award means the gross proceeds thereof less the payment of all expenses, including reasonable attorneys’ fees incurred in connection with the collection of such gross proceeds.

“*Notice Address*” means:

- (a) As to the Authority: Greene County Port Authority
35 Greene St.
Xenia, Ohio 45385
Attention: Executive Director

- With a Copy To: Dinsmore & Shohl LLP
255 E. Fifth Street, Suite 1900
Cincinnati, Ohio 445202
Attention: Bradley N. Ruwe, Esq.

- (b) As to the Trustee: The Huntington National Bank
3805 Edwards Road, Suite 350
Cincinnati, Ohio 45209
Attention: Corporate Trust Department

- (c) As to the Original Purchaser: [HASI OBS OP A LLC]
[1906 Towne Centre Blvd., Suite 370]
[Annapolis, MD 21401]

or such additional or different address given in accordance with Section 11.04 hereof.

“*Original Purchaser*” means the purchaser of the Bonds named in the Certificate of Award.

“*Outstanding Bonds*” or “*Bonds outstanding*” or “*outstanding*” as applied to particular Bonds or to all Bonds, means, as of any date, the Bonds to which the reference applies and which have been authenticated and delivered, or are then being authenticated and delivered, by the Trustee under the Trust Agreement except:

(i) Bonds canceled or retained in safekeeping upon surrender, exchange or transfer, or cancelled by reason of payment or redemption on or prior to that date;

(ii) Bonds, or the portion of Bonds, for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to that date with the Trustee or Paying Agents (whether upon or prior to the maturity or redemption date of those Bonds), or which are deemed to have been paid or caused to be paid, as provided in Article X of this Trust Agreement; provided (a) that if those Bonds are to be redeemed prior to their stated maturity, notice of that redemption has been given or arrangements satisfactory to the Trustee have been made for giving that notice, or waiver of that notice satisfactory in form to the Trustee has been filed with the Trustee, and (b) that if those Bonds are to be purchased for cancellation, a firm offer for sale stating the price has been received and accepted; and

(iii) Lost, stolen, mutilated, or destroyed Bonds in lieu of which others have been authenticated (or payment when due of which is made without replacement) under the Trust Agreement.

“*Owner*” means MFC Beaver Creek, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, together with any permitted successors or assigns.

“*Paying Agent*” means the Trustee designated as the paying agent or place of payment for Bonds pursuant to the Trust Agreement, and its successors designated pursuant to the Trust Agreement.

“*Person*” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, political subdivisions, other legal entities, and natural persons.

“*Petition*” means the petition of the Owner as owner of the Site, dated _____, 2016, as amended, for the establishment of the ESID plan for public improvements (within the meaning of Ohio Revised Code Section 1710.01(G)) consisting of the financing of the Project by the Authority and acquisition, construction, equipping, improvement, and installation of the Project by the Owner, and the levy of Special Assessments in aggregate amount sufficient to pay for the costs of the Project.

“*Pledged Revenues*” means the following receipts of or on behalf of the Authority:

(i) the Special Assessments, including, without limitation, all moneys paid by the City under the Cooperative Agreement;

(ii) all other payments, moneys, or amounts received or to be received by or otherwise pledged to the Authority or the Trustee and intended to be used for Debt Service Charges, including without limitation, all moneys and investments in the Bond Fund, the Revenue Fund, and the Surplus Fund;

(iii) any proceeds from the sale, lease, use or disposition of the Project by the Trustee, the ESID, the City or the Authority, and any proceeds realized from the enforcement of the Cooperative Agreement or the foreclosure of any lien of delinquent Special Assessments;

(iv) all right, title, and interest of the Authority in the proceeds derived from the sale of the Bonds; and

(v) all income and profit from the investment of the foregoing moneys.

“*Principal Account*” means the Principal Account established in the Bond Fund pursuant to the Trust Agreement.

“*Principal Payment Date*” or “*Principal Payment Dates*” means each date (including each of the Mandatory Sinking Fund Redemption Dates) on which principal is payable on the Bonds, being June 1 and December 1 of each year, commencing June 1, 2018 and ending on December 1, 2031.

“*Project*” means “port authority facilities” consisting of energy efficiency improvements to be constructed on the Site including, without limitation, the construction, acquisition, and installation of roof improvements, HVAC system improvements, and related improvements all as generally described in Exhibit B to the Cooperative Agreement.

“*Project Costs*” means the Costs of the Project described in Section 3.5 of the Cooperative Agreement, which such Project Costs are to be paid or reimbursed from the proceeds of the Bonds pursuant to Section 3.5 of the Cooperative Agreement.

“*Project Fund*” means the Greene County Port Authority Project Fund created pursuant to this Trust Agreement, and includes all accounts (including, without limitation, the Capitalized Interest Account and the Energy Project Account) and subaccounts therein as may be created pursuant to this Trust Agreement.

“*Rating Service*” means any one or more of Fitch Ratings, Ltd., Moody’s Investors Service, Inc., or Standard & Poor’s Rating Services, and their respective successors.

“*Record Date*” or “*Regular Record Date*” means the fifteenth day of the calendar month immediately preceding each Interest Payment Date.

“*Registrar*” means the Person that keeps and maintains the Register for the Bonds, which Registrar is the Trustee and is a transfer agent registered in accordance with Section 17(A)(c) of the Securities Exchange Act of 1934.

“*Register*” means the books kept and maintained by the Registrar for the registration, exchange, and transfer of Bonds pursuant to the Trust Agreement.

“*Required Commercial General Liability Insurance Coverage*” means commercial general liability insurance, or alternative arrangements for insurance or self-insurance approved by the Authority and the Trustee, with coverage limits in the minimum amount of \$3,459,000 in each occurrence and \$3,459,000 in the general aggregate amount. All Required Commercial General Liability Insurance Coverage shall be procured from sound and reputable insurers admitted to do business in the State, rated “A” or better by A.M. Best Co. or a successor to its national insurance rating business.

“*Required Property Insurance Coverage*” means with respect to the Project, at any time, insurance in an amount sufficient to cover loss of or damage to the Project in an amount not less than one hundred percent (100%) of its replacement value, exclusive of land, insuring the Project against loss or damage by fire and those hazards ordinarily covered in all-risk property insurance policies in the State for improvements similar to the Project. All Required Property Insurance Coverage will be procured from sound and reputable insurers admitted to do business in the State, rated “A” or better by A.M. Best Co. or a successor to its national insurance rating business. Until the Completion Date, “all-risk builder’s risk insurance” covering the insurable value of the Project shall be provided in lieu of “all-risk property” insurance.

“*Revenue Fund*” means the Greene County Port Authority Revenue Fund created and maintained in accordance with this Trust Agreement.

“*Secretary*” means the Secretary of the Board.

“*Security Agreement*” means the Security Agreement, dated as of _____, 2016, between the ESID and the Trustee.

“*Site*” means certain real property located at 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431, and initially owned by the Owner.

“*Special Assessments*” means all special assessment payments paid with respect to the Site and received by the City for the purpose of the Project pursuant to the Special Assessments Act.

“*Special Assessments Act*” means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws, Ordinance No. _____ of the City Council adopted on _____, 2016, approving financing, Resolution No. _____ of the City Council adopted on _____, 2016 approving the Petition and the establishment of the ESID, Resolution No. _____ of the City Council adopted on _____, 2016 as a resolution of necessity for the Special Assessments, Ordinance No. _____ of the City Council passed on _____, 2016 as an ordinance to proceed with the

Special Assessments, and Ordinance No. _____ of the City Council passed on _____, 2016 as an ordinance levying the Special Assessments.

“*Special Funds*” means the Bond Fund and accounts therein; the Revenue Fund and the accounts therein; the Surplus Fund and the accounts therein; or any other fund or account established under the Trust Agreement and identified as a Special Fund.

“*Supplemental Trust Agreement*” means a Supplemental Trust Agreement approved or authorized by the Authority and entered into by the Authority and the Trustee pursuant to the Trust Agreement.

“*Surplus Fund*” means the Surplus Fund created pursuant to the Trust Agreement, and includes all accounts and subaccounts therein as may be created pursuant to the Trust Agreement.

“*Trust Agreement*” means this Trust Agreement, dated as of _____, 2016, between the Authority and the Trustee, approved by the Bond Resolution, as it may from time to time be amended and supplemented in accordance with its terms.

“*Trustee*” means the Trustee appointed and qualified under the Trust Agreement, initially The Huntington National Bank, N.A., duly organized and validly existing under the laws of the United States of America and qualified to exercise trust powers in the State, and shall include any successor Trustee thereunder.

“*Trustee Fee*” means the amount of \$1,250.00 on December 1, 2016, and each Interest Payment Date thereafter.

“*Unassigned Authority Rights*” means all of the rights of the Authority to be held harmless and indemnified under Section 5.2 of the Cooperative Agreement, be reimbursed for attorneys’ fees and expenses under Section 7.4 of the Cooperative Agreement, to make requests, to receive notice and to give or withhold consent including, without limitation, notices pursuant to Section 7.1 of the Cooperative Agreement and consents to amendments, changes, modifications, alterations, and termination of the Cooperative Agreement under Section 8.5 thereof.

Section 1.02. Interpretations. Any reference to a section or provision of the Act, the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Authority, the Holders, the Trustee, or the Registrar under this Trust Agreement, the Bond Resolution, or any other of the Bond Proceedings or other instruments or documents entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay Debt Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Proceedings, except as permitted herein.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” “hereinafter” and similar terms refer to this Trust Agreement. Words of any gender include the correlative worth of the other genders, unless the sense indicates otherwise.

The captions and headings in this Trust Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs, or clauses hereof.

[END OF ARTICLE I]

ARTICLE II

FORM, AUTHENTICATION, REGISTRATION, PAYMENT, EXCHANGE, AND TRANSFER OF BONDS

Section 2.01. Form of Bonds. The Bonds, the certificate of authentication, and the form of assignment shall be substantially in the respective forms thereof set forth in Exhibit A to this Trust Agreement with any omissions, insertions, and variations which may be authorized or permitted by the Bond Proceedings and are consistent with this Trust Agreement. Additional Bonds, the certificate of authentication of such Additional Bonds and the form of assignment of such Additional Bonds shall be in the form set forth in the Supplemental Trust Agreement authorizing such Additional Bonds.

Section 2.02. Authentication and Delivery of Bonds.

(a) **Authentication.** No Bond shall be valid or become obligatory for any purpose or entitled to any security or benefit under this Trust Agreement unless and until an authentication certificate, substantially in the form set forth below, has been endorsed upon that Bond. The authentication certificate may be executed by any Person authorized to do so by an Authenticating Agent, but it shall not be necessary that the same Person sign the authentication certificates on all the Bonds. The authentication certificate shall be in substantially the following form:

“This Bond is one of the Bonds issued under the provisions of the within-mentioned Trust Agreement.”

The authentication of any Bond by any authorized Person shall be conclusive evidence that the Bond has been duly authenticated and delivered, and is entitled to the security and benefit, under this Trust Agreement. Additional Bonds, if issued, shall be authenticated in a manner consistent with the applicable Bond Proceedings and the law in effect at the time of their issuance.

(b) **Conditions to Authentication.** Before the Bonds are initially authenticated by an Authenticating Agent and delivered by or on behalf of the Trustee, there shall have been filed with the Trustee the following:

- (i) A copy, certified by the Secretary of the Authority, of the Bond Resolution authorizing the issuance and delivery of the Bonds.
- (ii) An original executed counterpart of this Trust Agreement entered into in connection with the issuance of the Bonds.
- (iii) A request and authorization to the Trustee on behalf of the Authority, signed by its Authorized Officer, to authenticate and deliver the Bonds to or on the order of the Original Purchaser identified, and upon payment of an amount specified, in that request and authorization.
- (iv) A certificate of the Authority, signed by its Authorized Officer, in form satisfactory to the Trustee that (A) the Authority is not in default, and the

authentication and delivery of the Bonds will not result in any default, of any of its covenants or obligations under this Trust Agreement; and (B) the Aggregate Outstanding Principal Amount of the Bonds will not exceed in aggregate the amount of Bonds that may be issued or outstanding under the Act and the Bond Proceedings.

(v) The written opinion of Bond Counsel to the effect that documents submitted to the Trustee in connection with that request and authorization comply with the requirements of this Trust Agreement, and that all legal conditions precedent to the issuance of the Bonds as provided in this Trust Agreement have been complied with, and a written opinion of Bond Counsel that the Bonds, when duly executed, authenticated, and delivered, will be valid and legal special obligations of the Authority, enforceable in accordance with their terms, and will be secured by this Trust Agreement.

(vi) If Additional Bonds are to be authenticated and delivered, the Supplemental Trust Agreement pursuant to which such Additional Bonds are issued.

(vii) If Additional Bonds are to be authenticated and delivered, a written opinion of Bond Counsel retained or designated by the Authority, who may be the counsel to whom reference is made in any other subparagraph of this Section 2.02(b), that those Additional Bonds, when duly executed, authenticated and delivered, will be secured to the extent required by this Trust Agreement and any applicable Supplemental Trust Agreement to provide for payment of Debt Service Charges.

(c) **Delivery.** When the documents and opinions referred to in Section 2.02(b) hereof have been filed with the Trustee and the Bonds have been executed and authenticated, the Trustee, itself or by an agent authorized to do so by the Trustee, shall deliver the Bonds to or on the order of the Original Purchaser identified in the request and authorization referred to in Section 2.02(b)(iii) hereof, on the Closing Date upon payment of the amount specified in that request and authorization.

(d) **Disbursement of Proceeds of the Bonds.** The Trustee shall disburse and deposit the proceeds of the Bonds in accordance with the Bond Resolution and the Certificate of Award.

(e) **Replacement Bonds.** All Bonds authenticated and delivered upon any transfer or exchange or partial redemption of the Bonds, or pursuant to Section 2.05 hereof, shall be valid special obligations of the Authority, evidencing the same obligation, and entitled to the same security and benefit under this Trust Agreement, as the predecessor Bonds surrendered or replaced.

(f) **Security.** All Bonds shall be equally and ratably secured, without distinction by reason of series designation, number, date of authorization, issuance, sale, execution or delivery, or date of the Bonds or of maturity, by the pledge of the Pledged Revenues to the extent provided in, and except as otherwise permitted by, this Trust Agreement. Nothing in this Trust Agreement

shall prevent the Authority from providing or causing to be provided a Credit Support Instrument or a required reserve account pledged or relating to the payment of Debt Service Charges on any one or more Bonds and not on other Bonds. Nothing herein shall prevent a subordinated pledge of the Pledged Revenues to secure Additional Bonds; provided, however, no Bond Resolution shall adversely affect the priority of any Bonds then outstanding without the consent of all of the Holders of the Bonds so affected.

Nothing in the Act, this Trust Agreement or the other Bond Proceedings gives the Holders of Bonds, and they do not have, the right to have levied by the Authority, or otherwise levy any excises or taxes for the payment of Debt Service Charges; each Bond shall bear on its face a statement to that effect and to the effect that the right of Holders to the payment of Debt Service Charges is limited to payment from the Pledged Revenues, and any other source of moneys as provided in this Trust Agreement and the Bond Proceedings. However, nothing in this Trust Agreement or in the Bond Proceedings shall be deemed to prohibit the Authority, of its own volition, from using to the extent lawfully authorized to do so any other resources for the fulfillment of the terms, conditions or obligations of the Bond Proceedings and the Bonds.

(g) **Additional Bonds.** After the issuance of the Bonds pursuant to this Trust Agreement, the Authority may issue Additional Bonds from time to time for the purposes of (i) funding costs of completing the Project; and (ii) refunding any Bonds previously issued pursuant to this Trust Agreement. Additional Bonds shall be on a parity with the Bonds and any Additional Bonds issued and outstanding at the time or under this Trust Agreement as to the security interest of the Trustee in the Pledged Revenues and shall be equally and ratably payable from the Special Funds; provided, that nothing herein shall prevent payment of Debt Service Charges on any series of Additional Bonds from (i) being otherwise secured and protected from sources or by property, instruments or documents not applicable to the Bonds or any one or more series of Additional Bonds; or (ii) not being secured or protected from sources or by property, instruments or documents applicable to the Bonds and any Additional Bonds issued and outstanding at the time or under this Trust Agreement.

Section 2.03. Registered Bonds. The Bonds shall initially be issued in fully-registered certificated form, with one physical Bond certificate to be delivered to each initial Holder of the Bonds. Upon the request of the Holders of the Bonds and with the written approval of the Trustee and the Authority, which shall not be unreasonably withheld, the Bonds may be reissued only to a Depository to be held in a book entry system and thereafter, so long as the Bonds are held in a book entry system: (i) the Bonds shall be registered as to both principal and interest in the name of the Depository or its nominee, as Holder, and immobilized in the custody of the Depository and held a book entry system; (ii) each Bond shall be of a single maturity of the same series and shall be dated as of the date of the Bonds of the same series originally issued; and (iii) the Bonds shall not be transferable or exchangeable, except for transfer to another Depository or another nominee of a Depository, without further action by the Authority. If and so long as the Bonds are held in a book entry system, Bonds in the form of physical certificates shall only be delivered to the Depository, and the owners of beneficial interests in the Bonds shall have no right to receive physical certificates. So long as any Bonds remain unpaid, the Authority will cause the Register to be maintained and kept at the principal office of the Registrar for the Bonds. Additional Bonds shall be registered in accordance with the terms of the Supplemental Trust Agreement authorizing their issuance.

Section 2.04. Payment, Transfer, Exchange and Registration of the Bonds.

(a) **Payment.** The principal of and any redemption premium on the Bonds shall be payable on presentation and surrender of the Bonds at the designated corporate trust office of the Trustee, and payment of the interest on the Bonds shall be by check or draft mailed by the Trustee on each Interest Payment Date to the Person who appears on the Register as the Holder of the Bond as of the Record Date applicable to such Interest Payment Date, and to the address of that Holder as it then appears on the Register.

The registered owner of a Bond shall be deemed and regarded as the absolute owner of that Bond for all purposes, and payment of or on account of the principal of and any premium and interest on that Bond shall be made to or upon the order of that Holder or his legal representative, and the Authority, the Trustee, and any Authenticating Agent or Paying Agent shall not be affected by any notice to the contrary, but the registration may be changed as provided in or permitted by this Trust Agreement. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond, including any interest on it, to the extent of the sum or sums so paid.

During such times as the Bonds are in fully-registered certificated form and are not held in a book entry system (a) the Trustee shall make all payments of principal of and interest and any premium on the Bonds to the Holders of the Bonds without presentation or surrender thereof; provided that presentation and surrender shall be required at final maturity of the Bonds; (b) the Authority and the Trustee shall transmit all notices and other communications under the Trust Agreement and the Bonds to the Holders; and (c) the Authority and the Trustee shall otherwise consider, recognize, and treat the registered owners as the Holders of the Bonds for all purposes of the Trust Agreement and the Bonds, including payment of Bond Services Charges, giving and receipt of notices, enforcement of remedies, and exercise of rights by Holders.

(b) **Transfer and Exchange.** The Bonds may be transferred or exchanged only upon the Register, upon its surrender at the designated office of an Authenticating Agent together with an assignment or request for exchange duly executed by the registered owner or his duly authorized attorney in such form as is satisfactory to the Registrar. Upon the transfer or exchange of the Bonds and on request of the Registrar, the Authority shall cause to be executed in the name of the transferee or the registered owner a new Bond in an aggregate principal amount equal to that amount of the predecessor Bond, and bearing any interest at the same rate (or determined in the same manner) and maturing on the same date or dates as the predecessor Bond. In all cases in which the Bonds are transferred or exchanged, the Authority shall cause to be executed and the Authenticating Agent shall authenticate and deliver a Bond in accordance with the provisions of this Trust Agreement and the Bond Resolution. The Authority and an Authenticating Agent:

(i) shall not be required to make any transfer or exchange of (A) a Bond if it is then subject to redemption during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption pursuant to Section 5.08 hereof and ending at the close of business on the day of the mailing, or (B) any Bond so selected for redemption, in whole or in part; and

(ii) shall make the transfer or exchange without charge, except that the Authority and the Authenticating Agent may make a charge sufficient to reimburse them for any tax, excise, or governmental charge required to be paid with respect to the transfer or exchange, which charge shall be paid before a new Bond is delivered.

For purposes of this Section, the “designated office” of the Trustee as an Authenticating Agent shall be its Notice Address.

Subject to the foregoing provisions of this Section 2.04, each Bond delivered by the Registrar upon transfer or in exchange for or in lieu of any other Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

Notwithstanding anything in this Trust Agreement to the contrary, from and after the Closing Date, no Bond shall be subsequently sold or transferred by any Holder unless the Trustee shall first have received (i) a satisfactory opinion of counsel that the sale or transfer will not violate the Securities Act of 1933, as amended (the “Securities Act”), the Securities Exchange Act of 1934 or the Investment Company Act of 1940, or any of the regulations issued pursuant to those Acts, (ii) a no-action letter of the staff of the Securities and Exchange Commission that the staff will recommend that no action be taken with respect to such sale or transfer, (iii) a certificate from the transferor that the transferor reasonably believes that the transferee is a “Qualified Institutional Buyer” within the meaning of subsection (a) of Rule 144A (“Rule 144A”) promulgated by the SEC pursuant to the Securities Act and has informed the transferee of the transfer restrictions applicable to the Bonds and that the transferor may be relying upon Rule 144A with respect to the transfer of the Bonds or (iv) a certificate from the Authority that the Bonds have been registered under the Securities Act and that the registration is in effect. The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Trust Agreement or under applicable law with respect to any transfer of any interest in any Bond (including any transfers between or among participants or beneficial owners in any Bond) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Trust Agreement, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.05. Mutilated, Lost, Wrongfully Taken, or Destroyed Bonds. If any Bond is mutilated, lost, wrongfully taken, or destroyed (referred to in this Section 2.05 as a “lost Bond”), in the absence of written notice to the Authority or the Registrar that the lost Bond has been acquired by a bona fide purchaser, the Authority shall cause to be executed and an Authenticating Agent shall authenticate a new Bond of like date, maturity, and denomination, and bearing any interest at the same rate (or determined in the same manner), as that lost Bond.

In the case of a mutilated Bond, the mutilated Bond shall first be surrendered to the Registrar. In case of a lost, wrongfully taken, or destroyed Bond, there first shall be furnished to the Authority and the Registrar evidence of the loss, wrongful taking, or destruction satisfactory to the Registrar, together with an indemnity agreement from an indemnifier and in form and content satisfactory to the Registrar and the Fiscal Officer of the Authority.

If the lost Bond has matured, instead of issuing a new Bond the Authority may pay, or may direct the Trustee to pay, the same without surrender or issuance of a new Bond upon the furnishing of evidence of loss and, if applicable, satisfactory indemnity as in the case of issuance of a new Bond.

The Authority and the Trustee may charge the Holder of the applicable Bond for reasonable fees and expenses, including legal fees and printing expenses, in connection with actions pursuant to this Section 2.05.

Every new Bond issued pursuant to this Section 2.05 shall constitute, consistent with the provisions of the predecessor Bond, an additional contractual obligation of the Authority, whether or not the predecessor Bond shall be found at any time. Any new Bond issued pursuant to this Section 2.05 may contain or have imprinted or stamped on it a statement to the effect, or a symbol indicating, that it is issued to replace a lost Bond.

All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section 2.05 are exclusive with respect to the replacement or payment of lost Bonds and shall preclude any and all other rights or remedies, notwithstanding any law or statute to the contrary now in effect or hereafter enacted, with respect to the replacement or payment of negotiable instruments or investment securities or other securities without their surrender.

Section 2.06. Safekeeping and Cancellation of Bonds. Any Bond surrendered for the purpose of payment or retirement, or for transfer or exchange, or for replacement or payment pursuant to Section 2.05 hereof, shall be cancelled upon surrender to the Trustee, an Authenticating Agent, or any Paying Agent. Any such Bonds cancelled by any Authenticating Agent or a Paying Agent other than the Trustee shall be promptly transmitted by the Authenticating Agent or Paying Agent to the Trustee. Certification of such surrender and cancellation shall be made to the Authority by the Trustee.

Unless otherwise directed by the Authority, cancelled Bonds shall be retained and stored, or microfilm or computer image copies made and retained, by the Trustee for a period of at least six years after their cancellation. Those cancelled Bonds may be destroyed by the Trustee by shredding or incineration six years after their cancellation, or if microfilmed or computer imaged, six months after their cancellation, or at any earlier time directed by the Authority. Certification of any destruction of cancelled Bonds, describing the manner of destruction, shall be provided by the Trustee to the Authority.

Section 2.07. Payment by Wire Transfer. Notwithstanding any provision of this Trust Agreement or of any Bonds to the contrary, with the approval of the Authority the Trustee may, upon the written request of any registered owner of a Registered Bond, enter into an agreement with that owner providing for payments to that owner of principal of and any interest and premium on that owner's Bond or Bonds, or any portion thereof, other than any payment of the entire unpaid principal amount of a Bond, at a place and in a manner (including the wire transfer of federal funds) other than as provided in this Trust Agreement, and in the case of principal or premium, without prior presentation or surrender of the Bond; upon any conditions satisfactory to the Trustee and the Authority. That payment in any event shall be made to the Person in whose name a Bond is registered on the Register, (i) as to principal or premium on the date that

principal or premium is due and (ii) as to interest as of the applicable Interest Payment Date. The Trustee will furnish a copy of each of those agreements to all other Authenticating Agents or Paying Agents for the applicable Bonds, and to the Authority. Any payment of principal, premium or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Trust Agreement.

[END OF ARTICLE II]

ARTICLE III

REDEMPTION PROVISIONS

Section 3.01. Privilege of Prior Redemption. The Bonds are subject to redemption prior to maturity to the extent, at such times, and in the manner provided in this Trust Agreement.

Section 3.02. Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory redemption prior to maturity on the applicable Mandatory Sinking Fund Redemption Dates pursuant to the Mandatory Sinking Fund Requirements described below. The aggregate amount of the Pledged Revenues which are to be transferred by the Authority to the Trustee and deposited in the Principal Account of the Bond Fund prior to each Mandatory Sinking Fund Redemption Date pursuant to Section 4.05 hereof shall include amounts sufficient to redeem on the next succeeding Mandatory Sinking Fund Redemption Date the principal amount of Bonds required to be redeemed on such Mandatory Sinking Fund Redemption Date (less the amount of any applicable credit described herein).

The Bonds maturing on December 1, 2031 are subject to mandatory redemption prior to maturity on the applicable Mandatory Sinking Fund Redemption Dates pursuant to the Mandatory Sinking Fund Requirements, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the applicable Mandatory Sinking Fund Redemption Date in the principal amounts as follows:

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Mandatory Sinking Fund <u>Redemption Dates</u>	<u>Mandatory Redemption Amount</u>
June 1, 2018	84,000
December 1, 2018	87,000
June 1, 2019	89,000
December 1, 2019	91,000
June 1, 2020	94,000
December 1, 2020	96,000
June 1, 2021	99,000
December 1, 2021	101,000
June 1, 2022	104,000
December 1, 2022	107,000
June 1, 2023	109,000
December 1, 2023	112,000
June 1, 2024	115,000
December 1, 2024	118,000
June 1, 2025	121,000
December 1, 2025	124,000
June 1, 2026	128,000
December 1, 2026	131,000
June 1, 2027	135,000
December 1, 2027	138,000
June 1, 2028	142,000
December 1, 2028	145,000
June 1, 2029	149,000
December 1, 2029	153,000
June 1, 2030	157,000
December 1, 2030	161,000
June 1, 2031	165,000

If retired only by mandatory sinking fund redemption prior to maturity, there would remain \$170,000 principal amount of Bonds maturing on December 1, 2031 to be paid on such maturity date.

The Authority shall have the option to deliver to the Registrar for cancellation Bonds acquired in any manner whatsoever in any aggregate principal amount and to receive a credit (except to the extent otherwise hereinafter provided in this paragraph) against the then current Mandatory Sinking Fund Requirement (and corresponding mandatory redemption obligation) of the Authority with respect to the Bonds as described above. Such option shall be exercised by the Authority on or before the 45th day preceding the applicable Mandatory Sinking Fund Redemption Date by furnishing the Trustee a certificate, executed by an Authorized Authority Representative, setting forth the extent of the credit to be applied with respect to the then-current Mandatory Sinking Fund Requirement (and corresponding mandatory redemption obligation). A credit against the then-current Mandatory Sinking Fund Requirement (and corresponding mandatory redemption obligation) also shall be received by the Authority for any maturing

Bonds that have been purchased for cancellation or redeemed other than through the operation of the Mandatory Sinking Fund Requirements.

Each Bond so delivered, redeemed previously, or purchased and canceled shall be credited by the Trustee at 100% of the principal amount thereof against the then-current Mandatory Sinking Fund Requirement. Any excess of that amount over the then current Mandatory Sinking Fund Requirement with respect to the Bonds shall be credited against subsequent Mandatory Sinking Fund Requirements with respect to the Bonds in the order directed by the Authority.

In the event of a partial redemption of Bonds, the Mandatory Sinking Fund Requirements and principal payment requirements with respect to the Bonds shall be reduced pro rata as described in Section 5.06.

Section 3.03. Optional Redemption. Unless previously redeemed, the Bonds are subject to redemption at the option of the Owner in whole or in part, provided that any partial redemption shall be in a minimum principal amount of no less than \$1,000,000.00, on or after _____, 2016, at the redemption prices set forth below, plus accrued interest to the redemption date, upon the Owner's exercise of its right in Section 4.1(f) of the Cooperative Agreement to direct the Authority to optionally redeem the Bonds, provided, however, that in the event of a prepayment due to damage at, or destruction of, the Project the redemption price shall be 100% of the par amount of the outstanding Bonds to be redeemed plus accrued interest.

<u>Date(s) of Redemption</u>	<u>Redemption Price</u>
_____, 2016 to _____, 20__	103%
_____, 20__ to _____, 20__	102%
_____, 20__ and thereafter	101%

Section 3.04. Extraordinary Mandatory Redemption from Remaining Bond Proceeds. The Bonds are subject to redemption in whole on any date or in part on any Interest Payment Date, at the option of the Authority, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, from amounts remaining in the Energy Project Account after the Completion Date and after payment of all Project Costs for the Project. The Bonds shall be redeemed in order of their maturity provided that any such credit shall be made so that any Bonds redeemed and to be redeemed after giving effect to such credit shall be in Authorized Denominations.

Section 3.05. Reserved.

Section 3.06. Reserved.

Section 3.07. Partial Redemption. If fewer than all of the Outstanding Bonds of a given maturity are to be redeemed, the selection of Bonds within such maturity to be redeemed,

or portions thereof in principal amounts equal to the lowest Authorized Denomination, or any integral multiples thereof, shall be made in such manner as the Authority, or the Holder at the time of such redemption, shall direct (and to the extent that any Bond of a given maturity is to be redeemed in part, such redemption shall be credited against principal installments thereof, including installments of principal to be redeemed by operation of Mandatory Sinking Fund Requirements, in the manner in which the Authority, or the Holder at the time of such redemption, shall direct), or, if the Authority, or the Holder at the time of such redemption, shall not so direct, by lot by the Trustee in any manner which the Trustee may determine. Unless the Authority shall otherwise direct, in the event that any Bond of a maturity is redeemed in part, such partial redemption shall be credited pro rata against the installments of principal due at maturity and with respect to such Bond by the operation of Mandatory Sinking Fund Requirements. Notwithstanding the foregoing, any Bonds that will remain outstanding after any partial redemption, and any Bonds to remain outstanding after operation of any new principal retirement schedule taking into account such credits, shall be in Authorized Denominations. In the case of a partial redemption of Bonds of a given maturity by lot when Bonds of such maturity have denominations greater than the lowest Authorized Denomination applicable to such maturity are then outstanding, each unit of face value of principal thereof equal to that lowest Authorized Denomination shall be treated as though it were a separate Bond of the same maturity of a principal amount equal to that lowest Authorized Denomination. If it is determined that one or more, but not all of such units of face value represented by a Bond of a maturity are to be called for redemption, then upon notice of redemption of one or more such units pursuant to Section 3.09 hereof, the Holder of that Bond shall surrender the Bond to the Trustee for (a) payment on the redemption date of the redemption price of the unit or units of face value called for redemption (including without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) issuance, without charge to the Holder thereof, of a new Bond or Bonds, of any Authorized Denomination in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

Section 3.08. Authority's Election to Redeem. Except in the case of redemption pursuant to Mandatory Sinking Fund Requirements, the Bonds shall be redeemed by written notice from the Authority to the Trustee. That notice shall specify the places where the amounts due upon redemption are payable, the redemption date, and the principal amount, Accreted Amount, and maturities of the Bonds to be redeemed, and it shall be given at least thirty (30) days prior to the redemption date or such shorter period as shall be acceptable to the Trustee.

Section 3.09. Notice of Call for Redemption. When Bonds (or portions thereof) are to be redeemed pursuant to the terms of Article III of this Trust Agreement other than upon Mandatory Sinking Fund Requirements or other mandatory redemption, the Authority shall give or cause to be given notice of the redemption of the Bonds to the Trustee. The notice to the Trustee may state (i) that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the date that is five (5) Business Days prior to the redemption date, or (ii) that the Authority retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a "Conditional Redemption"), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded.

The Trustee shall send notice of any redemption, identifying the Bonds or portions thereof to be redeemed, the redemption date and the method and place of payment to each Holder of a Bond called for redemption to the Holder's address listed on the Register as of the close of business on the fifteenth (15th) day preceding that mailing. Such notice of redemption shall be sent by the Trustee by first class mail between thirty (30) and sixty (60) days prior to the scheduled redemption date. With respect to Bonds held in book entry form, if any, if the Trustee sends the notice of redemption to the Depository, the Trustee shall not be required to give the notice set forth above. Failure to give the notice of redemption to, or failure to receive such notice by, the Holder of any Bond shall not affect in any respect the validity of the proceedings for the redemption of other Bonds.

In addition to the foregoing, the notice of redemption shall contain with respect to each Bond being redeemed (i) the date of issue, (ii) the interest rate, (iii) the maturity date, and (iv) any other descriptive information determined by the Trustee to be needed to identify the Bonds to be redeemed. If a redemption is a Conditional Redemption, the notice of redemption shall so state the terms of the Conditional Redemption.

Section 3.10. Redemption Procedure. If a notice of redemption has been given to the Holders of Bonds as provided in Section 3.09 hereof, the Authority shall, and hereby covenants that it will, prior to or on the scheduled redemption date, pay to the Trustee for deposit in the appropriate accounts or subaccounts of the Bond Fund or other appropriate Special Funds an amount in cash which, together with any other moneys available or to be timely available for the redemption and held by the Trustee or the Paying Agent, will be sufficient on the redemption date to redeem at the redemption price (including any interest accrued to the redemption date) all the Bonds to be redeemed.

Section 3.11. Payment of Redeemed Bonds. If a notice of redemption has been given in the manner provided in Section 3.09 hereof, the Bonds, or portions thereof, so called for redemption and identified in such notice shall become due and payable on the designated redemption date at the redemption price, plus any interest accrued to the redemption date, upon presentation and surrender of the Bonds at the place or places specified in the notice.

If moneys for the redemption of the Bonds or portions thereof to be redeemed are held on the redemption date by the Authority, Trustee or Paying Agent so as to be available therefor, then from and after that date the Bonds or the portions thereof so called for redemption shall no longer be considered as outstanding and if interest-bearing shall cease to bear interest. To any extent that those moneys are not so available on the redemption date, or notices have not been mailed as provided in Section 3.09 hereof, those Bonds or portions thereof not paid at redemption shall continue to bear or accrue interest until paid at maturity or subsequent prior redemption at the same rate (or determined in the same manner) as they would have had they not been called for redemption.

If a Bond is redeemed in part only, on or after the redemption date and upon surrender of the Bond to the Trustee, the Authority shall cause to be executed and an Authenticating Agent shall authenticate and deliver, without charge to the Holder, a new Bond or Bonds in Authorized Denominations and in an Aggregate Outstanding Principal Amount equal to that unmatured and unredeemed amount of that predecessor Bond and bearing or accruing any interest at the same

rate (or determined in the same manner) and maturing on the same date or dates as the predecessor Bond.

All moneys held by the Trustee and the Paying Agent for the redemption of particular Bonds shall be held in trust for the account of their Holders and shall be paid to them upon presentation and surrender of the Bonds.

[END OF ARTICLE III]

ARTICLE IV

PROVISIONS AS TO FUNDS, ACCOUNTS, AND PAYMENTS

Section 4.01. Establishment of Funds and Accounts

There are hereby created and shall be maintained the following funds, each as a separate fund (except when invested as hereinafter provided) in the custody of the Trustee, each designated as indicated and including therein the accounts and subaccounts described herein, and such additional accounts and subaccounts as may be created as the Trustee shall, in its discretion, deem expedient for implementing the purposes hereof:

- (a) A fund designated the “Greene County Port Authority Bond Fund,” and the “Interest Account” and the “Principal Account” therein;
- (b) A fund designated the “Greene County Port Authority Project Fund” and including the “Capitalized Interest Account” and the “Energy Project Account” therein;
- (c) A fund designated the “Greene County Port Authority Revenue Fund”;
- (d) A fund designated the “Greene County Port Authority Surplus Fund”; and
- (e) A fund designated the “Greene County Port Authority ESID Administrative Expense Fund”.

Section 4.02. Application of Proceeds.

The proceeds from the sale of the Bonds, excluding any amounts representing accrued interest, shall be deposited to the credit of the Capitalized Interest Account of the Project Fund and the Energy Project Account of the Project Fund pursuant to and in accordance with the Bond Resolution and the Certificate of Award.

The proceeds from the sale of any Additional Bonds shall be received by the Trustee for and on behalf of the Authority and shall be allocated, deposited and credited as provided in the Bond Resolution and the Supplemental Trust Agreement authorizing the issuance of such Additional Bonds.

Section 4.03. Bond Fund.

(a) **Bond Fund.** The Bond Fund is a Special Fund pledged to the payment of Debt Service Charges on Bonds to the extent provided in the applicable Bond Proceedings, and payment of Debt Service Charges from that fund shall be made or provided for by the Trustee in accordance with the Bond Proceedings without necessity for any act of appropriation. All moneys received by or on account of the Authority and required by the applicable Bond Proceedings to be deposited, transferred, or credited to the Bond Fund and the accounts and subaccounts therein, and all other moneys transferred or allocated to or received for the purposes of that fund, shall be deposited with the Trustee and credited to that fund and the proper accounts

therein, subject to the applicable Bond Proceedings, without necessity for any act of appropriation.

(b) Accounts. Moneys in the Interest Account and the Principal Account may be invested and reinvested by the Trustee, pursuant to the written instructions from the Owner, in Eligible Investments; provided, that investments of moneys in the Interest Account and the Principal Account shall mature or be redeemable at the times and in the amounts necessary to provide moneys solely and exclusively for the payment of Debt Service Charges as they become due at stated maturity, by redemption or pursuant to any Mandatory Sinking Fund Requirements, all as provided herein and in the Cooperative Agreement; provided, that no part thereof shall be used to redeem the Bonds prior to maturity, except as may be provided herein or in the Cooperative Agreement.

The Trustee may from time to time sell such investments and reinvest the proceeds of such sales in similarly rated Eligible Investments maturing or redeemable as provided above. The Trustee shall sell or redeem investments standing to the credit of the Interest Account and the Principal Account to produce sufficient moneys at the times required for the purpose of meeting Debt Service Charges when due. Subject to the provisions of the Bond Proceedings, investments made from moneys credited to the Interest Account and the Principal Account shall constitute part of those respective subaccounts, and those subaccounts shall be credited with all respective proceeds of sales and income from those investments. For purposes of this Trust Agreement, those investments shall be valued at the lesser of face amount or market value.

(c) Payment of Debt Service Charges. The Trustee shall transmit to the Paying Agent from moneys in the Interest Account and the Principal Account (and the appropriate subaccounts therein), as applicable, amounts sufficient to make timely payments of interest on and principal of and any premium on the Bonds to be made by the Paying Agent and then due and payable. The Authority authorizes and directs the Trustee to cause withdrawal of moneys from the Bond Fund which are available for the purpose of paying, and are sufficient to pay, the principal of and interest and any premium on the Bonds as they become due and payable (whether at stated maturity, by redemption, or pursuant to any mandatory sinking fund requirements), for the purposes of paying or transferring moneys to the Paying Agent which are necessary to pay such Debt Service Charges when due.

Debt Service Charges shall be payable, as they become due, (i) first, from the Capitalized Interest Account of the Project Fund as provided in Section 4.04(d) hereof; (ii) second, from the Interest Account and the Principal Account (and the appropriate subaccounts therein) to pay, respectively, the interest and principal on the Bonds; (iii) third, from the Revenue Fund and from any Special Assessments (which Special Assessments will, upon receipt, be deposited by the Trustee in the Revenue Fund) on deposit in the Revenue Fund; (iv) if amounts on deposit in the Bond Fund on any Interest Payment Date or Principal Payment Date are not sufficient to pay the Debt Service Charges due and payable hereunder, then from moneys transferred to the Bond Fund from the Surplus Fund; (v) to the extent that the foregoing sources are insufficient on any date on which Debt Service Charges are due and payable hereunder from other Pledged Revenues to the extent then available; and (vi) from any other source lawfully available to the

Trustee, including without limitation, proceeds from the sale or liquidation of any collateral then assigned or pledged to the Trustee.

(d) **Excess Bond Proceeds.** In addition to the deposits to be made in the Bond Fund as otherwise contemplated herein, there shall be deposited into the applicable account of the Bond Fund, as and when received (i) excess capitalized interest transferred from the Capitalized Interest Account, as provided in Section 4.04(d) hereof, and (ii) any amount remaining in the Project Fund after completion of the Project and payment of all costs and expenses to be paid from the Project Fund, as provided in Section 4.04(e) hereof, subject, however, to any applicable provisions in this Trust Agreement or in the Cooperative Agreement for another application of those moneys. Amounts so deposited shall be used by the Trustee in accordance with applicable provisions in this Trust Agreement or in the Cooperative Agreement.

(e) **Excess Funds.** Any amounts remaining in the Bond Fund (i) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Trust Agreement, and (ii) after payment or provision for payment of all fees, charges and expenses of the Trustee, including counsel fees of the Trustee and the Authority, and expenses of the Registrar, the Paying Agent, and the Authenticating Agent and of all other Administrative Expenses and other amounts required to be paid under this Trust Agreement or the Cooperative Agreement, shall be paid to the owner of the Site.

Section 4.04. Project Fund.

(a) **Project Fund.** The Project Fund does not constitute a Special Fund, nor shall any money or Eligible Investments held therein be pledged or used towards the payment of any Outstanding Bonds.

(b) **Application of the Project Fund.** Moneys in the Project Fund shall be deposited into, disbursed from, and transferred among and between accounts and subaccounts established and maintained in the Project Fund in accordance with and subject to the terms, conditions, and limitations set forth in the Act, this Trust Agreement, the Certificate of Award and the Cooperative Agreement.

(c) **Investment of the Project Fund.** Moneys in the Project Fund and separate accounts therein may be invested and reinvested by the Trustee, pursuant to the written instructions of the Owner, in any Eligible Investments of that fund as provided in this Trust Agreement; provided, that the Trustee shall keep accurate records of all investments of moneys in the Project Fund and the separate accounts therein. Subject to the provisions of the applicable Bond Proceedings, investment earnings on the Project Fund shall be credited to the Revenue Fund.

(d) **Capitalized Interest Account.** The amounts deposited into the Capitalized Interest Account and the subaccounts therein shall be transferred by the Trustee, without the need for any further direction on the part of the Authority or any other Person, to the Interest Account in the Bond Fund on the Interest Payment Dates in the amounts necessary to pay interest due on the Bonds. Any amounts remaining in any subaccount in the Capitalized Interest Account on the date of the last scheduled payment from the Capitalized Interest Account, shall be transferred on that

date to the Energy Project Account and shall be used for purposes permitted for that account; provided, that if the Completion Date has theretofore occurred and no amounts remain in the Energy Project Account, such amounts shall instead be transferred to the Bond Fund and used, together with any investment earnings thereon, on the next succeeding Interest Payment Date to redeem Bonds subject to optional redemption.

(e) **Energy Project Account.** Moneys in the Energy Project Account shall be disbursed in accordance with the Cooperative Agreement; provided, however, after the occurrence of an Event of Default, moneys on deposit in the Energy Project Account shall be used only upon the direction of the Authority. The Trustee shall cause to be kept and maintained adequate records pertaining to the Energy Project Account and all subaccounts and all disbursements therefrom. The completion of the acquisition, construction, equipping, improvement, and installation of the Project, and payment of all costs and expenses incident thereto, shall be evidenced by the filing with the Trustee of the applicable certificate or certificates of the Owner required by Section 3.6 of the Cooperative Agreement, which shall state that all obligations and costs in connection with the Project, or a portion of the Project, as applicable, and payable out of the Project Fund, have been paid and discharged, except for any amounts to be retained by the Trustee for the payment of costs of the Project not then due and payable. As soon as practicable after the filing with the Trustee of the final completion certificate (with respect to the last portion of the Project to be completed), any balance remaining in the Energy Project Account (other than any amounts to be retained by the Trustee as described in the preceding sentence) shall, unless otherwise directed by the Authorized Authority Representative, be transferred to and deposited in the Bond Fund and used, together with any investment earnings thereon, on the next succeeding Interest Payment Date to redeem Bonds subject to optional redemption, or shall be deposited or applied in accordance with the direction of the Authorized Authority Representative to one or more of the following purposes: (i) transfer to the Principal Account to be used for the payment of principal of the Bonds due on the next succeeding Principal Payment Date, (ii) transfer to the Interest Account to be used for the payment of interest due on the Bonds on the next succeeding Interest Payment Date, or (iii) transfer to the provider of a Credit Support Instrument to reimburse such provider for any draws on the Credit Support Instrument. After the Project has been completed and a certificate of payment of all costs is filed as provided herein, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Authority.

Section 4.05. Revenue Fund.

(a) **Revenue Fund.** The Revenue Fund constitutes a Special Fund. Moneys will be disbursed from the Revenue Fund pursuant to the provisions of this Section 4.05.

(b) **Application of the Revenue Fund.** The Revenue Fund and the moneys and Eligible Investments therein shall be used solely and exclusively for the payments and transfers described in this Section 4.05, and, except for an authorized application thereof, the Authority shall have no interest whatsoever in the moneys and investments in the Revenue Fund.

(c) **Deposit of Special Assessments.** So long as there are any outstanding Bonds, upon receipt by the Trustee, whether from the ESID, the City, the County Treasurer, or otherwise, all Special Assessments received by the Trustee shall be deposited by the Trustee in the Revenue Fund for the account of the Authority in accordance with the Cooperative Agreement and the Security

Agreement. Pursuant to the Cooperative Agreement and the Security Agreement, if the City receives Special Assessments from the County Treasurer out of any real property tax settlement, the City shall immediately upon receipt but not later than fourteen (14) days following receipt cause the proper deposit, assignment, transfer and payment of the Special Assessments to the Trustee. Subject to the terms of the Cooperative Agreement and the Security Agreement, the Special Assessments are expected to be in an aggregate amount which is sufficient to make the payments to be made from the Pledged Revenues, as described below.

Anything herein or in the Cooperative Agreement notwithstanding, all amounts deposited in the Revenue Fund, and any moneys and Eligible Investments held therein, constitute Pledged Revenues hereunder and are pledged and assigned solely for the uses and purposes hereof, and the ESID, the City, and the Authority shall not have any interest whatsoever in the Revenue Fund or the moneys and Eligible Investments therein except as to the uses and purposes hereof.

(d) **Reserved.**

(e) **Transfers from the Revenue Fund.** So long as there are any outstanding Bonds, all moneys and investments in the Revenue Fund shall be allocated to, and shall be used to make, the transfers described below at the following times and in the following order:

(i) First, on each Interest Payment Date, to the ESID Administrative Expense Fund an amount assessed pursuant to the Special Assessments Act and deposited into the Revenue Fund equal to one thousand five hundred dollars (\$1,500).

(ii) Second, on each Interest Payment Date and each Principal Payment Date, to the Interest Account and the Principal Account in the Bond Fund, after giving effect to any amounts on deposit in those accounts, an amount sufficient to pay the interest and principal due on all outstanding Bonds on that Interest Payment Date or Principal Payment Date, as applicable.

(iii) Third, to the Trustee on each Interest Payment Date, an amount sufficient to pay the applicable Trustee Fee.

(iv) Fourth, on each Interest Payment Date, to the ESID Administrative Expense Fund an amount assessed pursuant to the Special Assessments Act in excess of amounts transferred pursuant to (i) and (ii) of this Section 4.05(e).

(f) All moneys deposited in the Revenue Fund shall be used to make the transfers required by Section 4.05(e) above and due to be made on or before the applicable date. Any amounts still remaining in the Revenue Fund after the transfers required by Section 4.05(e) above on a given date, shall, but only after all transfers required by Section 4.05(e) above on that date have been made, be transferred to the Surplus Fund and used as provided herein.

(g) Notwithstanding anything else herein to the contrary, the transfers required by Section 4.05(e) above may be modified by a Supplemental Trust Agreement in order to provide for the presence of a Credit Support Instrument.

Section 4.06. ESID Administrative Expense Fund.

(a) **ESID Administrative Expense Fund.** The ESID Administrative Expense Fund does not constitute a Special Fund, nor shall any money or Eligible Investments held therein be pledged or used towards the payment of any Outstanding Bonds.

(b) **Application of the ESID Administrative Expense Fund.** Moneys in the ESID Administrative Expense Fund shall be deposited into, and disbursed from, the ESID Administrative Expense Fund in accordance with and subject to the terms, conditions, and limitations set forth in the Act, this Trust Agreement, the Certificate of Award and the Cooperative Agreement.

(c) **Investment of the ESID Administrative Expense Fund.** Moneys in the ESID Administrative Expense Fund may be invested and reinvested by the Trustee, pursuant to the written instructions of the Owner, in any Eligible Investments of that fund as provided in this Trust Agreement; provided, that the Trustee shall keep accurate records of all investments of moneys in the ESID Administrative Expense Fund and the separate accounts therein. Investment earnings on the Project Fund shall remain in the ESID Administrative Expense Fund.

(d) **Transfer of funds from the ESID Administrative Expense Fund.** The amounts deposited into the ESID Administrative Expense Fund shall be disbursed by the Trustee to pay for reasonable expenses incurred by the ESID. Such expenditures shall be made upon receipt by the Trustee of (i) a written request by the Authority for the expenditure and disbursement, and (ii) written approval of the ESID and the Authority of the purpose and amount of the expense(s) incurred or to be incurred by the ESID and paid with funds held in the ESID Administrative Expense Fund. Any amounts on deposit in the ESID Administrative Expense Fund in excess of ten thousand dollars (\$10,000) as of each December 15 shall be disbursed by the Trustee to the then owner of the Site. Upon termination of this Trust Agreement, any amounts remaining on deposit in the ESID Administrative Expense Fund shall be disbursed to the then owner of the Site.

Section 4.07. Surplus Fund.

(a) **Surplus Fund.** The Surplus Fund constitutes a Special Fund and shall be pledged to the payment of Debt Service Charges until released or otherwise used in accordance with this Trust Agreement.

(b) **Transfer of Funds from the Surplus Fund.** Any amount in the Surplus Fund shall be immediately transferred to the Energy Projects Account to be used toward the costs of the Project or to redeem Bonds, as provided in Section 4.04(e) hereof. After the redemption of all Outstanding Bonds, any amounts remaining on deposit in the Surplus Fund shall be transferred to the owner of the Site.

Section 4.08. Reserved.

Section 4.09. Reserved

Section 4.10. Administrative Expenses. At the written direction of an Authorized Authority Representative, the Trustee shall disburse, as required, moneys held in the Revenue Fund to pay, or reimburse the Authority or the Trustee for the payment of, Administrative Expenses including, without limitation, the Authority's scheduled administrative fees, legal fees for the Authority or the Trustee and reasonable fees and expenses of the Authority or the Trustee. Such amounts shall be paid to the party to whom those amounts are due.

Section 4.11. Reserved.

Section 4.12. Conversion Proceeds. Any Conversion Proceeds received by the Authority as the result of a casualty to the Project, or from a governmental Person as result of the Condemnation or sale under threat of Condemnation of any portion of the Project shall be deposited initially in the Revenue Fund. Thereafter all Conversion Proceeds to be used to repair or replace the portion or portions of the Project damaged, destroyed or taken shall be transferred to the Energy Project Account and disbursed in accordance with the provisions of Section 4.04 of this Trust Agreement and the Cooperative Agreement, as applicable, to repair, rebuild or replace such portion of the Project damaged, destroyed, or taken. Any remaining Conversion Proceeds shall be deposited in the Bond Fund and applied to the optional redemption of the Bonds, or, if the Bonds have already been refunded or retired by another issue of Bonds, the remaining Conversion Proceeds shall be deposited into the Bond Fund and applied to the prepayment of such refunding Bonds.

Section 4.13. Non-Presentation of Bonds. If a Bond is not presented for payment when due in whole or in part, whether at maturity, prior redemption or otherwise, or a check or draft for interest is uncashed, and if moneys for the purpose of paying and sufficient to pay the amount involved have been made available to the Trustee for the benefit of the Holder, all liability of the Authority to that Holder for that payment shall thereupon cease and be discharged completely, and it shall thereupon be the duty of the Paying Agent to hold those moneys in trust, without liability for interest on them, for the exclusive benefit of that Holder. Subject to the provisions of this Section 4.13, that Holder (and successive Holders of that Bond) shall thereafter be restricted exclusively to those moneys for any claim of whatever nature on his part under this Trust Agreement or on or with respect to that amount then due on that Bond or that check or draft. Any moneys so held by the Paying Agent and remaining unclaimed by the Holder (or successive Holders) of that Bond, for a period of three years after the date on which that Bond became payable as provided above or on which that check or draft was issued, shall be paid to the Trustee and thereafter the Holder (or successive Holders) of that Bond shall look only to the Trustee for payment and then only to the amounts so received by the Trustee without any interest on those amounts, and the Paying Agent shall have no further responsibility with respect to those moneys.

The moneys paid to the Trustee pursuant to this Section 4.13 shall be credited to a special subaccount in the Bond Fund created for such purpose. The Trustee shall keep a record of the amounts with respect to the Bonds so deposited in the special subaccount, and moneys in that subaccount shall be applied to payment of Debt Service Charges on the Bonds with respect to which such moneys are transferred to the Trustee. Investment income from moneys in that subaccount shall be credited to the Interest Account of the Bond Fund.

Upon termination of this Trust Agreement, the moneys paid to the Trustee pursuant to this Section 4.13 shall be paid to the Authority and thereafter the Holder (or successive Holders) of that Bond shall look only to the Authority for payment and then only to the amounts so received by the Authority without any interest on those amounts, and the Trustee shall have no further responsibility with respect to those moneys.

Section 4.14. Moneys to be Held in Trust. All moneys required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision of this Trust Agreement, and any investments of those moneys, shall be held by the Trustee or the Paying Agent in trust for the purposes intended until used for or applied to those purposes.

Section 4.15. Investments of Money. Moneys in the funds, accounts, and subaccounts held by the Trustee shall be invested in Eligible Investments pursuant to the written directions of the Owner; provided, however, moneys in the Bond Fund and moneys in the Project Fund shall only be invested in Eligible Investments that mature or are subject to redemption by and at the option of the Holder not later than five (5) years from the date of that investment. Any investment made from moneys in any fund, account, or subaccount shall constitute part of that fund, account, or subaccount. All proceeds of sale and income from any investment in any fund, account, or subaccount shall be credited to that fund, account, or subaccount.

Section 4.16. No Interest in Special Funds. Except as specifically and expressly provided in this Trust Agreement with respect to certain earnings or other excess amounts and with respect to amounts remaining in Special Funds after all required transfers therefrom, the Authority shall not have any interest whatsoever in the Special Funds or the deposits or investments therein.

[END OF ARTICLE IV]

ARTICLE V

ADDITIONAL COVENANTS OF THE AUTHORITY

Section 5.01. Power to Issue Bonds and Make Pledges. The Authority is duly authorized pursuant to law to create and issue the Bonds and enter into this Trust Agreement and to pledge the Pledged Revenues, the Bond Fund and other Special Funds (collectively, the "Trust Estate") in the manner and to the extent provided in this Trust Agreement. The Bonds and the provisions of this Trust Agreement are and will be the valid and legally enforceable special obligations of the Authority, all in accordance with their terms and the terms of this Trust Agreement. To the extent permitted by law, the Authority shall at all times preserve, protect, and defend the Trust Estate under this Trust Agreement and all the rights of the Holders under this Trust Agreement against all claims and demands of all Persons whomsoever, but any expenditure of funds therefor shall be solely from Pledged Revenues.

Section 5.02. Collection of Special Assessments. While any Bonds are outstanding, the Authority covenants to enforce its rights to collect and receive the Special Assessments by promptly pursuing or causing to be pursued remedies appropriate and available to it for the collection of Delinquent Special Assessments, but any expenditure of funds therefor shall be solely from Pledged Revenues; provided, that the Trustee shall be authorized to take such action at the direction of the Authority subject to the terms of this Trust Agreement.

Section 5.03. Extension of Payment of Bonds and Interest. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any interest on the Bonds, by the purchase or funding of those Bonds or claims for interest or by any other arrangement. In case the maturity of any of the Bonds or the time for payment of any interest is extended with the consent of the Holder, such Bonds or claims for interest shall not be entitled in case of any Event of Default to the benefit of this Trust Agreement or to any payment out of the Special Funds (except moneys specifically held for the payment of the particular Bonds or interest thereon pursuant to this Trust Agreement), except subject to the prior payment of all Outstanding Bonds the maturity of which has not been extended and of such portion of any accrued interest on the Bonds as is not represented by such extended claims for interest.

Nothing in this Section 5.03 shall be deemed to limit the right of the Authority to issue any refunding Bonds, which issuance shall not be or be deemed to constitute an extension of maturity of Bonds or of payment of interest.

Section 5.04. Insurance Requirements.

(a) During the period of the construction of any part of the Project, the Authority shall cause the Owner to maintain appropriate liability and builder's risk insurance until completion of the construction of the Project (or portion thereof, where applicable). The Trustee acknowledges and agrees that the Authority may satisfy its obligations under this Section 5.04(a) by requiring the Owner to maintain appropriate liability and builder's risk insurance until completion of the

construction of the Project (or portion thereof, where applicable) as set forth in the Cooperative Agreement.

(b) As long as any Bonds remain outstanding, the Trustee agrees that the Authority shall cause the Owner to carry the Required Property Insurance Coverage and the Required Commercial General Liability Insurance Coverage with respect to the Project. The Trustee acknowledges and agrees that the Authority may satisfy its obligations under this Section 5.04(b) by requiring the Owner to maintain the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage as set forth in the Cooperative Agreement.

(c) All policies providing the insurance coverage required by this Section 5.04 shall designate the Authority and the Trustee as additional insureds and as the loss-payees and shall be made payable to the Authority and the Trustee.

(d) The Authority covenants that it will take such action as may be necessary to demand, collect and sue for any insurance money which may become due and payable under any policy of insurance required by this Trust Agreement. The Trustee is hereby authorized in its own name to demand, collect, sue, and receive any insurance money which becomes due and payable under any policies payable to it.

(e) In case of any damage or destruction of the Project or any part thereof, the Authority, to the extent it has knowledge of such damage or destruction, will give prompt written notice to the Trustee, the ESID, the City, [HASI OBS OP A LLC], as Original Purchaser (or its successor or successors thereto as Holder of the Bonds) and the Owner (or its successor or successors thereto as owner of the Assessed Properties) generally describing the extent of such damage or destruction. In such event, there shall be no abatement of any portion of the Special Assessments payable under the Cooperative Agreement. Any Net Proceeds received by the Authority, the ESID, the City, the Owner, or any other Person shall be, at the Owner's option, applied to either: (i) the payment of the costs of repair, rebuilding or restoration of the Project; or (ii) to the redemption of Bonds, and, if after such redemption, all of the Bonds have been discharged and retired, to or on the direction of the Authority as provided in and subject to the Cooperative Agreement; provided, that the foregoing commitment to repair, restore or rebuild the Project is made only for the benefit of, and is only enforceable by the Holders of the Bonds (and the Trustee on their behalf) and, subject to the foregoing conditions is enforceable by any of the foregoing express beneficiaries by mandamus, but only from and to the extent of Net Proceeds (and any other amounts deposited with the Authority or the Trustee and available therefor).

(f) All moneys received by or on behalf of the Authority, the ESID, the City, the Owner, the Trustee, or any other Person constituting Net Proceeds or otherwise to be used for the purposes aforesaid may, pending application, be invested in Eligible Investments at the written or oral (confirmed in writing) direction of an Authorized Authority Representative and shall, to the extent to be used for repair, rebuilding, improvement, restoration, acquisition or construction, be disbursed as provided herein and in the Cooperative Agreement for the investment and disbursement of moneys in the Energy Project Account of the Project Fund.

Section 5.05. Settlement of Claims. In the event any portion of the Special Assessment is not paid when due and becomes Delinquent Special Assessments, the Trustee shall not,

without the prior written consent of the Authority, agree to accept any payment in respect of such Delinquent Special Assessments from any Person owing Special Assessments, including but not limited to the County Treasurer of the County, that is less than the amount of such Special Assessments as levied pursuant to the Cooperative Agreement and the Special Assessments Act.

Section 5.06. Cooperative Agreement. While the Bonds remain outstanding, the Authority will not modify the Cooperative Agreement or otherwise take any action in a way that would materially adversely affect the amount of Pledged Revenues projected to be received in any year.

[END OF ARTICLE V]

ARTICLE VI

THE TRUSTEE, AND AUTHENTICATING AGENTS, PAYING AGENTS, AND REGISTRARS

Section 6.01. Trustee's Acceptance and Responsibilities. The Trustee hereby accepts the trusts imposed upon it by this Trust Agreement, and agrees to perform those trusts as an ordinarily prudent corporate trustee under a trust agreement securing securities of a public entity, but only upon and subject to the following express terms and conditions:

(a) The Trustee may execute any of the trusts or powers of, and perform any of its duties under, this Trust Agreement by or through attorneys, agents or employees but shall be answerable for their conduct in accordance with the standard specified above. The Trustee shall be entitled to advice of counsel concerning all matters of trusts or powers of and duties under this Trust Agreement, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with those trusts, powers and duties. The Trustee may act upon the opinion or advice of any attorney (who may be Bond Counsel or an attorney for the Authority) approved by the Trustee in the exercise of reasonable care, and the Trustee shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon that opinion or advice.

(b) Except for its authentication certificate on the Bonds, the Trustee shall not be responsible for (i) any recital in this Trust Agreement or in the Bonds, (ii) the validity or priority of this Trust Agreement, (iii) the validity of execution by the Authority of this Trust Agreement or instruments of further assurance, (iv) the sufficiency of the security for the Bonds issued under and intended to be secured by this Trust Agreement, or (v) except as it is specifically directed in this Trust Agreement, for the application by the Authority of the proceeds of the Bonds. The Trustee shall not be bound to ascertain as to the performance or observance of any covenants, conditions or agreements on the part of the Authority under this Trust Agreement, but the Trustee may require of the Authority full information and advice as to the performance of those covenants, conditions and agreements.

(c) In the absence of bad faith on its part, the Trustee shall be protected in acting upon any notice, request, consent, certificate, report, order, budget, affidavit, letter, telegram, telecommunication, or other paper or document believed to be genuine and correct and to have been signed or sent by the proper Person or Persons. However, in the case of any such paper or document which by any provision of this Trust Agreement is required to be furnished to the Trustee, the Trustee shall be under a duty to examine it to determine whether or not it conforms to the requirements of this Trust Agreement. Any action taken by the Trustee pursuant to this Trust Agreement upon the request, authority, or consent of any Person who at the time of making that request or giving that authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and upon Holders of Bonds issued in exchange for or in place of that as a predecessor Bond.

(d) As to the existence or non-existence of any fact or the sufficiency or validity of any instrument, report, paper, document, or proceedings, in the absence of bad faith on its part the Trustee shall be entitled to rely upon a certificate signed on behalf of the Authority by an

Authorized Officer or an Authorized Authority Representative, as sufficient evidence of the facts contained or referred to in that certificate. The Trustee may accept a similar certificate to the effect that any resolution or other legislation in the form set forth or incorporated or referred to in that certificate has been duly adopted or enacted by the Authority as conclusive evidence that such resolution or legislation has been duly adopted or enacted and is in full force and effect. Prior to the occurrence of any Event of Default of which the Trustee has notice, the Trustee may accept a similar certificate to the effect that any particular transaction or action is necessary or expedient, but may at its discretion obtain such further evidence it deems necessary or advisable, but shall in no case be bound to obtain such further evidence.

(e) The Bond Resolution, opinions, reports, certificates, and other instruments provided for in this Trust Agreement may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated in them and shall be full warrant, protection, and authority to the Trustee for its actions taken under this Trust Agreement in reliance on them.

(f) The permissive right of the Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty and the Trustee, subject to the above provisions of this Article, shall not be answerable for other than its negligence, bad faith or willful misconduct.

(g) Except as may be expressly required by law or this Trust Agreement, the Trustee shall not be required to give any obligation or surety in respect of the execution of the trusts, powers and duties or otherwise in respect of the premises.

(h) Notwithstanding any provision contained elsewhere in this Trust Agreement, the Trustee may, but shall not be required to, demand in respect of the authentication of any Bonds or any action whatsoever within the purview of this Trust Agreement any showings, certificates, reports, opinions, or other information, or official action or evidence of official action, in addition to that required by the terms of this Trust Agreement as a condition of that action by the Trustee, considered by it desirable for the purpose of establishing the right of the Authority to the authentication of any Bonds or the taking of any other action by the Trustee.

(i) Before taking action under Section 6.02 hereof or Article VII hereof (with the exception of any action required to be taken under Section 7.02 hereof), the Trustee may require that a satisfactory indemnity obligation be furnished for the reimbursement to it of all reasonable expenses to which it may be put and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its negligence, bad faith or willful misconduct by reason of any action so taken.

(j) Unless otherwise provided in this Trust Agreement, moneys received by the Trustee under this Trust Agreement need not be segregated from other funds except to the extent required by this Trust Agreement or other Bond Proceedings or by law. The Trustee shall not be under any liability for interest on any moneys received by it under this Trust Agreement except as may be provided in this Trust Agreement or as may be agreed upon with the Authority.

(k) No provision of this Trust Agreement shall be construed to relieve the Trustee from liability for its own negligent action, negligent failure to act, bad faith or willful misconduct, except that:

(i) The Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, employees or agents, unless it shall be established that the Trustee was negligent in ascertaining the pertinent facts;

(ii) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in Aggregate Outstanding Principal Amount of the Bonds, or the Holder of a lesser Aggregate Outstanding Principal Amount as otherwise authorized in this Trust Agreement, relating to the time, method and place of conducting any proceeding for any remedy available to, or exercising any trust, duty or power conferred upon, the Trustee under this Trust Agreement; and

(iii) No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Trust Agreement, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of those funds or adequate indemnity against that liability is not reasonably assured to it.

The provisions of this Section 6.01 shall apply to the Paying Agent, the Authenticating Agent, and the Registrar.

Section 6.02. Intervention by Trustee. In any judicial proceeding to which the Authority is a party and which in the opinion of the Trustee and its attorney has a substantial bearing on the interest of Holders, the Trustee may intervene on behalf of Holders and shall do so if requested in writing by the Holders of at least twenty-five percent (25%) of the Aggregate Outstanding Principal Amount of the Bonds. The rights and obligations of the Trustee under this Section 6.02 are subject to the approval of intervention by a court of competent jurisdiction.

Section 6.03. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it or any successor to it may be consolidated, or to which it may sell or transfer its assets and trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation, or transfer to which it is a party, shall ipso facto be and become successor Trustee hereunder and vested with all such rights, powers, and duties as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties to this Trust Agreement; provided, however, that any such successor Trustee shall be a corporate trustee which may be a trust company or a bank having the powers of a trust company within the State, or outside the State but authorized to exercise trust powers within the State.

Section 6.04. Resignation of the Trustee. The Trustee may at any time resign from the trusts created by this Trust Agreement by giving written notice mailed to the Authority, any Securities Depository which is then a Holder, each Original Purchaser of the Bonds, and any

other Authenticating Agents, Registrars, and Paying Agents, not less than sixty (60) days before the resignation is stated to take effect. The resignation shall take effect immediately upon the appointment pursuant to Section 6.06 hereof of a successor Trustee if the successor Trustee is appointed before the time stated in the notice and accepts the trusts of this Trust Agreement.

Section 6.05. Removal of the Trustee. The Trustee may be removed at any time by (i) the Holders by an instrument or concurrent instruments in writing delivered to the Trustee and to the Authority and signed by or on behalf of the Holders of not less than a majority in Aggregate Outstanding Principal Amount of Bonds, or (ii) so long as no Event of Default has occurred and is continuing, by the written order of the Authority delivered to the Trustee and mailed to each Original Purchaser of the Bonds, any Securities Depository which is then a Holder, and any other Paying Agents, Registrars and Authenticating Agents, not less than sixty (60) days before the removal is to take effect.

The Trustee may also be removed at any time by a court of competent jurisdiction, upon the application of the Authority or the Holders of not less than 25% in Aggregate Outstanding Principal Amount of the Bonds, for any breach of trust or for acting or proceeding in violation of or for failing to act or proceed in accordance with any provision of this Trust Agreement with respect to the trusts, powers and duties of the Trustee.

The Authority shall publish notice of removal of the Trustee at least once in a financial or other newspaper of national circulation not less than thirty (30) days before the removal is to take effect.

Section 6.06. Powers and Appointment of Successor Trustee. If the Trustee resigns or is removed, or is dissolved, or otherwise becomes incapable of acting as Trustee under this Trust Agreement, or if the Trustee is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee shall be appointed by the Authority. However, following ten (10) days after the notice of resignation or instrument of removal is delivered as provided in Section 6.04 or 6.05 hereof, or the Trustee is dissolved, taken under control or otherwise incapable of action as above provided, then the Holders of a majority in Aggregate Outstanding Principal Amount of Bonds, by an instrument or concurrent instruments in writing signed by or on behalf of those Holders filed with the Authority, may designate a successor Trustee unless prior to that filing a successor Trustee has been appointed by the Authority.

Each successor Trustee appointed pursuant to the provisions of this Section 6.06 shall have the same qualifications as provided for a successor Trustee in Section 6.03 hereof, shall have a reported capital and surplus of not less than \$100,000,000, shall be willing to accept the trusteeship under the terms and conditions of this Trust Agreement and shall give notice of its appointment as successor Trustee by one publication in a financial or other newspaper of national circulation.

Each successor Trustee so appointed shall execute, acknowledge and deliver to its predecessor and to the Authority an instrument in writing accepting that appointment, and thereupon that successor without any further act shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor as Trustee. The predecessor Trustee

shall on the written request of its successor or of the Authority execute and deliver an instrument transferring to the successor Trustee all the rights, powers and trusts of the predecessor Trustee. Should any instrument in writing from the Authority be required by a successor Trustee for more fully and certainly vesting in that successor the rights, powers, trusts and duties vested or intended to be vested in the predecessor Trustee, any and all of those instruments in writing shall, on request of the successor Trustee, be executed, acknowledged and delivered by the Authority.

In the event of a change in Trustee, the predecessor Trustee shall cease to be custodian of any Special Funds, moneys or investments it may hold pursuant to this Trust Agreement and cease to be, as Trustee, the Registrar, Authenticating Agent and Paying Agent, and the successor Trustee as Trustee shall assume those duties.

Section 6.07. Trustee as Paying Agent, Authenticating Agent and Registrar. The Trustee agrees to act as the Registrar, Paying Agent and Authenticating Agent, for and in respect to the Bonds to the extent provided in this Trust Agreement.

Section 6.08. Merger, Resignation, Removal and Succession of Authenticating Agents, Paying Agents, and Registrars.

(a) **Merger or Consolidation.** Any corporation or association with or into which any Authenticating Agent, Paying Agent, or Registrar may be merged or consolidated, or with which it may be consolidated, or any corporation or association resulting from any merger, consolidation or conversion to which that agent or Registrar may be a party, or any corporation or association succeeding to the business of that agent or Registrar, shall be the successor of that Authenticating Agent, Paying Agent, or Registrar for the purposes of this Trust Agreement, if that successor corporation or association is otherwise eligible under this Trust Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto or the agent or Registrar or the successor.

(b) **Resignation and Removal.** An Authenticating Agent, a Paying Agent, or a Registrar may resign at any time by giving written notice by mail to the Authority and the Trustee, and the Authority and the Trustee may at any time terminate the agency of any Authenticating Agent, Paying Agent, or Registrar by giving written notice to that Person and to the Trustee or the Authority, as the case may be. Upon receiving notice of resignation or upon termination, or in case at any time any Agent or Registrar ceases to be eligible under this Section 6.08, or if the position of Agent or Registrar becomes vacant for any reason, the Authority or the Trustee may appoint a successor. The Trustee or the Authority shall give written notice of the appointment of a successor Authenticating Agent, Paying Agent, or Registrar to the other, and the Trustee, within ten (10) days after that appointment, shall mail notice of that appointment to all Holders affected by the change as their names and addresses appear on the Register on the date of that appointment.

(c) **Trustee Payments.** The Trustee shall pay to any Authenticating Agent, Paying Agent, or Registrar appointed by it reasonable compensation for its services, and the Trustee shall be entitled to be reimbursed by the Authority for those payments, subject to the provisions of Section 6.09 hereof.

(d) **Applicability of Section 6.01.** The provisions of Section 6.01 hereof shall, to the extent applicable apply to any Paying Agent, Authenticating Agent, or Registrar, except as otherwise provided in an agreement approved by the Authority.

Section 6.09. Fees, Charges, and Expenses of Trustee, Paying Agents, Authenticating Agents, and Registrars. The Trustee shall be entitled to payment of reasonable fees for its services rendered under this Trust Agreement and to reimbursement of its reasonable expenses, charges and other disbursements and those of its attorneys, agents, and employees incurred in and about the administration and execution of the trusts hereby created and the performance of its powers and duties under this Trust Agreement, including those as Paying Agent, Authenticating Agent, and Registrar. The Paying Agents, Authenticating Agents, and Registrars shall be entitled to payment and reimbursement of their reasonable fees and charges as such agents. The reasonable fees for the respective ordinary services and charges of the Trustee and the Authority shall be entitled to payment and reimbursement as Administrative Expenses from moneys available therefor, including from the Revenue Fund and the other Special Funds. Any amounts payable to the Trustee, the Registrar, any Paying Agent, any Authenticating Agent, or the Authority pursuant to this Section 6.09 shall be payable upon demand and shall bear interest from the date of demand therefor at a rate which is the rate announced by the Trustee in its lending capacity as a bank as its “prime rate” or “base rate” on the date of such demand, (i) shall be an additional obligation secured by this Trust Agreement, (ii) shall be given a preference in payment over any Debt Service Charges, and (iii) shall be paid out of the Pledged Revenues. The initial or acceptance fees of the Trustee and the fees, charges, and expenses of the Trustee, the Registrar, or any Paying Agents and Authenticating Agents to which reference is made above, may be paid by the Authority from the Project Fund as and when those fees, charges, and expenses become due to the extent that payment of those fees, charges, and expenses from that fund is in accordance with generally accepted accounting principles. Without creating a default or an Event of Default, the Authority may contest in good faith the necessity for any service or expense and the reasonableness of any fee, charge or expense under this Section 6.09. The Trustee, the Paying Agents, the Authenticating Agents, and the Registrars shall not be entitled to payment or reimbursement under this Section 6.09 for services or expenses occasioned by their own negligence, bad faith, or willful misconduct.

The Authority will, to the extent permitted by law, immediately upon demand pay or reimburse the Trustee for all attorneys fees, costs, and expenses incurred by the Trustee in any proceedings involving an insolvent or a debtor under federal bankruptcy law, or in any action proceeding or dispute of any kind in which the Trustee is made a party, or appears as in intervenor or party plaintiff or defendant, affecting or relating to the Bonds or any other Bonds secured hereby, this Trust Agreement, or the Authority or any action to protect the security hereof, and any such amounts paid by the Trustee shall, except as may be limited by law, be added to the indebtedness secured hereby and secured by the lien and security interest of this Trust Agreement.

Payment or reimbursement by the Authority under this Section 6.09 shall be limited to and made solely from Pledged Revenues of the Authority available for that purpose.

Section 6.10. Adoption of Authentication. In the case of any Bonds having been authenticated but not delivered, any successor Trustee or Authenticating Agent may adopt the certificate of authentication of the predecessor Trustee or Authenticating Agent and deliver the Bonds so authenticated as provided in this Trust Agreement. If any Bonds shall not have been authenticated, any successor Trustee or Authenticating Agent may authenticate such Bonds either in the name of its predecessor or in its own name. In all such cases that certificate of authentication shall have the same force and effect as provided in the Bonds or in this Trust Agreement with respect to the certificate of authentication of the Trustee or Authenticating Agent.

Section 6.11. Trustee, Authenticating Agents, Registrars and Paying Agents May Deal in Bonds. The Trustee, Authenticating Agents, Registrars, and Paying Agents, and any of their directors, officers, employees, or agents, may buy, sell, hold, and deal in the Bonds, and may in good faith become owners of Bonds with the same rights as Holders that they would have under this Trust Agreement if they did not hold those capacity.

Section 6.12. Right of Trustee to Advance Funds. The Trustee is authorized to advance funds to make payments and incur expenses as required by this Trust Agreement. The Trustee may make those advances, but without prejudice to any rights of the Trustee or the Holders against the Authority for failure of the Authority to do so. Any amount so paid at any time, with interest thereon at a rate which is the rate announced by the Trustee in its lending capacity as a bank as its “prime rate” or “base rate” on the date of such payment, (i) shall be an additional obligation secured by this Trust Agreement, (ii) shall be given a preference in payment over any Debt Service Charges, and (iii) shall be paid out of the Pledged Revenues. The Trustee shall make the advance, if it shall have been requested to do so by the Holders of at least 25% in Aggregate Outstanding Principal Amount of the Bonds and shall have been provided with adequate funds for the purpose of making the advance.

Section 6.13. Special Assessments. The Trustee shall take such actions to enforce its rights under the Cooperative Agreement and the Security Agreement to cause collection of the Special Assessments and to enforce the Special Assessments as the Holders of a majority of the Outstanding Bonds shall direct; provided, however, that (a) any direction shall not be other than in accordance with the terms of this Trust Agreement; (b) the Trustee shall be indemnified as provided in Section 6.01 hereof; and (c) the Trustee may take any other action which it deems to be proper and not inconsistent with such direction.

[END OF ARTICLE VI]

ARTICLE VII

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS

Section 7.01. Events of Default. The occurrence of any of the following events, subject to the provisions of Sections 7.03 and 7.07 hereof, is declared to be and to constitute an “Event of Default” under this Trust Agreement:

(a) The interest on any Bond is not paid when and as the same shall have become due and payable;

(b) The principal or Accreted Amount of or any redemption premium on any Bond is not paid when and as the same shall have become due and payable, whether at maturity or by call for redemption; and

(c) Failure to perform or observe duly or punctually any other covenant, condition or agreement contained in the Bonds or this Trust Agreement and to be performed by the Authority, which failure shall have continued for a period of ninety (90) days after written notice of it to the Authority given by the Trustee or the Holders of not less than 25% in Aggregate Outstanding Principal Amount of affected Bonds.

The Trustee shall not be required to take notice, and shall not be deemed to have notice or knowledge, of any Event of Default described in subparagraph (c) above, unless the Trustee is notified specifically of the Event of Default in a written instrument delivered to it by the Authority or by the Holders of at least 10% of the Aggregate Outstanding Principal Amount of Bonds. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no Event of Default as described in subparagraph (c) of this Section 7.01.

Section 7.02. Notices of Events of Default. If an Event of Default occurs, the Trustee, within five (5) days after having knowledge of that Event of Default, shall give written notice of that Event of Default to the Authority.

The Trustee shall give to the Original Purchasers of the Bonds then outstanding, to the Holders, and to any other Paying Agents and Authenticating Agents, written notice by mail of each Event of Default known to the Trustee within thirty (30) days after having knowledge of its occurrence, unless the Event of Default has been remedied or cured before the giving of that notice. Notice to the Holders shall be given by mailing notice to all Holders of Registered Bonds, as their names and addresses appear on the Register at the close of business fifteen (15) days prior to the mailing of that notice.

Section 7.03. Remedies. If an Event of Default as described in subparagraph (a) or (b) of Section 7.01 hereof has occurred and is continuing the Trustee shall, and if an Event of Default as described in subparagraph (c) of Section 7.01 hereof has occurred and is continuing, the Trustee may, and upon the written request of the Holders of not less than twenty-five percent (25%) in Aggregate Outstanding Principal Amount of Bonds shall, subject to the provisions of

Section 6.01 hereof, proceed in its own name to protect and enforce its rights and the rights of the Holders under this Trust Agreement by such of the following remedies as the Trustee, being advised by counsel, shall deem most effective to protect and enforce those rights:

(a) By mandamus or other suit, action, or proceeding at law or in equity enforce all the rights of the Holders, including the compelling of the performance of all duties of the Authority under the Bond Proceedings and the enforcement of the payment of Debt Service Charges;

(b) In the case of an Event of Default described in subparagraph (a) or (b) of Section 7.01 hereof, as assignee of the Authority, may take any and all actions as assignee of and, to the extent required by law, in the name of and for and on behalf of the City, to collect delinquent Special Assessments levied by the City pursuant to the Special Assessments Act and to cause the lien securing the delinquent assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Trust Agreement;

(c) Bring suit upon the Bonds;

(d) Enjoin unlawful activities or activities in violation of the rights of the Holders under this Trust Agreement; and

(e) In the case of an Event of Default described in subparagraph (a) or (b) of Section 7.01 hereof, apply to a court of competent jurisdiction to appoint a receiver (which may be the Trustee) to receive and administer the Pledged Revenues, with full power to pay and to provide for payment of Debt Service Charges, and with such powers, subject to the discretion of the court, as are accorded receivers in general equity cases, excluding any power (i) to pledge additional revenues or receipts or other income or moneys of the Authority to the payment of those Debt Service Charges, and (ii) to take possession of, mortgage, or cause the sale or otherwise dispose of any capital facilities.

Notwithstanding anything in this Trust Agreement to the contrary, neither the Trustee nor the Holders of any Bonds shall have any right to cause the acceleration of the payment of principal of, premium, if any, or interest on any Bonds. If the Authority fails to make any payment of principal of, premium, if any, or interest on any Bonds, the item in default shall continue to be an obligation of the Authority (payable only from Pledged Revenues) until such payment shall have been fully paid.

Section 7.04. Enforcement of Rights Under Agreement. Upon the occurrence and continuance of any Event of Default the Trustee may proceed, and upon the written request of the Holders of not less than twenty-five percent (25%) in Aggregate Outstanding Principal Amount of the Bonds shall proceed, subject to the provisions of Section 6.01 hereof, to protect and enforce its rights and the rights of the Holders under this Trust Agreement by such suits, actions, or special proceedings in equity or at law, either for the specific performance of any

covenant or agreement contained in this Trust Agreement or in the aid or execution of any power granted in this Trust Agreement or for the enforcement of any proper legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effective to protect and enforce those rights.

In the enforcement of any remedy under this Trust Agreement the Trustee shall be entitled to sue for, enforce payment of, and receive any and all amounts then or during any default becoming due and at any time remaining unpaid on account of principal, Accreted Amount, interest, or otherwise under any of the provisions of this Trust Agreement or of the Bonds, with interest on overdue payments at the rate or rates of interest specified or provided for in those Bonds, together with any and all costs and expenses of collection and of all proceedings under this Trust Agreement and under the Bonds, without prejudice to any other right or remedy of the Trustee or of the Holders, and to recover and enforce judgment or decree against the Authority, but solely as provided in this Trust Agreement and in the Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from the Pledged Revenues and moneys in the Revenue Fund and the other Special Funds from which the Bonds are payable) in any manner provided by law, the moneys adjudged or decreed to be payable.

The Holders of not less than a majority in Aggregate Outstanding Principal Amount of the Bonds shall have the right at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any and all remedial proceedings under this Trust Agreement. However, (i) that direction shall not be otherwise than in accordance with the provisions of law or of this Trust Agreement, (ii) the Trustee shall be indemnified as provided in Section 6.01 hereof, and (iii) the Trustee shall have the right to decline to follow any such direction which in its opinion would be unjustly prejudicial to Holders not parties to that direction.

No remedy by the terms of this Trust Agreement conferred upon or reserved to the Trustee (or to the Holders of the Bonds) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and in addition to any other remedy given to the Trustee or to the Holders of the Bonds under this Trust Agreement or now or hereafter existing.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of or acquiescence in that default or Event of Default. Every such right and power may be exercised from time to time and as often as may be deemed expedient.

On the occurrence of an Event of Default, neither the Authority nor anyone claiming through or under it, shall set up, claim, or seek to take advantage of any laws now or hereafter in force, in order to prevent or hinder the enforcement of this Trust Agreement, but the Authority, for itself and all who claim through or under it, hereby waives, to the extent it may lawfully do so, the benefit of all such laws to which it may be entitled.

Section 7.05. Effect of Abandonment of or Adverse Decision in Any Proceeding or Recovery of Judgment. If any proceeding taken by the Trustee on account of any Event of Default is discontinued or abandoned for any reason, or is determined adversely, then and in

every such case the Authority, the Trustee, and the Holders shall be restored to their former respective positions and rights under this Trust Agreement, and all right, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

No recovery of any judgment by the Trustee, and no levy of any execution under any judgment under this Trust Agreement, shall affect in any manner or to any extent the rights and duties provided for in this Trust Agreement, or any rights, powers, or remedies of the Trustee under this Trust Agreement, or any rights, powers, or remedies of the Holders of the Bonds, but those rights, powers, and remedies of the Trustee and of the Holders of the Bonds shall continue unimpaired as before.

Section 7.06. Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Trust Agreement and under any of the Bonds may be enforced by the Trustee without possession of any of the Bonds and without production of any of the Bonds at any trial or other proceedings relative thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds. Any recovery of judgment shall be for the benefit of the Holders of the Bonds then outstanding, subject to the provisions of this Trust Agreement.

Section 7.07. Waivers of Events of Default. At any time the Trustee may in its discretion waive any Event of Default under this Trust Agreement and its consequences, and shall do so upon the written request of the Holders of (i) at least a majority in Aggregate Outstanding Principal Amount of all the Bonds in respect of which an Event of Default in the payment of Debt Service Charges has occurred, or (ii) at least 25% in Aggregate Outstanding Principal Amount of all Bonds in case of any other Event of Default. However, there may not be so waived any Event of Default described in subparagraph (a) or (b) of Section 7.01 hereof, or any such declaration in connection therewith rescinded, unless at the time of that waiver or rescission payments of the amounts as provided in Section 7.03 hereof for waiver and automatic rescission in connection with such Event of Default have been made or provided for. In case of any such waiver or rescission, the Authority, the Trustee, and the Holders shall be restored to their common respective positions and rights under this Trust Agreement. No such waiver or rescission shall extend to or impair any rights consequent on any subsequent or other Event of Default.

Section 7.08. Limitations on Remedial Action by Holders. No Holder of any Bond shall have the right to institute any suit, action, or proceeding for the enforcement of or for the execution of any trust of this Trust Agreement or for the appointment of a receiver or any other remedy under this Trust Agreement unless (i) an Event of Default has occurred, (ii) that Holder or another Holder has previously given to the Trustee written notice of that Event of Default, (iii) the Holders of at least 25% in Aggregate Outstanding Principal Amount of Bonds have made written request to the Trustee and afforded the Trustee reasonable opportunity to proceed to exercise the powers granted above in this Article, or to institute such action, suit or proceeding in its own name and have also offered to the Trustee indemnity as provided in Section 6.01 hereof, and (iv) the Trustee shall thereafter have failed or refused to exercise the powers granted above in this Article, or to institute such action, suit, or proceeding in its own name, within a reasonable time. That notification, request, and offer of indemnity are in every case to be, at the option of the Trustee, conditions precedent to the execution of the powers and trusts of this Trust

Agreement, and to any action or cause of action for the enforcement of this Trust Agreement or for the appointment of a receiver or for any other remedy under this Trust Agreement.

It is understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice the benefit of this Trust Agreement by its or their action or to enforce any right under this Trust Agreement except in the manner provided in this Trust Agreement, and that the proceedings shall be instituted, had and maintained in the manner provided in this Trust Agreement and for the benefit of the Holders of all Bonds then outstanding. Subject to the foregoing, each Holder shall have a right of action to enforce the payment of the principal and Accreted Amount of and interest on any Bond owned by that Holder at and after the due date thereof at the place, from the sources and in manner stated in that Bond.

Section 7.09. Application of Moneys. All moneys received by the Trustee or a receiver pursuant to any right given or action taken under the provisions of this Article, subject to any provisions made pursuant to Article III hereof, Section 4.06 hereof, or Section 4.12 hereof, and after payment of the fees, costs, expenses, liabilities, and advances incurred or made by the Trustee or receiver, shall be applied as follows:

(a) All such moneys shall be applied:

First: To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of that interest and beginning with the earliest maturity, and if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Persons entitled thereto, without any discrimination or privilege except as to any difference in the respective rates of interest specified in the Bonds; and

Second: To the payment to the Persons entitled thereto of the unpaid principal or Accreted Amount of any of the Bonds which shall have become due (other than Bonds previously called for redemption for the payment of which moneys are held pursuant to the provisions of this Trust Agreement), whether at stated maturity, by redemption, or pursuant to any Mandatory Sinking Fund Requirements, in order of their due dates and beginning with the earliest due date, with interest on the Bonds from the respective dates upon which they became due, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with all such interest, then to the payment of the Bonds ratably, according to the amount of principal or Accreted Amount due on such date, to the Persons entitled thereto without any discrimination or privilege.

(b) If the principal and accrued Accreted Amount of all the Bonds has become due, all such moneys shall be applied to the payment of the principal and accrued Accreted Amount and interest then due and unpaid upon the Bonds, without preference or priority of principal or Accreted Amount over interest or of interest over principal or Accreted Amount, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal, Accreted Amount, and interest, to the Persons entitled thereto without any discrimination or privilege except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all the Bonds has been declared due and payable pursuant to this Article, and if that declaration thereafter has been rescinded and annulled under the provisions of Sections 7.03 and 7.07 hereof, then, subject to the provisions of subparagraph (b) of this Section 7.09 in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of subparagraph (a) of this Section 7.09.

(d) Whenever moneys are to be applied pursuant to the provisions of this Section 7.09, those moneys shall be applied as provided in this Section 7.09 at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of moneys available for application and the likelihood of additional moneys becoming available for application in the future. Whenever the Trustee shall direct the application of those moneys, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon that date interest or Accreted Amount on the amounts of principal to be paid on that date, and for which moneys are available, shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit of any such moneys and of fixing of any such date, and the Trustee shall not be required to direct payment to the Holder of any unpaid Bond until that Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

The above subparagraphs (a), (b), (c), and (d) of this Section 7.09 shall apply to the application of Pledged Revenues received by any receiver appointed and acting pursuant to Section 7.03 hereof.

The provisions of this Section are in all respects subject to the provisions of Section 6.01 hereof.

Whenever all Bonds and interest and accrued Accreted Amount thereon have been paid under the provisions of this Section 7.09, and all expenses and charges of the Trustee, Authenticating Agents, Registrars, and Paying Agents and all other expenses payable under this Trust Agreement have been paid, any balance remaining in the Bond Fund or other Special Funds shall be paid to the owner of the Site.

[END OF ARTICLE VII]

**ARTICLE VIII
SUPPLEMENTAL TRUST AGREEMENTS**

Section 8.01. Supplemental Trust Agreements Not Requiring Consent of Holders.

The Authority and the Trustee, upon receipt of written consent of the Original Purchaser so long as it is the owner of the Bonds but otherwise without the consent of or notice to any of the Holders, may enter into agreements supplemental to this Trust Agreement as shall not, in the opinion of the Authority and the Trustee, be inconsistent with the terms and provisions of this Trust Agreement for any one or more of the following purposes:

(i) to cure any ambiguity, inconsistency, or formal defect or omission in this Trust Agreement;

(ii) to grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(iii) to subject additional revenues or receipts to the lien and pledge of this Trust Agreement;

(iv) to add to the Authority's covenants and agreements contained in this Trust Agreement other covenants and agreements thereafter to be observed for the protection of all or particular Holders, or to surrender or limit any right, power, or authority reserved to or conferred upon the Authority in this Trust Agreement;

(v) to evidence any succession to the Authority and the assumption by that successor of the Authority's covenants and agreements contained in this Trust Agreement and the Bonds;

(vi) to permit compliance with changes in federal or state securities or tax laws or regulations;

(vii) to permit the exchange of Bonds, at the option of the Holders, for coupon Bonds payable to bearer, in an aggregate principal amount not exceeding the unmatured and unredeemed principal amount or Accreted Amount of the predecessor Bonds, bearing interest at the same rate or rates and maturing on the same date or dates, with coupons attached representing all unpaid interest due or to become due on the predecessor Bonds, but only if, in the opinion of Bond Counsel, that exchange would not result in inclusion of the interest on any of the Bonds in a Holder's gross income for federal income tax purposes;

(viii) to permit the Trustee to comply with any obligations imposed upon it by law;

(ix) to specify further the duties and responsibilities of, and to define further the relationship among, the Trustee, the Authenticating Agent, the Registrar, or the Paying Agent;

(x) in connection with the issuance of Additional Bonds in accordance with Article II of this Trust Agreement, any applicable Supplemental Trust Agreement and any applicable Bond

Resolution, including any and all appropriate provisions relating to the issuance of Additional Bonds in form other than Registered Bonds;

(xi) to provide for the reissuance of the Bonds or their transfer to a Securities Depository, transfer of Bonds from one Securities Depository to another, and the succession of Securities Depositories, and the withdrawal of Bonds issued to a Securities Depository for holding in a book entry system and the issuance of replacement Registered Bonds to others than a Securities Depository; and

(xii) to make such provisions as may be appropriate in connection with interest rate swaps, caps or other hedges; or to issue options pertinent to the purchase or redemption of Bonds, and any other amendment which, in the judgment of the Trustee, (i) is not to the prejudice of the Trustee or the Holders of Outstanding Bonds which that amendment may affect, or (ii) is not to the prejudice of the Trustee or to the substantial prejudice of the Holders of Outstanding Bonds and is consented to and approved by the owners of at least a majority of the Aggregate Outstanding Principal Amount of the Bonds which that amendment affects.

The provisions of clauses (vi), (vii), and (viii) of the preceding paragraph shall not be deemed to constitute a waiver by the Trustee, the Authority or any Holder of any right which it may have in the absence of those clauses (vi), (vii), and (viii) to contest the application of any change in law to this Trust Agreement or the Bonds.

Section 8.02. Supplemental Trust Agreements Requiring Consent of Holders.

Exclusive of Supplemental Trust Agreements referred to in Section 8.01 hereof and subject to the terms, provisions, and limitations contained in this Section and not otherwise, the Holders of not less than a majority in Aggregate Outstanding Principal Amount of the Bonds shall have the right, from time to time, anything contained in this Trust Agreement to the contrary notwithstanding, to consent to and approve the execution by the Authority and the Trustee of such other agreement or agreements supplemental to this Trust Agreement as may be deemed necessary and desirable by the Authority for the purpose of modifying, altering, adding to or rescinding, in any particular, any of the terms or provisions contained in this Trust Agreement. However, nothing in this Section 8.02 or elsewhere in this Trust Agreement shall permit or be construed as permitting:

(i) an extension of the maturity of the principal or Accreted Amount of or the interest on any Bond, or a reduction in the principal amount or Accreted Amount of or the rate of interest or redemption premium on any Bond, or a reduction in the amount or extension of the time of any payment required by any Mandatory Sinking Fund Requirements, without the consent of the Holder of each Bond so affected; or

(ii) a reduction in the Aggregate Outstanding Principal Amount of the Bonds required for consent to such Supplemental Trust Agreement without the consent of the Holders of all of the Bonds then outstanding.

Bonds owned or held by or for the account of the Authority shall not be deemed outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Section 8.02, and the Authority shall not be entitled with respect to such

Bonds to give any consent or take any other action provided for in this Section 8.02. At the time of any consent or other action taken under this Section 8.02, the Authority shall furnish the Trustee a certificate of an Authorized Authority Representative, upon which the Trustee may rely, describing all Bonds so to be excluded.

If at any time the Authority requests the Trustee to enter into a Supplemental Trust Agreement for any of the purposes of this Section 8.02, the Trustee, upon being satisfactorily indemnified with respect to expenses, shall cause notice of the proposed execution of that Supplemental Trust Agreement to be mailed to each Original Purchaser of the Bonds then outstanding, and to all Holders of Bonds then outstanding at their addresses as they appear in the Register. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail, or the failure of the Holder to receive, the notice required by this Section 8.02, and any such failure shall not affect the validity of that Supplemental Trust Agreement when consented to and approved as provided in this Section 8.02. The notice shall briefly set forth the nature of the proposed Supplemental Trust Agreement and shall state that copies of it are on file at the office of the Trustee for inspection by all Holders.

If within such period, not exceeding twelve (12) months, following the mailing of that notice, as shall be prescribed by the Authority, the Trustee receives instruments purporting to be executed by the Holders of not less than a majority in Aggregate Outstanding Principal Amount of the Bonds and which instruments refer to the proposed Supplemental Trust Agreement described in the notice and specifically consent to and approve the execution of it in substantially the form of the copy referred to in the notice as on file with the Trustee, thereupon, but not otherwise, the Trustee shall execute that Supplemental Trust Agreement in substantially that form, without liability or responsibility to any Holder of any Bond, whether or not that Holder shall have consented thereto.

That consent shall be binding upon the Holder of the Bond giving that consent and, anything in Section 10.01 hereof to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange for it, whether or not that subsequent Holder has notice of the consent. However, the consent may be revoked by the Holder of the Bond who gave the consent if still the Holder, or by a subsequent Holder of that Bond, by filing a written revocation with the Trustee prior to the date of execution by the Trustee of the Supplemental Trust Agreement. Promptly after the Holders of the required percentage of Bonds have filed their consents to the Supplemental Trust Agreement, the Trustee shall make and file with the Authority a written statement to that effect. That written statement shall be conclusive evidence that those consents have been so filed.

If the Holders of the required percentage in Aggregate Outstanding Principal Amount of the Bonds have consented to and approved the execution of the Supplemental Trust Agreement as provided in this Section 8.02, no Holder of any Bond shall have any right to object to the execution of that Supplemental Trust Agreement, or to object to any of the terms and provisions contained in or the operation of that Supplemental Trust Agreement, or in any manner to question the propriety of the execution of that Supplemental Trust Agreement or to enjoin or restrain the Trustee or the Authority from executing it or from taking any action pursuant to its provisions.

Section 8.03. Authorization to Trustee; Effect of Supplement. The Trustee is authorized to join with the Authority in the execution and delivery of any Supplemental Trust Agreement provided for in this Article and to make the further agreements and stipulations that may be contained in that Supplemental Trust Agreement.

Any Supplemental Trust Agreement executed in accordance with the provisions of this Article shall thereafter form a part of this Trust Agreement and all the terms and conditions contained in it as to any provision authorized to be contained in it shall be and shall be deemed to be part of the terms and conditions of this Trust Agreement for any and all purposes; this Trust Agreement shall be and shall be deemed to be modified and amended in accordance therewith; and the respective rights, limitations of rights, duties, immunities and obligations under this Trust Agreement of the Authority, the Trustee, Authenticating Agents, Registrars, Paying Agents and all Holders of Bonds then outstanding shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modifications and amendments.

Express reference to an executed Supplemental Trust Agreement may be made in the text of any Bonds thereafter issued if deemed necessary or desirable by the Trustee or the Authority. A copy of any Supplemental Trust Agreement provided for in this Article shall be mailed by the Trustee to the Original Purchaser of, and to each Rating Service that has at the Authority's request assigned a rating to, the Bonds affected by it.

Section 8.04. Opinion of Counsel. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of Bond Counsel or any counsel approved by it, who may be counsel for or designated by the Authority, as conclusive evidence that any proposed Supplemental Trust Agreement complies with the provisions of this Trust Agreement, and that it is proper for the Trustee, under the provisions of this Article, to join in its execution.

Section 8.05. Modification by Unanimous Consent. Notwithstanding anything contained elsewhere in this Trust Agreement, the rights and obligations of the Authority and of the Holders of the Bonds, and the terms and provisions of the Bonds and this Trust Agreement or any Supplemental Trust Agreement, may be modified or altered in any respect with the consents of the Authority and of the Holders of all of the Bonds then outstanding affected, as determined by the Trustee, by the modification or alteration.

[END OF ARTICLE VIII]

**ARTICLE IX
RESERVED**

[END OF ARTICLE IX]

ARTICLE X

DEFEASANCE

Section 10.01. Release of Agreement. If the Authority shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Outstanding Bonds all Debt Service Charges due or to become due thereon, and provision shall also be made for paying all other sums payable under this Trust Agreement by the Authority, then and in that event this Trust Agreement shall cease, determine, and become null and void, and the covenants, agreements, and other obligations of the Authority under this Trust Agreement shall be discharged and satisfied, and thereupon the Trustee shall execute and deliver to the Authority such instruments to evidence that release and discharge as may be reasonably required by the Authority, and the Trustee, Authenticating Agent, and Paying Agent shall assign and deliver to the Authority any moneys, investments, and Special Funds at the time subject to the lien of this Trust Agreement which may then be in their possession except for such as are held by the Trustee and Paying Agent (i) for the payment of Debt Service Charges or (ii) for payment to any provider of a Credit Support Instrument.

Section 10.02. Payment of Debt Service Charges. Debt Service Charges due or to become due on Outstanding Bonds shall be deemed to have been paid or caused to be paid within the meaning of Section 10.01 if:

(a) the Trustee, the Paying Agent, and the Authority, shall hold, in trust for and irrevocably committed thereto, sufficient moneys; or

(b) the Trustee or Authority shall hold, in trust for and irrevocably committed thereto, non-callable Federal Securities certified by a firm of independent certified public accountants of national reputation to be of such maturities and Interest Payment Dates and to bear such interest or other investment income as will be, without further investment or reinvestment of either the principal amount of or the interest earnings from them (likewise to be held in trust and committed, except as hereinafter provided), sufficient, together with any moneys referred to in (a) above, for the payment, when due, of all Debt Service Charges to the date or respective dates of maturity or redemption, as the case may be; provided, that if any Bonds are to be redeemed prior to their maturity, notice of that redemption shall have been duly given or irrevocable provision reasonably satisfactory to the Trustee shall have been duly made for the giving of that notice. Any moneys held in cash by the Trustee or Authority in accordance with the provisions of this paragraph shall be invested only in Federal Securities of which the maturities or redemption dates (at the option of the Holder) shall coincide as nearly as practicable with, but be not later than, the date or dates at which the moneys will be required for the purposes stated above. Any income or interest earned by, or increment to, the investments held under this paragraph, to the extent not required for the purposes of this Section 10.02, at the Authority's request shall be transferred to the Authority from time to time, free of any trust or lien.

Within thirty (30) days after Bonds are deemed paid or caused to be paid pursuant to this Section 10.02 or Section 10.03 hereof, the Trustee shall cause notice (i) to be given by mail to each Holder of those Bonds at the name and address shown on the Register on the date on which those Bonds are deemed paid or caused to be paid, and (ii) to be published at least once in a

financial or other newspaper of national circulation. That notice shall state the numbers or other identification of Bonds deemed paid or caused to be paid or that all Bonds or all Bonds of a particular maturity are deemed paid or caused to be paid, set forth a general description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 10.02, and specify the date or dates on which any of the Bonds are to be called for redemption pursuant to notice of redemption given or for which irrevocable provisions have been made for such notice pursuant to the first paragraph of this Section 10.02.

Section 10.03. Partial Defeasance. This Trust Agreement shall cease, determine, and become null and void, and the covenants, agreements, and other obligations of the Authority shall be discharged and satisfied, as to the Bonds, or as to certain of the Bonds, as specified by the Authority, upon deposit by the Authority with the Trustee of sufficient moneys or Federal Securities satisfying the requirements of Section 10.02 hereof with respect to the Debt Service Charges on those Bonds.

Section 10.04. Survival of Certain Provisions. The provisions of this Trust Agreement that relate to the maturity of the Bonds, Accreted Amount, and interest payments and Accreted Amount and Interest Payment Dates, optional and mandatory redemption provisions, credit against Mandatory Sinking Fund Requirements, exchange, transfer, and registration of Bonds, replacement of mutilated, destroyed, lost or wrongfully taken Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds and unclaimed moneys, the holding of moneys in trust, and the duties and indemnification of the Trustee, the Authority, the Paying Agents or the Authenticating Agents in connection with the foregoing, shall remain in effect and be binding upon the Trustee, the Authority, the Authenticating Agents, the Paying Agents and the Holders notwithstanding the release and discharge of this Trust Agreement. The provisions of this Article X shall survive any release, discharge and satisfaction of this Trust Agreement.

[END OF ARTICLE X]

ARTICLE XI

MISCELLANEOUS

Section 11.01. Instruments of Holders. Any consent, request, direction, approval, objection, or other instrument required by this Trust Agreement to be signed or executed by the Holders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Holders in Person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Trust Agreement, and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) The fact and date of the execution by any Person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within that jurisdiction that the Person signing that writing acknowledged before him the execution thereof, or by affidavit of any witness to that execution.

(b) The fact of ownership of Registered Bonds shall be proved by the Register.

Nothing contained above in this Section 11.01 shall be construed as limiting the Trustee to such proof. It is intended that the Trustee may accept any other or additional evidence which it deems to be sufficient. Any request or consent of the Holder of any predecessor Bond shall bind every future Holder of the same Bond in respect to anything done or suffered to be done by the Authority, the Trustee or any Authenticating Agent or Paying Agent pursuant to that request or consent.

Section 11.02. Limitation of Rights. With the exception of rights expressly conferred in this Trust Agreement, nothing expressed or mentioned in or to be implied from this Trust Agreement or the Bonds authorized in this Trust Agreement is intended or shall be construed to give to any Person other than the parties hereto, the Registrar, the Authenticating Agents, the Paying Agents, or the Holders of the Bonds and any other Person specifically mentioned herein any legal or equitable right, remedy, or claim under or in respect to this Trust Agreement or any covenants, conditions, and provisions contained herein. This Trust Agreement and all of its covenants, conditions, and provisions are intended to be and are for the sole and exclusive benefit of the parties herein described and the Holders of the Bonds as provided in this Trust Agreement.

Section 11.03. Severability. In case any section or provision of this Trust Agreement, or in case any covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Trust Agreement, or any application thereof, is for any reason held to be illegal or invalid, that illegality or invalidity shall not affect the remainder thereof or any other section or provision of this Trust Agreement or any other covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Trust Agreement, which shall be construed and enforced as if that illegal or invalid portion were not contained in it. Any such illegality or invalidity or inoperability or any application thereof shall not affect any legal and valid application thereof, and each such section,

provision, covenant, stipulation, obligation, agreement, act, or action, or part thereof, shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent from time to time permitted by law.

Section 11.04. Notices. It shall be sufficient service or giving of any notice, request, complaint, demand or other paper if it is mailed addressed as follows: if to the Authority, addressed to the Authority at its Notice Address; and if to the Trustee, addressed to the Trustee at its Notice Address. The Authority and the Trustee may, by notice given under this Section 11.04, designate any further, different or more specific addresses to which subsequent mailings shall be sent.

In connection with any notice mailed pursuant to the provisions of this Trust Agreement, a certificate or affidavit of the Trustee, the Authority, an Authenticating Agent, a Paying Agent, an Registrar, or the Holders of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

If because of the suspension of delivery of first class mail or for any other reason, the Trustee or other Person is unable to mail by the required class of mail any notice required to be mailed by the provisions of this Trust Agreement, the Trustee or other Person shall give that notice in such other manner as in its judgment most effectively approximates mailing of that notice, and the giving of that notice in that manner for all purposes of this Trust Agreement shall be deemed to be in compliance with the requirements for mailing of that notice.

Except as otherwise provided in this Trust Agreement, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail, and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 11.05. Payments Due on Saturdays, Sundays, and Holidays. If any Interest Payment Date, date of maturity of the principal or Accreted Amount of any Bonds, or date fixed for redemption of any Bonds (each referred to in this Section 11.05 as “the applicable date”) is a Saturday or Sunday, or a day on which:

(i) the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest, principal, Accreted Amount, and any redemption premium (each referred to in this Section 11.05 as the “payment”) need not be made by the Trustee or any Paying Agent on that date, and that payment shall be made on the next succeeding Business Day on which the Trustee and the Paying Agent are open for business with the same force and effect as if that payment were made on the applicable date, and no interest shall accrue for the period after that applicable date, or

(ii) a Paying Agent is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then the payment need not be made by that Paying Agent on that date, and the payment shall be made on the next succeeding Business Day on which that Paying Agent is open for business with the same force and effect as if the payment were made on the applicable date, and no interest shall accrue for the period after that applicable date.

If, however, the Trustee is open for business on the applicable date it shall make any payment with respect to interest on Outstanding Bonds and principal and Accreted Amount of and premium on Bonds presented to it for payment, regardless of whether any other Paying Agent is open for business or closed on that date.

Section 11.06. No Right to Levy of Excises or Taxes. Nothing in this Trust Agreement shall be construed as giving the Holders of any Bonds or the Trustee the right or expectation, and they shall have no right, to have excises or taxes levied by the Authority or otherwise, or applied, obligated or pledged, for the payment of Debt Service Charges.

Section 11.07. Extent of Covenants; No Personal Liability. All of the covenants, stipulations, obligations and agreements of the Authority contained in this Trust Agreement are and shall be deemed to be covenants, stipulations, obligations, and agreements of the Authority to the full extent authorized by the Act and permitted by the Ohio Constitution. No such covenant, stipulation, obligation, or agreement shall be deemed to be that of any present or future member of the Authority, or officer, agent, or employee of the Authority, in their individual capacity, and neither the members of the Authority nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of their issuance.

Section 11.08. Consents. Any consent, permission, or approval by the Trustee or Authority required or contemplated by this Trust Agreement shall not be unreasonably withheld or delayed.

Section 11.09. Binding Effect. This Trust Agreement shall inure to the benefit of and shall be binding upon the Authority and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Trust Agreement.

Section 11.10. Counterparts. This Trust Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.11. Governing Law. This Trust Agreement and the Bonds are and shall be deemed contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

[END OF ARTICLE XI]

IN WITNESS WHEREOF, the Authority has caused this Trust Agreement to be executed in its name and on its behalf by its duly authorized officers, and The Huntington National Bank, as Trustee, in token of its acceptance of the trusts created hereunder, has caused this Trust Agreement to be executed in its name, all as of _____, 2016.

GREENE COUNTY PORT AUTHORITY

By: _____

Title: Board Chairman

By: _____

Title: Secretary

**THE HUNTINGTON NATIONAL BANK, as
Trustee**

By: _____

Title: _____

EXHIBIT A

THE SECURITY REPRESENTED BY THIS DOCUMENT HAS BEEN ACQUIRED FOR INVESTMENT AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR UNDER ANY STATE SECURITIES LAW. WITHOUT SUCH REGISTRATION, SUCH SECURITY MAY NOT BE SOLD, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED, EXCEPT UPON COMPLIANCE WITH THE PROVISIONS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

Registered
Number
R-1

Registered
Dollars
\$[3,027,000]

**UNITED STATES OF AMERICA
STATE OF OHIO**

**GREENE COUNTY PORT AUTHORITY
PROPERTY ASSESSED CLEAN ENERGY TAXABLE REVENUE BOND
(Mall at Fairfield Commons Project)
SERIES 2016**

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>
December 1, 2031	_____, 2016	[5.250]%

Registered Owner: Hare & Co.

Principal Amount: THREE MILLION TWENTY-SEVEN THOUSAND DOLLARS
(\$[3,027,000])

GREENE COUNTY PORT AUTHORITY (the "Issuer"), a port authority created under Ohio Revised Code Sections 4582.21 to 4582.59, both inclusive (the "Act"), and a body both corporate and politic, for value received, promises to pay to the Registered Owner, but solely from the sources and in the manner referred to herein, the Principal Amount specified above, on the Maturity Date specified above, unless this Bond is called for earlier redemption, and to pay interest thereon at the aforesaid Interest Rate on June 1 and December 1 of each year (the "Interest Payment Dates"), commencing December 1, 2016, until the Principal Amount is paid. This Bond will bear interest from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid or duly provided for, unless the date of authentication of any Bond is less than 15 days prior to an Interest Payment Date, in which case interest shall accrue from such Interest Payment Date. Interest shall be calculated on the basis of a 360-day year and twelve 30-day months.

The principal of and any premium on this Bond is payable upon presentation and surrender hereof at the designated corporate trust office (the "Designated Office") of the Trustee, initially The Huntington National Bank (the "Trustee"), located in Cincinnati, Ohio. All other payments of principal and any premium (including those due by reason of mandatory or optional redemption as described below) of this Bond are payable when due at the Designated Office of the Trustee or at such designated office of any paying agent; provided, that if this Bond is not presented for payment, the Registered Owner shall endorse such payment on this Bond form and the Trustee shall endorse each such payment on the registration books (the "Register") maintained by the Trustee, as registrar ("Registrar"), and absent manifest error, such endorsement by the Trustee on the Register shall be conclusive evidence that such payment has been made and of the amount paid. Interest is payable on each Interest Payment Date and will be paid or transmitted by wire transfer to the person in whose name this Bond (or one or more predecessor Bonds) is registered (the "Holder") at the close of business on the fifteenth (15th) day of the calendar month immediately preceding that Interest Payment Date (the "Regular Record Date") on the Register. Any interest which is not timely paid or duly provided for shall cease to be payable to the Holder hereof (or of one or more predecessor Bonds) as of the Regular Record Date, and shall be payable to the Holder hereof (or of one or more predecessor Bonds) at the close of business on a special record date (the "Special Record Date") to be fixed by the Trustee for the payment of that overdue interest. Notice of the Special Record Date shall be mailed to Holders not less than ten days prior thereto. The principal of and interest on this Bond are payable in lawful money of the United States of America, without deduction for the services of the paying agent.

The Bonds shall not constitute the personal obligation, either jointly or severally, of the members or officers of the Issuer.

This Bond shall not be entitled to any security or benefit under the Trust Agreement or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

This Bond represents one of the duly authorized issue of Property Assessed Clean Energy Taxable Revenue Bonds (Mall at Fairfield Commons Project), Series 2016 (the "Bonds") issuable under the Trust Agreement, dated as of _____, 2016 (the "Trust Agreement"), between the Issuer and the Trustee, aggregating in principal amount \$[3,027,000] and issued to acquire, construct, equip and install the Project, as defined in Resolution No. 2016-__, passed by the Board of Directors of the Issuer (the "Board") on October __, 2016 (the "Bond Resolution"). The Bonds are special obligations of the Issuer, issued or to be issued under and are to be secured and entitled equally and ratably to the protection given by the Trust Agreement. The Bonds are issued pursuant to the Act, and in accordance with resolutions duly adopted by the Issuer.

All capitalized words used as defined terms to the extent not defined herein shall have the meaning assigned to those words and terms in the Trust Agreement.

NEITHER THE BONDS, NOR THE BOND RESOLUTION AUTHORIZING THE BONDS, NOR THE TRUST AGREEMENT CONSTITUTES A GENERAL OBLIGATION, DEBT, OR BONDED INDEBTEDNESS OF THE ISSUER, AND NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE ISSUER, THE STATE OF OHIO, OR ANY OTHER POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS, AND, FURTHER, THE HOLDERS HAVE NOT BEEN GIVEN AND HAVE NO RIGHT TO HAVE EXCISES, TAXES, OR CHARGES LEVIED BY THE ISSUER FOR THE PAYMENT OF THE DEBT SERVICE CHARGES.

Reference is made to the Trust Agreement and the Cooperative Agreement for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Trust Agreement and the Cooperative Agreement. Copies of the Trust Agreement and the Cooperative Agreement are on file in the Designated Office of the Trustee.

This Bond is a special obligation of the Issuer, and the Debt Service Charges (being the principal of, premium, if any, and interest on the Bonds) are payable solely from the Pledged Revenues, as defined and as provided in the Trust Agreement (including (i) the Special Assessments, including, without limitation, all moneys paid by the City under the Cooperative Agreement; (ii) all other payments, moneys, or amounts received or to be received by or otherwise pledged to the Issuer or the Trustee and intended to be used for Debt Service Charges, including without limitation, all moneys and investments in the Bond Fund, the Revenue Fund, and the Surplus Fund; (iii) any proceeds from the sale, lease, use or disposition of the Project by the Trustee, the ESID, the City, or the Issuer, and any proceeds realized from the enforcement of the Cooperative Agreement or the foreclosure of any lien of delinquent Special Assessments; (iv) all right, title, and interest of the Issuer in the proceeds derived from the sale of the Bonds; and (v) all income and profit from the investment of the foregoing moneys), and are an obligation of the Issuer only to the extent of the Pledged Revenues.

The Bonds, and the interest payable thereon, do not represent or constitute a debt of the Issuer, within the meaning of the provisions of the Constitution or statutes of the State of Ohio, or a pledge of the faith and credit of the Issuer. The Bonds, as to principal, premium, if any, and interest, are not an obligation of the State of Ohio, or of any political subdivision thereof, and are payable solely and only from Pledged Revenues. No covenant or agreement contained in the Bonds shall be deemed to be a covenant or agreement of any member of the Board or of any officer or employee of the Issuer in his or her individual capacity, nor shall any officer or employee of the Issuer executing the Bonds be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

The Bonds are initially issuable in minimum denominations of \$100,000 and integral multiples of \$1,000 in excess thereof and are exchangeable for Bonds of other Authorized Denominations in equal aggregate principal amounts at the office of the Registrar specified on the face hereof, but only in the manner and subject to the limitations provided in the Trust

Agreement. This Bond is transferable at the office of the Registrar, by the Holder in person or by his attorney, duly authorized in writing, upon presentation and surrender hereof to the Registrar. The Registrar is not required to transfer or exchange (i) any Bond during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing, or (ii) any Bonds so selected for redemption in whole or in part.

This Bond is transferable, and exchangeable for a Bond in the same principal amount, at the office of the Registrar by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Registrar, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Registrar, all subject to the terms, limitations, and conditions provided in the Bond Resolution and the Trust Agreement; provided, however, that each Registered Owner by its acceptance hereof acknowledges and agrees that it will not transfer this Bond except in compliance with all applicable federal and state securities laws. NO BOND OR BENEFICIAL INTEREST THEREIN SHALL BE SOLD OR TRANSFERRED UNLESS THE TRUSTEE SHALL FIRST HAVE RECEIVED (I) A SATISFACTORY OPINION OF COUNSEL THAT THE SALE OR TRANSFER WILL NOT VIOLATE THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), THE SECURITIES EXCHANGE ACT OF 1934 OR THE INVESTMENT COMPANY ACT OF 1940, OR ANY OF THE REGULATIONS ISSUED PURSUANT TO THOSE ACTS, (II) A NO-ACTION LETTER OF THE STAFF OF THE SECURITIES AND EXCHANGE COMMISSION THAT THE STAFF WILL RECOMMEND THAT NO ACTION BE TAKEN WITH RESPECT TO SUCH SALE OR TRANSFER, (III) A CERTIFICATE FROM THE TRANSFEROR THAT THE TRANSFEROR REASONABLY BELIEVES THAT THE TRANSFEREE IS A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF SUBSECTION (A) OF RULE 144A ("RULE 144A") PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE SECURITIES ACT AND HAS INFORMED THE TRANSFEREE OF THE TRANSFER RESTRICTIONS APPLICABLE TO THE BONDS AND THAT THE TRANSFEROR MAY BE RELYING UPON RULE 144A WITH RESPECT TO THE TRANSFER OF THE BONDS OR BENEFICIAL INTEREST THEREIN OR (IV) A CERTIFICATE FROM THE ISSUER THAT THE BONDS HAVE BEEN REGISTERED UNDER THE SECURITIES ACT AND THAT THE REGISTRATION IS IN EFFECT. No charge will be made for transfer or exchange, but the Issuer or the Registrar may require payment of an amount sufficient to cover any tax or other governmental charge payable in connection therewith. The Issuer and the Registrar may deem and treat the Registered Owner as the absolute owner of this Bond for the purpose of receiving payment of or on account of principal or interest and for all other purposes, and neither the Issuer nor the Registrar shall be affected by any notice to the contrary.

Notwithstanding the foregoing and except as otherwise hereinafter provided and subject to the transfer restrictions herein contained, the Bonds shall be issuable initially only in fully-registered certificated form, registered in the name of the Registered Owner identified above or its registered assigns, which shall be considered to be the Holder for all purposes of the Trust Agreement, including, without limitation, payment of Debt Service Charges, giving and receipt of notices, enforcement of remedies, and exercise of rights by Holders.

Redemption of Bonds. This Bond is subject to redemption prior to stated maturity pursuant to prior notice thereof, as follows:

(a) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory redemption prior to maturity on the applicable Mandatory Sinking Fund Redemption Dates pursuant to the Mandatory Sinking Fund Requirements described below. The aggregate amount of the Pledged Revenues which are to be transferred by the Issuer to the Trustee and deposited in the Principal Account of the Bond Fund prior to each Mandatory Sinking Fund Redemption Date pursuant to Section 4.05 of the Trust Agreement shall include amounts sufficient to redeem on the next succeeding Mandatory Sinking Fund Redemption Date the principal amount of Bonds required to be redeemed on such Mandatory Sinking Fund Redemption Date (less the amount of any applicable credit described herein).

The Bonds maturing on December 1, 2031 are subject to mandatory redemption prior to maturity on the applicable Mandatory Sinking Fund Redemption Dates pursuant to the Mandatory Sinking Fund Requirements, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the applicable Mandatory Sinking Fund Redemption Date in the principal amounts as follows:

<u>Mandatory Sinking Fund Redemption Dates</u>	<u>Mandatory Redemption Amount</u>
June 1, 2018	84,000
December 1, 2018	87,000
June 1, 2019	89,000
December 1, 2019	91,000
June 1, 2020	94,000
December 1, 2020	96,000
June 1, 2021	99,000
December 1, 2021	101,000
June 1, 2022	104,000
December 1, 2022	107,000
June 1, 2023	109,000
December 1, 2023	112,000
June 1, 2024	115,000
December 1, 2024	118,000
June 1, 2025	121,000
December 1, 2025	124,000
June 1, 2026	128,000
December 1, 2026	131,000
June 1, 2027	135,000
December 1, 2027	138,000
June 1, 2028	142,000
December 1, 2028	145,000
June 1, 2029	149,000
December 1, 2029	153,000
June 1, 2030	157,000

Mandatory Sinking Fund

Redemption Dates

December 1, 2030

June 1, 2031

Mandatory Redemption Amount

161,000

165,000

If retired only by mandatory sinking fund redemption prior to maturity, there would remain \$170,000 principal amount of Bonds maturing on December 1, 2031 to be paid on such maturity date.][NOTE: Schedule to be updated]

The Issuer shall have the option to deliver to the Registrar for cancellation Bonds acquired in any manner whatsoever in any aggregate principal amount and to receive a credit (except to the extent otherwise hereinafter provided in this paragraph) against the then current Mandatory Sinking Fund Requirement (and corresponding mandatory redemption obligation) of the Issuer with respect to the Bonds as described above. Such option shall be exercised by the Issuer on or before the 45th day preceding the applicable Mandatory Sinking Fund Redemption Date by furnishing the Trustee a certificate, executed by an Authorized Authority Representative, setting forth the extent of the credit to be applied with respect to the then-current Mandatory Sinking Fund Requirement (and corresponding mandatory redemption obligation). A credit against the then-current Mandatory Sinking Fund Requirement (and corresponding mandatory redemption obligation) also shall be received by the Issuer for any maturing Bonds that have been purchased for cancellation or redeemed other than through the operation of the Mandatory Sinking Fund Requirements.

Each Bond so delivered, redeemed previously, or purchased and canceled shall be credited by the Trustee at 100% of the principal amount thereof against the then-current Mandatory Sinking Fund Requirement. Any excess of that amount over the then current Mandatory Sinking Fund Requirement with respect to the Bonds shall be credited against subsequent Mandatory Sinking Fund Requirements with respect to the Bonds in the order directed by the Issuer.

(b) Optional Redemption. Unless previously redeemed, the Bonds are subject to redemption at the option of the Owner in whole or in part, provided, however, that any partial redemption shall be in a minimum principal amount of at least \$1,000,000.00, on or after _____, 2016 at the redemption prices set forth below, plus accrued interest to the redemption date, upon the Owner's exercise of its right in Section 4.1(f) of the Cooperative Agreement to direct the Issuer to optionally redeem the Bonds, provided, however, that in the event of a prepayment due to damage at, or destruction of, the Project the redemption price shall be 100% of the par amount of the outstanding Bonds to be redeemed plus accrued interest.

<u>Date(s) of Redemption</u>	<u>Redemption Price</u>
_____, 2016 to _____, 2__1	103%
_____, 20__ to _____, 20__	102%
_____, 20__ and thereafter	101%

(c) Extraordinary Mandatory Redemption from Remaining Bond Proceeds. The Bonds are subject to redemption in whole on any date or in part on any Interest Payment Date, at the option of the Issuer at the direction and expense of the Owner, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, from amounts remaining in the Project Fund after the Completion Date and after payment of all Project Costs for the Project. The Bonds shall be redeemed in order of their maturity provided that any such credit shall be made so that any Bonds redeemed and to be redeemed after giving effect to such credit shall be in Authorized Denominations.

The Trust Agreement contains provisions authorizing the Issuer and the Trustee to enter into supplemental trust agreements for certain purposes and in certain cases without the necessity of obtaining the consent of the Holders, for such purposes as modifying, altering, amending, adding to or rescinding, terms and provisions of the Trust Agreement.

The Issuer and the Trustee may deem and treat the Registered Owner as the absolute owner hereof for all purposes, whether or not this Bond is overdue, and neither the Issuer nor the Trustee nor the Registrar shall be affected by any notice to the contrary. "Registered Owner," as used herein, means the person named as the Registered Owner of this Bond on the front hereof and on the registration books maintained by the Registrar.

This Bond is transferable by the Registered Owner hereof in person or by his attorney duly authorized in writing at the Designated Office of the Trustee as Registrar, upon presentation hereof to the Trustee, all subject to the terms and conditions provided in the Trust Agreement.

Except as provided in the Trust Agreement, the Holders or registered Holders of the Bonds are not entitled to enforce the provisions of the Trust Agreement or to institute, appear in or defend any suit, action or proceeding to enforce any provisions of the Trust Agreement or to take any action with respect to any Event of Default (as such term is defined in the Trust Agreement) under the Trust Agreement.

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IN WITNESS OF THE ABOVE, the Issuer, under the authority described in this Bond, has caused this Bond to be executed by the Chair and the Secretary of the Board of the Issuer as of the date stated above.

**GREENE COUNTY PORT
AUTHORITY**

Secretary, Board of Directors

Chair, Board of Directors

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of the within-mentioned Trust Agreement.

Date of Registration and Authentication: _____, 2016

**THE HUNTINGTON NATIONAL BANK
as Trustee**

By: _____
Authorized Signor

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ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____

_____ the within Bond and irrevocably constitutes and appoints _____ attorney to transfer that Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: The assignor's signature to this assignment must be guaranteed by an institution meeting the requirements of the Trustee, and such signature must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

The social security number, taxpayer identification number, or other identifying number of the assignee is to be inserted below.

BOND PURCHASE AGREEMENT

between

[HASI OBS OP A LLC]

and

GREENE COUNTY PORT AUTHORITY

Dated _____, 2016

[\$3,027,000]

Greene County Port Authority
Property Assessed Clean Energy Taxable Revenue Bonds
(Mall at Fairfield Commons Project)
Series 2016

Frost Brown Todd LLC
Bond Counsel

BOND PURCHASE AGREEMENT

This Bond Purchase Agreement (“Bond Purchase Agreement”) dated _____, 2016, is entered into between [HASI OBS OP A LLC] (the “Original Purchaser”) and the GREENE COUNTY PORT AUTHORITY, as issuer (the “Authority”) (capitalized words and terms not otherwise defined herein shall have the meanings given them in accordance with the Trust Agreement (the “Trust Agreement”) dated as of December 1, 2016 between the Authority and The Huntington National Bank, as trustee (the “Trustee”).

RECITALS

- A. The Authority proposes to assist the Owner in financing a portion of the Project Costs of the Project constituting “port authority facilities” under the Act.
- B. To finance a portion of the Project Costs, the Authority will issue its Property Assessed Clean Energy Taxable Revenue Bonds (Mall at Fairfield Commons Project), Series 2016 (the “Bonds”) in the principal amount of [\$3,027,000], in accordance with a resolution enacted on _____, 2016 (the “Bond Resolution”) by the Board of Directors of the Authority (the “Legislative Authority”). The Bonds will be issued under and secured by the Trust Agreement.
- C. The Bonds will be payable from the Pledged Revenues as provided in the Trust Agreement, including certain Special Assessments to be approved by the City of Beavercreek (Greene County), Ohio Energy Special Improvement District (the “ESID”), levied and received by the City of Beavercreek, Ohio (the “City”), and assigned to the Trustee, all in accordance with the Special Assessments Act.
- D. The Authority has agreed to sell the Bonds to the Original Purchaser, subject to the terms and conditions set forth in this Bond Purchase Agreement.
- E. This Bond Purchase Agreement, the Trust Agreement, the Cooperative Agreement, and the Security Agreement are referred to herein as the “Bond Documents.”
- F. This Bond Purchase Agreement, the Trust Agreement, and the Cooperative Agreement are referred to herein as the “Authority Documents.”
- G. This Bond Purchase Agreement and the Investor Letter (the form of which is attached hereto as Exhibit A) are referred to herein as the “Original Purchaser Documents.”
- H. The Cooperative Agreement, the Owner Consent to Tax Lien Agreement and the Petition (as defined in the Trust Agreement) are referred to herein as the “Owner Documents.”

NOW, THEREFORE, in consideration of the premises above and the agreements contained herein, the parties agree as follows:

Section 1. Purchase, Sale, and Closing.

- (a) The Authority has awarded the sale of the Bonds to the Original Purchaser. The Authority agrees to sell the Bonds directly to the Original Purchaser, and the Original Purchaser agrees to purchase the Bonds directly from the Authority, at the purchase price equal to \$[3,027,000.00] (the "Purchase Price"). Payment of the Purchase Price of the Bonds shall be made by the Original Purchaser on the Closing Date in accordance with the Trust Agreement. The Trustee will complete and authenticate the Bonds, registered in the name of [Hare & Co.] as nominee for the Original Purchaser, or such other nominee as the Original Purchaser may designate prior to the Closing Date, and deliver the Bonds to the Original Purchaser in accordance with the Trust Agreement. The Bonds shall have the terms set forth in the Trust Agreement.
- (b) The pre-closing for the delivery of and sale of the Bonds will take place electronically on _____, 2016, and the closing will occur on _____, 2016, or at any other date, place, or time as may be designated by the Authority (the "Closing Date").
- (c) The Authority acknowledges and agrees that (i) the Original Purchaser is acting solely as a principal and is not acting as a municipal advisor (within the meaning of Section 15B of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), financial advisor or fiduciary to the Authority, (ii) the Original Purchaser has not assumed (individually or collectively) any advisory or fiduciary responsibility to the Authority with respect to this Agreement, the offering of the Securities and the discussions, undertakings and procedures leading thereto (irrespective of whether the Original Purchaser, or any affiliate of the Original Purchaser, has provided other services or is currently providing other services to the Authority on other matters), (iii) the only obligations the Original Purchaser has to the Authority with respect to the transactions contemplated hereby are set forth in this Agreement, (iv) the Original Purchaser has financial and other interests that differ from those of the Authority and (v) the Authority has consulted with its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

Section 2. Authority's Representations and Warranties. The Authority makes the following representations and warranties:

- (a) The Authority is a port authority and political subdivision of the State of Ohio and is authorized by the provisions of the Act, among other things, (1) to issue the Bonds as revenue bonds to finance a portion of the costs of "port authority facilities" as defined in the Act and to apply the proceeds of the Bonds for the purposes described

in the Trust Agreement and the Cooperative Agreement, and (2) to secure the Bonds in the manner contemplated by the Trust Agreement.

- (b) The Authority has full legal right, power and authority (1) to adopt the Bond Resolution; (2) to enter into the Authority Documents; (3) to issue, sell and deliver the Bonds to the Original Purchaser; (4) to make proceeds of the Bonds available to the Owner to assist in financing or reimbursing the Project Costs; and (5) to carry out and consummate all other transactions contemplated by the Authority Documents to be carried out and consummated by the Authority, and the Authority has complied with all provisions of applicable law, including the Act, in all matters relating to those transactions.
- (c) The Bond Resolution has been duly adopted by the Board of Directors of the Authority, is in full force and effect and constitutes the legal, valid, and binding act of the Authority.
- (d) The Authority Documents constitute, or when executed and delivered, will constitute, legal, valid, and binding obligations of the Authority, enforceable in accordance with their respective terms, except that the binding effect and enforceability thereof are subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws in effect from time to time affecting the rights of creditors generally and except to the extent that the enforceability of the Authority Documents may be limited by the application of general principles of equity and, in the case of this Bond Purchase Agreement and the Trust Agreement, securities laws.
- (e) To the knowledge of the Authority, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against the Authority, which in any way questions the powers of the Authority referred to in paragraph (a) above, or the validity of any proceedings taken by the Authority in connection with the issuance of the Bonds, or the validity or enforceability of, the Bond Resolution, the Bonds, or the Authority Documents.

Section 3. Original Purchaser's Representations and Warranties.

- (a) The Original Purchaser has been duly formed, is validly existing, and is in good standing as a limited liability company under the laws of the State of Delaware and has full power to conduct the Original Purchaser's business.
- (b) The Original Purchaser has full legal right, power and authority to execute and deliver the Original Purchaser Documents and to take any and all action as may be required on its part to carry out, give effect to, consummate, and perform the transactions contemplated by the Original Purchaser Documents. The Original Purchaser Documents each constitute the legal, valid, and binding obligation of the

Original Purchaser enforceable in accordance with its respective terms, except that enforceability may be limited by laws relating to bankruptcy, fraudulent conveyance, reorganization or other similar laws affecting the rights of creditors, and by the exercise of judicial discretion in accordance with general principles of equity.

- (c) Neither the execution and delivery of the Original Purchaser Documents nor the consummation of the transactions contemplated by or the compliance with the provisions of the Original Purchaser Documents, will conflict with, or constitute on the part of the Original Purchaser a violation of, or breach of or default under, its charter, code of regulations, any resolution of its board of directors, or any indenture, mortgage, commitment, note or other agreement or instrument to which the Original Purchaser or any of its properties are bound, or any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Original Purchaser or any of its activities or properties, except for any conflict, violation, breach or default that has been duly waived under the terms of the applicable instrument. All consents, approvals, authorizations, and orders of governmental or regulatory authorities which are required for the Original Purchaser's execution and delivery of, and consummation of the transactions contemplated by and compliance with the provisions of, the Original Purchaser Documents to have been obtained.
- (d) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body, pending against or affecting the Original Purchaser, its properties, or its legal existence, or the actions taken or contemplated to be taken by it, in which the Original Purchaser is a named party, nor is there any reasonable basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the business, financial condition or operations of the Original Purchaser, or the transactions contemplated by, or the validity or enforceability of, the Original Purchaser Documents.

Section 4. Covenants of the Authority. The Authority covenants and agrees that it will observe all covenants of the Authority in the Authority Documents and will not issue or sell any bonds or obligations under the Trust Agreement other than the Bonds and any Additional Bonds authorized thereunder.

Section 5. Covenants of the Original Purchaser. The Original Purchaser covenants and agrees as follows:

- (a) The Original Purchaser will take any action that is reasonably requested to facilitate the timely consummation of the transactions contemplated by the Original Purchaser Documents.
- (b) The Original Purchaser is aware that the Bonds have not and will not be registered under federal or state securities laws and that there are certain restrictions on the

transferability of the Bonds. It is acknowledged that the Authority is under no obligation whatsoever to register the Bonds under any state or federal securities law.

- (c) The Original Purchaser agrees that it shall not sell or transfer any portion of the Bonds, nor any interest therein, unless it first delivers to the Trustee (i) an opinion of counsel acceptable to the Trustee and the Authority that such sale or transfer does not violate the Securities Act of 1933 (the “33 Act”), the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the regulations issued pursuant to such Acts, or (ii) a no-action letter of the staff of the Securities and Exchange Commission that the staff will recommend that no action be taken with respect to such sale or transfer, or (iii) an Investor Letter signed by the transferee in substantially the same form as that attached hereto as Exhibit A along with a certificate of the transferor addressed to the Trustee that transferor has informed the transferee of the transfer restrictions applicable to the Bonds (or any beneficial interest therein) and that the transferor may be relying upon Rule 144A with respect to the transfer of the Bonds (or any beneficial interest therein), or (iv) a certificate from the Authority that the Bonds have been registered under the 33 Act and that the registration is in effect.
- (d) The Original Purchaser is the sole purchaser of the Bonds and is not acting as a broker, dealer, municipal securities dealer or underwriter (as said terms are defined or used in the federal securities laws) with regard to the purchase of the Bonds.
- (e) In connection with its business, the Original Purchaser is a sophisticated investor and has expertise in municipal finance and has such knowledge and expertise in financial and business matters that it is capable of evaluating the merits and risks of purchasing the Bonds.
- (f) The Original Purchaser is purchasing the Bonds for investment for the Original Purchaser’s own account and not with a present view to the distribution thereof to any other Person or member of the public or with any present intention of trading or selling the Bonds or any rights therein to any other Person, it being understood that this representation is made without prejudice to the right of the Original Purchaser at all times to sell or otherwise dispose of the Bonds or any rights therein in accordance with applicable State and federal securities laws.
- (g) The Original Purchaser acknowledges that the Bonds are revenue obligations of the Authority and that the sources of payment and security for the Bonds are limited as described in Section 7 of this Bond Purchase Agreement.

Section 6. Conditions to Closing. The obligations of the Authority and Original Purchaser hereunder shall be subject to the following conditions having been satisfied, deemed satisfied or waived on or before the Closing Date:

- (a) Delivery of the following items in form and substance reasonably acceptable to the Authority and the Original Purchaser:
- (i) certification by the Owner that (i) such Owner representations and warranties made in the Owner Documents remain true, accurate and complete as of the date hereof in all material respects, and (ii) no default or event which, by notice, the passage of time or otherwise, would constitute a default, exists under the Owner Documents;
 - (ii) a Certificate of Existence of the Owner issued by the Secretary of State of Delaware and a Certificate of Full Force and Effect issued by the Secretary of State of the State of Ohio, both dated within ten (10) days of the Closing Date;
 - (iii) copies of the governing instruments of the Owner certified by the Owner to be true, correct, and complete;
 - (iv) certified copies of the resolutions or written actions of the Owner authorizing execution and delivery of the Owner Documents and performance thereunder;
 - (v) a certificate of incumbency as to the authorized representatives executing the Bond Documents on behalf of each of the Authority, the City, the ESID and the Owner;
 - (vi) evidence of the (A) Required Commercial General Liability Insurance Coverage (as defined in the Cooperative Agreement), and providing for the Issuer as an additional insured under such coverage, and (B) Required Property Insurance Coverage (as defined in the Cooperative Agreement) and providing for the Issuer as a loss payee under such coverage, as the aforesaid coverage is required under the terms of the Cooperative Agreement;
 - (vii) written consent of any mortgagee holding a mortgage on the site of the Project to the special assessments and to the lien securing the special assessments which are the subject of the Owner Documents;
 - (viii) a caveat, suitable for recording on the real estate records of Greene County indicating that a Special Assessment and lien against the site of the Project is anticipated upon completion of the Project or at an earlier date as provided herein; and
 - (ix) a Tax Lien Agreement by and among the County Treasurer, the City and the Trustee.

- (b) The Bond Documents and all other documents for the issuance, purchase, and sale of and security for the Bonds, in form and substance satisfactory to the Authority and the Original Purchaser, shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect.
- (c) The Special Assessments shall have been duly authorized by the ESID and the City, and the legislation of the ESID and the City approving the Special Assessments in accordance with the Special Assessments Act shall have been adopted or passed, as applicable, and shall be in full force and effect.
- (d) The Original Purchaser shall have executed the Investor Letter in the form attached hereto as Exhibit A.
- (e) Frost Brown Todd LLC, as bond counsel, shall have delivered its opinion in form and substance reasonably acceptable to the Authority and the Original Purchaser.
- (f) Counsel to the ESID shall have delivered its opinion in form and substance reasonably acceptable to bond counsel and the Original Purchaser.
- (g) Counsel to the City shall have delivered its opinion in form and substance reasonably acceptable to the Authority and the Original Purchaser.
- (h) Counsel to the Owner shall have delivered its opinion in form and substance reasonably acceptable to the Authority and the Original Purchaser.
- (i) Counsel to the Authority shall have delivered its opinion as issuer's counsel in form and substance reasonably acceptable to bond counsel.

Section 7. No Pecuniary Liability of the Authority. The Bonds will be special obligations of the Authority and do not and will not represent or constitute a debt or pledge of the faith and credit of the Authority, the County of Greene, the State of Ohio, or any political subdivision within the meaning of the Constitution and the statutes of the State of Ohio. The Bonds are payable solely from Pledged Revenues pledged under the Trust Agreement. No moneys of the Authority raised by taxation are obligated or pledged for the payment of the Bonds. No member, director, officer, agent, or employee of the Authority, including any person executing the Trust Agreement or the Bonds, will be liable personally on the Bonds or subject to any personal liability for any reason relating to the issuance of the Bonds. Any obligations or liabilities of the Authority under this Bond Purchase Agreement are to be paid only from proceeds of the Bonds or other moneys made available to the Authority by the Original Purchaser.

Section 8. Survival of Representations, Warranties, Covenants, and Agreements. All representations, warranties, covenants, and agreements of the Original Purchaser contained in this Bond Purchase Agreement and all statements certified to in the certificates of officials, officers, trustees or members of the Original Purchaser submitted in accordance with this Bond Purchase

Agreement, will remain operative and in full force and effect and shall survive delivery of the Bonds to the Original Purchaser and payment therefor by the Original Purchaser.

Section 9. Parties in Interest. This Bond Purchase Agreement is made solely for the benefit of the Authority, its officials and officers, the Original Purchaser, and their respective successors, and no other person, partnership, association or corporation will acquire or have any right under or by virtue of this Bond Purchase Agreement.

Section 10. Notices. Any notice or other communication to be given to any party to this Bond Purchase Agreement may be given by delivering the same in writing at, or by sending the same by first class, postage prepaid, mail to, the parties hereto at each party's Notice Address in the manner set forth in the Cooperative Agreement for providing notice.

Section 11. Applicable Law. This Bond Purchase Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Section 12. Severability. If any provision of this Bond Purchase Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy, or any other reason, that circumstance will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatsoever.

Section 13. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument. This Bond Purchase Agreement will become effective when each of the parties has signed at least one counterpart, which need not be the counterpart signed by any other party.

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IN WITNESS WHEREOF, the undersigned have caused this Bond Purchase Agreement to be executed by their duly authorized officers, officials or agents, as the case may be, as of the date set forth above.

GREENE COUNTY PORT AUTHORITY

By: _____
Chair, Board of Directors

[HASI OBS OP A LLC]

By: _____
Name: _____
Title: _____

EXHIBIT A

INVESTOR LETTER

Greene County Port Authority
35 Greene St.
Xenia, OH 45385
Attention: Chair

The undersigned (the "Investor") has agreed to purchase the principal amount indicated below of the Property Assessed Clean Energy Taxable Revenue Bonds (Mall at Fairfield Commons Project), Series 2016 (the "Bonds") of the Greene County Port Authority (the "Authority"). The Investor acknowledges that delivery and execution of this letter is a condition precedent to the sale of the Bonds to the Investor and that the compliance with securities registration laws may depend on the accuracy of this letter.

Investor represents and warrants to the Authority as follows:

(a) The Investor is aware that the Bonds have not been registered under federal or state securities laws; that there are restrictions on the transferability of the Bonds, or any beneficial interests therein; that there is no public market for the Bonds; and that it is unlikely that such a market will ever develop.

(b) Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of an investment in the Bonds.

(c) The Investor is acquiring the Bonds or any beneficial interest therein for its own account and not with a present view to resale or distribution; however, the disposition of the Bonds or any beneficial interest therein shall at all times remain under the control of the Investor.

(d) The Bonds are being sold in minimum denominations of \$100,000 to 35 or fewer sophisticated investors.

(e) The Investor qualifies as one or more of the following (as checked):

_____ (i) a National Bank.

_____ (ii) a banking institution organized under the laws of any state, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the state or territorial banking commission or similar official.

_____ (iii) an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency of a state or territory or the District of Columbia.

_____ (iv) an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a) (48) of that Act.

_____ (v) a Small Business Investment Company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958 or an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$100,000,000.

_____ (vi) a private business development company as defined in section 202 (a) (22) of the Investment Advisers Act of 1940.

_____ (vii) any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the Bonds, with total assets in excess of \$5,000,000.

_____ (viii) any trust with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the Bonds, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) promulgated by the U.S. Securities and Exchange Commission pursuant to the 33 Act.

_____ (ix) a natural person who is an “accredited investor” within the meaning of Rule 215 promulgated by the U.S. Securities and Exchange Commission pursuant to the Securities Act.

_____ (x) any entity all of the equity owners of which are “accredited investors” within the meaning of Rule 215 promulgated by the U.S. Securities and Exchange Commission pursuant to the 33 Act.

The Investor shall not sell or transfer the Bonds until the Trustee shall first have received (i) a satisfactory opinion of counsel that the sale or transfer will not violate the Securities Act of 1933, as amended (the “33 Act”), the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and regulations issued pursuant to such Acts, or (ii) a no-action letter of the staff of the Securities and Exchange Commission that the staff will recommend that no action be taken with respect to such sale or transfer, or (iii) an Investor Letter signed by the transferee in substantially the same form as this letter along with a certificate from the Investor that the Investor has informed the transferee of the transfer restrictions applicable to the Bonds (or any beneficial interest therein) and that the transferor may be relying upon Rule 144A with respect to the transfer of the Bonds (or any beneficial interest therein), or (iv) a certificate from the Authority that the Bonds have been registered under the 33 Act and that the registration is in effect.

Under penalties of perjury, the Investor certifies (i) that the number shown below on this form is its correct taxpayer identification number, and (ii) that it is not subject to backup withholding either because it has not been notified that it is subject to backup withholding as a result of a failure to report all interest or dividends, or because the Internal Revenue Service has notified it that it is no longer subject to backup withholding, under Section 3406(a) (1) (c) of the Internal Revenue Code of 1986, as amended.

Dated: _____, 2016

[INVESTOR NAME]

Signature of Investor

Title if any: _____

Taxpayer I.D. Number

Principal Amount of Bonds Purchased: \$[Amount Purchased].

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10/19/2016 5:11 pm

**CITY OF BEAVERCREEK
RESOLUTION NO. 16-28**

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

A RESOLUTION DECLARING THE NECESSITY OF ACQUIRING AND CONSTRUCTING CERTAIN PUBLIC IMPROVEMENTS IN COOPERATION WITH THE CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE GREENE COUNTY PORT AUTHORITY.

WHEREAS, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in a special improvement district pursuant to Ohio Revised Code Chapter 1710 shall levy said special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, MFC Beavercreek, LLC (the "Owner") petitioned for the creation of the City of Beavercreek (Greene County), Ohio Energy Special Improvement District (the "ESID") pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of its project, which consists of acquiring, constructing, equipping, improving, and installing energy efficiency improvements on its real property, including, without limitation, the replacement of approximately 400,000 square feet of roofing, installation of approximately 21 energy efficient rooftop HVAC units and related improvements (the "Project"); and

WHEREAS, the City Council (the "Council") of the City of Beavercreek (the "City") has, by Resolution No. _____, adopted on October __, 2016, approved the initial petition (the "Petition"), the articles of incorporation, and the initial plan (the "Plan") for, and approved the creation of, the ESID; and

WHEREAS, the Petition, which is attached hereto as Exhibit A and made a part hereof, has been signed by the Owner, who owns one hundred percent (100%) of the real property affected by the Petition (as further described in Exhibit B to the Petition, the "Assessed Properties"), which Petition proposes the necessity of acquiring, constructing, and improving the Project and financing the Project through revenue bonds to be issued by the Greene County Port Authority (the "Authority"); and

WHEREAS, in the Petition the Owner requests that the Project be paid for by special assessments assessed upon the Assessed Properties (the "Special Assessments") in an amount sufficient to pay the costs of the Project, which is estimated to be \$2,719,200, and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the ESID, and the Authority in accordance with a Cooperative Agreement, expected to be dated as of December 1, 2016, by and among the City, the Authority, the ESID, the Owner and The Huntington National Bank, as trustee, (the "Cooperative Agreement"); and

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

It is hereby declared necessary, and a vital and essential public purpose of the City, to improve the Assessed Properties, which are located at 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431, by providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition, and providing for the payment of principal and interest on bonds issued by the Authority to pay the costs of the Project and other related interest, financing, credit enhancement, and issuance expenses and trustee fees and Authority ongoing administrative fees and expenses, all as more fully described in the Petition, the Cooperative Agreement, and the Plan, profiles, specifications, and estimates of cost of the Project, all of which are on file with the Clerk of Council and open to the inspection of all persons interested.

SECTION II.

It is hereby determined that the elements of the Project are so situated in relation to each other that in order to complete the acquisition and improvement thereof in the most practical and economical manner they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that elements of the Project shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09 and said improvements shall be treated as a joint improvement to be undertaken cooperatively by the City, the Authority, and the ESID pursuant to Ohio Revised Code Sections 4582.43 and 4582.431.

SECTION III.

The City has previously determined and hereby ratifies and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project as defined in Ohio Revised Code Section 1710.01(1); that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the ESID and the Authority, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petition, the Plan and the Cooperative Agreement. It is hereby determined and declared that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants thereof.

SECTION IV.

The plans, specifications, profiles and estimate of cost of the Project are hereby approved subject to changes as provided for in the Cooperative Agreement and as permitted by Ohio Revised Code Chapter 727 and Ohio Revised Code Chapter 1710.

SECTION V.

Pursuant to and subject to the provisions of a valid Petition signed by one hundred percent (100%) of the property owners of the Assessed Properties, which Petition is hereby accepted, the entire cost of the Project shall be paid by the Special Assessments levied against the Assessed Properties, which are the benefited properties. The provisions of the Petition are

hereby ratified, adopted, approved and incorporated into this Resolution as if set forth in full herein.

This Council hereby accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and any applicable laws, resolutions, or rules of the City, and consents to the immediate imposition of the Special Assessments upon the Assessed Properties. This waiver encompasses but is not limited to waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Council under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing ordinance under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors or omissions in the Special Assessment process.

SECTION VI.

The method of levying the Special Assessments shall be in proportion to the benefits received, equally on a gross per acre basis of the Assessed Properties, as set forth in the Petition.

SECTION VII.

The lots or parcels of land to be assessed for the Project shall be the Assessed Properties, described in Exhibit B to the Petition, all of which lots and lands are hereby determined to be specially benefited by the Project.

SECTION VIII.

The cost of the Project to be paid for directly or indirectly, in whole or in part, by funds derived from the Special Assessments may include, but are not limited to: (a) the cost of creating and operating the ESID, including creating and operating a nonprofit organization, hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment; (b) the cost of planning, designing, and implementing the Project, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses; (c) the cost of printing, serving, and publishing notices, resolutions, and ordinances; (d) the cost of all Special Assessment proceedings; (e) the cost of labor and material, whether furnished by contract or otherwise, in connection with the Project; (f) interest on bonds or notes issued in anticipation of the levy and collection of the Special Assessments; (g) Debt Service Charges and Administrative Expenses, each as defined in the Cooperative Agreement; (h) the total amount of damages and interest thereon, resulting from the Project and assessed in favor of any owner of lands affected by the Project, and any court costs incurred by the district in implementing the Project; (i) the cost incurred in connection with the preparation, levy, and collection of the Special Assessments, including legal expenses incurred by reason of the Project; (j) the costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the Project; and (k) incidental costs directly connected with the Project.

SECTION IX.

The Special Assessments shall be levied and paid in twenty-eight (28) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, with interest on the deferred payments at the same rate and for the same period as the bonds or notes to be issued by the Authority to pay the costs of the Project as provided in the Petition; provided that the owner of any property assessed may, at its option, pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing ordinance.

The capital cost of the Project is estimated to be \$2,719,200. Each semi-annual Special Assessment payment represents the payment of a portion of the principal of and interest on the Authority's revenue bonds and the scheduled amounts payable as the Authority administrative fee, and the trustee fee. In addition to the Special Assessments, the County Auditor of Greene County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Auditor of Greene County, Ohio.

SECTION X.

Bonds of the Authority, pursuant to the Cooperative Agreement, shall be issued and served by the levy and collection of the Special Assessments by installments and in an amount equal thereto.

SECTION XI.

The Financial Services Administrative Director is hereby authorized and directed to cause to be prepared and filed in the office of the Clerk of Council the estimated Special

Assessments for the cost of the Project in accordance with the method of assessment set forth in the Petition and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

SECTION XII.

Upon the filing of the estimated Special Assessments with the Financial Services Administrator Director, notice of the adoption of this Resolution and the filing of the estimated Special Assessments shall be served upon the Owner of the Assessed Properties, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

SECTION XIII.

The City Council and the Fiscal Officer are each authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

SECTION XIV.

The Special Assessments will be used by the City to meet its obligations under the Cooperative Agreement and are hereby appropriated for such purposes.

SECTION XV.

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION XVI.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 24th day of October, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-27

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

AN ORDINANCE DETERMINING TO PROCEED WITH THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT, OF CERTAIN PUBLIC IMPROVEMENTS IN COOPERATION WITH THE CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE GREENE COUNTY PORT AUTHORITY AND DECLARING AN EMERGENCY.

WHEREAS, this City Council (the "Council") of the City of Beavercreek, Ohio (the "City") duly adopted Resolution No. 16-28 on October 24th, 2016 (the "Resolution of Necessity") (i) declaring the necessity of acquiring, constructing, and improving energy efficiency improvements, including, without limitation, the replacement of approximately 400,000 square feet of roofing, installation of approximately 21 energy efficient rooftop HVAC units and related improvements (the "Project", as more fully described in the Petition referenced below) located on real property owned by MFC Beavercreek, LLC (the "Owner") and located at 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431 (the "Assessed Properties", as further described in Exhibit B to the Petition); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition (as that term is defined in the Resolution of Necessity), and the Cooperative Agreement, expected to be dated as of December 1, 2016, by and among the City, the Authority, the ESID, the Owner and The Huntington National Bank, as trustee (the "Cooperative Agreement"), including by levying and collecting special assessments to be assessed upon the Assessed Properties (the "Special Assessments") in an amount sufficient to pay the capital costs of the Project, which is estimated to be \$2,719,200, plus other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses; (iii) accepting the Petition; and (iv) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City, the ESID, and the Authority; and

WHEREAS, claims for damages alleged to result from and objections to the Project have been waived by one hundred percent (100%) of the affected property owners;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

It is hereby declared to be the intention of this Council to proceed with the acquisition, construction, and improvement of the Project, as such are described in the Petition and the Resolution of Necessity.

SECTION II.

The Project shall proceed in accordance with the provisions of the Resolution of Necessity, and in accordance with the plans, specifications, profiles and estimate of cost of the Project set forth in the Petition now on file in the office of the Clerk of Council and approved pursuant to the Resolution of Necessity.

SECTION III.

The Special Assessments, in an amount sufficient to pay the capital costs of the Project, which is estimated to be \$2,719,200, plus other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses, shall be assessed on the Assessed Properties in the manner and in the number of semi-annual installments as provided in the Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of the principal of and interest on the Authority's revenue bonds and the scheduled amounts payable as the Authority administrative fee, and the trustee fee. In addition to the Special Assessments, the County Auditor of Greene County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the Auditor of Greene County, Ohio.

SECTION IV.

The estimated Special Assessments, heretofore prepared and filed in the office of the Clerk of Council, in accordance with the Resolution of Necessity, are hereby adopted.

SECTION V.

In compliance with Ohio Revised Code Section 319.61, the Clerk of Council is hereby directed to deliver a certified copy of this Ordinance to the County Auditor of Greene County, Ohio within fifteen (15) days after the date of adoption hereof.

SECTION VI.

All contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code and the Cooperative Agreement, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

SECTION VII.

It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION VIII.

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City, and for the further reason that this Ordinance is required to be immediately effective to provide for the acquisition, construction, and improvement of the Project to enhance energy efficiency and to better provide for the health of the residents of the City.

WHEREFORE, this Ordinance shall take effect and be in force from and immediately upon its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this ____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-28

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN COOPERATION WITH THE CITY OF BEAVERCREEK (GREENE COUNTY), OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE GREENE COUNTY PORT AUTHORITY AND DECLARING AN EMERGENCY.

WHEREAS, this City Council (the "Council") of the City of Beavercreek, Greene County, Ohio (the "City") duly adopted Resolution No. 16-28 on October 24, 2016 (the "Resolution of Necessity") and declared the necessity of acquiring, constructing, and improving certain public improvements consisting of energy efficiency improvements, including, without limitation, the replacement of approximately 400,000 square feet of roofing, installation of approximately 21 energy efficient rooftop HVAC units and related improvements (the "Project") as described in the Resolution of Necessity and accepted the Petition, as that term is defined in the Resolution of Necessity, by the owners as of the date of this Ordinance of real property designated as Greene County Auditor Parcel Number _____ and being located at the commonly used mailing address 2727 Fairfield Commons Drive, Beavercreek, Ohio 45431 (as further described in Exhibit B to the Petition, the "Assessed Properties") requesting the Project; and

WHEREAS, the Council duly adopted Ordinance No. 16-27 on November __, 2016 (the "Ordinance to Proceed") and determined to proceed with the Project and adopted the estimated Special Assessments (as defined in the Resolution of Necessity) filed with the Clerk of Council pursuant to the Resolution of Necessity;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEAVERCREEK, GREENE COUNTY, OHIO, that:

SECTION I.

The list of Special Assessments to be levied and assessed on the Assessed Properties in an amount sufficient to pay the costs of the Project, which is estimated to be \$2,719,200, and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses, which costs were set forth in the Petition and previously reported to this Council and are now on file in the office of the Clerk of Council, is hereby adopted and confirmed, and that there are hereby levied and assessed the Special Assessments on the Assessed Properties. The list of Special Assessments to be levied and

SECTION I.

It is hereby declared to be the intention of this Council to proceed with the acquisition, construction, and improvement of the Project, as such are described in the Petition and the Resolution of Necessity.

SECTION II.

The Project shall proceed in accordance with the provisions of the Resolution of Necessity, and in accordance with the plans, specifications, profiles and estimate of cost of the Project set forth in the Petition now on file in the office of the Clerk of Council and approved pursuant to the Resolution of Necessity.

SECTION III.

The Special Assessments, in an amount sufficient to pay the capital costs of the Project, which is estimated to be \$2,719,200, plus other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on bonds issued by the Authority to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Authority administrative fees and expenses, shall be assessed on the Assessed Properties in the manner and in the number of semi-annual installments as provided in the Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of the principal of and interest on the Authority's revenue bonds and the scheduled amounts payable as the Authority administrative fee, and the trustee fee. In addition to the Special Assessments, the County Auditor of Greene County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the Auditor of Greene County, Ohio.

SECTION IV.

The estimated Special Assessments, heretofore prepared and filed in the office of the Clerk of Council, in accordance with the Resolution of Necessity, are hereby adopted.

SECTION V.

In compliance with Ohio Revised Code Section 319.61, the Clerk of Council is hereby directed to deliver a certified copy of this Ordinance to the County Auditor of Greene County, Ohio within fifteen (15) days after the date of adoption hereof.

SECTION VI.

All contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code and the Cooperative Agreement, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

SECTION VII.

It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council and that, except as otherwise provided by Ohio Revised Code Section 121.22, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION VIII.

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City, and for the further reason that this Ordinance is required to be immediately effective to provide for the acquisition, construction, and improvement of the Project to enhance energy efficiency and to better provide for the health of the residents of the City.

WHEREFORE, this Ordinance shall take effect and be in force from and immediately upon its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this ____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council

CITY OF BEAVERCREEK, OHIO

ORDINANCE NO. 16-29

SPONSORED BY COUNCIL MEMBER _____ ON THE 24TH DAY OF OCTOBER, 2016.

AUTHORIZING THE CITY'S PARTICIPATION IN FINANCING SPECIAL ENERGY IMPROVEMENT PROJECTS IN COOPERATION WITH THE PORT AUTHORITY; AUTHORIZING THE EXECUTION OF DOCUMENTS TO EFFECTUATE SUCH FINANCING; AND DECLARING AN EMERGENCY.

WHEREAS, MFC Beaver creek, LLC (the "Owner") intends to construct special energy improvement projects, as that term is used in Ohio Revised Code Chapter 1710, on certain real **property** located within The City of Beaver creek, Greene County, Ohio (the "City"), including an energy-efficiency grade roof, energy efficient HVAC systems and related improvements (the "Project"); and

WHEREAS, this City Council (the "Council") of the City, the Greene County Port Authority (the "Port Authority"), and the City of Beaver creek (Greene County), Ohio Energy Special Improvement District (the "ESID") each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of the Project is through the Cooperative Agreement expected to be dated as of November 1, 2016, to be entered into by and among the Port Authority, the City, the ESID, the Owner, and The Huntington National Bank, as trustee for the Port Authority's bonds issued to finance the Project (the "Cooperative Agreement"); and

WHEREAS, the City has determined, as requested in the Owner's petition, to undertake the Project in cooperation with the Port Authority and the Owner pursuant to the Cooperative Agreement, and the City has undertaken to adopt or pass all legislation required by Ohio Revised Code Chapter 727 and Ohio Revised Code Chapter 1710 in order to levy special assessments on the Owner's property; and

WHEREAS, the Port Authority has determined to undertake the authorization and issuance of port authority revenue bonds payable from special assessments to finance the costs of the Project and otherwise assist in, acquiring, constructing, and improving the Project, which bonds shall be payable from Port Authority revenues, limited to the Special Assessments (as defined in the Cooperative Agreement) transferred by the City.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Beavercreek, Ohio, that:

SECTION I.

The City Council of the City of Beavercreek, Greene County, Ohio, hereby approves the Petition that has been submitted to the City on October __, 2016 and executed and delivered by the Owner of 100% of the real property included in the ESID.

SECTION II.

The City Council of the City of Beavercreek, Greene County, Ohio hereby designates the ESID as its agent that may automatically convey the Project materials to the Owner without additional consideration. The Council of the City determines that the Project is not required to be owned by the City or its agent and that the Project will promote the welfare of the people of the City by providing energy efficiency improvements and promoting energy efficiency.

SECTION III.

The financing documents necessary to effectuate the City's participation in the Project, including the Cooperative Agreement, Tax Lien Agreement, and any other documents deemed necessary by the City Manager each in substantially the form presently on file with the Clerk of Council, with such changes as are requested by the City Manager or the Law Director and with only such other changes as are approved by the City Manager and the Law Director, are hereby approved and the City Manager, the Mayor and the Financial Administrative Services Director are hereby authorized to enter into and execute said financing documents and all necessary closing certificates and to take whatever other action is necessary to complete and perform this transaction as determined by the City Manager.

SECTION IV.

Upon the terms contained in the Cooperative Agreement, the City hereby assigns the Special Assessments to the Port Authority, such assignment to take effect upon execution of the Cooperative Agreement.

SECTION V.

The obligations of the City under this Ordinance do not and shall not represent or constitute a debt or pledge of the full faith and credit or the taxing power of the City and no member of Council, officer, official, employee, agent, or legal representative of the City shall be liable personally for any obligations under this Ordinance or the Cooperative Agreement.

SECTION VI.

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, except as otherwise provided by Section 121.22 of the Ohio Revised Code, all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION VII.

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City, and for the further reason that this Ordinance is required to be immediately effective to provide for the acquisition, construction, and improvement of the Project to enhance energy efficiency and to better provide for the health of the residents of the City.

WHEREFORE, this Ordinance shall take effect and be in force from and immediately upon its adoption.

ADOPTED by the Council of the City of Beavercreek, Ohio this ____ day of _____, 2016.

Bob Stone, Mayor

ATTEST:

Dianne Lampton, Clerk of Council



CITY COUNCIL
Regular Meeting – November 14, 2016 6:00 p.m.
Council Chambers

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Council Member Whilding
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
- VI. ORDINANCES, RESOLUTIONS AND PUDS
 - A. Ordinance 16-22 Repealing Current Section 132.13 “Panhandling” and Adopting New Section 132.13 “Panhandling” (Third Reading)
 - B. Ordinance 16-23 Repealing Current Chapter 112 “Peddling, and Soliciting, and Distribution” and Adopting New Chapter 112 “Peddling, Soliciting, and Distribution” (Third Reading)
- VII. CITY MANAGER’S REPORT
- VIII. MAYOR’S REPORT
- IX. COUNCIL TIME
- X. CITIZEN COMMENTS
- XI. EXECUTIVE SESSION
- XII. ADJOURNMENT

DRAFT



**AGENDA
CITY COUNCIL
Budget Work Session – November 16, 2016, 5:00 p.m.
Council Chambers**

*1368 Research Park Dr
Beavercreek, Ohio*

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. DISCUSSION ITEMS
 - A. 2017 Budget Item – Police Fund
 - B. 2017 Budget Item – Parks and Recreation Fund
 - C. 2017 Budget Item – Golf Fund
- V. ADJOURNMENT

DRAFT

PLANNING DEPARTMENT STATUS REPORT

October 20, 2016

CITY COUNCIL

October 24, 2016

- PUD 91-2 MOD 9/16, BSM Development, public hearing
- PUD 16-1 SSP #1, Cottages of Beaver creek (tabled 10/10/16)

November 14, 2016

-
-

November 28, 2016

-
-

December 12, 2016

-
-

Tabled / Delayed / Pending

-

PLANNING COMMISSION

November 2, 2016

- PUD 06-3 Amendment 9/16, First & Main, public hearing (tabled Oct. 5)
-

Currently Tabled / Delayed

-

Commercial Permits Submitted and Under Review

-
-

BOARD OF ZONING APPEALS

November 10, 2016

-
-

Currently Tabled or Delayed

-
-