AMENDED AND RESTATED DEVELOPMENT AGREEMENT

by and between

CITY OF HUBER HEIGHTS, OHIO

and

DEC LAND CO. I, LLC

relating to

CARRIAGE TRAILS DEVELOPMENT

---

dated as of

SEPTEMBER 21, 2009

TABLE OF CONTENTS

ARTICLE VI
PUBLIC INFRASTRUCTURE BONDS AND LETTER OF CREDIT

ARTICLE VII
AMENDED PETITION FOR SPECIAL ASSESSMENTS

ARTICLE VIII
TAX INCREMENT FINANCING

ARTICLE IX
REMEDIES

ARTICLE X
MISCELLANEOUS

(END OF TABLE OF CONTENTS)

DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "*Agreement*") is made and entered into this 21st day of September, 2009 (the "*Effective Date*"), by and between the CITY OF HUBER HEIGHTS, OHIO ("*City*"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "*State*") and its Charter, and DEC LAND CO. I, LLC ("*Developer*" and together with City, the "*Parties*") an Ohio limited liability company, under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I hereof).

RECITALS:

WHEREAS, Kendall heretofore acquired the Property and executed the Original Kendall Development Agreement with City, all for the purpose of undertaking the Original Development; and

WHEREAS, City's Planning Commission and City Council heretofore approved a basic development plan for the Original Development; and

WHEREAS, in connection with the Original Development, Kendall also executed and delivered to City the Original Assessment Petition and requested therein that City agree to finance and construct the Public Infrastructure Improvements (Development Parkway and Related) and that a portion of the cost of those Public Infrastructure Improvements (Development Parkway and Related) would be paid from special assessments to be levied against and collected from the Property; and

WHEREAS, City heretofore issued securities to finance the cost of constructing and installing the Public Infrastructure Improvements (Development Parkway and Related); and

WHEREAS, the construction and installation of those Public Infrastructure Improvements (Development Parkway and Related) has been completed and City Council has enacted legislation

to levy and collect the special assessments, all as more particularly described in the Original Assessment Petition and the Original Assessment Ordinance; and

WHEREAS, Kendall failed to complete work on the Original Development and Kendall's primary lender, Fifth Third Bank, prosecuted a foreclosure action against the Property and acquired the Property through a Sheriff's sale; and

WHEREAS, Fifth Third Bank subsequently conveyed the Property to Developer; and

WHEREAS, the Parties heretofore executed the Original DEC Development Agreement which provided that the Development Site (including the Property) would be developed as a residential, retail and commercial development and that the special assessments provided for in the Original Assessment Petition would be restructured to facilitate that development; and

WHEREAS, the Parties acknowledge that the recent downturn in the local economy has delayed the Proposed Development; and

WHEREAS, the Parties further acknowledge that the immediate construction of certain public infrastructure improvements and provision for the construction of other long-term public infrastructure improvements should facilitate and promote the Proposed Development; and

WHEREAS, Developer desires to continue to undertake the Proposed Development on the Development Site, subject to all required approvals by City in accordance with the City Codified Ordinances; and

WHEREAS, the City Council has passed the Authorizing Legislation which authorizes the execution and delivery of this Agreement; and

WHEREAS, the Parties have determined to enter into this Agreement to provide for the continued development of the Development Site in a manner consistent with the Proposed

Development and to consolidate into a single agreement those terms and conditions heretofore agreed to by the Parties and relating to the Proposed Development;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, and to induce Developer to continue to proceed with the Proposed Development, the Parties hereto agree and obligate themselves as follows:

(END OF RECITALS)

ARTICLE I

DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

Section 1.2 Definitions. As used herein:

"***Acceptable Bank***" means (a) any state or federally chartered bank that, at the time such bank is required to deliver a Letter of Credit, has been assigned a rating by Moody's Investors Service, Inc. at least equal to "A1" or by Standard & Poor's Rating Services at least equal to "A", each with respect to the long term, unsecured debt of the bank or (b) any state or federally chartered bank (including Integra Bank of Evansville, Indiana) *provided* that the Letter of Credit issued by a bank described in this clause (b) shall be accompanied by a confirming letter of credit issued by the Federal Home Loan Bank of Indianapolis.

"***Agreement***" means this Amended and Restated Development Agreement by and between City and Developer and dated as of the Effective Date.

"***Allocable Debt Service***" means 56.891% of the Debt Service which percentage is allocable to the Development Site – Residential Portion and which percentage reflects the proportionate cost of the Public Infrastructure Improvements (Development Parkway and Related) which is apportioned to the Development Site – Residential Portion pursuant to the Amended (Second) Assessment Petition.

"***Amended (First) Assessment Petition***" means the Amended Petition for Special Assessments and Affidavit originally executed on July 10, 2008 and delivered by Developer to City all pursuant to the Original DEC Development Agreement.

"***Amended (Second) Assessment Petition***" means the Amended and Restated Petition for Special Assessments and Affidavit substantially in the form as set forth on **EXHIBIT A** attached hereto and incorporated herein by reference and which shall amend and restate the Amended (First) Assessment Petition.

"***Amount Available for Allocable Debt Service***" means, on any date on which Debt Service is payable, the amount on deposit in the Special Assessment Account (excluding any Unamortized Special Assessments).

"***Authorizing Legislation***" means Resolution No. 2009-R-5125 passed on September 14, 2009 by the City Council and authorizing the execution and delivery of this Agreement.

"***CC&R***" means the Declaration of Covenants, Conditions and Restrictions prepared by Developer dated April 1, 2009, which, among other terms, will create the MHOA, and was recorded by Developer with the County Recorder on May 1, 2009, in Volume 0029, starting at page 135.

"***City***" means the City of Huber Heights, Ohio, an Ohio municipality.

"***City Codified Ordinances***" means the Codified Ordinances of City, as amended and supplemented from time to time.

"***City Council***" means the City Council of City.

"***City Engineer***" means the City Engineer of City.

"***City Manager***" means the City Manager of City.

"***City Property***" means the approximate 100 acres of real property depicted and described on **EXHIBITS C-1** and **C-2**, respectively, attached hereto and incorporated herein by reference.

"***City to Developer Conveyance***" means the sale and conveyance of the City Property from City to Developer.

"***Collection Year***" means the year in which taxes and special assessments are collected in respect of a particular tax year. For example, Collection Year 2009 would refer to the calendar year 2009 and in which payments are required to be remitted by a property owner for real property taxes and assessments in respect of Tax Year 2008, with the first installment of such payments being due in approximately January 2009 and the second installment of such payments being due in approximately June 2009, or such alternate collection method as may be required by the County from time to time.

"***Conceptual Development Plan***" means the conceptual site plan for the Development Site and the Proposed Development to be constructed thereon which is attached hereto as **EXHIBIT D** and incorporated herein by reference.

"***County***" means the County of Miami, Ohio.

"***County Auditor***" means the Auditor of the County.

"***County Recorder***" means the Recorder of the County.

"***County Treasurer***" means the Treasurer of the County.

"***Debt Service***" means the payment of principal of and interest on the Public Infrastructure Bonds.

"***Debt Service Coverage Ratio Set Aside***" means an amount computed in each calendar year equal to the difference between (a) the debt service coverage ratio (which ratio shall not be less than 1.20x, and shall be determined by City, in consultation with City's investment banking firm, assuming the respective long term bond issue was issued as a tax increment revenue financing) for each series of long term bonds issued by City in accordance with Section 4.4(e)(iv)(B) multiplied by the Debt Service Set Aside for those Bonds in that calendar minus (b) the Debt Service Set Aside for those Bonds in that calendar year.

"***Debt Service Set Aside***" means the amount determined by City to be required in any particular calendar year to pay the principal of and interest on the securities issued in accordance with Sections 4.4(e)(iv)(A) and 4.4(e)(iv)(B).

"***Developer***" means DEC Land Co. I, LLC, an Ohio limited liability company.

"***Developer to City Conveyance***" means the sale and conveyance of the Public Access Easements - Property from Developer to City.

"***Development Parkway***" means the street and related right-of-way depicted on **EXHIBIT B** attached hereto and incorporated herein by reference.

"***Development Site***" means, collectively, the Property and the City Property.

"***Development Site – Other Portion***" means collectively, any parcel(s) of the Development Site which are not included within the Development Site – Residential Portion.

"***Development Site – Residential Portion***" means collectively, any parcel(s) of the Development Site which, according to the Amended (Second) Assessment Petition, are to be developed for single-family or multi-family residential uses.

"***Effective Date***" means the date as defined in the preamble of this Agreement; *provided* that the Parties acknowledge and agree that certain actions were heretofore taken pursuant to and in accordance with the Original DEC Development Agreement.

"***Eligible TIF Area***" means the approximate 625 acres of real property depicted and described in the TIF Ordinance and on **EXHIBIT E**, attached hereto and incorporated herein by reference.

"***Eligible TIF Fund Receipts***" means, collectively, the Service Payments and Property Tax Rollback Payments received by City in respect of Improvements on the Eligible TIF Area.

"***Fair Market Value***" means the value of any parcel(s) of land as mutually agreed to by the seller and purchaser of the parcel(s).

"***Improvement***" shall have the same meaning as set forth in Ohio Revised Code Section 5709.40(A)(4).

"***Kendall***" means The Kendall Group Limited, an Ohio limited liability company.

"***Letter of Credit***" means an irrevocable letter of credit in the amount of Five Hundred Thousand Dollars ($500,000) issued by an Acceptable Bank in favor of City.

"***Montgomery County TIF Ordinance***" means Ordinance No. 2003-O-1409 passed by the City on August 22, 2005.

"***MHOA***" means the master homeowners' association to be created by Developer pursuant to Section 4.7 of this Agreement and the City Codified Ordinances.

"***MHOA Organizational Documents***" means the documents providing for the creation of the MHOA, including, but not limited to, the CC&R.

"***Notice Address***" means:

as to City:	City of Huber Heights, Ohio 6131 Taylorsville Road Huber Heights, Ohio 45424 Attention: City Manager Telephone: (937) 233-1423 Facsimile: (937) 233-1272
as to Developer:	DEC Land Co. I, LLC 255 Bradenton Avenue Dublin, Ohio 43017 Attention: Michael T. Radcliffe, Chairman

with copies to: George L. Jenkins
255 Bradenton Avenue
Dublin, Ohio 43017
Telephone: (614) 717-4444 ext. 110
Facsimile: (614) 717-4440
Email: george-jenkins@dec-investment.com

and

John P. Gordon, Esq.
Radcliffe & Gordon, LLP
255 Bradenton Avenue
Dublin, Ohio 43017
Telephone: (614) 726-4959
Facsimile: (614) 790-8923
Email: john-gordon@radcliffegordon.com

"***Original Assessing Ordinance***" means Ordinance No. 2004-O-1537 passed by the City Council on November 22, 2004.

"***Original Assessment Petition***" means the Affidavit and Petition for Special Assessments dated January 13, 2003, as amended by the Amended and Restated Affidavit and Petition for Special Assessments dated May 9, 2003, which is presently on file in the office of the Clerk of City Council.

"***Original DEC Development Agreement***" means, collectively, the Development Agreement, dated as of November 1, 2007, by and between City and Developer, as heretofore amended on July 29, 2008 and June 8, 2009.

"***Original Development***" means the original development proposed for the Property which would have consisted of approximately 1,100 single family residential homes, 450 multi-family units, a golf course and related clubhouse, and approximately 35 acres of commercial property.

"***Original Kendall Development Agreement***" means the Development Agreement by and between City and Kendall, dated as of November 12, 2002.

"***Planning Commission***" means the Planning Commission of City.

"***Property***" means the approximate 625 acres of real property depicted on **EXHIBIT E** attached hereto and incorporated herein by reference.

"***Property Tax Rollback Payment***" means any other payments received by City in connection with the TIF Exemption under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time.

"***Proposed Development***" means the development proposed by Developer for the Property which will consist of single family residential homes and multi-family residential units and 9.76 acres of retail and commercial development, and which may also include green space, community centers, pocket parks, bike paths and other related uses, all as generally depicted on the Conceptual Development Plan.

"***Public Access Easements***" means the perpetual easements consisting of the approximately 90 acres of real property depicted on **EXHIBIT F** attached hereto and incorporated herein by reference.

"***Public Access Easements – City Property***" means the portion of the Public Access Easements located upon the City Property and which will be reserved by City in connection with the Real Property Closing.

"***Public Access Easements – Property***" means the portion of the Public Access Easements located upon the Property and which was conveyed to City by Developer in the Grant of Public Access Easement Agreement dated February 1, 2008, and recorded as Item 0482215 in the County Recorder's Office.

"***Public Infrastructure Bonds***" means the $8,940,000 portion of the City's Various Purpose Bonds, Series 2008, dated March 7, 2008 which are general obligation bonds of the City

and were issued for the purpose and in an amount sufficient to pay the costs of constructing and installing the Public Infrastructure Improvements (Development Parkway and Related) and paying any related issuance costs of those Bonds.

"***Public Infrastructure Improvements ($0.6 Million)***" means any Public Infrastructure Improvements (TIF Related) including, but not limited to, streets, curbs and drains, water, sanitary and storm sewer and other public utility improvements, the design of any such Improvements, the preparation of the public areas related to the site of the Improvements and all other related and necessary appurtenances thereto.

"***Public Infrastructure Improvements ($1.2 Million)***" means any Public Infrastructure Improvements (TIF Related) including, but not limited to, streets, curbs and drains, water, sanitary and storm sewer and other public utility improvements, the design of any such Improvements, the preparation of the public areas related to the site of the Improvements and all other related and necessary appurtenances thereto.

"***Public Infrastructure Improvements (Development Parkway and Related)***" means Development Parkway, together with the related water, sanitary sewer, storm sewer, lighting, irrigation, landscaping improvements, and all necessary appurtenances thereto, heretofore constructed and installed by City, and all right-of-way associated with such improvements.

"***Public Infrastructure Improvements (TIF Related)***" means any public infrastructure improvements identified in the TIF Ordinance (which may be amended from time to time), together with all related costs (including those defined in Ohio Revised Code Section 133.15(B)), and which are paid for in accordance with Sections 4.4 and 8.4 hereof.

"***Public Infrastructure Securities ($1.8 Million)***" mean the securities issued by City from time to time in accordance with Section 4.4(d) for the purpose of paying the costs of the

Public Infrastructure Improvements ($0.6 Million) and Public Infrastructure Improvements ($1.2 Million) and any related financing costs.

"***Purchaser***" means (a) with respect to the Developer to City Conveyance, City and (b) with respect to the City to Developer Conveyance, Developer.

"***Real Property***" means with respect to the City to Developer Conveyance, the City Property; *provided* that City shall reserve the Public Access Easements – City Property out of the Real Property Deed in connection with the Real Property Closing.

"***Real Property Closing***" means the conveyance of the Real Property Deed, and in the case of the Developer to City Conveyance, the conveyance of the Public Access Easements - Property.

"***Real Property Closing Date***" means the date on which the Real Property Closing occurs.

"***Real Property Conveyances***" means collectively, the Developer to City Conveyance and the City to Developer Conveyance.

"***Real Property Current Taxes***" means the real estate taxes to be levied against the Real Property, if any, in respect of the tax year in which the Real Property Closing occurs.

"***Real Property Deed***" means collectively, the one or more good, sufficient and recordable general warranty deeds for the Real Property, each in a form reasonably satisfactory to Purchaser.

"***Real Property Escrow Agent***" means the Real Property Title Insurance Company, who will also serve as escrow agent for Seller and Purchaser.

"***Real Property Purchase Price***" means (a) with respect to the Developer to City Conveyance, an amount equal to Two Million Dollars ($2,000,000) and (b) with respect to the City to Developer Conveyance, an amount equal to Two Million Seven Hundred Thousand

Dollars ($2,700,000), and in each case, Seller and Purchaser each represent that the amount for each Conveyance, together with the other agreements and covenants contained herein, represents good and valuable consideration for that Conveyance. It is the intention of the Parties that City own all of the Public Access Easements following the Real Property Closing, and therefore, the Parties intend and agree that the Real Property Purchase Price for the Developer to City Conveyance also includes good and valuable consideration for Developer's agreement to allow City to reserve the Public Access Easements – City Property from the City to Developer Conveyance.

"***Real Property Survey***" means an ALTA survey prepared with respect to the Real Property.

"***Real Property Title Insurance Commitment***" means a commitment by the Real Property Title Insurance Company to issue the Real Property Title Insurance Policy.

"***Real Property Title Insurance Company***" means a title insurance company which shall be reasonably acceptable to Seller and Purchaser which shall issue the Real Property Title Insurance Policy.

"***Real Property Title Insurance Policy***" means an owner's policy of title insurance issued by the Real Property Title Insurance Company providing for title insurance in the amount of the Fair Market Value of the Real Property, insuring in Purchaser good and merchantable title in fee simple, free and clear of all liens, encumbrances, restrictions, reservations, easements and conditions of record, except those created or permitted by this Agreement.

"***Seller***" means (a) with respect to the Developer to City Conveyance, Developer and (b) with respect to the City to Developer Conveyance, City.

"***Service Payments***" means service payments in lieu of taxes which are required by the TIF Ordinance to be remitted by the then current owner of the Property pursuant to the TIF Ordinance.

"***SIB Agreements***" means, collectively, (a) the Loan Agreement between City and the Ohio Department of Transportation dated as of May 19, 2004 and (b) the Loan Agreement between City and the Ohio Department of Transportation dated as of September 29, 2005.

"***Special Assessment Account***" means the account created and maintained within the Carriage Trails Capital Fund which Fund is maintained in the custody of City. The Special Assessment Account shall also include a subaccount into which all special assessments levied in accordance with the Amended (Second) Assessment Petition and collected by the Auditor and conveyed to the City in respect of the Development Site – Residential Portion shall be deposited. All special assessments levied to pay the costs of the Public Infrastructure Improvements (Development Parkway and Related) and collected in respect of the Development Site will be credited to the Special Assessment Account.

"***Target Issue Amount – Special Project Based***" means the amount computed by City on October 1 in each of the calendar years 2010 through 2017 as follows (a) for calendar year 2010, an amount equal to the lesser of (i) $750,000 or (ii) the product of (A) the estimated Service Payments and Property Tax Rollback Payments to be received in respect of the cumulative tax valuation of residences to be constructed within the Eligible TIF Area (based on building permits issued prior to that October 1) divided by (B) $24,000 multiplied by (C) $750,000, (b) for calendar year 2011, an amount equal to the lesser of (i) $1,500,000 or (ii) the product of (A) the estimated Service Payments and Property Tax Rollback Payments to be received in respect of the cumulative tax valuation of residences to be constructed within the Eligible TIF Area (based on

building permits issued prior to that October 1) divided by (B) $55,000 multiplied by (C) $1,500,000, (c) for calendar year 2012, an amount equal to the lesser of (i) $2,250,000 or (ii) the product of (A) the estimated Service Payments and Property Tax Rollback Payments to be received in respect of the cumulative tax valuation of residences to be constructed within the Eligible TIF Area (based on building permits issued prior to that October 1) divided by (B) $105,000 multiplied by (C) $2,250,000, (d) for calendar year 2013, an amount equal to the lesser of (i) $3,000,000 or (ii) the product of (A) the estimated Service Payments and Property Tax Rollback Payments to be received in respect of the cumulative tax valuation of residences to be constructed within the Eligible TIF Area (based on building permits issued prior to that October 1) divided by (B) $160,000 multiplied by (C) $3,000,000, and (e) for calendar years 2014 through 2017, an amount equal to the lesser of (i) $3,750,000 or (ii) the product of (A) the estimated Service Payments and Property Tax Rollback Payments to be received in respect of the cumulative tax valuation of residences to be constructed within the Eligible TIF Area (based on building permits issued prior to that October 1) divided by (B) $220,000 multiplied by (C) $3,750,000; *provided, however*, City shall not be required to issue securities in any calendar year based on this calculation in an amount in excess of fifty percent (50%) of the estimated costs of the Public Infrastructure Improvements (TIF Related) as submitted by Developer in that calendar year. The Parties agree that for a building permitted to be recognized under this definition, such building permit shall (x) have been issued by the appropriate governmental authority, (y) reflect on its face the anticipated construction value of the residence and (z) have been issued within the twenty four (24) month period immediately preceding the October 1 on which the calculation is made or if the building permit was issued prior to that twenty four (24) month period, a

certificate of occupancy shall have been issued for the residence in respect of which the building permit was originally issued.

"***Target Issue Amount – TIF Value Based***" means an amount reasonably computed by City in any particular calendar year based on the following information (a) the amount, reasonably determined in cooperation with the County Auditor, of the anticipated assessed valuation of the Eligible TIF Area for the then current calendar (tax) year and based on that anticipated assessed valuation, ninety-five percent (95%) of the anticipated amount of Service Payments and Property Tax Rollback Payments to be received by City in respect of the Eligible TIF Area in the succeeding calendar (collection) year and (b) based on the preceding computation in (a), the principal amount, reasonably determined in consultation with City's investment banking firm and bond counsel, of securities which may be issued after taking into consideration a reasonable, market-based debt service coverage ratio (for TIF revenue long-term obligations) and reasonable assumed interest rates, principal amortization periods and issuance expenses.

"***TIF Exemption***" means the exemption from real property taxation for the Improvements as authorized by the TIF Statute and TIF Ordinance.

"***TIF Fund***" means the Miami County Municipal Public Improvement Tax Increment Equivalent Fund created pursuant to the TIF Ordinance and includes any accounts created therein.

"***TIF Fund – Additional Public Improvements Account***" means the account by that name created within the TIF Fund and into which certain Eligible TIF Fund Receipts shall be deposited in accordance with Section 8.4 hereof.

"***TIF Fund – Primary Public Improvements Account***" means the account by that name created within the TIF Fund and into which certain Eligible TIF Fund Receipts shall be deposited in accordance with Section 8.4 hereof.

"***TIF Ordinance***" means Ordinance No. 2005-O-1589 passed on August 22, 2005 by the City Council which exempted any Improvements to the Property from real property taxation pursuant to the TIF Statute.

"***TIF Statute***" means Sections 5709.40 through 5709.43 of the Ohio Revised Code and those sections as each may be amended from time to time.

"***Unamortized Special Assessments***" means, to the extent that any special assessments levied in accordance with the Amended (Second) Assessment Petition are prepaid, that portion of those prepaid special assessments which would not have been due and payable in the then current calendar year.

Section 1.3 Interpretation. Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their 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, a section, provision or chapter of the Ohio Revised Code, or a section or provision of the City Codified Ordinances shall include such section, provision or chapter as 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 Parties under this 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 Agreement; and the term "*hereafter*" means after, and the term "*heretofore*" means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

(END OF ARTICLE I)

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1 General Agreement Among Parties. 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 Agreement and the intended arrangements between the Parties, the Parties shall cooperate in the manner described herein to facilitate the construction of the Proposed Development.

Section 2.2 Term of Agreement. This Agreement shall become effective as of the Effective Date and shall continue until the Parties have satisfied their respective obligations as set forth in this Agreement, unless sooner terminated in accordance with the provisions set forth herein.

Section 2.3 Amendment and Restatement of Original Agreement. This Agreement is intended to amend and restate the Original DEC Development Agreement, including any heretofore executed amendments to the Original DEC Development Agreement.

Section 2.4 Recordation of Agreement. Developer shall file this Agreement with the County Recorder of the County for recordation in the Official Records of the County as soon as practicable following the Effective Date. Developer shall pay any costs associated with the recording of this Agreement. Developer shall, promptly following such recordation, provide, without charge, a photocopy of this Agreement to City.

(END OF ARTICLE II)

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1 Representations and Covenants of City. City represents and covenants that:

(a) It is a municipal corporation 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 City which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of City, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to City, including its Charter, and does not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the covenants and agreements of City contemplated herein are valid and binding obligations of City, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by City wherein an unfavorable ruling or decision would materially adversely affect City's ability, to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

(g) The Authorizing Legislation has been duly passed and is in full force and effect as of the Effective Date.

(h) The City has provided to Developer a complete and accurate set of plans and specifications, and cost information for the Public Infrastructure Improvements (Development Parkway and Related) which it hereby certifies to be true and accurate and such cost information shall be used in the computation of the special assessments as described in the Amended (Second) Assessment Petition.

(i) Based on the knowledge of the City Manager and the Director of Law as of the Effective Date, the City Property is not in violation of or subject to any existing, pending, or threatened investigation or inquiry by any governmental authority, nor subject to any remedial obligations for hazardous substances or wastes under any federal, state or local environmental statute, regulation or ordinance.

Section 3.2 Representations and Covenants of Developer. Developer represents and covenants that:

(a) It is a for profit limited liability company duly organized and validly existing under the 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 Developer which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of Developer, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to Developer, and does not and will not conflict with or

result in a default under any agreement or instrument to which Developer is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by Developer and all steps necessary to be taken by Developer have been taken to constitute this Agreement, and the covenants and agreements of Developer contemplated herein are valid and binding obligations of Developer, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by Developer wherein an unfavorable ruling or decision would materially adversely affect Developer's ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(g) It has the financial ability to meet its monetary obligations that arise or may arise as a result of this Agreement, and will, upon City's request, provide confirmation of this representation by certification of an officer of the Developer of the equity capitalization of the Developer of at least Five Million Dollars ($5,000,000) contributed in cash.

(h) It owns good and marketable fee simple title to the Property.

(END OF ARTICLE III)

ARTICLE IV

DEVELOPMENT OF DEVELOPMENT SITE

Section 4.1 General Provision Relating to Proposed Development. Promptly following the Effective Date, Developer agrees to proceed with all reasonable dispatch to develop the Development Site in a manner consistent with this Agreement.

Section 4.2 Zoning.

(a) **Original Development Zoning.** The Parties acknowledge that the Planning Commission and the City Council have heretofore zoned the Development Site as a Planned Mixed Use development. Also, the Planning Commission and the City Council have each approved a basic development plan for the Development Site, which was prepared and submitted by Kendall.

(b) **Proposed Development Zoning.** The Parties agree that the Conceptual Development Plan formed the basis for a revised basic development plan which was prepared by the Developer and approved by the City Council on December 15, 2008 in Ordinance No. 2008-O-1766 dated December 18, 2008. The Parties further agree that such revised basic development plan constitutes a major change from the basic development plan for the Original Development heretofore approved by the Planning Commission and the City Council. The Parties acknowledge that the revised basic development plan was submitted for review first by the City administrative staff, second by the Planning Commission for review and action and third by the City Council for review and was approved by all these bodies, all in accordance with Chapter 1171 of the City Codified Ordinances. Developer acknowledges and agrees that it will be required to prepare and submit for approval detailed development plan(s) for the Development Site as various subdivisions are developed.

(c) **Proposed Timing**. The Parties agree that the Development Site will likely be developed in phases and therefore, Developer may periodically submit separate detailed development plans for the various phases of the development of the Development Site, all of which will be subject to the approval process described in Section 4.2(b). The revised basic development plan included a phasing plan. Detailed development plan proposal(s) submitted for approval of each phase must be self-sufficient and not dependent on the subsequent approval and/or completion of any other portion of the Development Site for the provision of roadway access or utilities.

Section 4.3 Requirements Related to Development of Development Site.

(a) **Construction and Installation of Utilities and Roadways.**

(i) **Water**. Except as otherwise provided herein, at no cost to City, it shall be the obligation of Developer, or any successor developer of the Development Site as the case may be, to construct the water lines, hydrants, valves, irrigation systems and related appurtenances within the Development Site, which water lines, hydrants, valves, irrigation systems and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with City's standard requirements.

(ii) **Sanitary Sewer**. Except as otherwise provided herein, at no cost to City, it shall be the obligation of Developer, or any successor developer of the Development Site as the case may be, to construct the sanitary sewer lines and related appurtenances within the Development Site, which sanitary sewer lines and related appurtenances shall be installed and inspected pursuant to plans and specifications approved by the City Engineer in accordance with City's standard requirements.

(iii) **Storm Sewer**. Except as otherwise provided herein, at no cost to City, Developer shall provide to City storm sewer drainage easements, as necessary, and will dedicate a storm sewer collection system and related onsite and offsite regional detention and/or retention ponds to City which will be designated on the detailed development plan(s) and plat(s) for the Development Site. The exact location and size of such storm sewer drainage easements and regional ponds shall be determined by the detailed development plan(s) and final plat(s) as approved by City, consistent with the zoning thereof, as herein provided, engineering standards and all other applicable rules and regulations. Except for underground storm sewer pipes, Developer or MHOA shall be responsible for all maintenance of the storm sewer management system (including but not limited to easements and ponds) on each phase of development of the Development Site.

The Parties covenant and agree that all roadway, utility and other construction and development work undertaken by such party will be designed and performed in such a manner as not to disrupt or otherwise interfere with any then existing storm sewer drainage systems (surface, field tile or other) on or off of the Development Site.

The Parties acknowledge the existence of the storm sewer ditch in the northwest corner of the Development Site and that such ditch facilitates the removal of storm sewer drainage from real property located to the north of the Development Site. The Parties agree that Developer may, at Developer's cost, take such appropriate steps to remediate such storm sewer ditch to facilitate the completion of the Proposed Development; *provided, however*, Developer agrees that any remediation activity shall be taken at such times and subject to approval by City, such that alternative storm sewer drainage facilities shall be available to properly dispose of any storm sewer drainage from the real property

located to the north of the Development Site and the real property to the north shall not be adversely affected in connection with those remediation activities.

(iv) **Roadways**. Except as otherwise provided herein, all roads within the Development Site, not already constructed by City, shall be constructed by Developer (or its successors in interest to the applicable portion of the Development Site) as needed for its intended use of the Development Site. All public and private roads shall be constructed in accordance to City standards. All roads shall be reviewed, inspected and approved by City.

(v) **Cross-Easements for Utility Services**. The Parties agree among themselves to grant, without charge, reciprocal cross-easements or easements to public or private utilities, as appropriate, for construction of utilities described in this Section 4.3, or other public or private utilities to service the Property; *provided, however*, that all easements shall be within or adjacent to the various proposed public road or driveway rights-of-way, as set forth on the revised basic development plan for the Development Site, except as may otherwise be reasonably necessary to assure utility services to all parts of the Development Site. Easements for surface drainage shall follow established water courses, unless otherwise agreed to by the affected Parties. Developer shall restore any easement areas to a condition which is reasonably satisfactory to City promptly following any construction work by a private entity. City shall restore any easement areas following any construction work by City in accordance with the City Codified Ordinances.

(vi) **Dedication**. All public utilities and public roadways (including related rights-of-way) installed and/or constructed within the Development Site (except certain

of the storm sewer improvements referenced in Section 4.3(a)(iii) which may hereafter be identified by City and the utility cross easements described in Section 4.3(a)(v)) shall be dedicated (free and clear of any liens, encumbrances and restrictions except as may be permitted in writing by City) to City and recorded with the County Recorder at such time as is consistent with the City Codified Ordinances.

(vii) **Public Infrastructure Improvements (Development Parkway and Related)**. The Public Infrastructure Improvements (Development Parkway and Related) (including related rights-of-way) have been dedicated (free and clear of any liens, encumbrances and restrictions except as were permitted in writing by City) to City and recorded with the County Recorder. To the extent that any of water, sanitary sewer or storm sewer improvements installed as part of the Public Infrastructure Improvements (Development Parkway and Related) must be relocated to facilitate the Proposed Development, Developer may, except as otherwise provided herein, at its sole cost and with approval from the Planning Commission, relocate said Public Infrastructure Improvements (Development Parkway and Related). Promptly following the issuance of a zoning permit for 85% of the buildable lots within the Development Site – Residential Portion, or such earlier time as determined solely by City, City agrees to pay for and install one additional asphalt lift on Development Parkway.

(viii) **State Route 201 Intersection Signalization**. City agrees, when and as approved by City, to pay for, install and maintain a traffic signal and related appurtenances at the intersection of Development Parkway and State Route 201.

(ix) **Expedited Bidding Process**. Since the Parties want to develop residential dwellings in the Development as soon as practical to generate revenue for City and

Eligible TIF Funds, City will waive the competitive bidding requirements of the City Codified Ordinances for the first subdivision to enhance the financial condition of City. City will waive competitive bidding for the next two subdivisions if Developer follows the following procedures: Developer will: (A) obtain a minimum of two (2) bids from responsible and responsive bidders, (B) in conjunction with City, it will select the lowest and best bidder and (C) negotiate and sign a contract with the selected bidder which contract shall comply with the ordinances and regulations of City and be approved by City.

(b) **Construction Access**. Developer agrees that it shall limit the loading and unloading of construction supplies, equipment and vehicles to the Development Site only and shall not permit any loading or unloading of construction supplies, equipment or vehicles to take place on Development Parkway. Developer shall be permitted access to and from the Development Site through Development Parkway; *provided, however*, that no tracked vehicles shall be operated on Development Parkway, and Developer shall only allow construction vehicles with pneumatic tires and which will not damage the surface of Development Parkway. Developer shall repair, replace or restore any damaged property and any disturbed surfaces or sub-surfaces of the Development Parkway to the satisfaction of City as determined by the City Engineer, including but not limited to damage to Development Parkway caused by construction traffic; *provided, however*, if Developer is able to demonstrate to the sole satisfaction of the City Manager that the damage to Development Parkway was not caused by the actions of Developer, any successor in interest of Developer to the Development Site, or any contractor of Developer or its successors, then Developer shall not be obligated to repair, replace or restore such damage to Development Parkway. Prior to the earlier occurrence of (i) City's determination to open

Development Parkway for access by the public or (ii) City granting a grading or zoning permit or taking other official action to authorize Developer to commence construction activity within the Development Site, Developer shall provide a performance and payment bond or letter of credit acceptable to City, in the amount of not less than $100,000 which such performance and payment bond or letter of credit shall name City as an obligee with respect to the repair, replacement or restoration requirements of this Section 4.3(b). In addition, Developer shall maintain a performance and payment bond or letter of credit of not less than $365,000. Developer may apply any part or all of the $365,000 as security for Section 9 of the Planned Unit Development Agreement(s) and/or Sections 2 and 4 of the Subdividers Agreement(s). Developer may break down the $465,000 obligation between a $100,000 bond or letter of credit and a $365,000 bond or letter of credit or Developer may maintain a $465,000 bond or letter of credit. In either event not less than $100,000 shall be maintained solely for the purpose of securing the obligation to repair, replace or restore any Developer caused damage to Development Parkway for the duration of the obligation under this Agreement. The $365,000 bond or letter of credit may secure one or more Planned Unit Developments or Subdividers Agreements as long as the total does not exceed $365,000. If some or all of the $365,000 is not being used as security for the Planned Unit Development Agreements and/or Subdividers Agreements, the uncommitted amount may be used to meet the repair, replace or restore obligations of Developer.

(c) **Permits**. Prior to commencing construction within the Development Site, Developer shall obtain all necessary permits from all levels of government to allow Developer to build and develop the Development Site consistent with the detailed development plan(s) for the Proposed Development. Standards for permit approval shall comply with all applicable

standards (as may be set forth in City Codified Ordinances or elsewhere) at the time of zoning permit application or, in the case of City administrative plan review requirements, at the time of application for those predevelopment permits.

(d) **Fees and Charges**. Developer, or any successor developer of a portion of the Development Site as the case may be, shall, prior to commencing any construction within the Development Site, pay the then current fees in connection with any construction on the Development Site, which fees shall include, but not be limited to, the provision of water, sanitary sewer and storm sewer services, and which fees, City agrees, will be computed in a reasonable manner. Developer acknowledges and agrees that City reserves the right to adjust the fees described in this Section 4.3(d) from time to time.

(e) **Provision of City Services**. Except as otherwise provided herein, City agrees to provide to Development Site any City services usually and customarily provided by City, including but not limited to fire and police protection and road maintenance.

(f) **Insurance and Bonds**. Insurance and bonds shall be provided by Developer or its contractors and subcontractors during the course of development of the Development Site as otherwise required by the City Codified Ordinances and other applicable development regulations.

(g) **Compliance with Laws**. In connection with the completion of the Proposed Development and in performing its obligations under this Agreement, Developer agrees that it shall comply with, and cause all of its employees, agents, contractors and consultants to comply with, all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit

(federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence affecting the Development Site or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Developer, at any time in force affecting the Development Site or any part thereof.

Section 4.4 Construction and Financing of Additional Public Infrastructure Improvements.

(a) **General.** The Parties agree that certain additional public infrastructure improvements will be constructed and financed from time to time in accordance with this Section.

(b) **Public Infrastructure Improvements ($1.2 Million).** Developer agrees to finance and cause the construction of the Public Infrastructure Improvements ($1.2 Million). City agrees to acquire the Public Infrastructure Improvements ($1.2 Million) from Developer for an amount equal to the lesser of (i) the actual costs of constructing those Public Infrastructure Improvements ($1.2 Million) or (ii) One Million Two Hundred Thousand Dollars ($1,200,000); *provided, however*, City shall not be obligated to acquire such Public Infrastructure Improvements ($1.2 Million) unless Developer shall have submitted such Public Infrastructure Improvements ($1.2 Million) to City for dedication with fifteen (15) months following the Effective Date in a manner consistent with an agreement to be entered into between City and Developer which will provide for the specific terms relating to the construction and dedication of the Public Infrastructure Improvements ($1.2 Million); and *provided, further*, Developer acknowledges and agrees that City's obligation to acquire such Public Infrastructure Improvements ($1.2 Million) is contingent upon City's successful sale of securities for that

purpose which City agrees to diligently pursue in good faith. City agrees to act in good faith to review and process any submissions from Developer relating to the dedication of the Public Infrastructure Improvements ($1.2 Million). City agrees to pay for the Public Infrastructure Improvements ($1.2 Million) no later than ten (10) business days following the conveyance or dedication of those Public Infrastructure Improvements ($1.2 Million).

(c) **Public Infrastructure Improvements ($0.6 Million)**. Developer agrees to finance and cause the construction of the Public Infrastructure Improvements ($0.6 Million). City agrees to acquire the Public Infrastructure Improvements ($0.6 Million) from Developer for an amount equal to the lesser of (i) the actual costs of constructing those Public Infrastructure Improvements ($0.6 Million) or (ii) Six Hundred Thousand Dollars ($600,000); *provided, however*, City shall not be obligated to acquire such Public Infrastructure Improvements ($0.6 Million) unless Developer shall have submitted such Public Infrastructure Improvements ($0.6 Million) to City for dedication with twenty-four (24) months following the Effective Date in a manner consistent with an agreement to be entered into between City and Developer which will provide for the specific terms relating to the construction and dedication of the Public Infrastructure Improvements ($0.6 Million); and *provided, further*, Developer acknowledges and agrees that City's obligation to acquire such Public Infrastructure Improvements ($0.6 Million) is contingent upon (iii) Developer having delivered documentation (in a form which is reasonably acceptable to City) that any of the following have been satisfied: (A) fifty percent (50%) of (1) twenty-two lots in Section 14 and (2) fifteen (15) lots in another subdivision (a total of 19 lots), are under contract with a homebuilder and/or homeowner, (B) thirty-three percent (33%) of (1) the twenty-two (22) lots in Section 14 and (2) fifteen (15) lots in another subdivision (a total of 37 lots) have been sold to homeowners, (C) at least thirteen (13) lots in all of the subdivisions in

the Development Site – Residential Portion have been sold to homeowners, or (D) the tax valuation of all developed lots within the Development Site – Residential Portion which have been sold by Developer to a homebuilder shall equal or exceed $1.4 million, and (iv) City's successful sale of securities for that purpose which City agrees to diligently pursue in good faith. City agrees to act in good faith to review and process any submissions from the Developer relating to the dedication of the Public Infrastructure Improvements ($0.6 Million). City agrees to pay for the Public Infrastructure Improvements ($0.6 Million) no later than ten (10) business days following the conveyance or dedication of those Public Infrastructure Improvements ($0.6 Million).

(d) **Issuance of Securities by City for Public Infrastructure Improvements ($1.2 Million) and Public Infrastructure Improvements ($0.6 Million)**. Within 45 days after the Effective Date, City agrees to issue the Public Infrastructure Securities ($1.8 Million) (based on consultations with the City's investment banking firm and bond counsel), sufficient to pay the costs of the Public Infrastructure Improvements ($1.2 Million) and Public Infrastructure Improvements ($0.6 Million) and any related financing costs. City agrees that the proceeds from the sale of those securities (excluding any portion related to financing costs) will be deposited into a fund and used for the purpose of paying the costs of the Public Infrastructure Improvements ($1.2 Million) and Public Infrastructure Improvements ($0.6 Million) in accordance with this Agreement. City anticipates that it will issue bond anticipation notes for purposes of this subsection (xi) until calendar year 2015, at which time it anticipates issuing a long-term bond issue for purposes of refinancing those bond anticipation notes; *provided, however*, the Parties acknowledge and agree that conditions in the tax-exempt markets may require an alternative approach and that City is entitled to reasonably rely on consultations with

City's investment banking firm and bond counsel to determine the financing structure(s) for the Public Infrastructure Securities ($1.8 Million) which may be in the best financial interest of City.

(e) **Public Infrastructure Improvements (TIF Related)**. The Parties agree that Developer may request, based on the requirements of this subsection, that City agrees to pay for or finance the construction of certain additional Public Infrastructure Improvements (TIF Related).

(i) **Identification of Public Infrastructure Improvements (TIF Related)**. At any time following the Effective Date and until October 1 of the last calendar year in which Eligible TIF Fund Receipts are received by City, Developer may provide written notification to City which notification shall include (A) a description of the proposed Public Infrastructure Improvements (TIF Related) to be constructed or which have been constructed, including the location thereof, (B) the anticipated cost of those Public Infrastructure Improvements (TIF Related) to be constructed or which have been constructed, (C) the schedule for the construction of those Public Infrastructure Improvements (TIF Related) and (D) whether the costs of the Public Infrastructure Improvements (TIF Related) will be paid from monies on deposit in the TIF Fund - Additional Public Improvements Account or from securities proposed to be issued by the City. Not later than thirty (30) days following receipt of that request by City, City shall provide written notification to Developer regarding Developer's request; *provided*, that City's notification shall specify whether each point required to be included in Developer's notification is approved or disapproved and, if disapproved, the reason for the disapproval; *provided, further*, the Public Infrastructure Improvements (TIF Related)

must be permitted pursuant to the TIF Ordinance and the TIF Statute and City agrees not to unreasonably withhold or delay approval of any request submitted by Developer.

(ii) **Construction of Public Infrastructure Improvements (TIF Related)**. Following approval by City of the proposed or previously constructed Public Infrastructure Improvements (TIF Related), the Parties shall enter into one or more infrastructure agreements (each in a form which is approved by the City Attorney) to provide for the construction of the proposed Public Infrastructure Improvement (TIF Related). The infrastructure improvement agreement shall provide for the specific terms relating to the construction of the proposed Public Infrastructure Improvements (TIF Related) which shall include provision for, but not necessarily be limited to, the preparation of plans and specifications, construction costs, paying or financing the costs, and providing warranties therefor. The Parties agree to cooperate in good faith to promptly complete and execute an infrastructure agreement to provide for those proposed Public Infrastructure Improvements (TIF Related).

(iii) **Payment of the Costs of Public Infrastructure Improvements (TIF Related)**. If Developer's request provides that the costs of the proposed Public Infrastructure Improvements (TIF Related) shall be paid directly from monies on deposit in the TIF Fund - Additional Public Improvements Account (as opposed to a financing), the related infrastructure agreement shall provide that the City shall pay, when the related Public Infrastructure Improvements (TIF Related) are dedicated or conveyed to City, to the Developer, or other party designated by the Developer, the final costs of the proposed Public Infrastructure Improvements (TIF Related) no later than ten (10) business days following completion and dedication or conveyance of such proposed Public

Infrastructure Improvements (TIF Related) to the City and as sufficient monies are on deposit in the TIF Fund - Additional Public Improvements Account.

(iv) **Financing of the Costs of Public Infrastructure Improvements (TIF Related)**. If Developer's request provides that City shall issue securities to pay the costs of the proposed Public Infrastructure Improvements (TIF Related), the Parties agree that the following shall apply:

(A) For requests made in each of the calendar years 2010 through 2017, the request shall be made no later than October 1 of that calendar year and upon receipt of the request, City shall first reasonably determine the aggregate principal amount of securities which may be issued based on the greater of the Target Issue Amount – Special Project Based or Target Issue Amount – TIF Value Based; *provided, however*, the aggregate principal amount of securities to be issued, unless otherwise approved by the City, shall not exceed an amount equal to $750,000 plus the Target Issue Amount – TIF Value Based. The Parties agree that such principal amount shall necessarily include the amount required to retire the principal amount of securities theretofore issued in accordance with this Section 4.4(e)(iv)(A) and any related issuance expenses and may be limited to the extent the City reasonably determines that Service Payments and Property Tax Rollback Payments are required to pay the principal of and interest on the loans identified in the SIB Agreements.

(B) For requests made in each of the calendar years following 2017, the request shall be made no later than October 1 of that calendar year and upon receipt of the request, City shall first reasonably determine the aggregate principal

amount of securities which may be issued based on the Target Issue Amount – TIF Value Based. The Parties agree that such principal amount shall necessarily be determined such that the debt service coverage ratio described in Target Issue Amount – TIF Value Based shall apply to all securities theretofore issued in accordance with Sections 4.4(e)(iv)(A) and 4.4(e)(iv)(B) and the securities then proposed to be issued in accordance with this Section 4.4(e)(iv)(B). The Parties further agree that the principal amount may include such amounts required to pay any related issuance expenses. The Parties further agree that the principal amount may be limited to the extent the City reasonably determines that Service Payments and Property Tax Rollback Payments are required to pay the principal of and interest on the loans identified in the SIB Agreements.

(C) Based on the determinations in either (A) or (B) above, City agrees to act in good faith to pursue the issuance of securities to pay the costs of the proposed Public Infrastructure Improvements (TIF Related). City anticipates that the securities to be issued in accordance with Sections 4.4(e)(iv)(A) and 4.4(e)(iv)(B) will be initially issued as bond anticipation notes until calendar year 2017, at which time it anticipates issuing a long-term bond issue for purposes of refinancing those bond anticipation notes; *provided, however*, the Parties acknowledge and agree that conditions in the tax-exempt markets may require an alternative approach and that City is entitled to reasonably rely on consultations with City's investment banking firm and bond counsel to determine the financing structure(s) for the securities identified in this subsection which may be in the best financial interest of City. For any securities issued in accordance with Section

4.4(e)(iv)(B) after 2017, City reserves the right to issue those securities in such form as may be financially advantageous to City. The Parties agree that the amortization period of any securities shall not exceed the final calendar year in which City expects to receive Eligible TIF Fund Receipts.

(D) The Parties agree that sufficient monies shall be set aside in the TIF Fund - Primary Public Improvements Account in each year to provide for the Debt Service Set Aside and the Debt Service Coverage Ratio Set Aside. The Parties further agree that the aggregate of Eligible TIF Fund Receipts required to satisfy the Debt Service Set Aside and the Debt Service Coverage Ratio Set Aside shall not thereafter be available for the purpose of securing additional securities which may be issued in the future in accordance with Section 4.4(e)(iv)(B).

(f) **Financing of the Costs of Public Infrastructure Improvements (TIF Related) for Extraordinary Project**. If Developer provides written notice to City of an extraordinary project within the Eligible TIF Area, City reserves the right, but shall not be obligated, to waive all or any portion of the requirements of this Section 4.4 and provide sufficient monies (either through a financing or otherwise) to pay the costs of the Public Infrastructure Improvements (TIF Related) as identified by Developer as necessary to facilitate such extraordinary project.

Section 4.5 Expeditious Completion of Proposed Development. The Parties agree that the expeditious completion of the Proposed Development will benefit both Parties. To that end, Developer agrees to act in good faith and proceed forward with all reasonable dispatch to complete the Proposed Development. City also agrees to act in good faith and diligently review the various applications and other matters which must be approved by City as compliant with applicable laws and regulations in connection with the Proposed Development; *provided*,

however, Developer acknowledges and agrees that the various approvals of City relating to planning and zoning described in this Article IV shall not be effective until approved by the appropriate body. The Parties each agree that City shall bear no responsibility for the marketing or sale of residential, retail or commercial real property or improvements thereto within the Proposed Development.

Section 4.6 Neighborhood Amenities. The Parties acknowledge and agree that the Development Site will benefit from the construction of neighborhood amenities which will be available solely for the residents of the Development Site; *provided, however*, any amenities constructed within the Public Access Easements shall be available to the general public. Developer further agrees that City shall bear no responsibility for the financing, construction, operation or maintenance of the neighborhood amenities.

Section 4.7 Master Homeowners' Association.

(a) **Creation and Organizational Documents.** Developer agrees that following the completion of the Real Property Conveyances and prior to the sale of any parcel to third parties for development, it will create or cause the creation of the MHOA which will consist of all real property to be included in the Proposed Development. Developer agrees that the MHOA Organizational Documents will provide that the MHOA will be responsible for all matters for which a property owners' association customarily has responsibility. Developer agrees that City shall have the right to review and approve the MHOA Organizational Documents, which approval shall not be unreasonably withheld or delayed. City agrees to provide comments and/or approval relative to the MHOA Organizational Documents no later than sixty (60) days following receipt thereof from Developer.

(b) **City's Rights Under CC&R**. The Parties agree that, among other terms which may be included in the CC&R, the CC&R shall provide the following:

(i) City shall have the right, without effect of waiver or delay, to perform the obligations of the MHOA as prescribed by Section 4.8, which performance by City may be effected following delivery of notice by City to the MHOA that the MHOA has failed to perform its obligations under this Agreement and such failure shall continue for ten (10) days following delivery of such notice by City; *provided, however*, City agrees that it will delay pursuit of such obligations if in the City's reasonable determination, Developer or MHOA is proceeding expeditiously to complete such obligation;

(ii) City shall have the right to impose fees against the MHOA which fees shall be reasonably related to City's cost of effecting such performance as described in Section 4.7(b)(i);

(iii) In the event that City performs the obligations of the MHOA pursuant to Section 4.7(b)(i) above, City shall have the right, if the MHOA does not remit payment of such fees within thirty (30) days following the delivery of an invoice by City to the MHOA, to (A) certify any unpaid fees to the County Auditor and which unpaid fees shall be apportioned against all real property located within the Development Site (except any real property owned by City or the MHOA) on a per acreage basis, shall constitute a lien against that real property and shall be collected with real property taxes in the succeeding tax collection year and/or (B) institute legal proceedings against the MHOA and/or the owner of any real property within the Development Site to recover said unpaid fees; and

(iv) City shall reserve the right to pursue all other rights and remedies at law or in equity which it may have against the MHOA.

Section 4.8 Maintenance Responsibilities. In addition, the Developer agrees that it shall be responsible and, after the MHOA is created, the MHOA shall be responsible, for the following:

(a) **Maintenance of a Portion of Development Parkway Right-of-Way**. Paying the costs of and undertaking responsibility for seeding, maintaining, weeding, mowing, trimming, irrigating, repairing and replacing all grass and other plantings within Development Parkway.

(b) **Maintenance of Pathways and Plantings**. Paying the costs of and undertaking responsibility for designing, installing, planting, maintaining, weeding, repairing and replacing all paths and bikeways, and grass and other plantings within any areas of the Public Access Easements, all of which shall be reviewed and approved pursuant to City Codified Ordinances and other applicable regulations.

(c) **Operation and Maintenance of Proposed Development Lighting**. Paying the costs of and undertaking responsibility for operating, maintaining, repairing and replacing all street lighting within the Proposed Development, including but not limited to, Development Parkway.

(d) **Maintenance of Tunnels**. Paying the costs of and undertaking responsibility for draining, lighting, maintaining, repairing and improving all tunnels within the Proposed Development.

(e) **Insurance**. The party which is then currently responsible for the maintenance obligations set forth in this Section 4.8 shall continuously, during the term of this Agreement, maintain such policy or policies of insurance, including general liability coverage, as would be maintained by City when operating and maintaining such improvements (as described in subsections 4.8(a) through (d)) and shall verify and deliver originals of all such policies to City

on or before January 1st of each and every calendar year during the term of this Agreement. The cost of any and all litigation incurred by City, related to such improvements, including but not limited to its defense under Section 723.01 of the Ohio Revised Code, shall be the responsibility of the Developer. All such policies shall name the City as an additional insured.

Section 4.9 Future Development. Developer acknowledges and agrees that the real property located north of the Development Site, between State Routes 201 and 202 and south of U.S. Route 40 may be integrated into the Proposed Development. Developer further agrees that if the real property described in the preceding sentence is proposed for development by Developer, Developer will, upon the request of City, file any necessary petitions with City to annex such real property into City and will not seek the provision of utility services for such area from any other political subdivision.

(END OF ARTICLE IV)

ARTICLE V

CONVEYANCES OF REAL PROPERTY

Section 5.1 Conveyance of Public Access Easements – Property to City. The Parties have completed the Developer to City Conveyance for an amount equal to the Real Property Purchase Price for that Conveyance.

Section 5.2 Conveyance of City Property to Developer. The Parties have completed the City to Developer Conveyance for an amount equal to the Real Property Purchase Price for that Conveyance.

Section 5.3 General Agreement. The Parties agree that whenever this Agreement provides for the conveyance of real property, such conveyance shall be completed in the manner described in this Article V.

(a) **Form of Real Property Deed; Title**. Seller will convey good and merchantable fee simple title to the Real Property to Purchaser in the form of the Real Property Deed. The conveyance and title for the Real Property shall, in addition to any other conditions, covenants, and restrictions set forth or referred to elsewhere in this Agreement, be subject to the following:

(i) Easements and rights-of-way of record for public utility service, and such additional easements or rights-of-way as are necessary for public utility service. At City's option, such easements or rights-of-way (if any) which must be created after the date of this Agreement for the benefit of the Real Property will be created in accordance with City's subdivision regulations at no cost to City;

(ii) The covenants contained herein (if any) which are by the terms of this Agreement required to be covenants running with the land;

(iii) Unpaid taxes and assessments, not delinquent; *provided* that Developer, or any successor or assign, shall be obligated for the payment of any such assessments;

(iv) Zoning ordinances and other applicable land use and development regulations; and

(v) Such additional title exceptions as will not materially and adversely affect the use of the Real Property.

(b) **Apportionment of Current Taxes**. The Real Property Current Taxes shall be apportioned on a calendar year basis between Seller and Purchaser as of the Real Property Closing Date. Real estate taxes for the tax years previous to the tax year in which the Real Property Closing occurs, if any, will be paid by Seller. Seller shall be entitled to any refund for real estate taxes paid by Seller (whether by direct payment or as a result of proration at the Real Property Closing) for any time period prior to the applicable Real Property Closing Date. If any such refund is paid directly to Purchaser or credited to Purchaser on subsequent tax bills, then Purchaser shall promptly pay such amounts to Seller.

(c) **Recordation of Deed**. Purchaser promptly filed the Real Property Deed and the Public Access Easements - Property with the County Recorder of the County for recordation in the Official Records of the County. Developer paid all costs of recording any Real Property Deed and the Public Access Easements - Property. Developer did, at its expense and promptly following the recordation of the deed therefore, provide a copy of such recorded deed to City.

(d) **Title Insurance**. Simultaneously with the delivery of the Real Property Deed, Developer did provide, at the expense of Developer, the Real Property Title Insurance Policy issued by the Real Property Title Insurance Company.

(e) **Surveys**. Developer did, at its expense, cause to be prepared the Real Property Surveys. Such Surveys were certified to Purchaser, the Real Property Title Insurance Company, and to Seller.

(f) **Real Property Closing**.

(i) Seller delivered the Real Property Deed and, in the case of the Developer to City Conveyance, the Public Access Easements - Property, and possession of the Real Property to Purchaser on the Real Property Closing Date. Purchaser accepted delivery of the Real Property Deed and, in the case of the Developer to City Conveyance, the Public Access Easements - Property, and make payment of the Real Property Purchase Price for the Real Property and, in the case of the Developer to City Conveyance, the Public Access Easements - Property. Payment of the Real Property Purchase Price was made by wire transfer of funds to Seller, or by such other means as was approved by Seller in writing.

(ii) The conveyance of the Real Property and, in the case of the Developer to City Conveyance, the Public Access Easements - Property, was closed in escrow with the Real Property Escrow Agent. This Agreement, together with the Real Property Escrow Agent's usual conditions of acceptance, served as escrow instructions for such Real Property Closing; *provided*, *however*, that in the event of any conflict between the provisions of this Agreement and the Real Property Escrow Agent's usual conditions of acceptance, the provisions of this Agreement govern. The Real Property Escrow Agent's usual conditions for closing were submitted to and approved in writing by Seller and Purchaser prior to the Real Property Closing.

(iii) All documents necessary for the completion of the Real Property Closing transaction were deposited with the Real Property Escrow Agent on or before five (5) days before the Real Property Closing Date. After the satisfaction of the document requirements for the Real Property Closing under this Agreement, Purchaser deposited

the amount of the Real Property Purchase Price with the Real Property Escrow Agent, and the Real Property Escrow Agent promptly notified Seller of such deposit.

(iv) Except as otherwise described in this Article V, Developer paid all other costs associated with each Real Property Closing.

(g) **Disclaimers Related to Conveyance of Real Property**. Except as otherwise specifically stated herein or the warranties set forth in the Real Property Deed or the Public Access Easements - Property, Seller hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (a) the nature and condition of the Real Property, including, without limitation, the water, soil and geology, and the suitability thereof and of the Real Property for any and all activities and uses which Purchaser may elect to conduct thereon, and the existence of any environmental hazards or conditions thereon or compliance with all applicable laws, rules or regulations; (b) the nature and extent of any right-of-way, lease, possession, lien encumbrance, license, reservation, condition or otherwise; and (c) the compliance of the Real Property or its operation with any laws, ordinances or regulations of any governmental or other body. Purchaser acknowledges that it inspected the Real Property and Purchaser relied solely on its own investigation of the Real Property and not on any information provided by Seller relating to the physical condition of the Real Property, except as otherwise specified herein. Purchaser further acknowledges that the information provided and to be provided with respect to the Real Property was obtained from a variety of sources and Seller did not make any independent investigation or verification of such information; and Seller did not make any representations as to the accuracy or completeness of such information, except as otherwise specified herein. The sale of the Real Property as provided for herein was made on an "as is," "where is" basis and with all faults, and Purchaser

expressly acknowledges that, in consideration of the agreements of Seller herein, except as otherwise specified herein or in the Real Property Deed or the Public Access Easements - Property, Seller made no warranty or representation, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, habitability, merchantability, suitability, tenantability or fitness for a particular purpose, in respect of the Real Property.

Section 5.4 Prior Actions. The Parties acknowledge that as of the Effective Date, the actions required by this Article V have heretofore been completed in a mutually satisfactory manner.

(END OF ARTICLE V)

ARTICLE VI

PUBLIC INFRASTRUCTURE BONDS AND LETTER OF CREDIT

Section 6.1 General. The Parties acknowledge that City heretofore has issued the Public Infrastructure Bonds which Bonds constitute a long-term, permanent financing by City. The interest on the Public Infrastructure Bonds is payable semiannually commencing on December 1, 2008 and principal is payable in twenty annual installments commencing December 1, 2009. The Parties further acknowledge that the special assessments levied against the Development Site, in accordance with the Amended (Second) Assessment Petition and Article VII of this Agreement, will be used by City for the purposes described in Section 7.5. To further secure the payment of the Allocable Debt Service, Developer agrees to deliver and maintain a Letter of Credit in accordance with Section 6.4.

Section 6.2 Deposit to Special Assessment Account. City agrees that it will promptly deposit into the Special Assessment Account all special assessments collected in respect of the Development Site in accordance with the Amended (Second) Assessment Petition and Article VII. City further agrees that it will maintain detailed accounting records for the Special Assessment Account, including but not limited to the special assessments collected in respect of the Development Site – Residential Portion. City agrees that upon reasonable prior notice, Developer shall have the right during normal business hours to inspect City's records relating to the Special Assessment Account.

Section 6.3 City's Annual Contribution to Allocable Debt Service. The Parties acknowledge that the City has paid $95,834.67 in support of Allocable Debt Service on June 1, 2009. The Parties further agree that, except for such prior payment, the provisions in the Original DEC Development Agreement relating to the City's Annual Contribution to Allocable Debt Service have been deleted herein.

Section 6.4 Letter of Credit.

(a) **Establishment**. In consideration for City's agreements herein and in the Original DEC Development Agreement, Developer has heretofore agreed and did deliver a Letter of Credit to City with an initial term of one (1) year and has maintained such Letter of Credit, all in the manner described in this Section 6.4. Developer shall pay all costs associated with the delivery, maintenance, replacement and renewal of the initial Letter of Credit and any subsequent Letter of Credit. The Letter of Credit shall be irrevocable and shall name City or such other entity as designated by City as the sole beneficiary.

(b) **Amount of Letter of Credit**. Developer agrees that for so long as Developer is required to maintain the Letter of Credit pursuant to this Agreement, the amount available to be drawn against the Letter of Credit by City or its designee on any date, shall be equal to Five Hundred Thousand Dollars ($500,000).

(c) **Subsequent Letter of Credit**. At least 15 days prior to the expiration of any Letter of Credit, Developer shall deliver to City either (i) written acknowledgment from the provider of the existing Letter of Credit that the existing Letter of Credit has automatically renewed for an additional one (1) year period or (ii) a subsequent Letter of Credit with an expiration date of not earlier than one (1) year from the date of the issuance of the subsequent Letter of Credit; *provided, however*, Developer shall not be required to renew the Letter of Credit or provide a subsequent Letter of Credit with an expiration date beyond December 31, 2014.

(d) **Advances by Developer; Draw on Letter of Credit**. If on the thirtieth day prior to any date on which Debt Service is payable on the Public Infrastructure Bonds, the Amount Available for Allocable Debt Service is not sufficient to pay the Allocable Debt Service on those Bonds, City shall notify Developer of the amount of the deficiency (a "*Debt Service Deficiency*")

prior to the twentieth day prior to date on which Debt Service is payable, and Developer shall remit to City an amount equal to that Debt Service Deficiency no later than the fifteenth day prior to the date on which Debt Service is payable; *provided, however*, any Debt Service Deficiency (and corresponding amount owed to City by Developer) shall be further reduced by (i) an amount equal to any special assessments in respect of the Development Site – Residential Portion previously certified to the County Auditor for collection but the payment of which in the then current calendar year is delinquent and (ii) an amount equal to any special assessments in respect of the Development Site – Residential Portion for which Developer provided timely notice to City in accordance with Section 7.3(b)(i) and in such case City failed to certify such amount to the County Auditor for collection in the then current calendar year. Any amount so remitted by Developer shall be used solely to pay the Allocable Debt Service on the Public Infrastructure Bonds.

If on the fourteenth day prior to the date on which Debt Service is payable, City has not received the amount of the Debt Service Deficiency (if any and as may be reduced above) from Developer, City will be entitled to draw on the Letter of Credit in an amount sufficient, together with the Amount Available for Allocable Debt Service, to pay the Debt Service Deficiency (if any and as may be reduced above). Any amount drawn on the Letter of Credit shall be used solely to pay the Allocable Debt Service on the Public Infrastructure Bonds. Within fifteen (15) calendar days following any draw on the Letter of Credit, Developer shall take such action as is necessary to restore the maximum amount which may be drawn pursuant to the Letter of Credit to Five Hundred Thousand Dollars ($500,000). Developer acknowledges and agrees that any failure by City to notify Developer of any Debt Service Deficiency in accordance with this Section 6.4(d) shall not impair City's right to draw on the Letter of Credit.

(e) **Termination of Letter of Credit**. City agrees that it shall record the amount of monies deposited into the Special Assessment Account in each calendar year (for each calendar year, the aggregate deposit being referred to as the "*Annual Deposit in the Account*"). If the Annual Deposit in the Account for each of two (2) consecutive calendar years equals or exceeds the Allocable Debt Service, then Developer shall no longer be required to maintain the Letter of Credit pursuant to this Agreement and City will cooperate with Developer to terminate the Letter of Credit.

(f) **Default**. If Developer shall fail to establish, maintain, restore or renew the Letter of Credit with an Acceptable Bank in accordance with the provisions of this Section 6.4, such failure shall constitute an event of default and City shall be entitled to pursue any and all remedies now or hereafter existing at law or in equity to enforce such performance, which may include, but shall not be limited to, (i) drawing the entire stated amount of the Letter of Credit and/or (ii) certifying to the County Auditor that the amount of special assessments which was deferred for any parcel in accordance with the Amended (Second) Assessment Petition shall become due and payable as provided in Section 7.3(c).

(g) **Limitation of Developer's Obligation**. Developer shall have no obligation to remit payment to City pursuant to this Section 6.4, and City shall have no right to draw on the Letter of Credit for the purpose of paying a Debt Service Deficiency, until such time as City has deposited sufficient money into an appropriate fund for the purpose of satisfying City's obligations set forth in Sections 4.3(a)(ix) and 4.3(a)(x).

(END OF ARTICLE VI)

ARTICLE VII

AMENDED PETITION FOR SPECIAL ASSESSMENTS

Section 7.1 Original Assessment Petition. Kendall heretofore filed and City has accepted the Original Assessment Petition in respect of the Development Site. The Parties acknowledge that the Original Assessment Petition requested that City construct the Public Infrastructure Improvements (Development Parkway and Related) and assess a portion of the cost of those Public Infrastructure Improvements (Development Parkway and Related) against the Property. The Parties acknowledge and agree that the Original Development and the Proposed Development are materially different and the proposed allocation of special assessments against the Development Site as set forth in the Original Assessment Petition must be amended to accommodate the Proposed Development. The Parties further acknowledge that Developer filed the Amended (First) Assessment Petition with the City on July 10, 2008 to provide for certain amendments to the Original Assessment Petition.

Section 7.2 Amended (Second) Assessment Petition. Within thirty (30) days following the Effective Date, Developer agrees that it will sign and file with City the Amended (Second) Assessment Petition; *provided, however*, if Developer shall fail to file such Amended (Second) Assessment Petition by September 30, 2009, the Development Site shall be subject to the special assessments in accordance with the Amended (First) Assessment Petition. The Amended (Second) Assessment Petition will provide, among other terms, a method by which the cost of the Public Infrastructure Improvements (Development Parkway and Related) and the related assessments will be allocated against the Development Site; *provided, however*, the Parties acknowledge and agree that no portion of the special assessments shall be allocated to the real property constituting the Development Parkway or the Public Access Easements. The Parties agree that the allocation will be based on the estimated use of the Development Site (i.e.

single-family residential, multi-family residential, retail and commercial) and that following the filing of the Amended (Second) Assessment Petition with City, the allocable cost to each developable area may not be changed, regardless of whether the actual use of that developable area is different than the use identified on the Amended (Second) Assessment Petition. The Parties acknowledge and agree that the respective portions of the cost of the Public Infrastructure Improvements (Development Parkway and Related) are being assessed as follows: (a) 67.890% of those costs will be assessed against the Development Site, (b) 3.609% of those costs will be assessed against the residential condominium units developed by a franchisee of Epcon Communities, and (c) 28.501% of those costs will be assessed against the other commercial developments identified in the Original Assessment Petition and consisting of approximately 25.290 acres.

Section 7.3 Collection and Deferral of Special Assessments.

(a) **Non Residential Use of Development Site.** The Parties agree that the special assessments allocated to and levied against any parcel(s) included within the Development Site – Other Portion shall be collected in twenty (20) annual installments of principal and interest (each installment to be payable semi-annually at the time real property taxes in the County are payable), which shall be substantially equal, commencing in Collection Year 2009 and continuing through and including Collection Year 2028; and

(b) **Residential Use of Development Site.** The Parties agree that the special assessments allocated to and levied against any parcel(s) included within the Development Site – Residential Portion shall initially be deferred until the earlier of (i) the first complete Collection Year next following the first day of September following provision of written notice by Developer to City that the deferral for a particular parcel should be terminated or (ii) Collection

Year 2012; *provided, however*, no portion of those special assessments will be payable earlier than Collection Year 2009. City agrees that following termination of the deferral in accordance with this Section 7.3(b), City shall promptly notify the County Auditor that such deferral has terminated and will request the County Auditor to collect the special assessments in respect of such parcel(s) in twenty (20) annual installments of principal and interest (each installment to be payable semi-annually at the time real property taxes in the County are payable), which shall be substantially equal, commencing in the Collection Year described in (i) or (ii) above, as the case may be, and continuing for twenty (20) consecutive Collection Years; and

(c) **Developer Default**. The Parties agree that if Developer defaults under Section 6.4 (which shall not include, and Developer will not be required to remit, payments in respect of the amounts described in subsections 6.4(d)(i) and (ii)), City may, in its sole discretion, take the steps authorized in this Section 7.3(c) or pursue such other remedies as may be available to City at law or in equity. First, City may compute the amount of special assessments deferred for any parcel(s) in accordance with Section 7.3(b) which computation shall assume that the special assessments on those parcel(s) would have been paid in twenty (20) annual installments of principal and interest commencing in Collection Year 2009 and continuing through and including Collection Year 2028 and the amount of the deferred special assessments would equal the sum of the special assessments which would have been due and payable in Collection Year 2009 through and including the then current Collection Year (collectively, the "*Aggregate of Deferred Assessments*"). The Aggregate of Deferred Assessments shall then be due and payable to the County Auditor immediately. Additionally, City may make an additional certification to the County Auditor to collect the remaining amount of special assessments for any parcel(s) (exclusive of the Aggregate of Deferred Assessments), which amounts shall be collected in

annual installments of principal and interest (each installment to be payable semi-annually at the time real property taxes in the County are payable), which shall be substantially equal, commencing in the Collection Year following the Collection Year in which the Aggregate of Deferred Assessments are collected and continuing through and including Collection Year 2028.

Section 7.4 Further Agreements Relating to Special Assessments. Developer agrees that City will pass an amendment to the Original Assessing Ordinance to reflect the terms of the Amended (Second) Assessment Petition. City agrees that it will promptly certify to the County Auditor that one hundred percent (100%) of the special assessments relating to the Development Site – Residential Portion have been deferred in accordance with the deferment terms described in Section 7.3(b) above.

Section 7.5 Use of Special Assessments. The Parties agree that the special assessments collected by the City in accordance with the Amended (Second) Assessment Petition and on deposit in the Special Assessment Account (excluding any Unamortized Special Assessments on deposit therein) shall be used for the purposes and in the order of priority as follows:

(a) ***first***, those special assessments on deposit in the Special Assessment Account (excluding any Unamortized Special Assessments on deposit therein) shall be used to pay Allocable Debt Service which is due and payable in the then current calendar year,

(b) ***second***, those special assessments remaining on deposit in the Special Assessment Account (excluding any Unamortized Special Assessments on deposit therein) after all payment(s) required by ***first*** in the then current calendar year have been paid shall be used to reimburse City for any City's Annual Contribution to Allocable Debt Service payments theretofore paid by City but not yet reimbursed pursuant to this Section 7.5, and

(c) ***third***, those special assessments remaining on deposit in the Special Assessment Account (excluding any Unamortized Special Assessments on deposit therein) after all payment(s) required by ***first*** and ***second*** in the then current calendar year have been paid shall be used to reimburse Developer for any Debt Service Deficiency payments theretofore paid by Developer or pursuant to a draw on the Letter of Credit but not yet reimbursed pursuant to this Section 7.5.

(END OF ARTICLE VII)

ARTICLE VIII

TAX INCREMENT FINANCING

Section 8.1 TIF Ordinance. The Parties acknowledge that City Council heretofore passed the TIF Ordinance pursuant to the TIF Statute thereby exempting from taxation any Improvements to the Development Site and requiring the current and future property owners to pay Service Payments in respect of those Improvements exempted from taxation.

Section 8.2 Service Payments. Developer hereby agrees, or cause successive owners of the Development Site, to make Service Payments attributable to its period of ownership of the Development Site, all pursuant to and in accordance with the requirements of the TIF Statute, the TIF Ordinance and any subsequent amendments or supplements thereto.

Service Payments will be made semiannually to the County Treasurer (or to such Treasurer's designated agent for collection of the Service Payments) on or before the date on which real property taxes would otherwise be due and payable for the Development Site. Any late payments will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time.

Service Payments will be made in accordance with the requirements of the TIF Statute and the TIF Ordinance and will be in the same amount as the real property taxes that would have been charged and payable against the Improvements (after credit for any Property Tax Rollback Payments received) had the TIF Exemption not been granted, including any penalties and interest. Developer, or its successors or assigns, will not, under any circumstances, be required for any tax year to pay both real property taxes and Service Payments with respect to the Improvements, whether pursuant to Ohio Revised Code Section 5709.42, the TIF Ordinance or this Agreement. Further, Developer, or its successors or assigns, will not, under any circumstance, be required for

any tax year to pay Service Payments with respect to any Improvements which are exempt from real property taxation pursuant to any section of the Ohio Revised Code other than the TIF Statute.

Section 8.3 Disposition and Use of Service Payments and Property Tax Rollback Payments. All Service Payments and Property Tax Rollback Payments received by City will, except as otherwise provided by Section 8.4, be used by City for any lawful purpose.

Section 8.4 Disposition and Use of Eligible TIF Fund Receipts.

(a) **General**. All Eligible TIF Fund Receipts received by the City shall be promptly deposited into the TIF Fund for further credit as described in this Section 8.4.

(b) **Disposition of Eligible TIF Fund Receipts in Calendar Years 2009 through 2017**. In each of the calendar years 2009 through 2017, all of the Eligible TIF Fund Receipts received by City shall be deposited in the TIF Fund – Primary Public Improvements Account and used by City for any lawful purpose, including but not limited to, paying principal of and interest on the loans identified in the SIB Agreements and securities issued by City in accordance with Section 4.4.

(c) **Disposition of Eligible TIF Fund Receipts Following Calendar Year 2017**. In each of the calendar years following 2017, Eligible TIF Fund Receipts received by City shall be deposited in the TIF Fund as follows:

(i) ***First***, to the extent required by Section 8.4(f), such required amount of Eligible TIF Fund Receipts shall be deposited in the TIF Fund - Primary Public Improvements Account and used for the purpose of paying the principal of and interest on the loans identified in the SIB Agreements.

(ii) ***Second***, after providing for the deposit in ***First***, the Parties agree that sufficient monies shall be set aside in the TIF Fund – Primary Public Improvements

Account in each year to provide for the Debt Service Set Aside and the Debt Service Coverage Ratio Set Aside on any securities issued in accordance with Sections 4.4(e)(iv)(A) and 4.4(e)(iv)(B) and any other securities issued by City at the request of Developer.

(iii) ***Third***, after providing for the deposits in ***First*** and ***Second***, the Parties agree that sufficient monies shall be set aside in the TIF Fund – Primary Public Improvements Account in each year to provide for reasonable legal, financial, accounting and other fees incurred by City in connection with administration of the TIF Fund, including but not limited to, any ongoing fees incurred in connection with City's obligations undertaken in accordance with Sections 4.4(e)(iii) and 4.4(e)(iv) to pay for or finance the costs of Public Infrastructure Improvements (TIF Related).

(iv) ***Fourth***, after providing for the deposits in ***First*** through ***Third***, (A) one-third (1/3) of the remaining Eligible TIF Fund Receipts received by the City in that Calendar Year shall be deposited in the TIF Fund - Primary Public Improvements Account and (B) two-thirds (2/3) of the remaining Eligible TIF Fund Receipts received by the City in that Calendar Year shall be deposited in the TIF Fund - Additional Public Improvements Account.

(d) **Use of Eligible TIF Fund Receipts on Deposit in the TIF Fund - Primary Public Improvements Account**. The Parties agree that the Eligible TIF Fund Receipts on deposit in the TIF Fund - Primary Public Improvements Account may be used by the City for any lawful purpose.

(e) **Use of Eligible TIF Fund Receipts on Deposit in the TIF Fund - Additional Public Improvements Account**. The Parties agree that the Eligible TIF Fund Receipts on

deposit in the TIF Fund - Additional Public Improvements Account may be used in the manner described in Section 4.4(e).

(f) **SIB Agreements and Priority of Use of Eligible TIF Fund Receipts**. The Parties acknowledge and agree that City has heretofore entered into the SIB Agreements to provide for the financing and construction of various public infrastructure improvements in proximity to the I-70 / State Route 201 interchange and the I-70 / State Route 202 interchange described in the TIF Ordinance and that the Eligible TIF Fund Receipts described in the TIF Ordinance have been heretofore pledged by the City pursuant to the SIB Agreements. The City agrees to first use any service payments in lieu of taxes and property tax rollback payments received by City pursuant to the Montgomery County TIF Ordinance for the purpose of paying the principal of (including any necessary deposits into a sinking fund for the final maturity of such obligations) and interest on the loans identified in the SIB Agreement, or any securities issued by City for the purpose of refunding the loans identified in the SIB Agreements. *Provided, however*, the Parties acknowledge and agree that if the service payments in lieu of taxes and property tax rollback payments received by City in any calendar year pursuant to the Montgomery County TIF Ordinance are insufficient for the purpose of paying the principal of (including any necessary deposits into a sinking fund for the final maturity of such obligations) and interest on the loans identified in the SIB Agreements, or any securities issued by City for the purpose of refunding the loans identified in the SIB Agreements, City shall be entitled to use Eligible TIF Fund Receipts for that purpose in the manner described in Section 8.4.

Section 8.5 Exemption Applications. The Parties agree to cooperate in the preparation, execution and filing of all necessary applications and supporting documents to obtain from time to time the TIF Exemption and to enable City to collect Service Payments with respect to the

Development Site. City will perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain the TIF Exemption and collect the Service Payments including, without limitation, joining in the execution of all documentation and providing any necessary certificate required in connection with the TIF Exemption or the Service Payments. Developer agrees that it will, promptly following the Effective Date and before Developer transfers any portion of the Development Site, execute and file any applications necessary to obtain from time to time the TIF Exemption as may be provided in the TIF Ordinance; *provided, however*, to the extent that Developer is unable to file such applications, Developer hereby authorizes and consents to City filing any such applications necessary to obtain from time to time the TIF Exemption as may be provided in the TIF Ordinance.

Section 8.6 Tax Incentive Review Council. Developer agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated Tax Incentive Review Council to enable that Tax Incentive Review Council to review and determine annually during the term of this Agreement the compliance of Developer with the terms of this Agreement. Any information supplied to such Tax Incentive Review Council will be provided solely for the purpose of monitoring Developer's compliance with this Agreement.

Section 8.7 Covenant Running with the Property. It is intended and agreed, and it will be so provided by Developer in a declaration of covenants relating to the Development Site, the form of which shall be reasonably approved by City and recorded with the County Recorder of the County within thirty (30) days of the Effective Date, that the covenants provided in Sections 8.2, 8.5 and 8.6 of this Agreement are covenants running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit and in

favor of and enforceable by City against any owner of a portion of the Development Site with respect to that owner's period of ownership of that portion of the Development Site, whether or not this Agreement remains in effect or whether or not such provision is included by an owner in any deed to such owner's successors and assigns. It is further intended and agreed that these agreements and covenants will remain in effect for the full period of exemption permitted in accordance with the requirements of the TIF Statute and the TIF Ordinance enacted pursuant thereto. The Parties or their successors agree to terminate these covenants when the TIF Exemption shall have expired.

Section 8.8 Transfer of Development Site – Residential Portion and Assignment of Eligible TIF Funds. The Parties acknowledge and agree that Developer may sell some or all of the Development Site – Residential Portion to third parties from time to time. If Developer conveys any portion of the Development Site – Residential Portion, it shall notify City of such conveyance and may request that City agree to allocate a specific percentage of the Eligible TIF Fund Receipts to that purchaser for use solely in accordance with Section 4.4(e). City agrees to review such request within fifteen (15) days and to determine whether such allocation will adversely affect any securities theretofore issued or commitments theretofore made by City in connection with the financing or payment of costs of Public Infrastructure Improvements (TIF Related) in accordance with Section 4.4(e). The Parties further agree that if City reasonably determines that such allocation will adversely affect any securities theretofore issued or commitments theretofore made by City, City shall promptly notify DEC of such determination and will work in good faith with DEC to compute an alternative allocation.

(END OF ARTICLE VIII)

ARTICLE IX

REMEDIES

Section 9.1 General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, such Party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the Party shall upon written notice from the other commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

Section 9.2 Other Rights and Remedies; No Waiver by Delay. The Parties shall each have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; *provided*, that any delay by either Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or limit such right in any way; nor shall any waiver in fact made by either Party with respect to any specific default by the other Party under this Agreement be considered or treated as a waiver of the rights of such Party with respect to any other defaults by the other party to this Agreement or with respect to the particular default except to the extent specifically waived in writing. It is the further intent of this provision that neither Party should be constrained, so as to avoid the risk of

being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved.

Section 9.3 Force Majeure. Except as otherwise provided herein, no Party shall be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God, acts of terrorism or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; *provided, however*, that the Party seeking the benefit of the provisions of this Section 9.3 shall within fourteen (14) days after the beginning of such enforced delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Party in writing of the duration of the delay.

(END OF ARTICLE IX)

ARTICLE X

MISCELLANEOUS

Section 10.1 Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties, except to a financially responsible party; *provided, however*, the non-assigning Parties shall have the right to reasonably approve the financial responsibility of such proposed assignee. This Agreement may also be assigned without consent of the non-assigning Parties to an entity which is controlled by Developer or its members. Developer and/or its members shall be deemed in control if they own 51% or greater ownership interest in the assignee; *provided, however*, Developer may convey some or all of the Development Site – Residential Portion as long as it complies with Section 8.8 hereof.

Section 10.2 Binding Effect. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties, including successive successors and assigns.

Section 10.3 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 10.4 Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

Section 10.5 Entire Agreement. This Agreement, including the exhibits, embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 10.6 Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 10.7 Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this 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, officer, agent , director, shareholder, or employee of City or Developer other than in his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement nor any present or future members, officers, agent or employee of Developer, shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of City and Developer contained in this Agreement.

Section 10.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between City, its agents and employees, and Developer, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

Section 10.9 Indemnification. Developer hereby agrees to indemnify and hold City harmless and agrees to defend City from and against any and all claims, losses, damages, demands, liabilities, obligations, penalties, actions or rights of action, judgments, suits, costs, expenses, or disbursements of any kind or nature which may arise as a result of (a) breach of this

Agreement by Developer, (b) anything done or omitted to be done through the negligence or intentional acts of Developer or of its staff, agents or employees, or (c) any action by Developer or any of its officers, directors, employees, or agents, which action requires the approval of City and such has not been obtained. City shall promptly give Developer written notice, at the address provided in this Agreement, of any and all claims, losses, damages, demands, liabilities, obligations, penalties, actions or rights of action, judgments, suits, costs, expenses, or disbursements of any kind or nature for which City seeks indemnification. The obligation of Developer pursuant to this Section 10.9 shall survive termination of this Agreement without limitation.

Section 10.10 Limits on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City or Developer be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

Section 10.11 Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Any process, pleadings, notice

of other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one party to the other.

Section 10.12 Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 10.13 Severability. If any provision of this 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. If any provision, covenant, obligation or agreement shall be subject to more than one interpretation, such interpretation shall be used to make this Agreement effective. 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 10.14 Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(END OF ARTICLE X – SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF HUBER HEIGHTS, OHIO

By: _____

Printed: Eileen W. Bensen

Title: City Manager

Approved as to Form:

By: _____

Printed: Alan B. Schaeffer

Title: Director of Law

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

On this 21st day of Sept., 2009, before me a Notary Public personally appeared Eileen W. Bensen, the authorized representative of the City of Huber Heights, Ohio, and acknowledged the execution of the foregoing instrument, and that the same is her voluntary act and deed on behalf of the City of Huber Heights, Ohio and the voluntary act and deed of the City of Huber Heights, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

_____
Notary Public

NOTARY PUBLIC STATE OF OHIO

KATHY J. YOUNG, Notary Public
In and for the State of Ohio
My Commission Expires Sept. 1, 2013

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

DEC LAND CO. I, LLC

By: DEC/Carriage Trails, LLC

Its: Managing Member

By: _____

Printed: Michael T. Radcliffe

Title: Managing Member

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

On this 23rd day of September, 2009, before me a Notary Public personally appeared Michael T. Radcliffe, Managing Member of DEC/Carriage Trails, LLC, an Ohio limited liability company, Managing Member of DEC Land Co. I, LLC, an Ohio limited liability company, the authorized representative of DEC Land Co. I, LLC, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of DEC Land Co. I, LLC and the voluntary act and deed of DEC Land Co. I, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

George L. Johns, Esq.
Notary Public
Expires Commission

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Huber Heights, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2009 under the foregoing Agreement have been appropriated lawfully for that 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 Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: 9/21, 2009

Donnie Jones
Director of Finance
City of Huber Heights, Ohio

LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
A	FORM OF AMENDED (SECOND) ASSESSMENT PETITION
B	DEPICTION OF DEVELOPMENT PARKWAY AND RELATED RIGHT-OF-WAY
C-1	DEPICTION OF CITY PROPERTY
C-2	LEGAL DESCRIPTION OF CITY PROPERTY
D	CONCEPTUAL DEVELOPMENT PLAN
E	DEPICTION OF PROPERTY
F	DEPICTION OF PUBLIC ACCESS EASEMENTS

EXHIBIT A

FORM OF AMENDED (SECOND) ASSESSMENT PETITION

AMENDED AND RESTATED PETITION FOR SPECIAL ASSESSMENTS AND AFFIDAVIT

_____, 2009

To the City Council of the City of Huber Heights, Ohio:

WHEREAS, on July 10, 2008, DEC Land Co. I, LLC (the "*Property Owner*") submitted to the City of Huber Heights, Ohio an Amended Petition for Special Assessments and Affidavit (the "*Amended Petition*"), thereby requesting that certain real property owned by the Property Owner be assessed for 67.890% of the cost of constructing and improving a boulevard described in the Original Petition from State Route 201 to State Route 202 and constructing and improving certain other public improvements, including the construction of turn lanes and boulevard improvements, installation of water and sewer lines, storm drains, lighting, irrigation lines and signage, together with all related facilities, site improvements and all necessary appurtenances (collectively, the "*Public Improvements*"); and

WHEREAS, the City Council of the City of Huber Heights, Ohio (the "*City*") has heretofore duly enacted legislation accepting the Amended Petition, authorizing the construction of the Public Improvements, and levying the special assessments in accordance with the Amended Petition (collectively, the "*Assessment Legislation*"); and

WHEREAS, in accordance with the Amended Petition and the Assessment Legislation, the collection of certain of the special assessments will be deferred; and

WHEREAS, the Property Owner, acting through its authorized representative, Michael T. Radcliffe as the managing member of DEC/Carriage Trails, LLC which is the managing member of Property Owner (the "*Authorized Representative*"), represents that DEC continues to be the owner of certain real property (which real property represents 100% of the real property described on Attachment A attached hereto and by reference made a part hereof and referred to herein as the "*Property*") and further that the Property was described in the Amended Petition and according to the Amended Petition such Property shall be specially assessed for 67.890% of the actual costs of the Public Improvements; and

WHEREAS, the Property Owner acknowledges that the Property will receive special benefits from the Public Improvements; and

WHEREAS, the Property Owner and the City have entered into an Amended and Restated Development Agreement dated _____ ___, 2009 (the "*Amended and Restated Development Agreement*") to provide for the continued development of the Property; and

WHEREAS, the City and the Property Owner have agreed that the provisions relating to the deferral of the collection of certain of the special assessments should be modified in accordance with the Amended and Restated Development Agreement; and

WHEREAS, the City and the Property Owner have also agreed that all other provisions of the Amended Petition shall remain in full force and effect and be restated herein; and

WHEREAS, the Property Owner is acting through its Authorized Representative and the Authorized Representative, upon being duly sworn, deposes and states that this Amended and Restated Petition for Special Assessments and Affidavit (the "*Second Amended Petition*") is, among other things, intended for the purpose of stating facts relating to the happening of any condition or event that may create an interest or estate in the Property; and

WHEREAS, the Authorized Representative, on behalf of the Property Owner, further deposes and states that this Second Amended Petition and the actions provided for herein impose burdens and obligations upon the Property and provides for special assessments which were heretofore levied upon that Property in accordance with the Amended Petition, and that the Amended Petition and this Second Amended Petition are available for inspection at the Office of the Clerk of Council of the City of Huber Heights, Ohio;

NOW, THEREFORE, the Property Owner hereby petitions the City Council of the City of Huber Heights, Ohio as follows:

1. ***Special Assessments.*** The Property Owner states that it is the owner of 100% of the Property. Acting pursuant to Chapter 727, Ohio Revised Code, the Property Owner hereby amends the Amended Petition as it relates to the Property as filed with the City Council (the "*Council*") of the City of Huber Heights, Ohio (the "*City*") for the construction of the Public Improvements and in consideration for the construction of those Public Improvements, and in conjunction with the Development Agreement which provides for the deferral of the special assessments requested herein, agrees that the Property will receive special benefits from the construction of the Public Improvements, and respectfully requests that 67.890% of the actual costs of the Public Improvements, including without limitation the compensation, damages and expenses of the Public Improvements, be assessed upon the Property in proportion to the benefits to the Property. The special assessments shall be collected pursuant to the method to be determined by the City and consistent with the methodology set forth in Attachment B of this Second Amended Petition which is incorporated herein by reference and made a part hereof. To the extent the Property Owner, or its grantees or other successors with respect to the Property, does not pay the special assessments as levied in the time period provided for by Ohio law, the Property Owner acknowledges and agrees that the City may, in accordance with Ohio law, issue notes or bonds in anticipation of the collection of those unpaid special assessments. The Property Owner further agrees that in accordance with Ohio law, the City may increase those unpaid special assessments by an amount necessary to reflect any financing costs, including but not limited to, interest and issuance expenses.

2. ***Duration of Special Assessments.*** The Property Owner hereby confirms that the special assessments (which shall be adjusted to include an amount necessary to reflect any financing costs,

including but not limited to, interest and issuance expenses on related securities issued by the City) and the interest thereon be payable in twenty (20) annual installments of principal and interest (each annual installment to be payable semi-annually at the time real property taxes in Miami County, Ohio are payable), that the interest on the special assessments be computed at the same interest rate applicable to the notes or bonds to be issued by the City in anticipation of collection of the special assessments, and that the annual amounts for principal and interest be computed utilizing a methodology which produces the same amount, or approximately the same amount, each year. The Property Owners hereby request that the special assessments and interest thereon be certified to the County Auditor of the County in order that (a) the first installment of assessments in respect of any portion of the Property to be used for single-family or multi-family residential purposes (as described in Attachment B hereto) shall not be due earlier than (i) the first December 15 next following the first September 1 next following provision of written notice by the Property Owner to the City that the deferral for a particular parcel should be terminated or (ii) December 15, 2011; *provided, however*, if the Developer shall default under the Development Agreement with respect to the Letter of Credit required thereby, the City may require that any deferred assessments become due and payable as soon as is practicable under the Development Agreement and any remaining assessments shall be payable and collected in annual installments (each annual installment to be payable semi-annually at the time real property taxes in Miami County, Ohio are payable) and in approximately equal amounts in each year thereafter through and including 2028, and (b) the first installment of assessments in respect of any portion of the Property to be used for any other use not described in (a) shall not be due earlier than December 15, 2008. Reference is made to the Development Agreement for a more specific discussion of the deferral and collection of special assessments and such provisions in the Development Agreement, to the extent there is any conflict with this Amended Petition, shall prevail.

3. Payment of Special Assessments. In consideration of the Public Improvements, the Property Owner, for itself and its grantees or other successors with respect to the Property, agrees to pay promptly all special assessments levied against the lots and lands which collectively constitute the Property as they become due, and agrees that the determination by the Council of the special assessments in accordance with the terms hereof will be final, conclusive and binding upon the Property Owner and the Property. In further consideration of the Public Improvements, the Property Owner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be specially assessed for the actual costs of the Public Improvements, in the deed to the transferee the existence of any outstanding special assessment for the Public Improvements and to require that transferee to covenant to disclose that information in any subsequent deed to any transferee so long as such special assessments remain unpaid. As a condition to each subsequent transfer while such special assessments remain unpaid, the Property Owner further covenants and agrees to provide expressly in the deed to any transferee (a) for the acquisition by such transferee of the Property subject to any outstanding special assessment and such transferee's assumption of responsibility for payment thereof and for the waiver by such transferee of any rights that the Property Owner has waived pursuant to this Amended Petition and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee the conditions described in clause (a) so long as such special assessments remain unpaid.

4. Action by City Council. Except as modified hereby, the Property Owner, for its successors and assigns, further consents and acknowledges that all legislation passed pursuant to

and in connection with the filing of the Amended Petition shall remain in effect and any actions taken to implement and carryout the directives and intentions of the Amended Assessment Legislation shall continue in order to complete the Public Improvements and levy the assessments against the Property.

5. No Effect Real Property Not Described Herein. The Property Owner acknowledges and agrees that this Second Amended Petition is not intended and shall not be interpreted as affecting or modifying the method by which special assessments are computed and allocated for any real property (excluding the Property) as described in the Original Petition.

6. Waivers. The Property Owner consents and requests that these special assessments be levied and collected without limitation as to the value of the Property, and waives all the following relating to the Public Improvements and the special assessments:

(a) 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 lots and lands as enhanced by the Public Improvements to be made;

(b) 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;

(c) any and all damages or claims for damages of whatsoever kind, character or description resulting from the Public Improvements or the making of the Public Improvements, 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;

(d) any and all resolutions, ordinances and notices required for the making of the Public Improvements, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, the equalization of the estimated special assessments, any increase in the cost of labor and materials over the estimated cost, the passage of the assessing ordinance, and the right to apply for deferment of the special assessments pursuant to Section 727.251 of the Revised Code, and 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; and

(e) any limitation on the addition of interest to the special assessments specified by Section 727.301 of the Revised Code; and

(f) any limitation or restriction on the levy and collection of special assessments against the Property for the Public Improvements as specified in Section 929.03 of the Revised Code; and

(g) any and all irregularities and defects in the proceedings.

7. ***Notice.*** Notice may be provided to the Property Owner at:

DEC Land Co. I, LLC
255 Bradenton Avenue
Dublin, Ohio 43017
Attention: Michael T. Radcliffe, Chairman

(*This Space Intentionally Left Blank*)

IN WITNESS WHEREOF, the Property Owner has caused this Amended Petition to be duly executed in its name, all as of the date hereinbefore written.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF:

DEC LAND CO. I, LLC

By: DEC/Carriage Trails, LLC

Its: Managing Member

_____ By: _____

Printed: Michael T. Radcliffe

_____ Title: Managing Member

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

On this _____ day of _____, 2009, before me a Notary Public personally appeared Michael T. Radcliffe, Managing Member of DEC/Carriage Trails, LLC, an Ohio limited liability company, Managing Member of DEC Land Co. I, LLC, an Ohio limited liability company, the authorized representative of DEC Land Co. I, LLC, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed on behalf of DEC Land Co. I, LLC and the voluntary act and deed of DEC Land Co. I, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid.

_____
Notary Public

Attachment A-1

Legal Description of the Property

Attachment A-2

Depiction of the Property

Attachment B

Estimate of Special Assessments

Residential Subareas:

The current estimated portion of the actual costs of the Public Improvements to be assessed against the residential areas of the Property (such portion of the Property as depicted on Attachment A-2 and the various phases each being referred to herein as a "*Residential Subarea*") is 56.891% of the actual costs of the Public Improvements, which actual costs shall be increased to include any financing costs, including but not limited to, interest and issuance expenses on notes or bonds to be issued by the City in anticipation of the collection of the special assessments. The current estimated acreage of the Residential Area is 470.250 acres. Therefore, the Residential Subareas will, subject to the more specific apportionment methodology which follows, be generally assessed at a rate of approximately 0.12098% of the actual costs of the Public Improvements per acre (subject to any adjustments for City Property and Right-of-Way Area as described below).

The Property Owner expects that the Residential Subareas will be developed in various phases and requests that the assessments apportioned against each lot within a specific development phase be approximately equal. Therefore, the Property Owner requests that, upon the initial certification to the Miami County Auditor that the collection of assessments in respect of a particular lot should commence (in accordance with the Development Agreement), and working cooperatively with the Property Owner, the City will apportion the assessments against that lot in such a manner that (1) if that lot is included within a subdivision previously approved by the City, all lots within that subdivision will be assessed in approximately equal amounts, and (2) if that lot is not included within a subdivision previously approved by the City, that lot will be assessed at the approximate per acreage rate as described in the preceding paragraph *provided* that (a) if that lot is thereafter split into separate lots pursuant to a subdivision certification approved by the City, the City will, to the extend permitted by law, reapportion the original aggregate assessment against that lot such that all lots within that subdivision will be assessed in approximately equal amounts or (b) if that lot is thereafter split into separate lots but not subject to a subdivision certification approved by the City, the City will reapportion the original aggregate assessment on the per acreage basis against the newly created lots.

The Property Owner further requests that the City may, when apportioning assessments in the manner described in the preceding paragraph and if requested by the Property Owner, apportion assessments to a particular lot at a rate different than the per acreage basis described above; *provided* that the Property Owner acknowledges and agrees that the final determination to adjust the basis for apportionment shall be in the sole discretion of the City.

Non-Residential Area:

The current estimated portion of the actual costs of the Public Improvements to be assessed against the non-residential areas of the Property (such portion of the Property as depicted on Attachment A-2 and being referred to herein as the "*Non-Residential Area*") is 10.999% of the actual costs of the Public Improvements, which actual costs shall be increased to include any financing costs, including but not limited to, interest and issuance expenses on notes or bonds to be issued by the City in anticipation of the collection of the special assessments. The current estimated acreage of the Non-Residential Area is 9.76 acres. Therefore, the Non-Residential Area will be assessed at a rate of approximately 1.1269% of the actual costs of the Public Improvements per acre (subject to any adjustments for City Property and Right-of-Way Area as described below).

City Property and Right-of-Way Areas:

The Property Owner further acknowledges that any portion of the Property within either a Residential Subarea or the Non-Residential Area that is hereafter dedicated to the City or in respect of which a perpetual easement is granted to the City ("*City Property*") or platted for use as a public right-of-way (a "*Right-of-Way Area*") shall not be assessed and that the costs of the Public Improvements which would have been assessed to such City Property or Right-of-Way Area shall be reallocated in a pro rata manner against all remaining real property located within the respective Residential Subareas or the Non-Residential Area.

EXHIBIT B

DEPICTION OF DEVELOPMENT PARKWAY AND RELATED RIGHT-OF-WAY

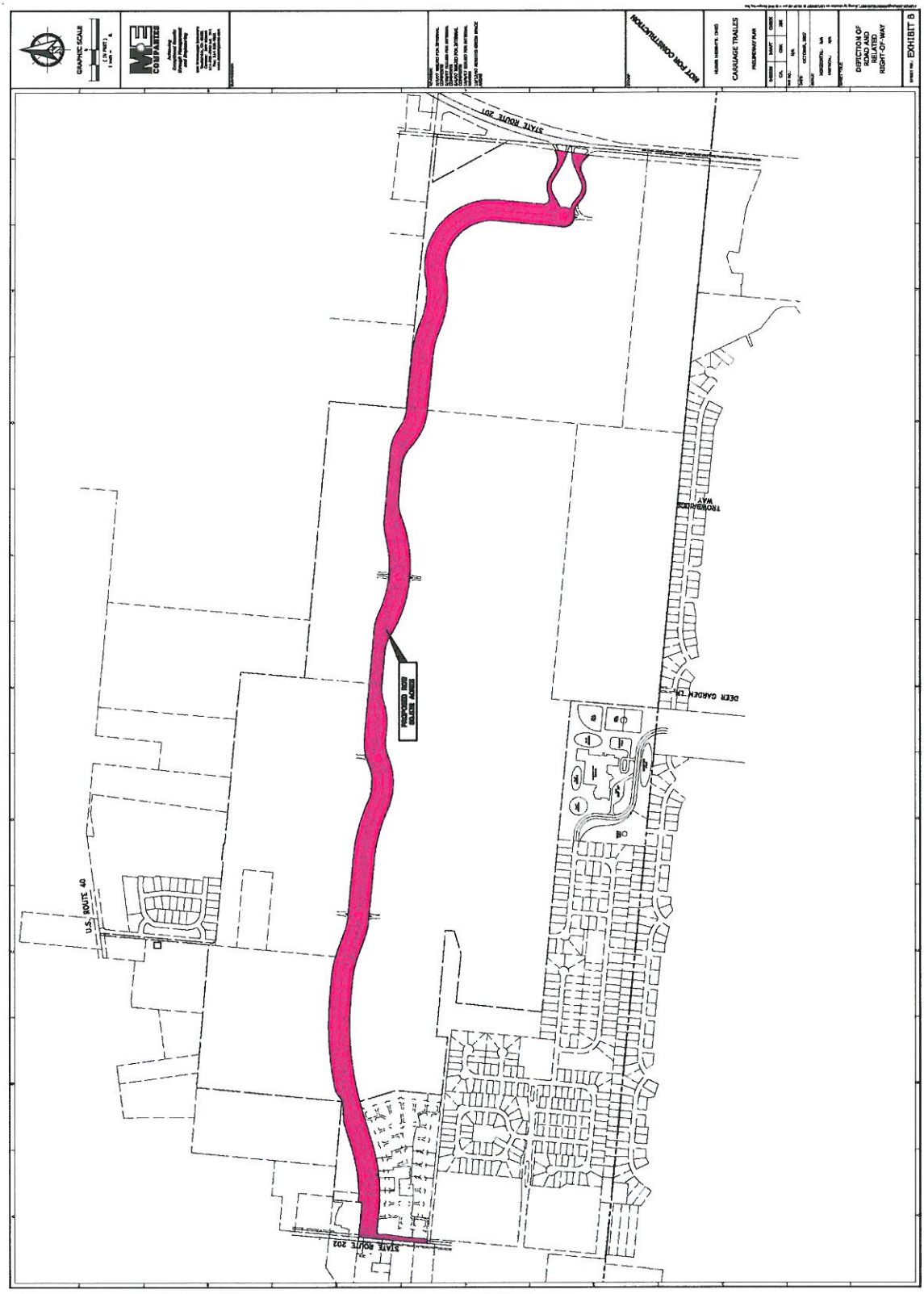

EXHIBIT C-1

DEPICTION OF CITY PROPERTY

EXHIBIT C-2

DESCRIPTION OF CITY PROPERTY

100.000 Acre Parcel
City of Huber Heights and Bethel Township
Miami County, Ohio

SCHAEFFER, AMOS & HUGHES, LLC

ENGINEERS
SURVEYORS

The following described real estate being located in Sections 13 and 19, Town 2, Range 9 M.R.S., City of Huber Heights and the Township of Bethel, County of Miami, State of Ohio, and being all of lands conveyed to Paul Edward and Jean Barbara Grusenmeyer by deed and recorded in Deed Book 664, Page 505, and Deed Book 693, Page 789, both on the deed records of said County, also being all of City of Huber Heights Lot Number 162 and being more particularly described as follows:

Beginning at a State of Ohio centerline survey monument marking the southeast corner of the southwest quarter of said Section 13;

Thence North 82° 22' 06" West, with the south line of said Section 13, a distance of 2671.73 feet to a concrete monument (found) marking the southwest corner of said Section 13 and also being located at the southeast corner of said Section 19 and passing an iron pin in the west right-of-way line of State Route Number 201 at 75.00 feet;

Thence North 82° 21' 20" West, with the south line of said Section 19, a distance of 2666.54 feet to a stone (found) marking the southwest corner of the southeast quarter of said Section 19;

Thence North 07° 19' 49" East, with the west line of said southeast quarter, a distance of 1031.91 feet to a ¾" iron pin (set);

Thence with a north line of said 100.042 acre tract, South 82° 21' 20" East a distance of 2670.12 feet to a ¾" iron pin (found) in the line between said Section 13 and 19;

Thence South 07° 31' 42" West, with the line between said Sections 13 and 19, a distance of 432.01 feet to a ¾" iron pin (found);

Thence with a north line of said 100.042 acre tract, South 82° 22' 06" East a distance of 2671.22 feet to a Mag-Nail (set) in the east line of the southwest quarter of said Section 13 and passing an iron pin in the west right-of-way line of State Route Number 201 at 2596.44 feet;

1253-G Lyons Road • Dayton, Ohio 45458
Phone (937) 434-5104 • Fax (937) 434-5204
www.sahengineers.com

SCHAEFFER, AMOS & HUGHES, LLC

ENGINEERS
SURVEYORS

Thence South 07° 28' 47" West, with the east line of the southwest quarter of said Section 13, a distance of 599.89 feet to the place of beginning.

Containing 100.000 acres of land more or less and subject to all legal highways, easements and restrictions of record. Of the aforesaid acreage, 63.210 acres are located in Section 19 and 36.790 acres are located in Section 13. Also, 98.969 acres are located within the City of Huber Heights and 1.031 acres are located within Bethel Township (right-of-way of State Route Number 201).

As surveyed in December 2001, by Schaeffer, Amos & Hughes, LLC, by Terry W. Hughes, Ohio Registered Surveyor #7965 with bearings based upon the centerline of Brandt Pike (State Route 201) being North 07° 30' 00" East as shown on the right-of-way plans for MOT-201-9.57 and MIA-201-0.00-1.74 project prepared in 1970.

Terry W. Hughes, PS
Ohio Reg. Surveyor No. 7965

Date 07/11/02

STATE OF OHIO
TERRY
W.
HUGHES
7965
REGISTERED
SURVEYOR

G:\Miami_Co_10\Submittal\100 Acre Miami County\100 Acre Parcel.Doc

EXHIBIT D

CONCEPTUAL DEVELOPMENT PLAN

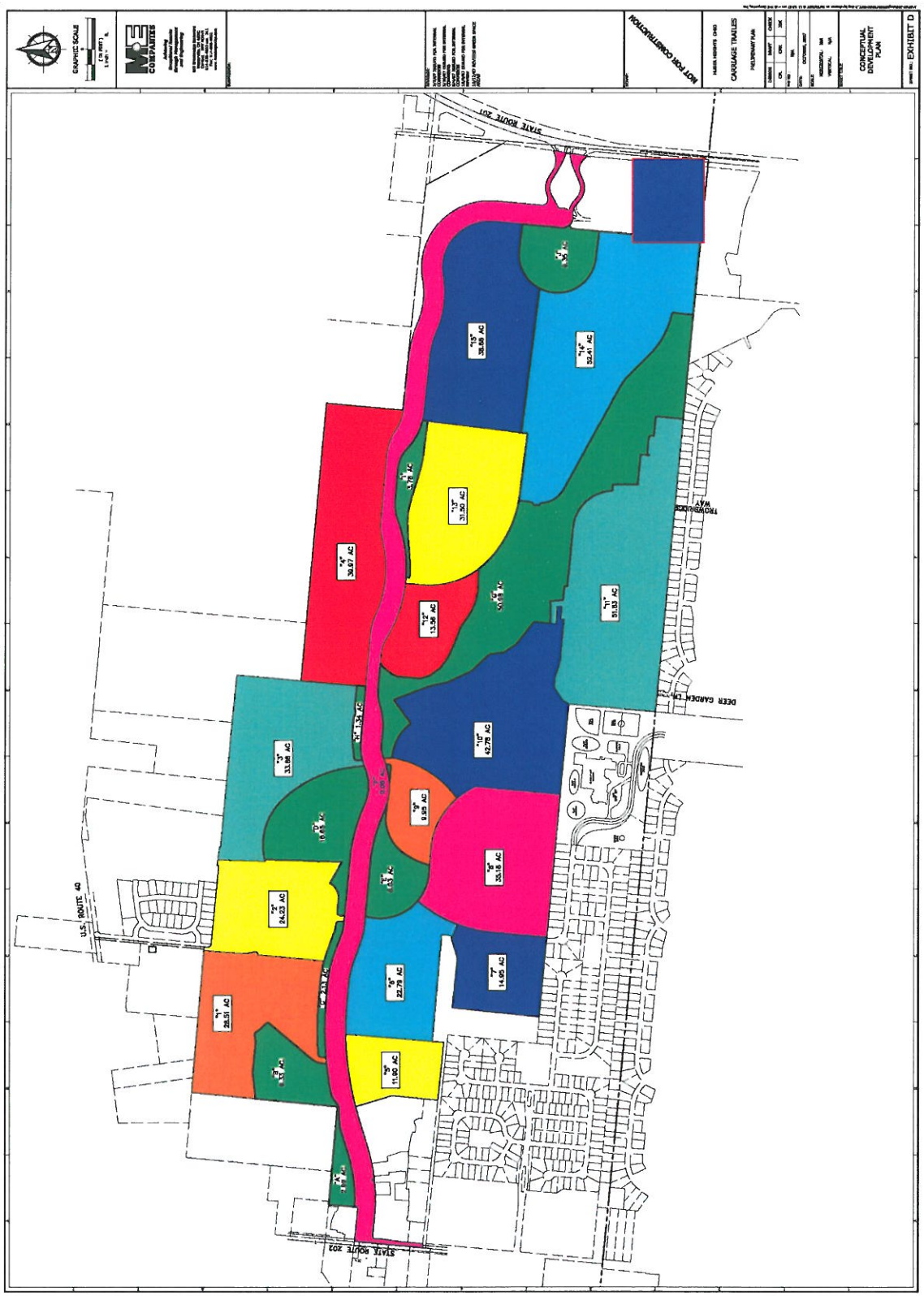

EXHIBIT E

DEPICTION OF PROPERTY

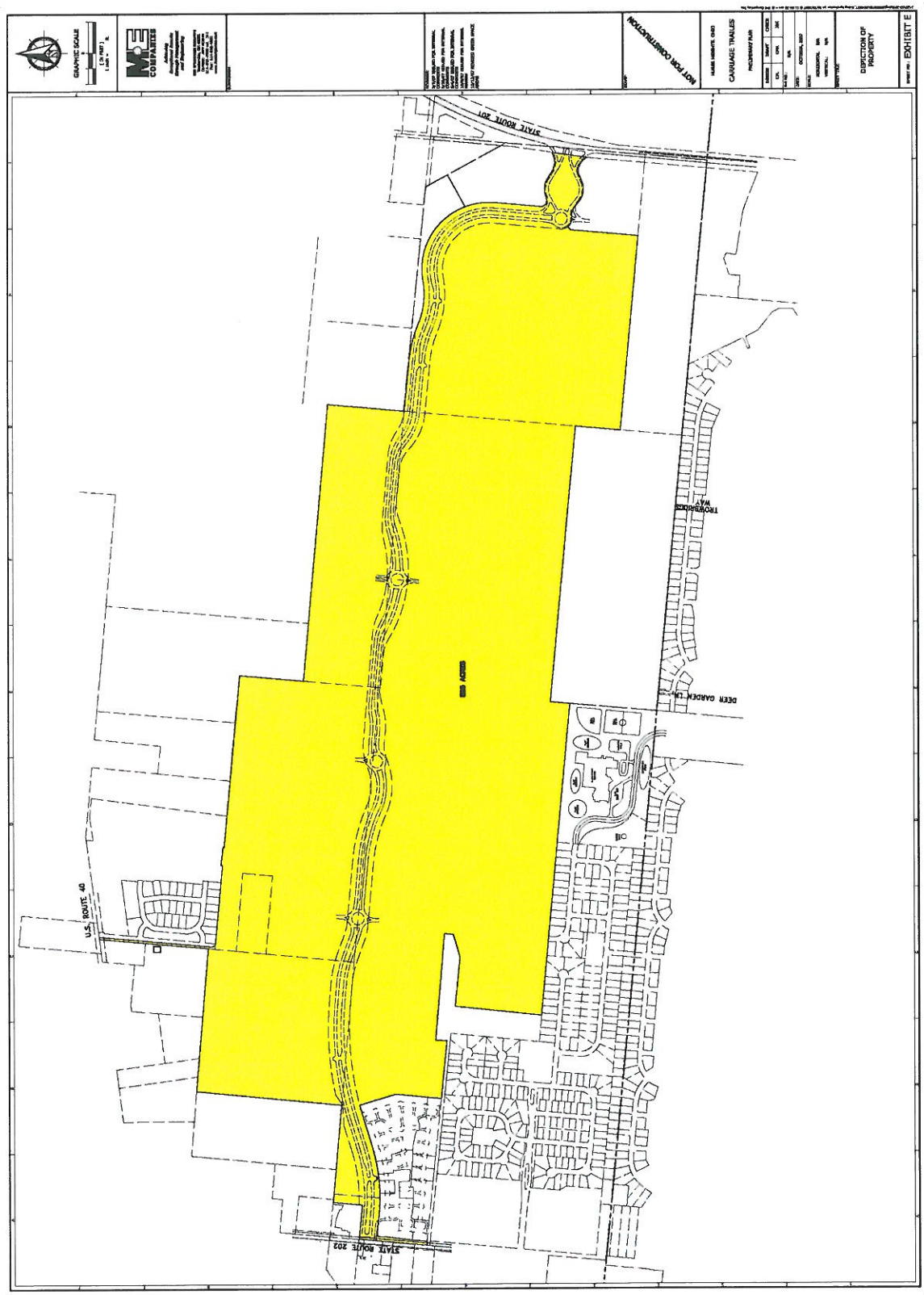

EXHIBIT F

DEPICTION OF PUBLIC ACCESS EASEMENTS