

**COMMISSIONERS JOURNAL NO. 71 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 14, 2019**

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:
Barb Lewis, President
Jeff Benton, Vice President
Gary Merrell, Commissioner

1
RESOLUTION NO. 19-231

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 11, 2019:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on March 11, 2019; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

2
PUBLIC COMMENT

3
RESOLUTION NO. 19-232

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0313:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0313 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
PR Number	Vendor Name	Line Description	Account Amount
R1901971	MAXIMUS CONSULTING SVCS INC	COST ALLOCATION PLAN	10011102 \$ 10,900.00 - 5301
R1902502	OHIO COMMERCIAL DOOR CO INC	REPLACE LOWER LEVEL ROLLING DOOR - COURTHOUSE	40111402 \$ 18,030.00 - 5410
R1902517	TREASURER, DELAWARE COUNTY	FOR CENTRAL ALUM CREEK SITE AT 603 BIG RUN ROAD	66711900 \$ 14,057.73 - 5380
R1902521	SHAW INDUSTRIES INC	CARPET - 3RD FLOOR HAYES BUILDING	40111402 \$ 9,051.87 - 5328
R1902523	SHAW INDUSTRIES INC	CARPET - 1ST FLOOR HAYES BUILDING	40111402 \$125,132.68 - 5410

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

4
RESOLUTION NO. 19-233

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following:

The Emergency Communications Department is requesting that Patrick Brandt attend an Association of Public-Safety Communications Officials Conference in Baltimore, MD from August 10-15, 2019 at the cost of \$2,529.00 (fund numbers 21411326/2171136).

The Regional Sewer District is requesting that John Feightner and William Brutchey attend an OWEA Lab Analyst Workshop in Columbus, Ohio on March 21st, 2019 at a total cost of \$110.00 from fund 66211900.

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The Regional Sewer District is requesting that Mike Frommer, Tiffany Maag, Erik McPeck, Cory Smith, Jason Watts, Liz Buening and Kelly Thiel attend an OWEA 2019 Tech Program in Huron, Ohio on June 24 – June 27, 2019 at a total cost of \$4,009.00 from fund 66211900.

The Commissioners office is requesting that Commissioners Jeff Benton and Gary Merrell attend an Ohio Council of County Officials Legislative Reception on April 4, 2019 at no cost.

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

S
RESOLUTION NO. 19-234

IN THE MATTER OF APPROVING THE SECOND AMENDMENT TO THE CONTRACT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, AND SPEAKWRITE, LLC. FOR VERBAL TRANSCRIPTION SERVICES:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve the following:

WHEREAS, the Director of Jobs & Family Services recommends approval of the following amendment to the contract with SpeakWrite LLC.;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following amendment to the contract with SpeakWrite LLC. for Verbal Transcription Services:

**Second Amendment
To
Contract for the Purchase of
Verbal Transcription Services
Between
Delaware County Board of County Commissioners
and
Speakwrite, LLC**

This Second Amendment of the Contract For The Provision of Verbal Transcription Services is entered into this 14th day of March, 2019 by and between the Delaware County, Ohio Board of County Commissioners (hereinafter “Board”), whose address is 101 North Sandusky Street, Delaware, Ohio 43015, the Delaware County, Ohio Department of Job and Family Services, a Title IV-E Agency, (hereinafter “Agency”) whose address is 145 North Union Street, 2nd Floor, Delaware, Ohio 43015, and Speakwrite, LLC (hereinafter “Provider”) whose address is 6011 West Courtyard Drive, Suite 450, Austin, Texas, 78730 (hereinafter collectively the “Parties”).

WHEREAS, the Parties entered into the Contract for Verbal Transcription Services on May 1, 2017.

WHEREAS, the parties agree to the addition of certain provisions to the Contract (collectively, “Provisions”).

NOW THEREFORE, the Parties agree as follows:

- 1. The Parties agree to amend the Agreement to add the following Provisions:
 - A. The maximum amount payable pursuant to this contract shall be increased to \$57,000.

2. Signatures

Any person executing this Second Amendment in a representative capacity hereby warrants that he/she has authority to sign this Second Amendment or has been duly authorized by his/her principal to execute this Second Amendment on such principal’s behalf.

3. Conflicts

In the event of a conflict between the terms of the Contract, the First Amendment, and this Second Amendment, the terms of the Second Amendment shall prevail.

4. Terms of Agreement Unchanged

All terms and conditions of the Contract and First Amendment not changed by this Second Amendment remain the same, unchanged, and in full force and effect.

Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

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6

RESOLUTION NO. 19-235

IN THE MATTER OF APPROVING THE CHILD PLACEMENT SERVICES CONTRACTS AND FIRST AMENDMENTS BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS, THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, AND CHILD PLACEMENT PROVIDERS THE VILLAGE NETWORK AND BUCKEYE RANCH:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve the following:

WHEREAS, Delaware County contracts with Child Care Placement providers in accordance with state and federal regulations; and

WHEREAS, the Director of Jobs & Family Services recommends approval of the following contracts and first amendments;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following contracts and first amendments for Child Care Placement providers:

Child Placement Service	Per diem cost and per diem reimbursement for the following categories
The Village Network 2000 Noble Drive Wooster, Ohio 44691 This Agreement in effect from 4/4/2019-6/30/2020	A. Maintenance B. Administration C. Case Management D. Transportation E. Other Direct Services (e.g., special diets, clothing, insurance, respite care) F. Behavioral Healthcare G. Other costs - (any other cost the Agency has agreed to participate in)

Child Placement Service	Per diem cost and per diem reimbursement for the following categories
Buckeye Ranch 5665 Hoover Road Grove City, Ohio 43213 This Agreement in effect from 4/4/2019-6/30/2020	A. Maintenance B. Administration C. Case Management D. Transportation E. Other Direct Services (e.g., special diets, clothing, insurance, respite care) F. Behavioral Healthcare G. Other costs - (any other cost the Agency has agreed to participate in)

**FIRST AMENDMENT TO THE AGREEMENT
FOR TITLE IV-E AGENCIES AND PROVIDERS FOR THE PROVISION OF CHILD
PLACEMENT BETWEEN DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY
SERVICES AND THE VILLAGE NETWORK.**

This First Amendment to the Agreement for Title IV-E Agencies and Providers for the Provision of Child Placement Between Delaware County Department of Job and Family Services (“Agency”) and The Village Network (“Provider”) (“First Amendment”) is entered into this 14th day of March, 2019.

Whereas, Agency and Provider have entered an Agreement for Title IV-E Agencies and Providers for the Provision of Child Placement with a term of 04/01/2019 through 06/30/2020 (“Agreement”); and

Whereas, Article XV of the Agreement allows the Parties to amend the Agreement via a written amendment signed by both parties; and,

Whereas, Agency and Provider desire and have agreed to amend the Agreement to include the additional terms and conditions set forth herein.

Now Therefore, the Parties agree to amend the Agreement as follows:

Section 1 – Supplemental Terms and Conditions

The following terms and conditions shall be added to and supplement the indicated sections of the Agreement:

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- A. Article II.** This agreement may be extended, at the option of the Agency and upon written agreement of the Provider, for one (1) additional one (1) year term not to exceed three (3) years
- B. Article V.B.** Provider agrees to submit a monthly progress report as negotiated by the parties to the Children Services Assistant Director for each child no later than the twentieth (20th) day of each month. The progress report will be based on the child's Individual Child Care Agreement and case plan and should include documentation of services provided to the child (visits to the child, counseling outcome(s), etc.). Failure to submit the progress reports may result in a delay of payment until such time as the Provider comes into compliance.
- C. Article V.D. and V.E.** Notification as required by these sections shall be made to the Agency's 24/7 emergency number. The emergency number is 740-833-2340.
- D. Article V.E.** Provider also agrees to notify the Agency when and if the following safety condition exists: - The child's medication has changed.
- E. New Article V. S.** Provider agrees to transfer copies of the child's records to the Agency within forty-eight (48) hours of the request, excluding weekends and holidays. Copies of the records are to be submitted electronically via email as an attachment, scanned pdf file(s), or via facsimile (fax).
- F. New Article V. T.** Provider agrees to provide transportation for the child to subsequent placements including those outside the Provider network. Transportation shall be limited to within the State of Ohio.
- G. Article VIII. A.** There shall be no pre-defined maximum amount payable pursuant to this contract. PROVIDER agrees to accept as full payment for Services rendered in a manner satisfactory to the Agency the amount of actual expenditures made by PROVIDER for purposes of providing the Services.
- H. New Article VIII. J.** Per diem rates shall remain unchanged during the initial service period defined in Article II, Term of Agreement. Upon completion of the initial service period, Provider may update per diem rates through a mutually agreed upon contract amendment not more than once annually during each one (1) year service period extension. Provider agrees to provide written notification to the Agency of requested per diem rate changes. Written notification shall be sent electronically via email to the attention of Ms. Sandy Honigford, Assistant Director, whose email address is sandy.honigford@jfs.ohio.gov and Mr. Steven Sikora, Fiscal Supervisor, whose email address is steven.sikora@jfs.ohio.gov. Written notification shall contain the total per diem rate and the per diem rate components (Maintenance, Administration, Transportation, Other, etc.). Per diem rate changes shall take effect the first calendar day of the month after the per diem rate change has been formally approved by the Provider and Agency in a contract amendment. Provider and Agency shall ensure service levels and per diem rates specified in an Individual Child Care Agreement (ICCA) are incorporated into the contract. In the event of a conflict between the per diem rate represented in an ICCA and the rates mutually agreed upon in the contract, rates in the contract shall prevail. In the event that an ICCA specifies a service level that is not yet included in the per diem rate schedule in the contract, Provider shall not provide the services for or bill the Agency for the services until the service level and related per diem rate has been incorporated into the contract through a contract amendment.
- I. Article XX.A.** Agency agrees to waive the requirement for One Hundred Thousand Dollars (\$100,000.00) coverage in legal liability fire damage.
- J. Article XX.D.** In lieu of the coverage amount indicated in the Agreement, Provider agrees to procure and maintain Umbrella and Excess liability insurance coverage of at least Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate above the commercial general and business auto primary policies.
- K. Article XX.F.** The Delaware County Board of Commissioners (Board") shall be listed as the Certificate Holder.

SECTION 2 – Added Terms and Conditions

The following terms and conditions shall be added to the Agreement:

- A. Independent Contractor Acknowledgement/No Contribution to OPERS.** Agency, Board, and Delaware County, Ohio (for purposes of this section collectively "County") are public employers as defined in R.C. § 145.01(D). The County has classified the Provider as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of Provider and/or any of its officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Agreement. Provider acknowledges and agrees that the County, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If Provider is an individual or has less than five (5) employees, Provider, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have

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each of its employees complete an OPERS Independent Contractor/Worker Acknowledgement Form (“OPERS Form”). The OPERS Form is attached to this First Amendment as Exhibit 1. The Agency shall retain the completed OPERS Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

If Provider has five (5) or more employees, Provider, by signature of its authorized representative below, hereby certifies such fact in lieu of completing the OPERS Form:

Signature

Date

Printed Name

Title

B. Campaign Finance – Compliance with R.C. § 3517.13. Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. The Provider, therefore, is required to complete the attached certificate/affidavit entitled “Certification/Affidavit in Compliance with O.R.C. Section 3517.13.” Failure to complete and submit the required aforementioned certificate/affidavit with the Agreement will prohibit the Agency from entering, proceeding with, and/or performing the Agreement. Such certification is attached to this First Amendment as Exhibit 2.

Section 3 - Miscellaneous

A. Exhibits to Agreement.

1. Exhibit 1 – Scope of Work. This exhibit is referenced throughout the Agreement. It does not exist.
2. Exhibits II and III. The Agreement was not competitively bid. These exhibits do not exist.
3. Exhibit IV – Rate Schedule. This exhibit is also referenced as “Schedule A.” It is attached to the Agreement labeled “Title IV-E Schedule A Rate Information.”

B. Attachments to First Amendment. The following are attached to this First Amendment and by this reference are incorporated into this First Amendment:

1. OPERS Independent Contractor/Worker Acknowledgement.
2. Certification/Affidavit in Compliance with O.R.C. Section 3517.13.

C. Conflicts. In the event of a conflict between the terms of the Agreement and this First Amendment, the terms of this First Amendment shall prevail.

D. Other Terms and Conditions Unchanged. All terms and conditions of the Agreement not changed by this First Amendment remain the same, unchanged, and in full force and effect.

E. Signatures.

1. Unless otherwise stated and unless the Agreement is otherwise signed by the Board or, where authorized, the Delaware County Administrator (“Administrator”) on behalf of the Board, the signatures of the Board or Administrator below shall be approval of both the Agreement and this First Amendment.
2. Any person executing this First Amendment in a representative capacity hereby warrants that he/she has authority to sign this First Amendment or has been duly authorized by his/her principal to execute this First Amendment on such principal’s behalf and is authorized to bind such principal.

F. Auditor’s Certification. The Auditor’s Certification attached to this First Amendment shall serve as the Auditor’s Certification for the Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement and this First Amendment as of the date of the signature of the Parties.

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**PLACEMENT BETWEEN DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY
SERVICES AND BUCKEYE RANCH, INC.**

This First Amendment to the Agreement for Title IV-E Agencies and Providers for the Provision of Child Placement Between Delaware County Department of Job and Family Services (“Agency”) and Buckeye Ranch, Inc. (“Provider”) (“First Amendment”) is entered into this March 14, 2019.

Whereas, Agency and Provider have entered an Agreement for Title IV-E Agencies and Providers for the Provision of Child Placement with a term of 04/01/2019 through 06/30/2020 (“Agreement”); and

Whereas, Article XV of the Agreement allows the Parties to amend the Agreement via a written amendment signed by both parties; and,

Whereas, Agency and Provider desire and have agreed to amend the Agreement to include the additional terms and conditions set forth herein.

Now Therefore, the Parties agree to amend the Agreement as follows:

Section 1 – Supplemental Terms and Conditions

The following terms and conditions shall be added to and supplement the indicated sections of the Agreement:

- A. Article II.** This agreement may be extended, at the option of the Agency and upon written agreement of the Provider, for one (1) additional one (1) year term not to exceed three (3) years
- B. Article V.B.** Provider agrees to submit a monthly progress report as negotiated by the parties to the Children Services Assistant Director for each child no later than the twentieth (20th) day of each month. The progress report will be based on the child’s Individual Child Care Agreement and case plan and should include documentation of services provided to the child (visits to the child, counseling outcome(s), etc.). Failure to submit the progress reports may result in a delay of payment until such time as the Provider comes into compliance.
- C. Article V.D. and V.E.** Notification as required by these sections shall be made to the Agency’s 24/7 emergency number. The emergency number is 740-833-2340.
- D. Article V.E.** Provider also agrees to notify the Agency when and if the following safety condition exists: - The child’s medication has changed.
- E. New Article V. S.** Provider agrees to transfer copies of the child’s records to the Agency within forty-eight (48) hours of the request, excluding weekends and holidays. Copies of the records are to be submitted electronically via email as an attachment, scanned pdf file(s), or via facsimile (fax).
- F. New Article V. T.** Provider agrees to provide transportation for the child to subsequent placements including those outside the Provider network. Transportation shall be limited to within the State of Ohio.

Article VIII. A. There shall be no pre-defined maximum amount payable pursuant to this contract. Provider agrees to accept as full payment invoiced amounts for the mutually agreed upon services and per diem rates represented in the contract’s rate schedule.

- G. New Article VIII. J.** Per diem rates shall remain unchanged during the initial service period defined in Article II, Term of Agreement. Upon completion of the initial service period, Provider may update per diem rates through a mutually agreed upon contract amendment not more than once annually during each one (1) year service period extension. Provider agrees to provide written notification to the Agency of requested per diem rate changes. Written notification shall be sent electronically via email to the attention of Ms. Sandy Honigford, Assistant Director, whose email address is sandy.honigford@jfs.ohio.gov and Mr. Steven Sikora, Fiscal Supervisor, whose email address is steven.sikora@jfs.ohio.gov. Written notification shall contain the total per diem rate and the per diem rate components (Maintenance, Administration, Transportation, Other, etc.). Per diem rate changes shall take effect the first calendar day of the month after the per diem rate change has been formally approved by the Provider and Agency in a contract amendment. Provider and Agency shall ensure service levels and per diem rates specified in an Individual Child Care Agreement (ICCA) are incorporated into the contract. In the event of a conflict between the per diem rate represented in an ICCA and the rates mutually agreed upon in the contract, rates in the contract shall prevail. In the event that an ICCA specifies a service level that is not yet included in the per diem rate schedule in the contract, Provider shall not provide the services for or bill the Agency for the services until the service level and related per diem rate has been incorporated into the contract through a contract amendment.
- H. Article XX.A.** Agency agrees to waive the requirement for One Hundred Thousand Dollars (\$100,000.00) coverage in legal liability fire damage.

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- I. **Article XX.D.** In lieu of the coverage amount indicated in the Agreement, Provider agrees to procure and maintain Umbrella and Excess liability insurance coverage of at least Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate above the commercial general and business auto primary policies.
- J. **Article XX.F.** The Delaware County Board of Commissioners (Board”) shall be listed as the Certificate Holder.

SECTION 2 – Added Terms and Conditions

The following terms and conditions shall be added to the Agreement:

- A. **Independent Contractor Acknowledgement/No Contribution to OPERS.** Agency, Board, and Delaware County, Ohio (for purposes of this section collectively “County”) are public employers as defined in R.C. § 145.01(D). The County has classified the Provider as an independent contractor or another classification other than public employee. As a result, no contributions will be made to the Ohio Public Employees Retirement System (“OPERS”) for or on behalf of Provider and/or any of its officers, officials, employees, representatives, agents, and/or volunteers for services and/or deliverables rendered and/or received under or pursuant to this Agreement. Provider acknowledges and agrees that the County, in accordance with R.C. § 145.038(A), has informed it of such classification and that no contributions will be made to OPERS. If Provider is an individual or has less than five (5) employees, Provider, in support of being so informed and pursuant to R.C. § 145.038, agrees to and shall complete and shall have each of its employees complete an OPERS Independent Contractor/Worker Acknowledgement Form (“OPERS Form”). The OPERS Form is attached to this First Amendment as Exhibit 1. The Agency shall retain the completed OPERS Form(s) and immediately transmit a copy(ies) of it/them to OPERS.

If Provider has five (5) or more employees, Provider, by signature of its authorized representative below, hereby certifies such fact in lieu of completing the OPERS Form:

Signature	Date
Printed Name	
Title	

- B. **Campaign Finance – Compliance with R.C. § 3517.13.** Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in said sections of the Revised Code are in compliance with the applicable provisions of section 3517.13 of the Revised Code. The Provider, therefore, is required to complete the attached certificate/affidavit entitled “Certification/Affidavit in Compliance with O.R.C. Section 3517.13.” Failure to complete and submit the required aforementioned certificate/affidavit with the Agreement will prohibit the Agency from entering, proceeding with, and/or performing the Agreement. Such certification is attached to this First Amendment as Exhibit 2.

Section 3 - Miscellaneous

- A. **Exhibits to Agreement.**
 1. Exhibit 1 – Scope of Work. This exhibit is referenced throughout the Agreement. It does not exist.
 2. Exhibits II and III. The Agreement was not competitively bid. These exhibits do not exist.
 3. Exhibit IV – Rate Schedule. This exhibit is also referenced as “Schedule A.” It is attached to the Agreement labeled “Title IV-E Schedule A Rate Information.”
- B. **Attachments to First Amendment.** The following are attached to this First Amendment and by this reference are incorporated into this First Amendment:
 1. OPERS Independent Contractor/Worker Acknowledgement.
 2. Certification/Affidavit in Compliance with O.R.C. Section 3517.13.
- C. **Conflicts.** In the event of a conflict between the terms of the Agreement and this First Amendment, the terms of this First Amendment shall prevail.
- D. **Other Terms and Conditions Unchanged.** All terms and conditions of the Agreement not changed by

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this First Amendment remain the same, unchanged, and in full force and effect.

E. Signatures.

1. Unless otherwise stated and unless the Agreement is otherwise signed by the Board or, where authorized, the Delaware County Administrator (“Administrator”) on behalf of the Board, the signatures of the Board or Administrator below shall be approval of both the Agreement and this First Amendment.
2. Any person executing this First Amendment in a representative capacity hereby warrants that he/she has authority to sign this First Amendment or has been duly authorized by his/her principal to execute this First Amendment on such principal’s behalf and is authorized to bind such principal.

F. Auditor’s Certification. The Auditor’s Certification attached to this First Amendment shall serve as the Auditor’s Certification for the Agreement.

IN WITNESS WHEREOF, the Parties have executed the Agreement and this First Amendment as of the date of the signature of the Parties.

Vote on Motion Mrs. Lewis Aye Mr. Benton Aye Mr. Merrell Aye

**7
RESOLUTION NO. 19-236**

IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH RITE-WAY COMPLIANCE GROUP LLC FOR THE FOG BMP MUNICIPAL PROGRAM ANNUAL SUBSCRIPTION:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following:

WHEREAS, the Sanitary Engineer recommends approval of an agreement with Rite-Way Compliance Group LLC to perform the services;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio, hereby approves the following agreement with Rite-Way Compliance Group LLC:

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 14th day of March, 2019, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Rite-Way Compliance Group LLC (“Consultant”), hereinafter collectively referred to as the “Parties”, and shall be known as the “Agreement.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide “Services” in connection with the following “Project”:
FOG BMP Municipal Program Annual Subscription (Under 1000 Food Service Establishments)
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 Services shall be described in and rendered by the Consultant in accordance with the following documents, by this reference made part of this Agreement:
Rite Way Compliance Group Quote #756 dated 2/19/2019

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer (“Sanitary Engineer”) as the Project Manager and agent of the County for this Agreement.
- 2.2 The Sanitary Engineer or his designee shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement

3 AGREEMENT AND MODIFICATIONS

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the Project, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 FEES AND REIMBURSABLE EXPENSES

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- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the document incorporated by reference in Section 1.3.
- 4.2 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

5 NOTICES

- 5.1 "Notices" issued under this Agreement shall be served to the parties listed below in writing. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

Sanitary Engineer:

Name: Delaware County Sanitary Engineer's Office
Attn: Kelly Thiel

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: (740) 833-2240

Email: kthiel@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Sam Mcleod

Address of Firm: 3520 Rohr Road

City, State, Zip: Groveport, Ohio 43125

Telephone: (614) 519-1769

Email: sam@fogbmp.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the Sanitary Engineer and on the calculated percentage of work performed to date in accordance with the Consultant's Price Proposal.
- 6.2 Invoices shall be submitted to the Project Manager by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

7 NOTICE TO PROCEED, COMPLETION, DELAYS AND EXTENSIONS

- 7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") from the Sanitary Engineer.
- 7.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Sanitary Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

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9 OWNERSHIP

- 9.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement
- 9.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.
- 9.3 This section does not require unauthorized duplication of copyrighted materials.

10 INDEMNIFICATION

- 10.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

11 INSURANCE

- 11.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 11.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 11.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 11.4 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 11.1 and 11.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 11.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

12 MISCELLANEOUS TERMS AND CONDITIONS

- 12.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 12.2 Independent Contractor: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 12.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 12.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

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- 12.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

- 12.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

- 12.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.

- 12.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.

- 12.9 County Policies: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

- 12.10 Drug-Free Workplace: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

- 12.11 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

**8
RESOLUTION NO. 19-237**

**IN THE MATTER OF APPROVING AN AGREEMENT FOR THE SALE AND PURCHASE OF
SANITARY SEWER BETWEEN THE BOARD OF EDUCATION OF THE OLENTANGY LOCAL
SCHOOL DISTRICT AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS:**

It was moved by Mr. Benton, seconded by Mr. Merrell to approve the following:

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RESOLUTION NO. 19-238

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR GENOA PLACE:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve the following sanitary sewer improvement plans for submittal to the Ohio EPA for their approval:

WHEREAS, the Sanitary Engineer recommends approval of the sanitary sewer improvement plans for Genoa Place;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the sanitary sewer improvement plans for Genoa Place for submittal to the Ohio EPA for their approval.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

10

RESOLUTION NO. 19-239

IN THE MATTER OF APPROVING A DEVELOPMENT AGREEMENT BY AND AMONG DELAWARE COUNTY; KERBLER FARMS, LLC; KERBLER BUILDERS; JAK INVESTMENTS II, LLC; AND SCHOTTENSTEIN REAL ESTATE GROUP, LLC:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following:

WHEREAS, the Economic Development Director recommends approval of a development agreement with Kerbler Farms, LLC; Kerbler Builders; JAK Investments II, LLC; and Schottenstein Real Estate Group, LLC;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, approves the Development Agreement in substantially the form set forth below and authorizes the County Administrator to approve the final form of the Development Agreement and execute the Development Agreement on its behalf:

DEVELOPMENT AGREEMENT

This Development Agreement (“the Agreement”) is made and entered into effective this 18th day of April, 2019 (the “Effective Date”) by and among **Delaware County, Ohio**, a county and political subdivision of the State of Ohio acting by and through its Board of County Commissioners (“Delaware County” or “County”); **Kerbler Farms LLC**, an Ohio limited liability company (“Kerbler Farms”); **Kerbler Builders**, an Ohio general partnership (“Kerbler Builders”); and **JAK Investments II, LLC**, an Ohio limited liability company (“JAK”), (with Kerbler Farms, Kerbler Builders and JAK collectively being referred to herein as “Kerbler”); and **Schottenstein Real Estate Group, LLC**, an Ohio limited liability company, its affiliates, successors, nominees and/or assigns (collectively, “SREG”, and together with Delaware County and Kerbler, being referred to as the “Parties”, and each being individually referred to as a “Party”), under the circumstances summarized in the following recitals.

RECITALS:

A. Kerbler owns several parcels of real property in Delaware County (collectively, the “Property”), which Property is further described and depicted as Parcels A-G, with the exception of Parcel C, on Exhibit A which is attached hereto and incorporated herein by reference.

B. Kerbler desires to sell to SREG those portions of the Property identified on Exhibit A as Parcel A and Parcel B (with Parcel A being referred to as the “South Parcel” and Parcel B being referred to as the “North Parcel” and both Parcels being collectively referred to as the “SREG Property”).

C. Subject to and contingent upon zoning approval, SREG desires to develop the SREG Property by constructing thereupon (i) a multi-family, rental apartment facility consisting of approximately 288 units and with a minimum of four units per building, and (ii) a patio, rental home development consisting of approximately 68 units and with a minimum of four units per building (collectively, the “Project”), which Project will create jobs and employment opportunities and further commerce within Delaware County.

D. Kerbler also owns approximately 106.90 acres of real property located to the north of the Property (the “Kerbler Property”, which Kerbler Property is further described and depicted on Exhibit A which is attached hereto and incorporated herein by reference), which Kerbler Property is not included as part of the Property or the Project.

E. In connection with the construction of the Project, the Parties desire to provide for the construction and/or implementation of certain public infrastructure improvements (collectively, the “Public Infrastructure”, which Public Infrastructure is further described in Section 3 and described and depicted on Exhibit B which is attached hereto and incorporated herein by reference). The Parties each agree that the Public

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Infrastructure, once constructed, will directly benefit the Property, the Kerbler Property and the Project, and will provide a benefit for the residents and businesses of Delaware County.

F. Delaware County, by its Resolution No. 18-1395 adopted on December 17, 2018 (the "TIF Resolution") which TIF Resolution is attached hereto as Exhibit C), has declared that seventy-five (75%) percent of the increase in assessed value of certain of the real property depicted on Exhibit A (specifically, the entirety of the parcels listed on Exhibit A, and which parcels are collectively referred to herein as the "TIF Property") subsequent to the effective date of the TIF Resolution (the "Improvement") is a public purpose and shall be exempt from taxation for a period which commences with the first tax year that begins after the effective date of the TIF Resolution and in which an Improvement attributable to a new structure on a respective Parcel first appears on the tax list and duplicate of real and public utility property were it not for the exemption granted by the TIF Resolution and ending on the earlier of (a) twenty (20) years after such commencement or (b) the date on which the County can no longer require service payments in lieu of taxes, all in accordance with the requirements of Ohio Revised Code Sections 5709.77 to 5709.80 (the "TIF Exemption").

G. The costs of the Public Infrastructure are to be paid through a combination of cash contributions from the Parties, special assessments to be levied by Delaware County against the Kerbler Property and receipts from the creation of a tax increment financing in respect of a portion of the Property.

H. The Parties desire to execute this Agreement to provide for the construction of the Public Infrastructure and the payment of the related costs and to facilitate the construction of the Project.

NOW, THEREFORE, in consideration of the foregoing, the promises contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties covenant, agree and obligate themselves as follows:

Section 1. General Agreement. 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 intend to and shall cooperate in the manner described herein to facilitate the design, construction, acquisition and installation of the Public Infrastructure and the Project.

Section 2. Representations and Covenants of the Parties.

A. Representations and Covenants of Delaware County. Delaware County represents and covenants that:

(1) It is a county duly organized and validly existing under the Constitution and applicable laws of the State.

(2) 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 it that would impair its ability to carry out its obligations contained in this Agreement.

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

(4) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

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

(6) 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.

(7) Resolution No. _____ adopted by the Board of County Commissioners on _____, 2019, authorizing the execution and delivery of this Agreement, has been duly adopted and is in full force and effect as of the Effective Date.

B. Representations and Covenants of Kerbler. Kerbler represents and covenants that:

(1) It is a for profit limited liability company duly organized and validly existing under the applicable laws of the State.

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(2) 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 it that would impair its ability to carry out its obligations contained in this Agreement.

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

(4) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

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

(6) 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.

C. Representations and Covenants of SREG. SREG represents and covenants that:

(1) It is a for profit limited liability company duly organized and validly existing under the applicable laws of the State.

(2) 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 it that would impair its ability to carry out its obligations contained in this Agreement.

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

(4) This Agreement has, by proper action, been duly authorized, executed and delivered by it and all steps necessary to be taken by it have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

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

(6) 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.

Section 3. Public Infrastructure. The Parties acknowledge and agree that the Public Infrastructure, once constructed, will directly benefit the Property, the Kerbler Property and the Project. The Parties intend that the Public Infrastructure be designed, constructed and financed in accordance with this Section 3.

A. County Infrastructure. Subject to the deposit requirements in Section 5(A) hereof, Delaware County agrees to construct, or cause to be constructed (in cooperation with the Delaware County Transportation Improvement District or such other party or parties as may be determined by Delaware County), the following projects (which projects shall be collectively referred to herein as the "County Infrastructure"):

(1) Home Road Connector. A public roadway extending for approximately 4,156 linear feet, commencing at U.S. Route 23, including such necessary construction as may be required on U.S. Route 23 and west of U.S. Route 23, and terminating at the proposed northern termini of Green Meadows Drive, with such additional construction particulars as are necessary to complete a fully functioning roadway, to be located and aligned substantially in accordance with the description set forth on Exhibit B (such public roadway being referred to herein as the "Home Road Connector"). The Home Road Connector shall include the construction of stormwater management improvements at the County's cost, including the construction of one or more detention or retention basins pursuant to the standard and specifications set by the County (as further described below, the "Stormwater Management Improvements"). The Stormwater Management Improvements shall be located on Parcels E1, E2 and D3 and the area immediately north of Parcel D3 on the north side of the Home Road Connector as generally depicted in Exhibit A. In addition, the Stormwater Management Improvements shall be located on Parcels E3-E6, per Exhibit A, along the U.S. Route 23 right of way a distance of 90' east of the U.S.

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Route 23 right of way, as necessary. The Stormwater Management Improvements shall provide stormwater management for the Home Road Connector, Green Meadows Drive, Graphics Way and Parcels E3-E14, D1, D2, a portion of D3, a portion of G and a portion of the extension of the Home Road Connector east of Green Meadows Drive, and a portion of the area north of the Home Road Connector and east of the Green Meadows Drive Extension as generally depicted in Exhibit A.

In accordance with Section 5, Kerbler agrees to contribute \$1,407,282 (such amount being referred to herein as the “Kerbler Home Road Connector Contribution”) towards the Cost (as such term is defined in this Section 3) of constructing the Home Road Connector and Delaware County agrees that it will pay any Cost of the Home Road Connector in excess of the Kerbler Home Road Connector Contribution. The Parties agree that (a) Delaware County will be entitled to be reimbursed for any such excess Costs from the Service Payments (as defined in and in accordance with Section 7) and (b) Delaware County shall not be required to reimburse Kerbler for the Kerbler Home Road Connector Contribution from any Delaware County monies, including but not limited to, the Service Payments.

Delaware County agrees, subject to an Unforeseeable Delay (as defined in Section 14) and the timely dedication of the Dedicated Right-of-Way (as defined in this Section 3), to commence and diligently pursue construction of the Home Road Connector in order that such construction shall be substantially complete on or about September 1, 2020.

(2) Home Road Sewer Extension. A public sanitary sewer line commencing at U.S. Route 23 and terminating at the proposed northern termini of Green Meadows Drive for approximately 4,156 linear feet (such public sanitary sewer line being referred to herein as the “Home Road Sewer Extension”). The Home Road Sewer Extension shall be able to provide gravity sewer services to the Property and the Kerbler Property.

In accordance with Section 5, Kerbler agrees to contribute \$819,910 (such amount being referred to herein as the “Kerbler Home Road Sewer Extension Contribution”) towards the Cost of constructing the Home Road Sewer Extension and Delaware County agrees that it will pay any Cost of the Home Road Sewer Extension in excess of the Kerbler Home Road Sewer Extension Contribution. The Parties agree that (a) Delaware County will be entitled to be reimbursed for any such excess Costs from the Service Payments in accordance with Section 7 and (b) Delaware County shall not be required to reimburse Kerbler for the Kerbler Home Road Sewer Extension Contribution from any Delaware County monies, including but not limited to, the Service Payments.

Delaware County agrees, subject to an Unforeseeable Delay, to commence and diligently pursue construction of the Home Road Sewer Extension, and provide completion as part of the Home Road Connector project by June 2020. The County acknowledges that a portion of the South Parcel’s sanitary sewer service is provided via the Home Road Sewer Extension. If the Home Road Sewer Extension is not complete, and the South Parcel is ready to activate its sanitary sewer that drains to the Home Road Sewer Extension, by June 2020, then the County agrees to allow the South Parcel to temporarily pump its sanitary sewage to the South Parcel’s sanitary sewer system which drains to the southwest. The County also agrees to allow such cost to be reimbursed to SREG through the TIF.

(3) Block Property Sewer Extension. An 18-inch public sanitary sewer line commencing at the property boundary of tax parcel number 31823002001000 (as identified on the tax year 2017 duplicate) and extending and terminating at the boundary of the Property (such sanitary sewer line being referred to herein as the “Block Property Sewer Extension”).

Delaware County agrees that it will be solely responsible for the Cost of the Block Property Sewer Extension to be completed by June 2020. The Parties agree that Delaware County will be entitled to be reimbursed for such Costs from the Service Payments in accordance with Section 7.

(4) Graphics Way and Green Meadows Drive Extensions.

(a) A public roadway extending for approximately 648 linear feet, commencing at the Home Road Connector and continuing in a southerly direction, with such additional construction particulars, and to be located and aligned substantially in accordance with the description set forth on Exhibit B (such public roadway being referred to herein as the “Graphics Way Extension”). The Graphics Way Extension shall include the necessary portions of the Stormwater Management Improvements.

In accordance with Section 5, Kerbler agrees to contribute \$622,147 (such amount being referred to herein as the “Kerbler Graphics Way Contribution”) towards the Cost of constructing the Graphics Way Extension, and Delaware County agrees that it will pay any Cost of the Graphics Way Extension in excess of the Kerbler Graphics Way Contribution. The Parties agree that (i) Kerbler will be entitled to be reimbursed (without interest) for the Kerbler Graphics Way Contribution solely from the Service Payments in accordance with Section 7 and (ii) Delaware County will be entitled to be reimbursed for any such excess Costs from the Service Payments in accordance with Section 7.

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(b) A public roadway extending for approximately 984 linear feet, commencing at the Home Road Connector and continuing in a southerly direction, with such additional construction particulars, and to be located and aligned substantially in accordance with the description set forth on Exhibit B (such public roadway being referred to herein as the “Green Meadows Drive Extension”). The Green Meadows Drive Extension shall include the necessary portions of the Stormwater Management Improvements.

In accordance with Section 5, Kerbler agrees to contribute \$801,173 (such amount being referred to herein as the “Kerbler Green Meadows Drive Contribution”) towards the Cost of constructing the Green Meadows Drive Extension, and Delaware County agrees that it will pay any Cost of the Green Meadows Drive Extension in excess of the Kerbler Green Meadows Drive Contribution. The Parties agree that (i) Kerbler will be entitled to be reimbursed (without interest) for the Kerbler Green Meadows Drive Contribution solely from the Service Payments in accordance with Section 7 and (ii) Delaware County will be entitled to be reimbursed for any such excess Costs from the Service Payments in accordance with Section 7.

(c) Delaware County agrees, subject to an Unforeseeable Delay, to commence and diligently pursue construction of the Graphics Way Extension and the Green Meadows Drive Extension in order that such construction shall be substantially complete on or before the date on which construction of the Project is substantially complete; *provided* that such construction shall not be required to be substantially complete prior to September 1, 2020. Based on current estimates which will be subject to change, the County currently anticipates that construction of the Graphics Way Extension will be completed in the spring of 2021.

(5) Further Agreement Regarding County Infrastructure. The Parties agree that the South Parcel will have vehicular access by the extension of Emil’s Way, a private road, east from its current terminus at Graphics Way Extension to the Property. Future additional vehicular access will be from two curb cuts along the Home Road Connector. The first access point to the Home Road Connector will align with Street E to the north and the second access point to the Home Road Connector will be a curb cut to be located further to the east (collectively, the “Access Points”), as shown on Exhibit D attached hereto. The Parties acknowledge and agree that the County may in its sole discretion, and upon notification to and consultation with SREG provided that SREG is the owner of the Property at such time, determine to limit or modify the Access Points, provided, however, that the Access Points shall remain in the same location and such modifications or limitations shall be limited to going from the existing full service curb cuts to “right in right out” curb cuts based on traffic safety determinations. In addition, a construction access drive/temporary emergency access drive shall be constructed and maintained in such manner as may be required by Orange Township, Ohio from Green Meadows Drive west to the Property (the “Construction/Emergency Access Road”). The South Parcel Improvements will be granted temporary and then final certificates of occupancy for all buildings, on a building by building basis. It is expressly understood and agreed that both temporary and final building certificates of occupancy will be granted with the only vehicular access point being from the extension of Emil’s Way and the only additional point of emergency access being the Construction/Emergency Access Road. The County and SREG acknowledge that the completion of the County Infrastructure is anticipated to be complete at a later date by the Delaware County Transportation Improvement District. Furthermore, the County agrees not to unreasonably condition, delay, withhold, or withdraw any of its approvals of any nature or any kind, including but not limited to temporary and permanent occupancy certificates, zoning compliance certificates, estoppel compliance letters to Applicant’s lenders, successors, assigns, or to any third party, based upon the completion status of the County Infrastructure and/or the Roadway Work; such status to include but not be limited to an indefinite delay in the completion of the County Infrastructure and/or the roadway work.

(6) Other Infrastructure. Such other public infrastructure improvements (as such term is defined in Ohio Revised Code Section 5709.40(A)(7)) that are specified in the TIF Resolution (defined herein) and that Delaware County has determined will directly benefit the Property (the “Other Infrastructure”).

B. Right-of-Way and Easements.

(1) County Infrastructure Right-of-Way. The Parties acknowledge that portions of the Property need to be conveyed to Delaware County as right-of-way and easements to facilitate the construction and maintenance of the County Infrastructure (such right-of-way and easements being collectively referred to herein as the “County Infrastructure Right-of-Way” which County Infrastructure Right-of-Way is further described and depicted on Exhibit B which is attached hereto and incorporated herein by reference). Delaware County and Kerbler agree that the County Infrastructure Right-of-Way shall be conveyed to Delaware County for purchase price equal to \$718,000, which purchase price shall be payable by Delaware County solely from the Service Payments and in the manner set forth in Section 7. Kerbler agrees to complete such conveyance to Delaware County before the date that SREG completes the purchase (“SREG Closing”) of the South Parcel (the “SREG Closing Date”), provided that SREG shall promptly notify Delaware County in writing as to the occurrence of this event. Kerbler and SREG each acknowledge that any delay in the conveyance of the County Infrastructure Right-of-Way to Delaware County may cause a commensurate delay in the completion of the County Infrastructure. The

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County Infrastructure Right-of-Way will be conveyed to the County by recording a right of way dedication plat and/or other suitable instrument(s) (the "Plat") with the Delaware County Recorder's Office. Kerbler shall execute and deliver the Plat to the County no later than April 15, 2019, and the County shall execute and record the Plat in connection with the SREG Closing.

(2) Construction Easements. Kerbler and SREG agree to provide at no charge such temporary construction easements as may be reasonably required by Delaware County to accommodate the construction of the County Infrastructure and the future extension of Home Road Connector east of Green Meadows Drive; *provided* that such easements do not unduly interfere with the construction of the Project.

(3) Stream Mitigation. Kerbler shall be responsible for providing stream impact mitigation relating to impacts to waterways under the Ohio EPA's Olentangy Construction General Permit by conveying to Delaware County one or more conservation easement(s), deed restrictions and/or covenants with the Ohio EPA or other governmental agency or non-profit organization ("Stream Mitigation") over the area generally depicted in Exhibit F having an area of approximately 13 acres, including approximately 9.6 acres of streamside buffer area. Such Stream Mitigation shall not unreasonably impact the developable area of the Kerbler Property. If adequate Stream Mitigation is not available on the Kerbler Property the County shall obtain stream mitigation from another source at the County's expense.

C. Water Main Extension.

(1) Kerbler Water Main Obligations. Kerbler shall enter into a reimbursement agreement with Del-Co Water by September 30, 2019 for construction of water main on the Property. Del-Co Water shall contract with a third party for the construction of a 12" water main along the Home Road Extension from U.S. Route 23 to Green Meadows Drive and a 12" water main along Green Meadows Drive from the Home Road Extension to the existing terminus of Green Meadow Drive (such water main being referred to herein as the "Water Main Extension"). Kerbler shall reimburse Del-Co Water for the cost of the Water Main Extension as per the reimbursement agreement between Kerbler and Del-Co Water.

(2) SREG Water Main Contribution. On the SREG Closing Date, SREG shall deposit \$430,000 in addition to the purchase price of the South Parcel, as described in the Third Amendment to the Purchase and Sale Agreement between SREG and Kerbler for the Property (collectively with all amendments, the "Purchase and Sale Agreement"), into escrow for SREG's contribution to the costs of the Water Main Extension.

(3) The Parties agree that Delaware County shall not be required to (a) pay any portion of the Cost or bear any responsibility for the construction of the Water Main Extension or (b) reimburse Kerbler or SREG for the Costs of the Water Main Extension from any Delaware County monies, including but not limited to, the Service Payments.

Kerbler agrees, subject to an Unforeseeable Delay, to take such actions reasonable necessary to cause the commencement and diligent pursuit of the construction of the Water Main Extension in order that such construction shall be substantially complete on or before the date on which construction of the Project is substantially complete; *provided* that such construction shall not be required to be substantially complete prior to September 1, 2020.

Delaware County, SREG and Kerbler each agree to grant such easement(s) to Del-Co Water as may be necessary to facilitate the construction of the Water Main Extension after the recording of the Plat. Kerbler agrees that some of the Del-Co Water easements will be described on the Plat.

The Parties agree to provide at no charge such temporary construction easements to Del-Co Water as may be reasonably required to accommodate the construction of the Water Main Extension; *provided* that such easements do not unduly interfere with the construction of the County Infrastructure or the Project.

D. Costs of Public Infrastructure. The Parties agree that the Cost of the Public Infrastructure shall be determined and accounted for as follows:

(1) Cost of Public Infrastructure. "Cost" or "Costs" as it relates to any component portion of the Public Infrastructure, shall mean all costs related thereto as defined in Ohio Revised Code 133.15(B).

(2) Accounting of Cost. Promptly following the completion of each component portion of the County Infrastructure, the County will provide to Kerbler a complete accounting of all Costs relating to the design and construction of that component portion of the County Infrastructure (in each case, an "Accounting"). A copy of each Accounting shall be deposited with and maintained in the office of the Delaware County Auditor.

Section 4. Project. SREG acknowledges and agrees that the Project, if developed, will be developed, or caused to be developed, by SREG and is expected to be approved by Delaware County and Orange

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Township (which approvals will not be unreasonably conditioned, delayed or withheld) as follows:

A. Rental Apartment Facility – SREG South Parcel. If SREG closes on the purchase of the South Parcel, SREG will construct an approximately 288 unit multi-family housing complex on the SREG Property (the “Rental Apartment Facility”). The Rental Apartment Facility is expected to be built in phases with the final phase targeted for completion and available for occupancy on or about June 1, 2020.

B. Rental Home Development – SREG North Parcel. If SREG closes on the purchase of the North Parcel, SREG will construct an approximately 68 unit rental home development on the SREG Property (the “Rental Home Development”). The Rental Home Development is expected to be built in phases with the final phase targeted for completion and available for occupancy within 24 months after final completion and acceptance of the County Infrastructure.

Section 5. Contributions into an Escrow Account.

A. First Deposit. Kerbler shall deposit the following with Leadership Title Company (the “Escrow Agent”) which shall be held in an escrow account under an escrow agreement:

(1) Cash Deposit. At the SREG Closing, a cash deposit (“Cash Deposit”) in the amount of \$2,650,512.

(2) Letter of Credit. Within not later than thirty (30) days after the effective date of the Third Amendment to the Purchase and Sale Agreement, an unconditional, irrevocable letter of credit, which shall be in favor of Delaware County, in a form and from a bank which shall be approved by Delaware County (which approval will not be unreasonably withheld) and issued in the amount of \$1,000,000 (the “Letter of Credit”) giving the County the right to make draws thereupon if there are insufficient funds in the escrow account to make the disbursements as provided in Section 5(D) below or if there is otherwise a default by Kerbler under this Agreement. The Letter of Credit shall be written to provide that it shall become effective only upon and at the SREG Closing Date, and shall have an initial term of one year and shall be renewed or replaced by a letter of credit with identical terms for four (4) successive one year periods in order that a Letter of Credit shall be available to the County for a consecutive period of five (5) years from the SREG Closing Date. Kerbler shall deliver each required renewal or replacement Letter of Credit to the County no later than thirty (30) days prior to the expiration of the then-current Letter of Credit or the County shall have the right to draw upon the then-current Letter of Credit. The Letter of Credit may be secured by a mortgage on the Property, but any mortgage must include an obligation by the mortgagee to deliver partial releases for the County Infrastructure Right-of-Way, the Del-Co Water easements, the Construction/Emergency Access Road, the South Parcel, the North Parcel and automatic subordination for all utility easements for the Project and/or elsewhere on the Property.

B. Second Deposit. If SREG acquires the North Parcel, then at the closing (“SREG North Closing”) from the net sales proceeds generated from the sale of the North Parcel, Kerbler shall deposit with the Escrow Agent an amount equal to \$1,000,000 less any amounts which, as of that date, have been drawn by the Delaware County against the Letter of Credit for the purpose of paying the Costs of County Infrastructure, and upon that deposit, shall be permitted to terminate the Letter of Credit.

C. Allocations. The amounts deposited into the escrow account shall be allocated to the various components of the County Infrastructure as follows:

D. Release of Amounts Deposited in the Escrow Account. With respect to each component of the

<u>County Infrastructure Component</u>	<u>Amount</u>
Home Road Connector	\$1,407,282
Home Road Sewer Extension	819,910
Graphics Way Extension	622,147
Green Meadows Drive Extension	801,173
Total	\$3,650,512

County Infrastructure, Delaware County shall account for the monies expended to date in respect of the total construction Cost for each such component. Once Delaware County determines that at least twenty-five (25%) percent of the total estimated construction Cost for a particular component of the County Infrastructure has been expended, Delaware County shall provide written notification to the Escrow Agent, with a copy to Kerbler. Once that written notification has been provided in respect of a component of the County Infrastructure, Delaware County will be entitled to request from the Escrow Agent disbursements from the escrow account to reimburse Delaware County for Costs of that component of the County Infrastructure. At no time shall the total amount disbursed from the escrow account in respect of a component of the County Infrastructure exceed an amount equal to the product of (1) the aggregate amount deposited into the escrow account in respect of that component of the County Infrastructure pursuant to this Sections 5 multiplied by (2) the quotient of (a) the total amount expended on Costs of that component of the County Infrastructure as of the date of the computation divided by (b) the total

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estimated construction Cost for that component of the County Infrastructure. If any amounts are required to be released pursuant to this Section 5.C. and there is insufficient cash on deposit in the escrow account, the County shall be permitted to draw upon the Letter of Credit (to the extent that it has not been terminated in accordance with this Section 5), to pay the cost of the respective component of the County Infrastructure.

Section 6. Special Assessments. Kerbler agrees that it will sign and deliver to Delaware County within ninety (90) days following the Effective Date a special assessment petition (which shall be substantially in the form set forth on Exhibit E) requesting that one or more components of the Public Infrastructure be designed, constructed and installed and that the cost of that Public Infrastructure (other than the County Infrastructure) be specially assessed against the Kerbler Property in accordance with the special assessment petition. Kerbler and Delaware County acknowledge that the special assessment petition shall also provide for the levy and collection of special assessments to pay the costs of constructing certain additional public infrastructure improvements which are not specifically described in this Agreement. The County hereby agrees that in the event of a default by Kerbler under this Section 6, this Agreement shall remain in effect and the County's sole remedy shall be the withholding of approval of the plat for the Kerbler Property.

Kerbler agrees that it will not, and it will prohibit any successor in interest to the Kerbler Property or any part thereof to, engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Kerbler Property or any portion thereof that will have priority over any lien resulting from the levy of special assessments in accordance with the special assessment petition and Kerbler hereby represents and warrants to Delaware County that no such mortgage or other encumbrance or lien exists as of the Effective Date. Kerbler further agrees that if such lien or encumbrance shall exist at the time such special assessment petition is filed with Delaware County, Delaware County shall have no obligation to accept such special assessment petition or to finance, construct or install such components of the Public Infrastructure as described in the special assessment petition until such time as said lien or encumbrance is eliminated or subordinated to the special assessment lien.

Section 7. Tax Increment Financing.

A. General. The Parties acknowledge and agree that the adoption of the TIF Resolution and creation of a tax increment financing area ("TIF") in respect of a portion of the Property is necessary to provide sufficient monies to pay the Costs of certain of the Public Infrastructure.

B. TIF Property; Kerbler Property to be Excluded. The TIF Resolution includes the Property and the Kerbler Property, and does not include any other parcels described on Exhibit A which have not been specifically included in the TIF Property (as defined above). Within thirty (30) days after the SREG Closing Date, Delaware County shall adopt a resolution to exclude the Kerbler Property from the TIF Property and the TIF Resolution. The TIF Resolution contains language indicating that the TIF exemptions shall commence on a parcel-by-parcel basis. The TIF Resolution requires the current and future owners of the TIF Property to make service payments in lieu of taxes (the "Service Payments") in an amount equal to the amount of real property taxes that would have been paid but for the exemptions provided in the TIF Resolution. The Service Payments shall be deposited by Delaware County into the Slate Ridge II Tax Equivalent Fund established in the TIF Resolution (the "TIF Fund").

C. Use of Service Payments.

(1) Within fifteen (15) business days following the deposit of Service Payments into the TIF Fund, Delaware County shall apply the balance of any monies then on deposit in the TIF Fund in the following manner:

(a) Fifty (50%) percent of the balance in the TIF Fund shall be retained by Delaware County and applied to the Unreimbursed Costs of the County Infrastructure (as defined below); and

(b) Subject to Sections 13(B) and 22, fifty (50%) percent of the balance in the TIF Fund shall be paid to Kerbler and applied to the Unreimbursed Costs of the Kerbler Infrastructure (as defined below).

(2) After the Parties have been fully reimbursed as described in (1) above, the monies on deposit, and thereafter deposited, in the TIF Fund shall be used for any lawful purpose.

(3) All of the Service Payments received or to be received by Delaware County and retained by Delaware County or paid to Kerbler hereunder will be deemed to be appropriated pursuant to the TIF Resolution to provide for the payment under this Section 7. Notwithstanding the foregoing, to the extent necessary, Delaware County agrees to appropriate those amounts to be received into the TIF Fund constituting Service Payments for payments under this Section 7. Notwithstanding anything in this Agreement to the contrary, Delaware County's obligations under this Section 7 are limited special obligations of Delaware County payable solely from Service Payments. Those obligations are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit or taxing power of Delaware County, and neither Kerbler nor any other person has any right to have taxes levied by Delaware County for the payments required under this Section 7.

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D. Accounting for Full Reimbursement. Commencing with the receipt of each Accounting and until Delaware County and Kerbler have been fully reimbursed or the TIF has terminated and Delaware County reasonably determines that no further Service Payments will be deposited into the TIF Fund (whichever occurs first), the Delaware County Auditor will maintain and keep current the following records:

(1) Unreimbursed Costs of the County Infrastructure. A record of the sum of (a) the Costs of the Home Road Connector less the amount of the Kerbler Home Road Connector Contribution remitted to Delaware County, (b) the Costs of the Home Road Sewer Extension less the amount of the Kerbler Home Road Sewer Extension Contribution remitted to Delaware County, plus the Costs of providing any temporary service pursuant to Section 3(A)(2) which shall be payable to SREG, (c) the Costs of the Block Property Sewer Extension, (d) the Costs of the Graphics Way Extension less the amount of the Kerbler Graphics Way Contribution remitted to Delaware County, (e) the Costs of the Green Meadows Drive Extension less the amount of the Kerbler Green Meadows Drive Contribution remitted to Delaware County and (f) the Costs of any Other Infrastructure (collectively, the "Original Costs of the County Infrastructure"). On the date on which any Service Payments are disbursed from the TIF Fund to Delaware County for the purpose of reimbursing the Unreimbursed Costs of County Infrastructure, the Delaware County Auditor shall recompute the Unreimbursed Costs of County Infrastructure as follows: (y) the Original Costs of the County Infrastructure less (z) any Service Payments theretofore retained by Delaware County for the purpose of reimbursing a portion of the Original Costs of the County Infrastructure (each such computation shall represent the then "Unreimbursed Costs of County Infrastructure"). The recomputed Unreimbursed Costs of County Infrastructure will be used on that date for the purpose of determining the disbursement amount to Delaware County pursuant to this Section 7.

(2) Unreimbursed Costs of the Kerbler Infrastructure. A record of the sum of (a) the purchase price for the County Infrastructure Right-of-Way, (b) the Kerbler Graphics Way Contribution and (c) the Kerbler Green Meadows Drive Contribution (collectively, the "Original Costs of the Kerbler Infrastructure"). On the date on which any Service Payments are disbursed from the TIF Fund to Kerbler for the purpose of reimbursing the Unreimbursed Costs of the Kerbler Infrastructure, the Delaware County Auditor shall recompute the Unreimbursed Costs of the Kerbler Infrastructure as follows: (y) the Original Costs of the Kerbler Infrastructure less (z) any Service Payments theretofore disbursed to Kerbler for the purpose of reimbursing a portion of the Unreimbursed Costs of the Kerbler Infrastructure (each such computation shall represent the then "Unreimbursed Costs of the Kerbler Infrastructure"). The recomputed Unreimbursed Costs of the Kerbler Infrastructure will be used on that date for the purpose of determining the disbursement amount to Kerbler pursuant to this Section 7.

(3) Reports to Kerbler. On the date of each disbursement of Service Payments pursuant to this Section 7, Delaware County shall also provide to Kerbler a report which shall include a statement of the original Accountings, Service Payments received into the TIF Fund and the Service Payments disbursed from the TIF Fund to Kerbler.

E. Priority of Lien. The provisions of Ohio Revised Code Section 5709.91, which specify that Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11, including, but not limited to, the priority of the lien and the collection of Service Payments, apply to this Agreement and to the TIF Property. The provisions of Ohio Revised Code Section 5709.911 apply to exemption applications filed pursuant to the TIF Resolution and this Agreement.

F. TIF Exemption Applications. In accordance with Ohio Revised Code Sections 5715.27 and 5709.911, Delaware County shall file or cause to be filed a completed application for an exemption from real property taxation (DTE Form 24 or its successor form) with the Delaware County Auditor (the "County Auditor") for the each parcel exempt pursuant to the TIF Resolution. Delaware County, Kerbler and SREG agree to cooperate with each other for this purpose, including the execution of a DTE Form 24P and/or imposing a requirement on future transferees of the TIF Property to similarly cooperate, and to cooperate with the County Auditor, the Ohio Department of Taxation, and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Resolution and this Agreement.

G. County Agreement. Delaware County agrees that so long as the real property tax exemption under the TIF Resolution is in effect, any exemptions from real property taxation for the TIF Property pursuant to Ohio Revised Code Section 5709.63 *et. seq.*, Ohio Revised Code Section 3735.65 *et. seq.*, or any other tax exemption or tax abatement program shall be subordinated to the exemption authorized by the TIF Resolution.

H. SREG Agreement. SREG agrees that so long as the real property tax exemption under the TIF Resolution is in effect, it shall not permit, and by way of deed restriction or other instrument as may be reasonably approved by Delaware County, the conversion of any portion of the Project to owner-occupied residential housing.

Section 8. Roadway Access; Curb Cuts. Delaware County and Kerbler acknowledge that SREG will need continuous and uninterrupted construction road access throughout the construction of the Project. In particular, (i) SREG shall use the intersection of U.S. 23 and Corduroy Road as a temporary primary access point and permanent secondary access point to the SREG Property, and (ii) SREG will use the extended Graphics Way and Emil's Way to provide a permanent primary access point to the SREG Property. Additional curb cuts would require separate approval from Delaware County. The roadway access plan is further described and depicted on

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Exhibit D attached hereto and incorporated herein by this reference.

Section 9. Condition Precedent. Delaware County, Kerbler and SREG hereby acknowledge and agree that the occurrence of the SREG Closing Date is a condition precedent to all other duties of Delaware County, Kerbler and SREG under this Agreement. If the SREG Closing Date does not occur on or before December 31, 2019, this Agreement and all of the benefits and obligations therein are null and void.

Section 10. Release. Upon satisfaction of Kerbler's or SREG's obligations under this Agreement and expiration of the periods of exemption under the TIF Resolution, or other termination of the obligations of the owners of the TIF Property to make the Service Payments, Delaware County shall, upon the request of Kerbler and/or SREG, execute an instrument in recordable form evidencing such satisfaction or termination.

Section 11. Estoppel Certificate. Upon request of Kerbler or SREG, Delaware County shall execute and deliver to Kerbler and/or SREG or any proposed purchaser, mortgagee or lessee of any parcel of the Property, a certificate stating: (a) that the Agreement is in full force and effect, if the same is true; (b) that Kerbler and/or SREG are not in default under any of the terms, covenants or conditions of the Agreement, or, if Kerbler and/or SREG are in default, specifying same; and (c) such other matters as Kerbler and/or SREG reasonably request.

Section 12. Representations of Delaware County. Delaware County hereby warrants and guarantees that it will complete the construction of the County Infrastructure, water and sewer capacity within the timing prescribed by this Agreement and under the guidelines and descriptions contained in this Agreement.

Section 13. Remedies

A. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or the Purchase and Sale Agreement by any party to this Agreement and the Purchase and Sale Agreement, or any successor to such party, such party (or successor) shall, within 45 days of receipt of written notice from any other, proceed to cure or remedy such default or 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. All rights and remedies shall be cumulative and shall not be construed to exclude any other remedies allowed at law or in equity. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be responsible for paying its own attorneys' fees, court costs and all expenses, (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding.

B. Self-Help. Notwithstanding the foregoing, the parties hereto acknowledge and agree that if Kerbler fails to perform any agreement or obligation contained in this Agreement, SREG shall give Kerbler written notice (the "Default Notice") and three (3) business days to cure the default described in the Default Notice, and if Kerbler fails to cure such default, SREG shall have the right, but not the obligation, to perform the same. In the event that SREG exercises its self-help right pursuant to this Section 13(B), Kerbler shall pay to SREG all costs, expenses and disbursements incurred by SREG in connection therewith, including, but not limited to, interest on such costs, expenses and disbursements at the prime rate of interest as published in the "Wall Street Journal" or if the "Wall Street Journal" is not then being published, in another commercial publication selected by SREG, plus five (5) percent (collectively the "SREG Self-Help Payment"). SREG shall be entitled to recover the SREG Self-Help Payment by the assignment of amounts payable to Kerbler pursuant to Section 7(C)(1)(b), all as provided in the last paragraph of Section 22 of this Agreement, and/or receive a credit against the purchase price of the North Parcel if the SREG North Closing occurs; provided, however, the County's obligation to remit any payments to SREG in lieu of Kerbler pursuant to this Section 13(B) shall be limited to those amounts originally described in Section 7(D)(2) and any additional costs, expenses and disbursements incurred by SREG in pursuit of its rights against Kerbler in accordance with this Section 13(B) shall not be payable by the County out of the TIF Fund or any other monies. The remedies available for payment of the SREG Self-Help Payment as set forth herein shall not be SREG's exclusive remedies, as SREG shall also be entitled to all other remedies available to it at law or in equity.

C. Unforeseeable Delay. Neither party shall be considered in breach of its obligations under this Agreement due to unforeseeable causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, orders of courts, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. The party seeking the benefit of the provisions of this subsection shall, within 15 calendar days after actual notice of any such unforeseeable delay, have first notified the other party of such unforeseeable delay in writing, and of the cause or causes of the unforeseeable delay.

Section 14. Successors. This Agreement shall be binding upon and inure to the benefit of Kerbler and its beneficiaries, successors and assigns, including successive as well as immediate successors and assigns; shall be binding upon and inure to the benefit of SREG and its beneficiaries, successors and assigns, including successive as well as immediate successors and assigns; and shall be binding upon and inure to the benefit of Delaware County, and its successors and assigns. Notwithstanding the foregoing, only Kerbler, SREG and their respective designees, and not their successors in ownership to the Property or any part of the Property, shall be

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entitled to the payments from the Service Payments as described in this Agreement, unless otherwise agreed in writing signed by Kerbler or SREG, as appropriate for portions of the Service Payments payable to Kerbler and SREG under the terms of this Agreement.

Section 15. Agreement Binding on Parties; No Personal Liability; County Consents. All covenants, obligations, and agreements of Delaware County, Kerbler and SREG 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, official, officer, agent, or employee of Delaware County in other than their official capacity or of any individual person who is a partner, shareholder, director, member, manager, employee, officer, or agent of Kerbler and SREG other than in their capacity as a partner, shareholder, director, member, manager, employee, officer, or agent, and neither the members of the Board of County Commissioners nor any County official executing this Agreement, or any individual person executing this Agreement on behalf of Kerbler or SREG, shall be liable personally by reason of the covenants, obligations, or agreements of Delaware County, Kerbler or SREG contained in this Agreement. Delaware County is a political subdivision of the State of Ohio and is entitled to all of the immunities and defenses provided by law.

Section 16. Merger and Amendments. This Agreement supersedes any and all other agreements, either oral or in writing, among Delaware County, Kerbler and SREG with respect to the matters contained in this Agreement and contains all of the covenants, agreements, and other terms and conditions among Delaware County, Kerbler and SREG with respect to the same. No waivers, alterations, or modifications of this Agreement or any agreements in connection with this Agreement shall be valid unless in writing and duly executed by Delaware County, Kerbler and SREG.

Section 17. Notices. Except as otherwise specifically set forth in this Agreement, all notices, certificates, 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 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. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, demands, requests, consents or approvals, or other communications shall be sent. The present notice addresses of the parties follow:

To Delaware County at:	Delaware County, Ohio 101 North Sandusky Street Delaware, Ohio 43015 Attn: County Administrator
With a copy to:	Delaware County Prosecuting Attorney 140 North Sandusky Street – 3 rd Floor Delaware, Ohio 43015
To Kerbler at:	Kerbler Farms LLC 16491 Proprietors Road Worthington, OH 43085 Attn: James A. Kerbler
To SREG at:	George Harmanis, Senior V.P. and Chief Financial Officer Schottenstein Real Estate Group, LLC 2 Easton Oval, Suite 510 Columbus, Ohio 43219 gh@sregroup.com (614) 418-8919
With a copy to:	Brian Schottenstein, President Schottenstein Real Estate Group, LLC 2 Easton Oval, Suite 510 Columbus, Ohio 43219 bs@sregroup.com (614) 418-8912
And to:	Chris L. Connelly Taft Stettinius & Hollister LLP 65 East State Street, Suite 1000 Columbus, Ohio 43215 cconnelly@taftlaw.com (614) 334-7108

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Section 18. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

Section 19. Severability and Cooperation Clause. In the event that any portions, sections or subsections of this Agreement are rendered invalid by the decision of any court or by the enactment of any law, resolution or regulation, such provision of this Agreement will be deemed to have never been included therein and the balance of the Agreement shall continue in full force and effect. If the terms of this Agreement, or any amendment or amendments to any provision of County laws that are required to be enacted or amended as a consequence of this Agreement, are challenged by either referendum or administrative appeal to the courts or such other legal or equitable remedies sought by those who may oppose this Agreement, the parties agree to cooperate with each other to uphold the validity and enforceability of this Agreement. This cooperation clause only pertains to Board of Commissioners decisions relating to this Agreement, and this cooperation clause cannot be used to attempt to force the Board of Commissioners to override other legislative or administrative decisions relating to the Project.

Section 20. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 21. Governing Law and Choice of Forum. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction. Each of Delaware County, Kerbler and SREG irrevocably consents to the jurisdiction of any state court located within Delaware County, Ohio in connection with any matter based upon or arising out of this Agreement, agrees that process may be served upon them in any manner authorized by the laws of the State of Ohio, and waived and covenants not to assert or plead any objection which they might otherwise have under such jurisdiction or such process.

Section 22. Assignments. Except as otherwise provided in this Section, Kerbler and SREG agree not to assign this Agreement without the prior written consent of Delaware County, which consent shall not be unreasonably withheld (and shall not, in any event, be withheld to stop or delay development consistent with zoning already in effect). Notwithstanding any provisions to the contrary in this Agreement and without the consent of Delaware County: (i) each of Kerbler and SREG may assign their interests in this Agreement to an entity controlled by or under common control with Kerbler or SREG, as applicable; (ii) Kerbler and SREG, in a written instrument signed by Kerbler or SREG, as applicable, may designate an authorized designee to receive all or any portion of the Service Payments payable to Kerbler or SREG pursuant to this Agreement, upon which designation such designee shall receive the portion of Service Payments specified by Kerbler or SREG as if it was Kerbler or SREG under this Agreement; and (iii) Kerbler and SREG, as security for the payment of all or any portion of the Service Payments payable to Kerbler or SREG pursuant to this Agreement to a designee, may collaterally assign their right, title, and interest in and to this Agreement.

Under the authority of clause (ii) above, Kerbler hereby assigns to SREG, and the County hereby consents to such assignment, fifty (50%) percent of the amount payable to Kerbler pursuant to Section 7(C)(1)(b) hereof (i.e., twenty-five (25%) percent of the total balance in the TIF Fund) until such time as SREG receives payments in an aggregate amount equal to \$572,000 (the "SREG Reimbursement"). Kerbler hereby directs the County to make such payments directly to SREG until an amount equal to the SREG Reimbursement has been remitted to SREG, after which time Kerbler shall receive the remaining payments (if any) payable to Kerbler pursuant to Section 7(C)(1)(b). For the sake of clarity, Kerbler shall receive 25% of the total Service Payments and SREG shall receive 25% of the total Service Payments until SREG receives the SREG Reimbursement of \$572,000. Thereafter, Kerbler shall receive 50% of the total Service Payments until Kerbler receives a total of \$1,569,320 of Service Payments to be received by Kerbler and \$572,000 by SREG. Thereafter, 100% of the Service Payments are to be retained by the County. The net result is that Kerbler is to be reimbursed for (i) \$622,147 for the Graphics Way Extension, (ii) \$801,173 for the Green Meadows Drive Extension, and (iii) \$718,000 for the County Infrastructure Right-of-Way (of which \$572,000 has been assigned to SREG pursuant to this Section 22).

In addition, in the event that SREG exercises its right of self-help pursuant to Section 13(B) of this Agreement, Kerbler hereby assigns to SREG, and the County hereby consents to such assignment, and agrees to pay to SREG any and all amounts payable to Kerbler pursuant to Section 7(C)(1)(b) hereof (to the extent legally permissible under the Ohio Revised Code) until such time as SREG is fully reimbursed for the SREG Self-Help Payment as described in and limited by Section 13(B).

(Remainder of page intentionally left blank – Signatures Follow)

As evidence of their intent to be bound by this Agreement, the authorized representatives of each of Delaware County, Kerbler and SREG have executed this Agreement for and on behalf of Delaware County, Kerbler and SREG as of the Effective Date.

DELAWARE COUNTY, OHIO

By: _____

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Name: Michael A. Frommer, P.E.

Title: County Administrator

KERBLER FARMS LLC

By:

Name: James A. Kerbler

Title: Managing Member

KERBLER BUILDERS, an Ohio general partnership

By:

Name: James A. Kerbler

Title: Partner

JAK INVESTMENTS II, LLC, an Ohio limited liability company

By:

Name: James A. Kerbler

Title: Managing Member

SCHOTTENSTEIN REAL ESTATE GROUP, LLC

By:

Name:

Title:

EXHIBITS:

- A – Property**
- B – Public Infrastructure Plan**
- C – Form of TIF Resolution**
- D – Roadway Access and Curb Cut Plan**
- E – Form of Special Assessment Petition**
- F – Stream Mitigation Plan**

FISCAL OFFICER’S CERTIFICATE

The undersigned, County Auditor of Delaware County, Ohio under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of Delaware County during the year 2019 under the foregoing Agreement have been lawfully appropriated for that purpose, and will be in the Treasury of Delaware County or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. There is no obligation for Delaware County to make any payments pursuant to this Agreement except from Service Payments deposited into the TIF Fund and from Special Assessments. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 2019

County Auditor
Delaware County, Ohio

**EXHIBIT A
THE PROPERTY**

The Property is the real property depicted as Parcels A – G, with the exception of Parcel C, on the attached depiction, which is comprised of all or a portion of the following tax year 2017 parcel numbers. The SREG Property is comprised of the parcels of the Property identified as Parcels A and B on the attached depiction.

Property Parcel Numbers:

- 31822004026000
- 31823001001000
- 31821315013000

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31821315013001
31822004029000
31824002001000
31821003023000



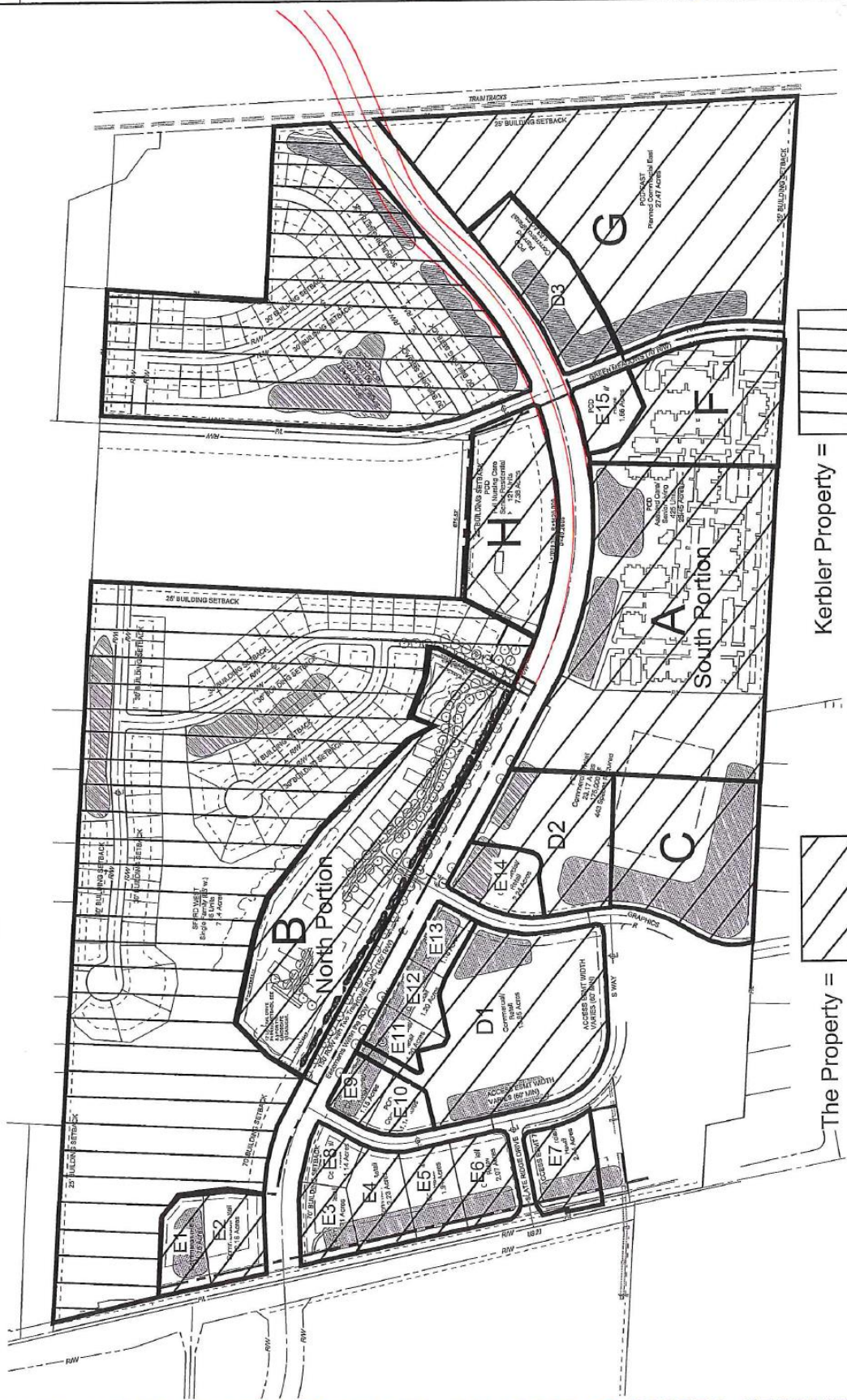
		NO. DATE DESCRIPTION _____	STREET AND STORM SEWER IMPROVEMENT PLAN FOR SLATE RIDGE COMMERCIAL SOUTH SECTION 2, TOWN 5, RANGE 15 DELAWARE COUNTY, OHIO PROJECT NO. 13833.000 DATE: 01/25/2017 SCALE: 0' 100' 200' 400' SHEET NAME:	OVERALL SKETCH	1/1
			SHEET NO.	SHEET NO.	

EXHIBIT A - PROPERTY



INSPIRED PEOPLE ▶ CREATIVE DESIGN ▶ TRANSFORMING COMMUNITIES

EXHIBIT B

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PUBLIC INFRASTRUCTURE PLAN,
RIGHTS-OF-WAY AND EASEMENTS

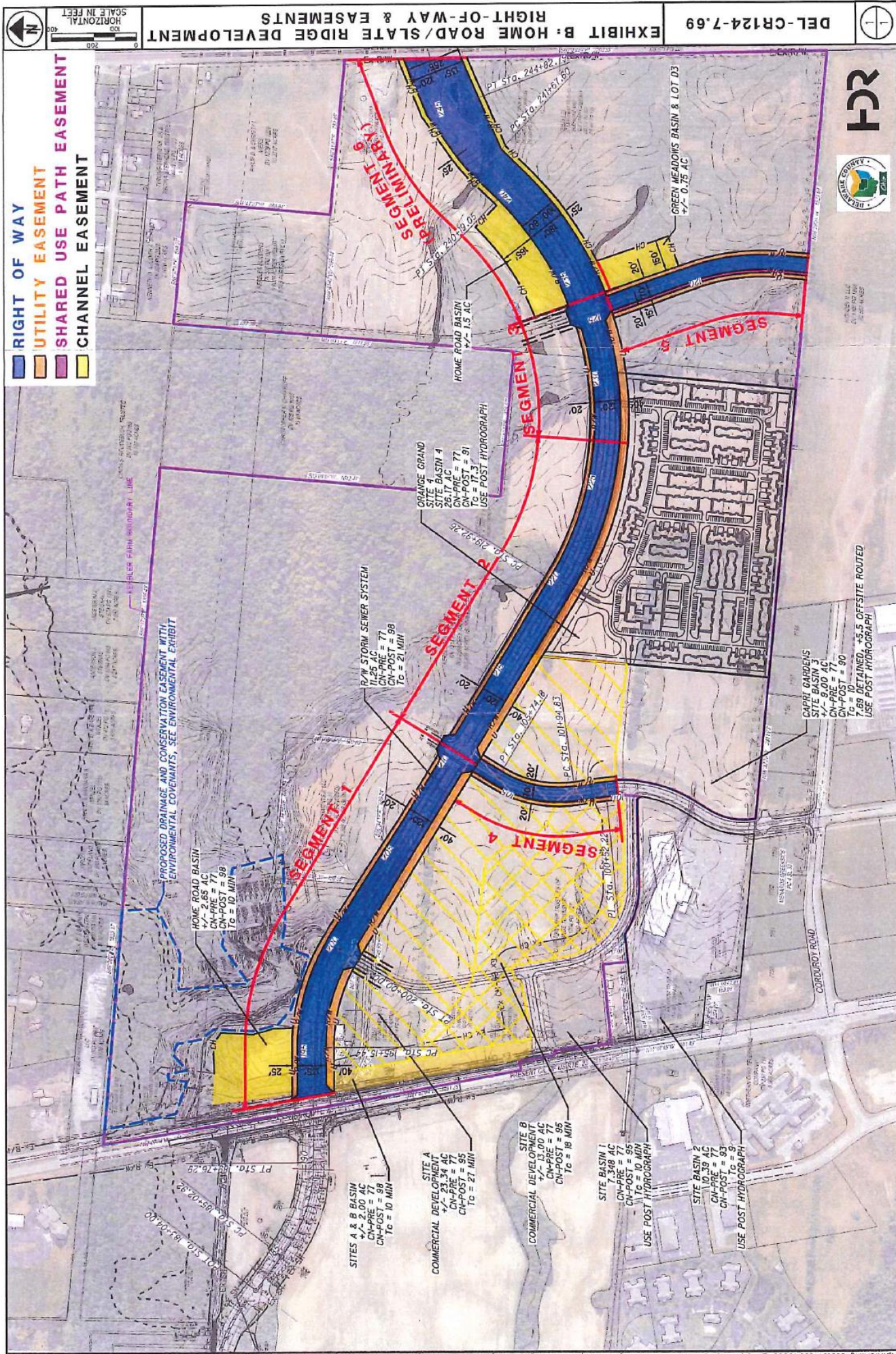
(attached hereto)

Roadway Segment	Right of Way Acreage	Utility Easement Acreage	Channel Easement Acreage	Shared Use Path Easement Acreage	FROM	TO	OFFSET	LENGTH (FT)	WIDTH (FT)
1	5.52	-	-	-	192+85	210+69	LT/RT	1785	VARIES 135 - 120
	-	0.94	-	-	192+85	210+34	LT	1750	VARIES 25 - 20
	-	0.53	-	-	192+85	199+57	RT	673	40
	-	0.89	-	-	200+32	210+34	RT	1002	40
2	-	-	2.65 *	-	193+03	195+99	LT	297	VARIES
	4.59	-	-	-	210+69	227+00	LT/RT	1631	120
	-	0.71	-	-	211+04	227+00	LT	1596	20
	-	1.48	-	-	211+04	227+00	RT	1596	40
3	2.06	-	-	-	227+00	233+80	LT/RT	680	120
	-	0.25	-	-	227+00	232+88	LT	588	20
	-	0.56	-	-	227+00	232+91	RT	591	40
	1.11	-	-	-	100+00	106+90	LT/RT	690	70
4	-	0.33	-	-	100+00	106+90	LT	690	20
	-	0.30	-	-	100+00	106+90	RT	690	20
	1.54	-	-	-	114+55	124+13	LT/RT	958	70
	-	-	-	0.32	114+55	124+13	LT	958	15
5	-	0.43	-	-	114+55	124+13	LT	958	20
	-	0.45	-	-	114+55	123+79	RT	923	20
	-	-	1.19	-	120+50	123+54	RT	304	150
	6.24	-	-	-	233+80	247+34	LT/RT	1354	VARIES 180 - 255
6 (PRELIMINARY)	-	-	2.54	-	233+80	247+34	LT	1354	VARIES 165 - 25
	-	-	0.74	-	233+80	247+34	RT	1354	25
TOTALS	21.06	6.87	7.12	0.32					

NOTES

* Includes 0.67 acres of existing Channel Easement

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EXHIBIT C TIF RESOLUTION (attached hereto)



Delaware County Commissioners

Jeff Benton
Barb Lewis
Gary Merrell

County Administrator
Michael Frommer

Deputy Administrators
Dawn Huston

Clerk to the Commissioners
Jennifer Walraven

RESOLUTION NO. 18-1395

A RESOLUTION DECLARING THE IMPROVEMENT TO CERTAIN PARCELS OF REAL PROPERTY TO BE A PUBLIC PURPOSE AND EXEMPT FROM TAXATION; ESTABLISHING A REDEVELOPMENT TAX EQUIVALENT FUND AND PROVIDING FOR THE COLLECTION AND DEPOSIT OF SERVICE PAYMENTS INTO THAT FUND; AND SPECIFYING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS DIRECTLY BENEFITING THE PARCELS:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve the following:

WHEREAS, Ohio Revised Code Sections 5709.77 to 5709.80 (collectively, the “*TIF Statutes*”) authorize the legislative authority of a county, by resolution, to declare the improvement to parcels of real property located within the unincorporated territory of the county to be a public purpose and exempt from taxation, require the owner of each parcel to make service payments in lieu of taxes, establish a redevelopment tax equivalent fund for the deposit of the those service payments, and specify public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, those parcels; and

WHEREAS, this Board has determined to declare the improvements to certain parcels of real property, which parcels are further described in Section 1, to be a public purpose; and

WHEREAS, this Board desires to provide for the construction and/or installation of the public infrastructure improvements described in Section 2; and

WHEREAS, notice of this proposed Resolution has been delivered to the Boards of Education of the Olentangy Local School District and the Delaware Area Career Center in accordance with and within the time periods prescribed in Ohio Revised Code Sections 5709.78 and 5709.83; and

WHEREAS, the Olentangy Local School District, pursuant to a resolution of the Board of Education of the Olentangy Local School District adopted on _____, 2018, has approved the TIF Exemption and waived the notice requirements of Ohio Revised Code Sections 5709.78, 5709.83 and 5715.27; and

WHEREAS, the Delaware County Career Center, pursuant to a resolution of the Board of Education of the Delaware Area Career Center adopted on _____, 2018, has acknowledged and consented to the TIF Exemption, and waived the notice requirements of Ohio Revised Code Sections 5709.78, 5709.83 and 5715.27;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Delaware, State of Ohio, that:

Section 1. Parcels of Real Property. The parcels of real property subject to the exemption granted by this Resolution are identified and depicted in **EXHIBIT A** attached hereto (each, as currently or subsequently configured, individually, a “*Parcel*” and collectively, the “*Parcels*”).

Section 2. Public Infrastructure Improvements. This Board hereby designates the public infrastructure improvements described in **EXHIBIT B** attached hereto (the “*Public Infrastructure Improvements*”) and any other public infrastructure improvements hereafter designated by resolution as public infrastructure improvements made, to be made or in the process of being made by the County that directly benefit, or that once made will directly benefit, the Parcels, provided that all public infrastructure improvements are to be made within the jurisdictional boundary of the Olentangy Local School District

Section 3. Authorization of Tax Exemption. This Board hereby finds and determines that 75% of the increase in assessed value of each Parcel subsequent to the effective date of this Resolution (which increase in assessed value is hereinafter referred to as the “*Improvement*” as defined in Ohio Revised Code Section 5709.77(D)) is hereby declared to be a public purpose and shall be exempt from taxation in accordance with Ohio Revised Code Section 5709.78(A) for a period commencing for each Parcel with the first tax year that begins after the effective date of this Resolution and in which an Improvement attributable to a new structure on that Parcel first appears on the tax list and duplicate of real and public utility property were it not for the exemption granted by this Resolution and ending on the earlier of (a) twenty (20) years after such commencement or (b) the date on which the County can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes. The real property tax exemption granted pursuant to this Section and the payment obligation established pursuant to Section 4 are subject and subordinate to any real property tax exemption granted pursuant to Sections 3735.65 to 3735.70 or Sections 5709.61 to 5709.69 of the Ohio Revised Code.

Section 4. Service Payments. Pursuant to Ohio Revised Code Section 5709.79, the owner of each Parcel is hereby required to and shall make service payments in lieu of taxes with respect to the Improvement allocable thereto to the Treasurer of Delaware County, Ohio (the “*County Treasurer*”) on or before the final dates for payment of real property taxes. The service payments in lieu of taxes shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and collected against that Improvement if it were not exempt from taxation pursuant to Section 3 of this Resolution, including any penalties and interest (collectively, the “*Service Payments*”). The Service Payments, and any other payments with respect to each Improvement that are

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received by the County Treasurer in connection with the reductions required by Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the "*Property Tax Rollback Payments*"), shall be allocated, distributed and deposited in accordance with Section 6 of this Resolution.

Section 5. TIF Fund. This Board hereby establishes, pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.80, the Slate Ridge II Tax Equivalent Fund (the "*TIF Fund*"). The TIF Fund shall be maintained in the custody of the County and shall receive all distributions to be made to the County pursuant to Section 6 of this Resolution. Those Service Payments and Property Tax Rollback Payments received by the County with respect to the Improvement of each Parcel and so deposited pursuant to Ohio Revised Code Section 5709.80 shall be used solely for the purposes authorized in the TIF Statutes or this Resolution. The TIF Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund shall be dissolved and any incidental surplus funds remaining therein transferred to the County's General Fund, all in accordance with Ohio Revised Code Section 5709.80.

Section 6. Distributions. Pursuant to the TIF Statutes, the County Treasurer is requested to distribute the Service Payments and Property Tax Rollback Payments to the County for further deposit into the TIF Fund for (a) payment of costs of the Public Infrastructure Improvements, including, without limitation, debt charges on any securities of the County issued to pay or reimburse financing costs or costs of those Public Infrastructure Improvements and (b) any other lawful purpose.

All distributions required under this Section 6 are requested to be made at the same time and in the same manner as real property tax distributions.

Section 7. Further Authorizations. The County Commissioners, or any of them, the County Auditor, the County Prosecutor, the County Treasurer, the County Administrator, the Economic Development Director, the Clerk of this Board and other County officials, as appropriate, are each authorized and directed to make such arrangements as are necessary and proper for collection of the Service Payments and the Property Tax Rollback Payments and to prepare and sign all documents and instruments and to take any other actions as may be appropriate to implement this Resolution.

Section 8. School Compensation Agreement. This Board of Commissioners further hereby approves the compensation agreement between the County and the Board of Education of the Olentangy Local School District and the Board of Education of the Delaware Area Career Center in the form attached hereto as **EXHIBIT C** (the "*School District Compensation Agreement*"), with any changes that are not inconsistent with this Resolution and not substantially adverse to the County and that are approved by the County Administrator on behalf of the County, all of which shall be conclusively evidenced by the signing of the School District Compensation Agreement, and hereby authorizes the President of the Board of Commissioners, the County Administrator, and the County's Economic Development Director to execute the School District Compensation Agreement on behalf of the County.

Section 9. Non-Discriminatory Hiring Policy. In accordance with Ohio Revised Code Section 5709.832, this Board of Commissioners hereby determines that no employer located in the Parcels shall deny any individual employment based solely on race, religion, sex, disability, color, national origin or ancestry. The County shall include a non-discriminatory hiring policy covenant in any development agreement entered into between the County and any owner or developer of any Parcel.

Section 10. Tax Incentive Review Council. The applicable Tax Incentive Review Council, with the membership of that Council to be constituted in accordance with Section 5709.85 of the Ohio Revised Code, shall, in accordance with Section 5709.85 of the Ohio Revised Code, review annually all exemptions from real property taxation granted by this Resolution and any other such matters as may properly come before that Council, all in accordance with Ohio Revised Code Section 5709.85.

Section 11. Filings with Ohio Development Services Agency. Pursuant to Ohio Revised Code Section 5709.78(H), the Economic Development Director or designee is hereby directed to deliver a copy of this Resolution to the Director of the Ohio Development Services Agency within fifteen days after its effective date. Further, and on or before March 31 of each year that the tax exemption authorized by Section 3 remains in effect, the Economic Development Director or other authorized officer of the County is directed to prepare and submit to the Director of the Ohio Development Services Agency the status report required under Ohio Revised Code Section 5709.78(H).

Section 12. Open Meetings. This Board finds and determines that all formal actions of this Board and any of its committees concerning and relating to the passage of this Resolution were taken in an open meeting of this Board or any of its committees, and that all deliberations of this Board and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Ohio Revised Code Section 121.22.

Section 13. Effective Date. This Resolution shall be in full force and effect immediately upon its adoption.

EXHIBIT A
IDENTIFICATION AND MAP OF THE PARCELS

The shaded area on the following map specifically identifies and depicts the Parcels and constitutes part of this **EXHIBIT A**. The Parcels include, without limitation, the tax parcels listed below (as they existed in the County Auditor's records on October 26, 2018).

Map #	Parcel #
1	318-220-04-026-000
2	318-230-01-001-000

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3	318-220-04-029-000
4	318-213-15-013-000
5	318-213-15-013-001
6	318-210-03-023-000
7	318-240-02-001-000
8	318-230-01-001-005

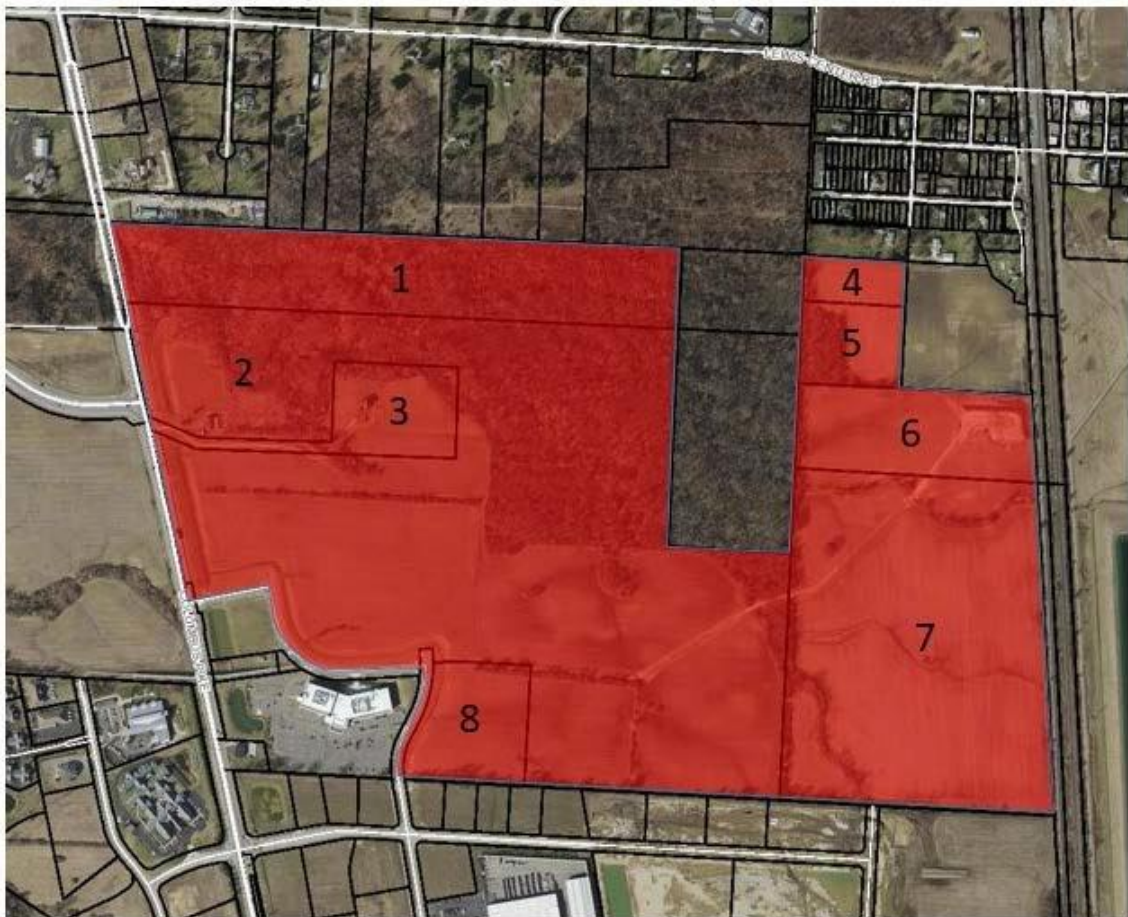


EXHIBIT B

PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements include the following: public infrastructure improvements to Home Road, Lewis Center Road, Graphics Way, Green Meadows Drive, and other County and Township transportation and sewer public improvements benefiting the TIF district as determined in the Delaware County Board of Commissioners' sole discretion.

The Public Infrastructure Improvements also include any and all transportation oriented infrastructure improvements and sanitary sewer infrastructure improvements on or near the Parcels that will directly benefit the Parcels, along with the general TIF area, and all related appurtenances (including, but not limited to, those costs listed in Section 133.15(B) of the Ohio Revised Code) and in each case, together with transportation improvements, including constructing, reconstructing, extending, opening, widening, grading, draining, curbing, paving, resurfacing, and traffic signage and signalization, bridges or tunnels, public utilities, including water, sanitary sewer, storm sewers, storm water improvements, burial and/or relocation of utility lines, gas, electric and communications service facilities (including fiber optics), street lighting, business signage restoration or improvements, landscaping, aesthetic improvements, sidewalks, bikeways, acquisition of interests in real property, erosion and sediment control measures, and acquisition of related equipment, each together with all other necessary appurtenances thereto, which improvements will benefit the Parcels.

Notwithstanding the above, any and all Public Infrastructure Improvements made with funds generated by this TIF shall be made solely within the jurisdictional boundary of the Olentangy Local School District.

EXHIBIT C

**SCHOOL DISTRICT COMPENSATION AGREEMENT
SCHOOL COMPENSATION AGREEMENT**

THIS SCHOOL COMPENSATION AGREEMENT (the "Agreement"), is made and entered into as of the 13th day of December, 2018, by and between the OLENTANGY LOCAL SCHOOL DISTRICT, Delaware and Franklin Counties, Ohio, a school district and political subdivision of the State of Ohio (the "School District"), the DELAWARE AREA CAREER CENTER, an Ohio joint vocational school district (the "JVSD"), DELAWARE COUNTY, Ohio, (the "County"), and their respective successors and assigns.

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WITNESSETH:

WHEREAS, Sections 5709.77 et seq. of the Ohio Revised Code authorize counties to grant tax increment financing real property tax exemptions for improvements in unincorporated territories of the county declared to be for a public purpose, which exemptions exempt from taxation the increase in the true value of the parcel of property after the effective date of the resolution granting such exemption; and

WHEREAS, Section 5709.79 of the Ohio Revised Code further authorizes a county to require owners of improvements subject to a tax increment financing tax exemption to make an annual payment in lieu of taxes (“Statutory Service Payments”), which payment is approximately equivalent to the amount of real property tax which would be payable on the increase in the true value of the parcel of property but for the exemption from taxation; and

WHEREAS, Section 5709.80 of the Ohio Revised Code further requires a county receiving payments in lieu of taxes to create a redevelopment tax increment equivalent fund for deposit of the entire amount of such payments, to pay or finance the costs of public infrastructure improvements benefiting the parcels subject to the tax increment financing tax exemption and, if provided, to make payments to school districts impacted by exemption from taxation; and

WHEREAS, pursuant to separate letters, each dated October 26, 2018, the County notified the School District and the JVSD of its intent to adopt a Resolution, as hereinafter defined, which Resolution provides for the use of tax increment financing, and grants the exemption (referred to herein as the “TIF Exemption”) on the Improvement (as defined in the Resolution), as authorized by Section 5709.77 et seq. of the Ohio Revised Code, for the parcels subject to the TIF Exemption (as set forth in Exhibit A attached hereto, and referred to herein as the “Parcels”), and to require the Developer and any subsequent owner of the Parcels (collectively, an “Owner”) to make Statutory Service Payments, which Statutory Service Payments will be used to pay for or finance the construction of Public Infrastructure Improvements that benefit or serve the Parcels (the “Public Infrastructure Improvements”) as described in Exhibit “B” to the Resolution, all of which shall be constructed within the boundaries of the School District, in order to induce the Developer to develop the Parcels; and

WHEREAS, the assessed value of the non-exempt portion of the Parcels prior to commencement of construction of the Public Infrastructure Improvements shall be determined by the Auditor of Delaware County, Ohio on or before December 31, 2018 (the “Historical Value”), which Historical Value shall not be altered during the term of the TIF Exemption; and

WHEREAS, the Board of Education (the “School Board”) of the School District passed a resolution on December 13, 2018, (the “School District Resolution”) approving the TIF Exemption on the condition that the parties hereto enter into this Agreement covering the Parcels; and

WHEREAS, the Board of Education (the “JVSD Board”) of the JVSD passed a resolution on _____, 2018, (the “JVSD Resolution”) approving the TIF Exemption on the condition that the parties hereto enter into this Agreement covering the Parcels; and

WHEREAS, the County has, pursuant to a resolution of the Board of Commissioners of the County adopted on December 17, 2018 (the “Resolution”), granted the TIF Exemption and authorized the execution of this Agreement with respect to the Project, as defined below; and

WHEREAS, Ohio Revised Code Sections 5709.78 and 5709.82 permit the Board of Commissioners of the County, the School Board, the JVSD Board, and the Developer to enter into this Agreement in order to compensate the School District and the JVSD for certain real property taxes re-directed to paying the cost of the Public Infrastructure Improvements;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter described, the School District, the JVSD, and the County covenant, agree and bind themselves as follows:

1. Approval of the TIF Exemption; Compensation to School District and JVSD While TIF Exemption in Effect.

(a) As provided in the School District Resolution, the School District approves the TIF Exemption for seventy-five percent (75%) of the Improvement of the Parcels that shall exist for the duration of the TIF Exemption.

(b) The remaining twenty-five percent (25%) of the Improvement of the parcels shall not be subject to the TIF Exemption and shall be subject to ad valorem taxation based on the millage rates of the taxing authorities, the School District, and the JVSD for the applicable tax year.

(c) The School District and the JVSD agree that the only compensation, made in accordance with Section 5709.82 of the Ohio Revised Code that the School District and the JVSD will receive for lost revenues due to the TIF Exemption that is to be paid to the School District and the JVSD is set forth in this Agreement and that the School District shall not seek or be entitled to Statutory Service Payments or any other compensation from the County, unless otherwise mutually agreed to in writing signed by all parties. However,

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nothing in this Agreement shall be construed to pledge the full faith and credit of the County.

2. Notices. All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given when (a) delivered by commercial carrier service, or (b) mailed by certified mail, postage prepaid, addressed to the following addresses:

School District: Board of Education
Olentangy Local School District
7840 Graphics Way
Lewis Center, OH 43035

JVSD: Board of Education
Delaware Area Career Center
1610 SR 521
Delaware, Ohio 43015

Delaware County, Ohio: Delaware County, Ohio
140 N. Sandusky Street
Delaware, Ohio 43015
Attn: Treasurer

with copies to:
Delaware County, Ohio

101 N. Sandusky Street
Delaware, Ohio 43015
Attn: County Administrator

3. Duration of Agreement; Amendment. This Agreement shall become effective on the date that it is executed and delivered and shall remain in effect for such period as any tax exemptions pursuant to Section 5709.77 *et seq.* of the Ohio Revised Code are in effect with respect to the Parcels, but in no event later than twenty (20) years from and after the date the TIF Exemption commences. This Agreement may be amended only by mutual agreement of the parties hereto. No amendment to this Agreement shall be effective unless it is contained in a written document approved through legal process and signed on behalf of all parties hereto by duly authorized representatives.

4. Waiver. No waiver by the School District, the JVSD, or the County of the performance of any terms or provision hereof shall constitute, or be construed as, a continuing waiver of performance of the same or any other term or provision hereof

5. Merger; Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter contained herein and merges and supersedes all prior discussion, agreements, and undertakings of every kind and nature between the parties with respect to the subject matter of this Agreement.

6. Binding Nature. The County shall cause this Agreement or a similar instrument evidencing the TIF Exemption to be recorded in the Delaware County, Ohio real estate records. The provisions of this Agreement shall be covenants running with the land and shall be binding and enforceable by the parties against each.

7. Severability. Should any portion of this Agreement be declared by the courts to be unconstitutional, invalid or otherwise unlawful, such decision shall not affect the entire agreement but only that part declared to be unconstitutional, invalid, or illegal and this Agreement shall be construed in all respects as if any invalid portions were omitted.

8. Counterparts; Captions. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

**EXHIBIT A
DESCRIPTION OF THE PARCELS**

Map #	Parcel #
1	318-220-04-026-000
2	318-230-01-001-000
3	318-220-04-029-000
4	318-213-15-013-000
5	318-213-15-013-001
6	318-210-03-023-000

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7 318-240-02-001-000
8 318-230-01-001-005



Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

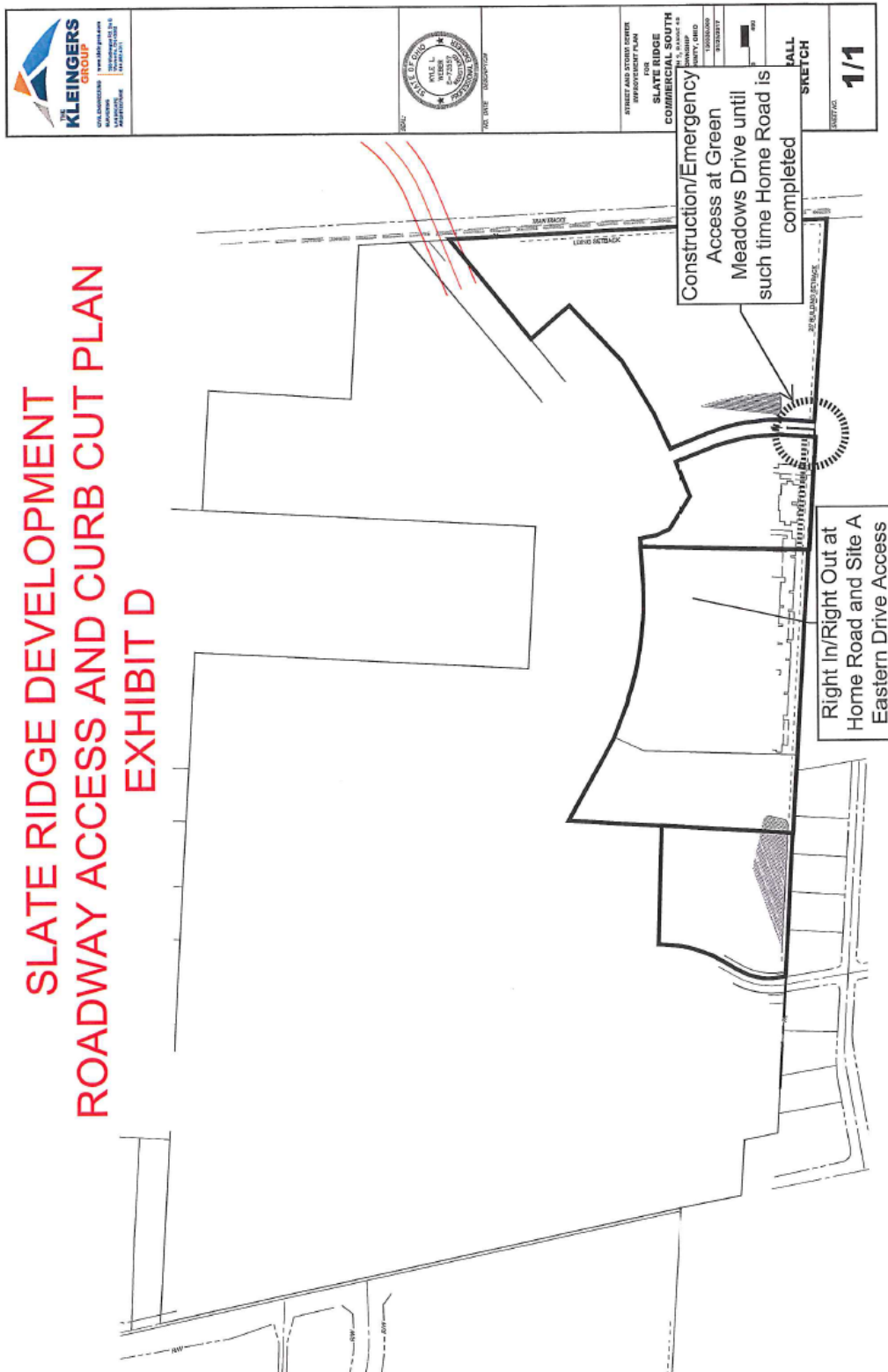
Kerbler TIF - Resolution plus School Compensation Agreement (as an exhibit)
RESOLUTION NO. 18-1395

I, Jennifer Walraven, Clerk to the Board of County Commissioners hereby certify that the foregoing is a true and correct copy of a resolution of the Board of County Commissioners of Delaware County duly adopted on December 17, 2018, and appearing upon the official records of said Board.


Jennifer Walraven
Clerk to Commissioners

EXHIBIT D
ROADWAY ACCESS AND CURB CUT PLAN
(attached hereto)

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**EXHIBIT E
FORM OF SPECIAL ASSESSMENT PETITION
(Attached hereto)**

PETITION FOR SPECIAL ASSESSMENTS AND AFFIDAVIT

_____, 2019

To the Board of County Commissioners of Delaware County, Ohio:

WHEREAS, it is represented by Kerbler Farms, LLC, and JAK. Investments II, LLC (the "*Property Owners*"), that they are the owners of certain real property (which real property represents at least 51% of the area described on Exhibit A attached hereto and by reference made a part hereof and referred to herein as the "*Property*"); and

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WHEREAS, the Property Owners acting through their Authorized Representative, James A. Kerbler, upon being duly sworn, depose and state that this Petition for Special Assessments and Affidavit (*the "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 Property Owners acknowledge that, in connection with the development of the Property, the Property will benefit from the extension of Home Road (County Road 124) commencing at the current eastern terminus at U.S. Route 23 (Columbus Pike), thence extending eastward through the lands of the Property Owners, over the CSX and Norfolk Southern railroad tracks on the eastern boundary of the lands of Property Owners, thence northward and terminating at Lewis Center Road (County Road 106) approximately 400 feet east of Franklin Street, by excavating, grading, paving, drainage, street lighting, conduit, curbs and gutters, traffic pavement markings, and street signs, together with all necessary and related appurtenances (collectively, the "*Improvement*"); and

WHEREAS, the Property Owners hereby petition the County for the construction of the Improvement and further, that \$2,059,200 of the actual costs of that Improvement be assessed against the Property, provided that such assessment may be increased to include any amount necessary to reflect any financing costs incurred by the County in connection with the issuance by the County of notes or bonds in anticipation of the collection of the special assessments; and

WHEREAS, the Property Owners acknowledge and agree that the Property includes all of the real property to be assessed pursuant to this Petition, all of which Property shall receive special benefit from the construction of the Improvement; and

WHEREAS, the Authorized Representative, on behalf of the Property Owners, further deposes and states that this Petition and the actions provided for herein impose burdens and obligations upon the Property and provides for special assessments to be levied upon that Property in accordance with this Petition, and that the Petition is available for inspection at the Office of the Clerk of the Board of County Commissioners of Delaware County, Ohio;

Now, THEREFORE, the Property Owners hereby petition the Board of County Commissioners of Delaware County, Ohio as follows:

1. Special Assessments. The Property Owners state that they are the owner of at least 51% of the Property (as described in Exhibit A). Acting pursuant to Chapter 5555, Ohio Revised Code, the Property Owners petition the Board of County Commissioners (the "Board ") of Delaware County, Ohio (the "County") for the construction of the Improvement and in consideration for the construction of that Improvement, agree that the Property will receive special benefits from the construction of the Improvement, and respectfully request that \$2,059,200 of the actual costs of the Improvement, including without limitation the compensation, damages and expenses of the Improvement, be assessed upon their lots and lands therefor in proportion to the benefits to the Property, all pursuant to a method to be determined by the Board and consistent with the methodology set forth in Exhibit B which is attached hereto and by reference made a part hereof.

To the extent the Property Owners, or their grantees or other successors with respect to the Property, do not pay the special assessments as levied in the time period provided for by Ohio law, the Property Owners acknowledge and agree that the County may, in accordance with Ohio law, issue notes or bonds in anticipation of the collection of those unpaid special assessments. The Property Owners further agree that in accordance with Ohio law, the County may increase those unpaid special assessments by an amount necessary to reflect any financing costs, including but not limited to, interest and issuance expenses, and if the County elects not to issue notes or bonds in anticipation of the collection of those unpaid special assessments, the County may increase those unpaid special assessments by an amount to reflect interest on such unpaid special assessments at an interest rate which shall be determined by the County to be substantially equivalent to the fair market rate that would have been borne by such notes or bonds. The County may also increase the unpaid assessments by an amount equal to the actual costs charged by the County to administer and collect the special assessments.

2. Duration of Special Assessments. The Property Owners hereby confirm that the special assessments (which will 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 County or an interest equivalent if securities are not issued) and the interest thereon will 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 the County are payable), that the interest on the special assessments will be computed at the same interest rate applicable to the notes or bonds to be issued by the County in anticipation of collection of the unpaid special assessments or an interest equivalent, and that the annual amounts for principal and interest will 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 duly certified to the County Auditor of the County in order that the special assessments and interest thereon shall become a lien upon the Property. The Property Owners further hereby request that the County Auditor be directed, no later than the second Monday in September next following the date on which the Property is subdivided, to collect the special assessments, commencing in the next succeeding calendar year, and continuing for a period of

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twenty (20) years.

3. *Payment of Special Assessments.* In consideration of the Improvement, the Property Owners, for themselves and their grantees or other successors with respect to the Property, agree to pay promptly all special assessments levied against the lots and lands which collectively constitute the Property as they become due, and agree that the determination by the Board of the special assessments in accordance with the terms hereof will be final, conclusive and binding upon the Property Owners and the Property. In further consideration of the Improvement, the Property Owners covenant and agree to disclose, upon the transfer of the Property or any portion of the Property to be specially assessed for the cost of the Improvement, in the deed to the transferee the existence of any outstanding special assessment for the Improvement 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 Owners further covenant and agree 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 undersigned have waived pursuant to this 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. *Waivers.* The Property Owners consent and request that these special assessments be levied and collected without limitation as to the value of the property assessed, and waive all the following relating to the Improvement and the special assessments:

(a) any and all damages or claims for damages of whatsoever kind, character or description resulting from the Improvement or the making of the Improvement, including but not limited to all rights, benefits and privileges specified by Chapter 5555 of the Revised Code, provided, however, that the foregoing waiver shall not constitute a waiver of any warranty or other claims against contractors or suppliers for the Improvement; and

(b) any and all resolutions and notices required for the making of the Improvement, 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, and the passage of the assessing resolution; and

(c) any limitation on the addition of interest to the special assessments specified by Chapter 5555 of the Revised Code; and

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

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

IN WITNESS WHEREOF, the Property Owners have caused this Petition to be duly executed in their name, all as of the date hereinbefore written.

Signed and acknowledged
in the presence of:

KERBLER FARMS, LLC

By: _____

Printed: James A. Kerbler

Title: _____

JAK INVESTMENTS II, LLC

By: _____

Printed: James A. Kerbler

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF DELAWARE)

On this _____ day of _____, 2019, before me a Notary Public personally appeared James A. Kerbler, and acknowledged the execution of the foregoing instrument, and that the same is his voluntary act and deed

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on behalf of Kerbler Farms, LLC, and JAK Investments II, LLC, and the voluntary act and deed of James A. Kerbler.

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

Notary Public

**Exhibit A
Descriptions of the Property**

**EXHIBIT B
Estimate of Special Assessments**

The Property Owners estimate that once the Property is fully developed, the Property will be subdivided into 130 residential building lots.

The current estimated portion of the cost of the Improvement to be assessed against the Property is \$2,059,200, which amount will be increased proportionately to include any estimated financing costs, including but not limited to, interest and issuance expenses on notes or bonds to be issued by the County in anticipation of the collection of the special assessments, or if notes or bonds are not issued, an amount to reflect interest on such unpaid special assessments at an interest rate which shall be determined by the County to be substantially equivalent to the fair market rate that would have been borne by such notes or bonds. Based on the estimated cost of the Improvement and the method of calculating the portion of the actual costs to be assessed against the various lots comprising the Property as described herein, lots within each residential subarea will be assessed in accordance with the following schedule (subject to any adjustments for County Property and Right-of-Way Area as described below):

Estimated Costs	Estimated # of Lots	Estimated Assessment Against each Lot
\$2,059,200	130	\$15,840 (\$792.00/year)

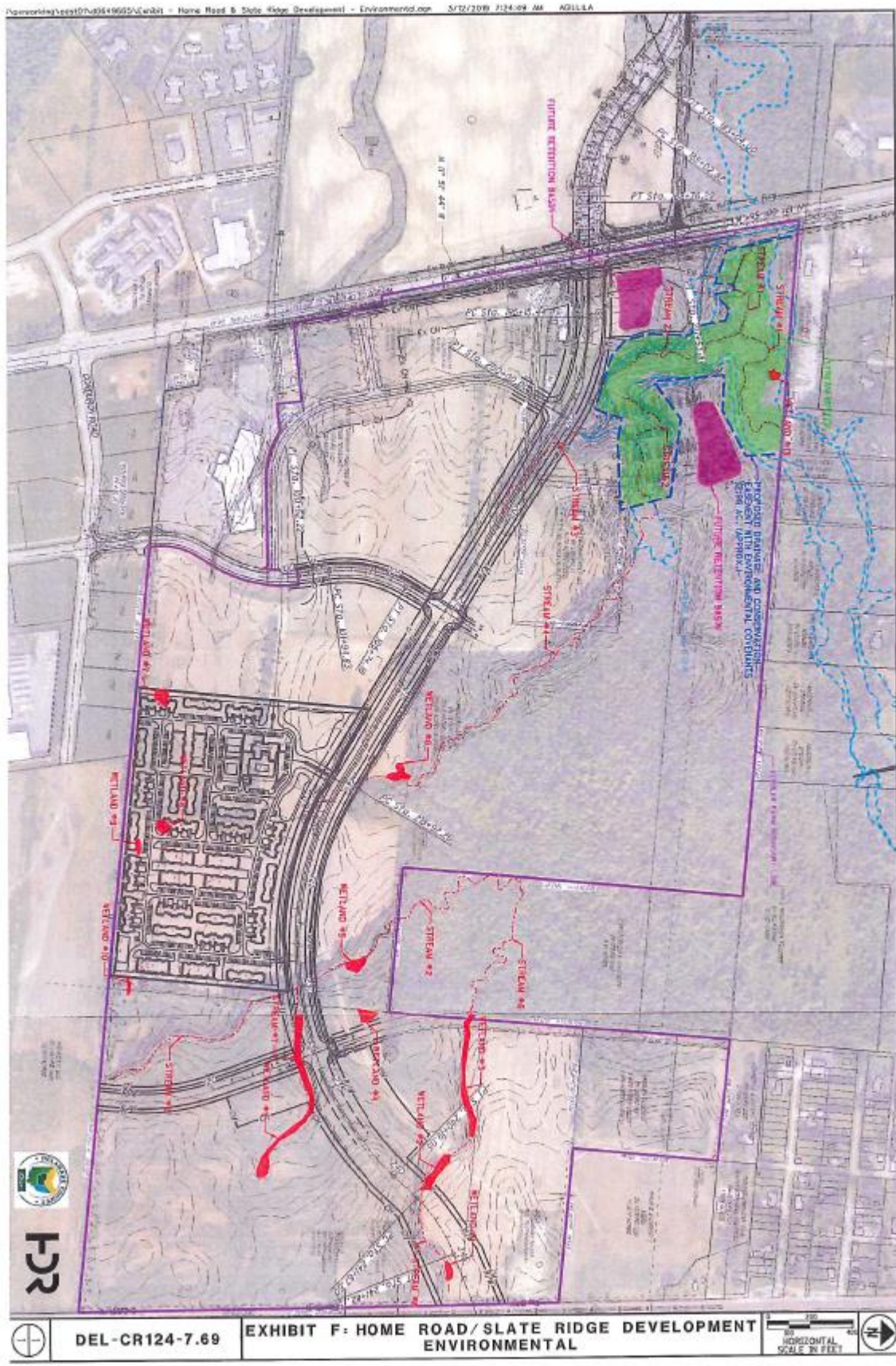
The Property Owners acknowledge that the special assessments provided for herein may be certified for collection prior to the time that the Property is completely subdivided and developed. Therefore, the Property Owners acknowledge and agree that the County will be required, subsequent to such certification, to apportion the assessments between lots which are subdivided and transferred by the Property Owners. In connection with any such apportionment, the Property Owners request that the County review the development of the Property up to that apportionment date, act in good faith to determine the remainder of the development within the Property, and apportion the assessment for that transferred lot in an amount which, based on the expectations on that apportionment date, would result in all lots within the Property thereafter transferred, would be assessed in substantially the same amount. The Property Owners further acknowledge that to the extent the County Auditor of the County requires an alternate method of apportioning the assessments, the County will act in good faith to apportion the assessments in a manner which approximates the methodology described herein as much as possible.

County Property and Right-of-Way Areas:

The Property Owners further acknowledge that any portion of the Property that is hereafter dedicated to the County ("*County 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 Improvement which would have been assessed to such County Property or Right-of-Way Area shall be reallocated in a pro rata manner against all remaining real property located within the Property.

**EXHIBIT F
STREAM MITIGATION PLAN
(attached hereto)**

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(Exhibits Are On File and Available For Inspection in the Delaware County Economic Development Department until No Longer Of Administrative Value).

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

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RESOLUTION NO. 19-240

IN THE MATTER OF APPROVING A JOINT APPLICATION BY THE DELAWARE COUNTY ACTING PROSECUTING ATTORNEY AND THE DELAWARE COUNTY BOARD OF COMMISSIONERS TO AUTHORIZE THE APPOINTMENT OF LEGAL COUNSEL TO ADVISE, REPRESENT, PROSECUTE ON BEHALF OF, AND/OR DEFEND THE BOARD IN AND AS RELATED TO THE MULTI-DISTRICT LITIGATION CURRENTLY PENDING AGAINST MANUFACTURERS AND DISTRIBUTORS OF OPIOID MEDICATIONS:

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It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following:

WHEREAS, on February 1, 2018, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 18-111, approving a joint application, pursuant to section 305.14(A) of the Revised Code, to appoint the firm of Taft Stettinius & Hollister LLP as legal counsel to advise, represent, prosecute on behalf of, and/or defend the Board in and as related to the multi-district litigation pending against manufacturers and distributors of opioid medications (the "Litigation"); and

WHEREAS, on February 2, 2018, the Delaware County Court of Common Pleas granted the joint application, and on February 8, 2018, the Board adopted Resolution No. 18-130, approving an authority to represent and authorizing the filing of a civil complaint against manufacturers and distributors of prescription opiates, thus bringing the Board into the Litigation; and

WHEREAS, the firm of Taft Stettinius & Hollister LLP has informed the Board that a conflict has arisen in the Litigation, and it is required to withdraw as legal counsel; and

WHEREAS, the consortium of law firms representing plaintiffs in the Litigation has agreed to assume representation of the Board;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby approves a Joint Application by the Delaware County Acting Prosecuting Attorney and the Delaware County Board of Commissioners to authorize the appointment of legal counsel to advise, represent, prosecute on behalf of, and/or defend the Board in and as related to the Litigation:

IN THE COURT OF COMMON PLEAS
OF DELAWARE COUNTY, OHIO

IN RE APPOINTMENT OF LEGAL :
COUNSEL FOR DELAWARE : Case No.
COUNTY BOARD OF COMMISSIONERS :

JOINT APPLICATION TO APPOINT LEGAL COUNSEL FOR
DELAWARE COUNTY BOARD OF COMMISSIONERS

Now comes Christopher D. Betts, Acting Prosecuting Attorney, Delaware County, Ohio ("Prosecutor"), and the Board of Commissioners, Delaware County, Ohio ("Board") and, pursuant to R.C. § 305.14(A), jointly move this Court to appoint legal counsel to advise, represent, prosecute on behalf of, and/or defend the Board in and as related to the multi-district litigation currently pending against manufacturers and distributors of opioid medications ("Litigation"). The appointment of legal counsel is needed due to the scope and complexity of the Litigation and the inability of the Prosecutor to devote existing resources to the Litigation as requested by the Board. The Board requests the consortium of firms as set forth in the Amended Authority to Represent be so appointed, with Anthony J. Majestro, Esq., of the firm of Powell & Majestro, PLLC, serving as Lead Counsel. Copies of the Board's resolution authorizing this joint application and the Amended Authority to Represent are attached hereto as exhibits.

Section 2. The Board hereby consents to the withdrawal of Taft Stettinius & Hollister LLP and, contingent upon the Delaware County Court of Common Pleas granting the Joint Application approved in Section 1 hereof, approves the following Amended Authority to Represent:

AMENDED AUTHORITY TO REPRESENT

RE: Delaware County (Ohio) civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.

The DELAWARE COUNTY BOARD OF COMMISSIONERS (hereinafter "CLIENT") hereby amends its Authority to Represent dated to confirm its consent to the withdraw of the law firm TAFT STETTINIUS & HOLLISTER LLP from the representation of Client. Pursuant to the Ohio Rules of Professional Responsibility and O.R.C. § 305.14, Client confirms the continued representation, on a contingent fee basis, of the firms listed below to pursue *all* civil remedies against those in the chain of manufacturing and distribution of prescription opiates responsible for the opioid epidemic which is plaguing Delaware County (Ohio) including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby. **Anthony J. Majestro, Esq.** of the law firm of POWELL & MAJESTRO, PLLC shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms:

POWELL & MAJESTRO, PLLC
405 Capitol Street, Suite P-1200
Charleston, WV 25301

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GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP
419 11th Street
Huntington, West Virginia

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA
316 South Baylen Street
Pensacola, Florida

BARON & BUDD, PC
3102 Oak Lawn Avenue #1100
Dallas, Texas

HILL PETERSON CARPER BEE & DEITZLER PLLC
500 Tracy Way
Charleston, West Virginia

MCHUGH FULLER LAW GROUP
97 Elias Whiddon Rd
Hattiesburg, Mississippi

In consideration, CLIENT agrees to pay thirty percent (30%) of the total recovery (gross) in favor of the CLIENT as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants Attorneys an interest in a fee based on the gross recovery. If a court awards attorneys' fees, Attorneys shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

POWELL & MAJESTRO, PLLC and the other law firms, hereinafter referred to as the "Attorneys," agree to advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. **There is no reimbursement of litigation expenses if there is no recovery.**

The CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Attorneys, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

This litigation is intended to address a significant problem in the community. The litigation focuses on the manufacturers and wholesale distributors and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution. Many of the facts of the case are locked behind closed doors. The billion dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Attorneys with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the CLIENT and the Attorneys regarding the definition of a "successful recovery."

The Attorneys intend to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages or equitable remedies (e.g., abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the manufacturers and wholesale distributors. The CLIENT agrees to compensate the Attorneys, contingent upon prevailing, by paying 30% of any settlement/resolution/judgment, in favor of the CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay 30% of the gross amount to Attorneys as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay 30% of the gross value of the equitable relief to the Attorneys as compensation and then reimburse the reasonable litigation expenses. To be clear, Attorneys shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee. Under no circumstances shall the CLIENT be obligated to pay any Attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the CLIENT's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Attorneys will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the Attorneys to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Attorneys should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

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The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the CLIENT. Any division of fees will be governed by the Ohio Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the CLIENT; (2) the CLIENT has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the CLIENT and each lawyer and shall comply with the terms of Rule 1.5 (c)(2) of the Ohio Rules of Professional Conduct; and (4) the total fee is *reasonable*.

LEAD COUNSEL shall appoint a contact person to keep the CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by the CLIENT. The CLIENT at all times shall retain the authority to decide the disposition of the case and personally oversee and maintain absolute control of the litigation.

Upon conclusion of this matter, LEAD COUNSEL shall provide the CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm, as required in Rule 1.5 (e)(3) of the Ohio Rules of Professional Conduct. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

Nothing in this Agreement and nothing in the Attorneys' statement to the CLIENT may be construed as a promise or guarantee about the outcome of this matter. The Attorneys make no such promises or guarantees. Attorneys' comments about the outcome of this matter are expressions of opinion only and the Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

Section 3. The Board directs legal counsel to file a notice of appearance and an amended complaint in the Litigation promptly upon approval of its appointment.

Section 4. This Resolution shall be effective immediately upon adoption.

Vote on Motion Mr. Merrell Aye Mr. Benton Nay Mrs. Lewis Aye

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ADMINISTRATOR REPORTS

Dawn Huston, Deputy Administrator

-No reports.

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Benton

- Will be attending a MORPC meeting today.
- The Annual Health District meeting is this evening.
- Attended the DKMM meeting on Tuesday.
- Attended the TID meeting yesterday.
- Attended the Land Bank meeting yesterday.

Commissioner Merrell

- The Land Bank has a couple of projects they are looking into throughout Delaware County.
- Will be attending a CCAO Committee Meeting today.
- The Delaware County Board of Developmental Disabilities will be holding their Lifetime of Giving Awards tonight.
- The groundbreaking for the new fairgrounds building will be March 23rd at 10:00AM. All are welcome to attend.

Commissioner Lewis

- Attended the Family and Children First Council meeting yesterday. The Governor's proposed budget will include \$74 million for abused/neglected/dependent children.

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RESOLUTION NO. 19-241

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF PENDING OR IMMINENT LITIGATION:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve the following:

WHEREAS, pursuant to section 121.22(G) of the Revised Code, a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive

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session and only at a regular or special meeting for the sole purpose of the consideration of any of the matters specified in section 121.22(G)(1)-(7) of the Revised Code; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby adjourns into executive session for consideration of pending or imminent litigation.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

RESOLUTION NO. 19-242

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Benton, seconded by Mr. Merrell to adjourn out of Executive Session.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners