

**COMMISSIONERS JOURNAL NO. 55 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD APRIL 11, 2011**

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

Present:
Dennis Stapleton, President
Ken O'Brien, Vice President
Tommy Thompson, Commissioner

RESOLUTION NO. 11-341

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM
REGULAR MEETING HELD APRIL 7, 2011:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on April 7, 2011; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 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. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

RESOLUTION NO. 11-342

**IN THE MATTER OF PROCLAIMING APRIL 10-16, 2011 NATIONAL CRIME VICTIMS RIGHTS WEEK IN
DELAWARE COUNTY:**

It was moved by Mr. O'Brien, seconded by Mr. Thompson to proclaim April 10-16, 2011 National Crime Victims Rights Week in Delaware County:

WHEREAS, Delaware County continues its efforts to prevent and respond to crime at every level, it will never neglect to show fairness, dignity, and respect to victims and survivors of crime, and will honor them during National Crime Victim's Rights Week, 2011.

WHEREAS, Delaware County will observe National Crime Victim's Rights Week from April 10 through 16 by planting a flag on the lawn of the Delaware County Commissioner's Office for each victim of violent crime as recognized by Delaware County and City Courts in the year 2010. Victims will also be honored through the Clothesline Project and through participation in the 3rd Annual Delaware County *Walk a Mile in Her Shoes*. It is hoped that these displays and events will illustrate to residents how much crime impacts this community, and demonstrate compassion and support to all victims and survivors.

NOW THEREFORE BE IT RESOLVED, It is with great admiration the Delaware County Commissioners express their appreciation for those victims and survivors of crime who have turned personal tragedies into a magnanimous force that not only serves to improve the rights and treatment of other crime victims, but also builds a better more just community, and for those people who work on behalf of crime victims such as the volunteers, law enforcement officers, prosecutors, victim service providers, physicians, health care professionals, parole and probation officers, counselors and a host of many others whose dedication and service to crime victims help to lessen the trauma and assist in personal recoveries;

FURTHER BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, that

The week of April 10 through 16, 2011, is declared National Crime Victims Rights Week in Delaware County, and all citizens of Delaware County are encouraged to use this week to reaffirm their commitment to victims of crime by extending to them respect, understanding and compassion.

BE IT FURTHER RESOLVED, That the Clerk of the Board of Commissioners shall cause this Resolution to be spread upon the Board's Official Journal.

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

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RESOLUTION NO. 11-343

IN THE MATTER OF ADOPTING A RESOLUTION DECLARING THE SECOND FULL WEEK OF APRIL 2011 AS NATIONAL PUBLIC SAFETY TELECOMMUNICATOR WEEK IN THE COUNTY OF DELAWARE, OHIO:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

WHEREAS; the Congress of the United States, and the President of the United States have, since 1992, established the second week of April as National Public Safety Telecommunicator Week, and;

WHEREAS; emergencies can occur at anytime, and;

WHEREAS; public safety telecommunicators daily serve the citizens of Delaware County by providing that first and most critical contact between our citizens and their need for a public safety response, and;

WHEREAS; public safety telecommunicators are the single vital communications link for monitoring, dispatching, providing information and ensuring the safety of law enforcement, fire, Emergency Medical and Emergency Management responders, and;

WHEREAS; this board believes that the public safety telecommunicators that serve the citizens of Delaware County are a highly trained and dedicated corps of personnel, and;

WHEREAS; the services of public safety telecommunicators is a "silent service" that is seldom observed by the public that deserves recognition, and;

THEREFORE be it resolved by the Board of County Commissioners, Delaware County, State of Ohio, enthusiastically supports recognition of all our professional public safety telecommunicators declaring the second full week of April as the National Public Safety Telecommunicator Week in Delaware County, and that all our residents are invited to observe this event.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-344

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0408:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0408 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Beem's	Gasoline	1001106-5228	\$75,000.00

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11 -345

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

The Department of Job and Family Services is requesting that Jacqueline Walters attend a Microsoft Excel Training in Columbus, Ohio June 9-15, 2011, at no cost.

The EMS Department is request that Joe Farmer attend an Advanced Assessment and Treatment Instructor Course at The Ohio State University April 21, 2011, at the cost of \$45.00. (Fund Number 10011303).

The EMS Department is request that Jason Sutmastel attend an Ohio Tactical EMS Training Course in Hamilton, Ohio May 24-25, 2011, at the cost of \$150.00. (Fund Number 10011303).

Environmental Services is requesting that Joseph Amato attend the Ohio Building Code Academy in Reynoldsburg, Ohio from April 11, 2011 to April 13, 2011 at no cost.

Environmental Services is requesting that Duane Matlack and Fred Fowler attend the Ohio Floodplain Management Association Mock Flood Disaster Exercise in Carrollton, Ohio on April 19, 2001 at a cost of \$30.00 from org key 10011301 – 5305.

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Environmental Services is requesting that Cory Smith attend a SWOWEA Operator Education Day in Kettering, Ohio on April 15, 2011 at a cost of \$10.00 from org key 66211907 - 5305.

The Engineer's Office is requesting that Cathleen Paulus attend a Basic Principles of Ergonomics at the Ohio BWC in Mansfield April 12, 2011, at no cost.

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

RESOLUTION NO. 11-346

IN THE MATTER OF CANCELING THE THURSDAY APRIL 21, 2011 COMMISSIONERS' SESSION:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to cancel the Thursday April 21, 2011 Commissioners' Session.

Vote On Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-347

IN THE MATTER OF APPROVING THE PLAT OF SUBDIVISION FOR OLENTANGY CROSSINGS SECTION 2, LOT 7354, DIVISION #1:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, Lewis Center Investments, LLC has submitted the Plat of Subdivision ("Plat") for Olentangy Crossings Section 2, Lot 7354, Division #1, including related development plans ("Plans") and requests approval thereof by the Board of Commissioners of Delaware County; and

Whereas, the Orange Township Zoning Officer has reviewed said Plat and Plans for conformance with Township Zoning Regulations and approved said Plat on March 7, 2011; and

Whereas, Del-Co Water Company has reviewed said Plat and Plans for conformance with its rules and regulations and approved said Plat on March 7, 2011; and

Whereas, the Delaware County Sanitary Engineer has reviewed said Plat and Plans for conformance with the Rules, Regulations, Standards and General Procedures Governing Sewerage in Delaware County and approved said Plat on March 8, 2011; and

Whereas, the Delaware County Engineer has reviewed said Plat and Plans for conformance with Delaware County Engineering and Surveying Standards and approved said Plat on March 9, 2011; and

Whereas, the Delaware County Regional Planning Commission has reviewed said Plat and Plans for conformance with Delaware County Subdivision Regulations and approved said Plat on April 4, 2011;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby approves the Plat of Subdivision for Olentangy Crossings Section 2, Lot 7354, Division #1.

Olentangy Crossings Section 2, Lot 7354, Division #1

Situated In The State Of Ohio, County Of Delaware, Township Of Orange. Located In Part Of Farm Lot 9, Section 2, Township 3, Range 18 United States Military Lands, Being A 2.880 Acre Subdivision, Being Out Of Lot 7354 Of Olentangy Crossings Section 2, Of Record In Official Record Volume 742, Page 1060-1062 And Being Out Of That 16.835 Acres Described In Deed To Lewis Center Investments, Llc., Of Record In Official Record Volume 593, Page 1744, All References Being To The Records Of The Recorder's Office, Delaware County, Ohio. Cost \$3.00

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 11-348

IN THE MATTER OF APPROVING A PROJECT AGREEMENT FOR SHEFFIELD PARK SECTION 3, PHASE B, PART 3:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following agreement:

Whereas, the County Engineer recommends the following project agreement;

Therefore Be It Resolved, that the Board of Commissioners approve the project agreement.

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Sheffield Park Section 3, Phase B, Part 3

PROJECT AGREEMENT
PROJECT NUMBER: 11001

THIS AGREEMENT, executed on this 11th day of April 2011 between **M/I HOMES OF CENTRAL OHIO, LLC**, hereinafter called '**OWNER**' and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as **SHEFFIELD PARK SECTION 3, PHASE B, PART 3**, further identified as Project Number 11001 is governed by the following considerations to wit:

Said **OWNER** is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this **AGREEMENT**.

OPTIONS:

1. Should **OWNER** elect to record the plat prior to beginning construction, **OWNER** shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in **Exhibit "A"** attached hereto.
2. Should **OWNER** elect to proceed to construction prior to recording the plat, no approved financial warranties are necessary until such time as **OWNER** elects to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNER hereby elects to use Option 1 for this project.

The financial warranties are to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Delaware County Design, Construction and Surveying Standards and any supplements thereto**. The **OWNER** shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The **OWNER** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date on which this **AGREEMENT** is executed by the **COUNTY COMMISSIONERS**.

The **OWNER** further agrees that any violations of or noncompliance with any of the provisions and stipulations of this **AGREEMENT** shall constitute a breach of contract, and the **COUNTY** shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this subdivision.

It is further agreed that upon execution of the **AGREEMENT**, the **OWNER** shall deposit **FIFTY-SIX THOUSAND NINE HUNDRED DOLLARS (\$56,900)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to **ten percent (10%)** of the original amount deposited, the **OWNER** shall replenish the account upon notice by the **Delaware County Engineer**. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

Upon completion of construction, the **OWNER** shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of **one year**. Said **OWNER'S** bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in **Exhibit "A"** for said maintenance. The reduction may be approved only after the **County Engineer** has been provided evidence that all work has been accomplished according to the approved plan and/or to the **County Engineer's** satisfaction. All work is to be done in accordance with the **Delaware County Design, Construction and Surveying Standards, and any supplements thereto**.

Acceptance of the project into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **OWNER'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the **OWNER**. All of the funds set forth in the **AGREEMENT** shall be made available to the **County Engineer** to ensure proper safety compliance.

The **OWNER** shall, within thirty (30) days of completion of construction and prior to final acceptance, to the **COUNTY COMMISSIONERS**, as required, "as-built" drawings of the improvements, which plans shall become the property of the **COUNTY** and remain in the office of the **Delaware County Engineer**.

The **OWNER** shall, within thirty (30) days of completion of construction, furnish to the **COUNTY COMMISSIONERS** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **OWNER** shall indemnify and hold harmless **Delaware County and all**

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Townships and/or Villages within Delaware County and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

The **OWNER** shall obtain all other necessary utility services incident to the construction of the improvements and for their continued operation. The **OWNER** shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the **OWNER** and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the **County**.

Should the OWNER become unable to carry out the provisions of this AGREEMENT, the **OWNER’S** heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this **AGREEMENT**.

In consideration whereof, the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO** hereby grants the **OWNER** or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT “A”

CONSTRUCTION COST ESTIMATE					\$710,386.00	
CONSTRUCTION BOND AMOUNT					\$ 710,386.00	
MAINTENANCE BOND AMOUNT					\$ 71,100.00	
INSPECTION FEE DEPOSIT					\$ 56,000.00	
Vote on Motion	Mr. Stapleton	Aye	Mr. Thompson	Aye	Mr. O'Brien	Aye

RESOLUTION NO. 11-349

IN THE MATTER OF APPROVING A DRAINAGE EASEMENT VACATION FOR LOT 1864, SUMMERWOOD EXTENSION SUBDIVISION, BERLIN TOWNSHIP, DELAWARE COUNTY, OHIO, (OFFICIAL RECORD VOL. 684, PAGE 1632):

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Drainage Easement Vacation

The Engineer has received a request from Silvestri Custom Homes, Inc., the owner of Lot 1864, Summerwood Extension, Berlin Township, commonly known as 5329 Summer Ridge Lane, Galena, Ohio 43021, to vacate a portion of the original fifty (50) foot drainage easement on the Summerwood Extension Subdivision plat that crosses said Lot 1864. The easement as described on the attached Exhibit “A – Description of a 0.090 Acre Drainage Easement”, and as indicated on the attached Exhibit “A” as “Description of a 0.089 Acre Easement Vacation”, is located within Lot 1864, as depicted in Official Record Volume 684, Page 1632, Recorder’s Office, Delaware County, Ohio. A portion of the original drainage easement that crosses Lot 1864 is no longer required after a new drainage easement was granted within Lot 1864. Therefore, the Engineer requests your approval to vacate a portion of the easement and to include a marginal reference on Official Record Volume 684, Page 1632 of this action to vacate a portion of the easement.

EXHIBIT “A”
DESCRIPTION OF A 0.089 ACRE EASEMENT VACATION
OVER LOT 1864 - SUMMERWOOD EXTENSION
March 7, 2011

Situated in the State of Ohio, County of Delaware, Township of Berlin, located in part of Farm Lot 4, Section 4, Township 4, Range 18, United States Military Lands, being a part of Summerwood Extension, Lot 1864, an 83.116 acre subdivision recorded in Cabinet 3, Slide 672, records of the recorder’s office, Delaware County, Ohio.

Being an easement for drainage purposes, over, through, and below the ground, the following description being for the purpose of realigning an existing 50 foot wide easement by vacating a portion of the existing easement, leaving a realigned 50 foot wide easement, all being more particularly described by the following area:

VACATION OF 0.089 ACRE DRAINAGE EASEMENT

BEGINNING at the most northwesterly corner of said Lot 1864, thence along the westerly line of said Lot, South 19-52-00 East, 54.50 feet to a point on the southwesterly line of a 50 foot wide drainage easement as shown on aforementioned Plat of said Lot;

Thence, along said drainage easement, South 75-56-17 East, 31.28 feet to the **TRUE POINT OF BEGINNING**;

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Thence, continuing along said southwesterly line, South 75-56-17 East, 151.12 feet; thence, leaving said drainage easement, North 30-55-51 West, 53.62 feet to the beginning of a radial 28.00 foot radius curve to the left, through an angle of 73-06-13, and an arc distance of 35.73 feet, with a chord of North 67-28-57 West, 33.35 feet, thence, tangent to said curve, South 75-57-56 West, 90.94 feet, to the **TRUE POINT OF BEGINNING**.

Containing 0.089 acres of land, more or less.

This description was prepared by Glenn Halmbacher, PE, PS on March 7, 2011, and are based on and referenced to Summerwood Extension Subdivision Plat recorded in Cabinet 3, Slide 672, on December 6th, 2005 as File #200500049480, records of the recorder's office, Delaware County, Ohio.

Bearings are based on the centerline of Summer Ridge Lane, being South 70-08-00 West, 723.47 feet, as shown on sheet #3 of above referenced plat.

This description has been prepared for easement purposes only, and is not to be used for fee transfer.

HALMBACHER ENGINEERING Glenn Halmbacher, PE, PS Registered Surveyor #S-7658

EXHIBIT "A"
DESCRIPTION OF A 0.090 ACRE DRAINAGE EASEMENT
OVER LOT 1864 - SUMMERWOOD EXTENSION
March 7, 2011

Situated in the State of Ohio, County of Delaware, Township of Berlin, located in part of Farm Lot 4, Section 4, Township 4, Range 18, United States Military Lands, being a part of Summerwood Extension, Lot 1864, an 83.116 acre subdivision recorded in Cabinet 3, Slide 672, records of the recorder's office, Delaware County, Ohio.

Being an easement for drainage purposes, over, through, and below the ground, the following description being for the purpose of realigning an existing 50 foot wide easement by dedicating an adjacent area, creating a new 50 foot wide easement, all being more particularly described by the following area:

DEDICATION OF NEW 0.090 ACRE DRAINAGE EASEMENT

BEGINNING at the most northwesterly corner of said Lot 1864, thence along the northerly line of said Lot, North 68-06-58 East, 8.28 feet to a point on the northeasterly line of a 50 foot wide drainage easement as shown on aforementioned Plat of said Lot;

Thence, along said drainage easement, South 75-56-17 East, 42.43 feet to the **TRUE POINT OF BEGINNING**;

Thence, continuing along said drainage easement, South 75-56-17 East, 168.20 feet to a point, thence, North 88-49-23 East, 7.98 feet to the easterly line of said Lot; thence, along said easterly line North 10-19-46 West, 12.76 feet; thence, leaving said easterly line, North 30-55-51 West, 13.51 feet to the beginning of a radial 78.00 foot radius curve to the left, through an angle of 73-06-13, and an arc distance of 99.52 feet, with a chord of North 67-28-57 West, 92.91 feet, thence, tangent to said curve, South 75-57-56 West, 78.42 feet, to the **TRUE POINT OF BEGINNING**.

Containing 0.090 acres of land, more or less.

This description was prepared by Glenn Halmbacher, PE, PS on March 7, 2011, and are based on and referenced to Summerwood Extension Subdivision Plat recorded in Cabinet 3, Slide 672, on December 6th, 2005 as File #200500049480, records of the recorder's office, Delaware County, Ohio.

Bearings are based on the centerline of Summer Ridge Lane, being South 70-08-00 West, 723.47 feet, as shown on sheet #3 of above referenced plat.

This description has been prepared for easement purposes only, and is not to be used for fee transfer.

HALMBACHER ENGINEERING Glenn Halmbacher, PE, PS Registered Surveyor #S-7658

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-350

IN THE MATTER OF APPROVING ESTIMATE, BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR THE PROJECT KNOWN AS DEL-COUNTY 2011 RESURFACING, Resurfacing and Reconstruction of Delaware County and Township Roads :

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

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Whereas, the County Engineer recommends approval of the Estimate, Bid Specifications And Bid Opening Date And Time for the project known as DEL-COUNTY 2011 RESURFACING, Resurfacing and Reconstruction of Delaware County and Township Roads;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the Estimate, Bid Specifications And Bid Opening Date And Time for the project known as DEL-COUNTY 2011 RESURFACING, Resurfacing and Reconstruction of Delaware County and Township Roads.

**Public Notice
Advertisement for Bids**

Sealed bids will be received at the Office of the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015, until 10:00 am on Tuesday, May 3, 2011, at which time they will be publicly opened and read aloud, for the project known as DEL-COUNTY 2011 RESURFACING, Resurfacing and Reconstruction of Delaware County and Township Roads.

The proposals must be made on the forms provided in the Contract Documents or a copy thereof and shall contain the full name and address of the bidder. All bids shall be sealed and plainly marked "SEALED BID FOR DEL-COUNTY 2011 RESURFACING". Bid shall be accompanied by a Bid Security in the form of a bid bond in the amount of one hundred percent (100%) of the bid or a certified check in the amount of ten percent (10%) of the bid. In addition to the Bid Security, a one (1) year Maintenance/Performance Bond is required for this project in the amount of one hundred percent (100%) of the total project cost, and may be submitted with the Bid Proposal.

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from the Delaware County Engineer's Office, 50 Channing Street, Delaware, Ohio 43015. Cost for printed copies of each set of plans & specifications is \$20 and the cost is non-refundable. Plans and specifications may also be downloaded, free of charge, from the Delaware County Engineer's website at www.co.delaware.oh.us/ebids. All bidders must register as a plan holder with the Delaware County Engineer's Office in person or through the website.

The Owner requires that all work associated with the project be completed before September 9, 2011. The estimated commencement of work date is May 16, 2011 for items associated with the Base Bid and July 1, 2011 for items associated with Alternate #1.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4111 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates: April 15, 2011, April 22, 2011

**SCOPE OF WORK
DEL-COUNTY 2011 RESURFACING
Resurfacing and Reconstruction of Delaware County and Township Roads**

The project includes resurfacing and pavement reconstruction of various county roads and township roads in Delaware County, Ohio.

1. County Portion – Improving a total of approximately 34 miles of roadways. Paving an asphalt leveling course on 8.85 miles of roadway (8,686 tons), placing 11.59 miles of Micro-surfacing (137,845 SY) and paving cold mix material in the amount of 37,987 SY. Project also includes applying an intermediate chip seal to 215,345 SY to existing surface, placing a surface chip seal to 259,191 SY and applying a liquid fog seal (18,146 gal) to 15.29 miles of proposed aggregate wearing surface, crack sealing material in the amount of 33,100 lbs. on various roads and painting road markings on approximately 39.65 miles of roadway. There are contingency quantities included for additional pavement repairs in the amount of 600 CY and 45 miles of additional striping (temporary and permanent).

The Owner of this portion of the project is the Delaware County Board of Commissioners.

2. Township Portion – Improvements to approximately 64 miles of Township roadway including paving approximately 23,640 tons of asphalt concrete, chip sealing 394,691 SY, applying slurry seal to 98,555 SY, planing 36,737 SY of existing pavement, fog sealing 5,654 SY, applying fiberized SAMI to 43,346 SY of milled and/or existing roadway surface, applying 6,790 lbs. of crack seal, repairing pavement on various roads in the amount of 406 CY and striping approximately 37 miles of various township roads.

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The Owners of this portion of the project are the 16 Boards of Township Trustees.

The Contract Administrator for this project is the Delaware County Engineer, 50 Channing Street, Delaware, Ohio 43015.

The primary point of contact for the Owners shall be the Project Engineer listed below:

Jerry Ungashick
Project Manager
Delaware County Engineer's Office
50 Channing Street
Delaware, OH 43015
Phone: 740-833-2400
Fax: 740-833-2399
email: jungashick@co.delaware.oh.us

GENERAL INFORMATION

LOCATION

Work location is on various county and township roads in Delaware County, Ohio. Refer to the project construction plans for specific locations of work.

PROJECT SCOPE

The project includes resurfacing and pavement reconstruction of various county roads and township roads in Delaware County, Ohio.

ODOT SPECIFICATIONS

The State of Ohio, Department of Transportation, Construction and Material Specifications, dated January 1, 2010 and the noted Standard Construction Drawings, and Proposal Notes shall govern this project unless otherwise directed by the Delaware County Engineer. Copies of the State of Ohio, Department of Transportation, Construction and Material Specifications may be purchased by contacting the Ohio Department of Transportation, Office of Contracts, 1980 West Broad Street, Columbus, Ohio 43223. Phone (614) 466-3778 or 3200: Customer Service.

Within the State of Ohio, Department of Transportation, Construction and Material Specification, wherever the word "State" occurs, it is to mean OWNER. Wherever the word "Department" occurs, it is to mean OWNER. Wherever the words "Director", "Deputy Director" or "Engineer" occur or any other reference to a State of Ohio employee, it is to mean DELAWARE COUNTY ENGINEER.

CONTRACT SCHEDULE

The Owner requires that all work associated with the project be completed before September 9, 2011, including the Base Bid and all Alternate Bids. The estimated commencement of work date is May 16, 2011 for the Base Bid and July 15, 2011 for Alternate Bids.

MAINTENANCE OF TRAFFIC

The Contractor shall maintain two-way traffic in accordance with the construction plans, except for project segments specified with a road closure. Limits of closure shall be as specified in the construction plans.

COOPERATIVE BID WITH MULTIPLE CONTRACTING ENTITIES

This project is a cooperative effort between Delaware County and 16 townships and includes various items of work that will be contracted by various local governmental agencies including the Delaware County Board of Commissioners and sixteen (16) Township Boards of Trustees. The Contractor shall not proceed with items of work without authorization by the respective project Owner.

ADDITIVE ALTERNATIVE BID

This contract will be awarded in multiple parts:

A. Base Bid

The Base Bid shall include those items of work specified as such in the bid blank. The total bid amount for the Base Bid items shall be considered as the basis of award by the project Owners (Delaware County and the various Townships).

B. Alternate #1

Items of Work identified collectively as Alternate #1 may be awarded with the Base Bid by the project Owners (various Townships) at their sole discretion. Work associated with these Bid Alternates is funded in part by the Ohio Public Works Commission (OPWC), and those funds will not be available until after the start of State Fiscal Year 2012 (July 1, 2011). Contract award of the items of work associated with Alternate #1 will not be

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made by the various Owners until after July 1, 2011. Completion of work associates with the Bid Alternates shall be the same as the completion date for the Base Bid.

ESTIMATE

ROAD	FROM	TO	MILES	ESTIMATE
(9) LIBERTY	FRANKLIN CO LINE	R/R TRACKS	0.76	\$100,900.00
(13) WORTHINGTON	COLUMBUS CITY L	LEWIS CENTER	5.05	\$926,100.00
(19) VANS VALLEY	SUNBURY	SR 37	3.77	\$54,200.00
(33) CARTER'S CORNER	US36/SR37	KILBOURNE	5.87	\$119,000.00
(51) N COUNTY LINE	MURPHY	SR 3/US 36	3.50	\$250,100.00
(98) PEACHBLOW	DELAWARE CITY L	S OLD STATE	2.59	\$287,400.00
(124) HOME	UNION CO LINE	NEW PAVE JOINT	0.45	\$88,900.00
(177) MINK STREET	UNION CO LINE	RIVER	3.84	\$77,800.00
(202) NORTON	SR 203	NORTON-WALDO	5.58	\$161,900.00
(220) HORSESHOE	SR 42	SR 229	8.24	\$372,200.00
SPECIAL ITEMS				\$634,300.00
TOTAL(S)			33.84	\$3,072,800.00

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11-351

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN THE
WESTCHESTER HOMEOWNERS ASSOCIATION AND THE BOARD OF DELAWARE COUNTY
COMMISSIONERS FOR THE ORANGE ROAD BRIDGE PROJECT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase with the Westchester Homeowners Association For The Orange Road Bridge project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract of sale and purchase with the Westchester Homeowners Association For The Orange Road Bridge project.

CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS

WITNESSETH: On this 11th day of April , 2011, Westchester Homeowners Association, Powell, Ohio 43065, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

One 27 SF subdivision sign and 12 shrubs

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

- PURCHASER promises and agrees to pay to the SELLER the total sum of Two Thousand Dollars (\$2,000.00) which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:
 - All title, rights, and interest in and to the PROPERTY; and,
 - For damages to any residual lands of the SELLER; and,
 - For SELLER’s covenants herein; and,
 - For expenses related to the relocation of the SELLER, their family, and business; and,
 - For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year’s taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or

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have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.
4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)
5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.
7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.
8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature,

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related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.

12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.
13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.
16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Nay Mr. Thompson Aye

RESOLUTION NO. 11-352

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN BENJAMIN G. DELINGER AND LISA A. BONNETT AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE ORANGE ROAD BRIDGE PROJECT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase With Benjamin G. Delinger And Lisa A. Bonnett for the Orange Road Bridge project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract of sale and purchase with Benjamin G. Delinger And Lisa A. Bonnett for the Orange Road Bridge project.

**CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS**

WITNESSETH: On this 11th day of April 2011, BENJAMIN G. DELINGER AND LISA A. BONNETT, whose address is 8300 Olentangy River Road, Delaware, Ohio 43015, hereinafter, the SELLER, in consideration

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of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (PROPERTY)

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of Seven Thousand Four Hundred Seventy Eight Dollars (\$7,478.00) which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:

- (A) All title, rights, and interest in and to the PROPERTY; and,
- (B) For damages to any residual lands of the SELLER; and,
- (C) For SELLER's covenants herein; and,
- (D) For expenses related to the relocation of the SELLER, their family, and business; and,
- (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.

3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.

4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)

5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.

6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.

7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.

8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.

9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both

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parties in connection with the consummation and closing of this CONTRACT.

10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.

12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.

13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.

14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.

16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

17. This CONTRACT 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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Vote On Motion Mr. O'Brien Nay Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-353

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN SANDRA STERKEL-FLACK AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE ORANGE ROAD BRIDGE PROJECT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Sandra Sterkel-Flack for the Orange Road Bridge project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract of sale and purchase with Sandra Sterkel-Flack for the Orange Road Bridge project.

CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS

WITNESSETH: On this 11th day of April , 2011, SANDRA STERKEL-FLACK, whose address is 1200 Carriage Road Powell, Ohio 43065, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (PROPERTY)

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of One Hundred Eighty Two Thousand Five Hundred Dollars (\$182,500.00) which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:

- (A) All title, rights, and interest in and to the PROPERTY; and,
- (B) For damages to any residual lands of the SELLER; and,
- (C) For SELLER’s covenants herein; and,
- (D) For expenses related to the relocation of the SELLER, their family, and business; and,
- (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year’s taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.

3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.

4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)

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5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.

6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.

7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.

8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.

9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.

10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.

12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.

13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.

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14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.

16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Nay

RESOLUTION NO. 11-354

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN EDWARD E. TELLE AND PEGGY S. DUPLER AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE ORANGE ROAD BRIDGE PROJECT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Edward E. Telle and Peggy S. Dupler for the Orange Road Bridge project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract of sale and purchase with Edward E. Telle and Peggy S. Dupler for the Orange Road Bridge project.

**CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS**

WITNESSETH: On this 11th day of April 2011, Edward E. Telle and Peggy S. Dupler, whose address is 1233 Carriage Road Powell, Ohio 43065, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (PROPERTY)

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of Five Thousand Dollars (\$5,000.00) which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:

- (A) All title, rights, and interest in and to the PROPERTY; and,
- (B) For damages to any residual lands of the SELLER; and,
- (C) For SELLER's covenants herein; and,
- (D) For expenses related to the relocation of the SELLER, their family, and business; and,
- (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance

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remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.

3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.

4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)

5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.

6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.

7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.

8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.

9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.

10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of

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the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.

12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.

13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.

14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.

16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Nay

RESOLUTION NO. 11-355

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN ROGER K. AND PAMELA A. PASLEY AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR THE ORANGE ROAD BRIDGE PROJECT:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Roger K. And Pamela A. Pasley for the Orange Road Bridge project;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the contract of sale and purchase with Roger K. And Pamela A. Pasley, for the Orange Road Bridge project. .

**CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS**

WITNESSETH: On this 11th day of April, 2011, ROGER K. AND PAMELA A. PASLEY, whose address is 1201 Carriage Road, Powell, Ohio 43065, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (PROPERTY)

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

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TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of Eighty Eight Thousand Eight Hundred Eighty Three Dollars (\$88,883.00) which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:

- (A) All title, rights, and interest in and to the PROPERTY; and,
- (B) For damages to any residual lands of the SELLER; and,
- (C) For SELLER's covenants herein; and,
- (D) For expenses related to the relocation of the SELLER, their family, and business; and,
- (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.

3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.

4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, whatever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)

5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.

6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.

7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.

8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.

9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.

10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any

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cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.

12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.

13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.

14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.

16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Vote on Motion Mr. O'Brien Nay Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-356

**IN THE MATTER OF AUTHORIZING THE SUBMITTAL OF THE STATUS REPORT FOR THE
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FORMULA 2010 WITH THE OHIO
DEPARTMENT OF DEVELOPMENT, OFFICE OF HOUSING AND COMMUNITY PARTNERSHIPS:**

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It was moved by Mr. O'Brien, seconded by Mr. Thompson to authorize the submittal of the CDBG Formula 2010 Status Report:

WHEREAS, the Ohio Department of Development awarded \$166,000 in Fiscal Year 2010 Small Cities Community Development Block (CDBG) grant funds under the Formula Program to Delaware County; and

WHEREAS, funding to Delaware County through the FY10 CDBG Formula Program, is intended to assist communities within Delaware County with necessary and useful public programs, which are responsive to State and National program objectives and qualification criteria for this program, and

WHEREAS, the Ohio Department of Development requires Delaware County to submit a Status Report of the CDBG Formula 2010 for their review.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED by the Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. The Delaware County Board of Commissioners hereby authorizes the submittal of the CDBG Formula 2010 Status Report for the period of September 1, 2010 – March 2, 2011 to Ohio Department of Development, Office of Housing and Community Partnership.

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11-357

IN THE MATTER OF APPROVING THE AGREEMENT WITH GARDNER ARCHITECTS TO PROVIDE DESIGN WORK TO ASSIST ANDREWS HOUSE WITH ADA RENOVATIONS:

It was moved by Mr. Thompson, seconded by Mr. O'Brien to approve the following:

WHEREAS, Andrews House is an independent 16 year-old Delaware community services center that sponsors or hosts nine help-giving programs and services; and

WHEREAS, the programs and services are focused on basic community needs, such as nutrition, medical care and legal consultation; and

WHEREAS, Andrews House also supports seven small social service agencies it houses by providing them office space at below-market rates; and

WHEREAS, the agencies are Action for Children, Alzheimer's Associations, Big Brother Big Sisters, Connections Volunteer Center, Concerned Citizens Against Homelessness, Grace Medical Clinic, and Legal Aid Society; and

WHEREAS, the ADA improvements will make the building more accessible for the elderly and handicapped; and

WHEREAS, assistance of handicapped individuals is considered a National Objective under the CDBG Program; and

WHEREAS, the Delaware County Commissioners authorized, in Resolution No. 10-1422 dated October 25, 2010, to use Revolving Loan Funds to assist Andrews House in the amount up to \$75,000.00 to assist Andrews House with ADA renovations; and

WHEREAS, Five Architects were contacted to submit a proposal for the architectural services for the ADA renovations; and

WHEREAS, Andrews House and the Delaware County Director of Economic Development recommend the firm of Gardner Architects, Inc., for the Project;

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED by the Delaware County Commissioners, State of Ohio, as follows:

Section 1. The Delaware County Commissioners accepts the proposal from Gardner Architects, Inc. for the architectural services for Andrews House ADA Renovation in the amount up to \$7,500.00 and approves the Architectural Services Contract set forth herein.

Section 2. This resolution shall take effect and be in force immediately after its passage.

**ARCHITECTURAL SERVICES CONTRACT
ANDREWS HOUSE ADA RENOVATIONS**

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Section 1 – Parties to the Agreement

This Agreement is made and entered into this 11th day of April, 2011, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and the firm of Gardner Architects, 5 East Winter Street, Delaware, Ohio 43015 (“Architect”).

Section 2 – Contract Administrator

The Delaware County Board of Commissioners hereby designates the Delaware County Administrator as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

Section 3 – Scope of Services (Work)

The Architect shall provide architectural services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the County in determining consulting services required for the Project. The Architect’s services include the following consulting services, if any:

During the Design Phase, the Architect shall review the County’s scope of work, budget and schedule and reach an understanding with the County of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design within 45 days of signing this agreement. Upon the County’s approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the County provides. The Architect shall assist the County in filing documents required for the approval of governmental authorities, in obtaining proposals and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the County’s representative and provide administration of the Contract between the County and the contractor. Generally, the Architect’s services during construction include interpreting the Contract Documents, reviewing the contractor’s submittals, visiting the site, reviewing and certifying payments, and rejecting nonconforming Work.

The Architect, at such times and in such forms as the County may require, shall furnish the County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

The County shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The County shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the County’s information. The County shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The County shall employ a contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

Section 4 – Compensation

Compensation for Work performed under this Agreement shall be in a Lump Sum not to exceed **Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00)**. Compensation shall constitute full payment for all labor, equipment and materials required to complete the required Work.

Section 5 – Payment

Compensation shall be paid based on invoices submitted by the Architect. Invoices shall be submitted to the Administrator by the Architect 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 Architect shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

Section 6 – Authorization to Proceed; Delays and Extensions

The Architect shall commence Work upon written authorization of the Administrator. In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Architect may make a written request for a time extension, and the Administrator may grant such an extension, provided that all other terms of the Agreement are adhered to.

Section 7 – Insurance

7.1 General Liability Coverage: Architect shall maintain commercial general liability insurance of \$250,000 each occurrence with an annual aggregate of \$500,000. Identical coverage shall be required to be provided by all subcontractors, if any.

7.2 Automobile Liability Coverage: Architect shall maintain automobile liability insurance of \$500,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical

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coverage shall be required to be provided by all subcontractors, if any.

- 7.3 Workers' Compensation Coverage: Architect 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.
- 7.4 Professional Liability Insurance: Architect hereby agrees to maintain, and require its subcontractors to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the services rendered hereunder, provided such insurance is commercially available. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 7.5 Additional Insureds: The 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 7.1 and 7.2. Architect shall require all of its subcontractors to provide like endorsements.
- 7.6 Proof of Insurance: Prior to the commencement of any work under this Agreement, Architect, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements in accordance with Subsection 7.5. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Architect will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 – Liability

The Architect shall indemnify and hold free and harmless the County and its 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 Architect, 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.

The Architect shall comply with all applicable laws, ordinances, regulations, rules, and codes of the Federal, State and Local governments, and the Architect shall indemnify and hold free and harmless the County and its employees from any damages arising from any of Architect's violations thereof.

Section 9 – Suspension or Termination of Agreement

The County may suspend or terminate this Agreement at any time for the convenience of the County, at which time the County shall provide written notice to the Architect ordering termination of Work. The Architect shall immediately suspend or terminate Work, as ordered by the County. In the case of Termination, the Architect shall submit a final invoice within sixty (60) days of receiving Notice of Termination for Work completed up to the date of termination. The County is not liable for payment for work performed after the date of termination.

Section 10 – Change in Scope of Work

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties in writing.

Section 11 – Ownership of Documents

Upon completion or termination of the Agreement, the Architect shall provide copies, if requested, to the County of all documents or electronic files produced under this Agreement. 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. This section does not require unauthorized duplication of copyrighted materials.

Section 12 – Personnel Requirements

The Architect shall immediately notify the County, in writing, of any change to key Architect staff or subcontractors assigned to the Work as contemplated at the time of executing this Agreement. The Architect represents that it has, or will secure at its expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. All of the services required hereunder will be performed by the Architect or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

Section 13 – Miscellaneous Terms & Conditions

- 13.1 Prohibited Interests: Architect 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. Architect further agrees that it will not employ in any manner a current County employee for a

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minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County. The Architect covenants that he presently has no interest and shall not acquire interest, direct, or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with performance of his services hereunder. The Architect further covenants that, in the performance of this Agreement, it shall not employ any person having any such interest.

- 13.2 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Architect, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 13.3 Assignment: The Architect shall not assign this Agreement or any rights, obligations, or interests provided for in this Agreement without the County's prior written consent.
- 13.4 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.
- 13.5 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.
- 13.6 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.
- 13.7 Records and Audits: The Architect shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the County to assure proper accounting for all project funds, both Federal and non-Federal shares. These records will be made available for audit purposes to the County or any authorized representative, and will be retained for three years after the expiration of this Agreement unless permission to destroy them is granted by the County.
- 13.8 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.
- 13.9 Findings for Recovery: Architect certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.10 Homeland Security: Architect certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list. Pursuant to R.C. § 2909.33, Architect agrees to make such certification by completing the declaration of material assistance/nonassistance described in R.C. § 2909.33(A) and understands that this Agreement is contingent upon full completion of such certificate and "No" being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.
- 13.11 Non-Discrimination/Equal Opportunity: During the performance of this Agreement, the Architect agrees as follows:
 - a. The Architect will not discriminate against any employee or applicant for employment because of race, creed, sex, color, age, familial status, handicap, or national origin. The Architect will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, age, familial status, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provision of this non-discrimination clause.

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- b. The Architect will, in all solicitation or advertisements for employees placed by or on behalf of the Architect, state that all qualified applicants will receive consideration for employment without regard to race, creed, sex, color, age, familial status, handicap, or national origin.
- c. The Architect will cause the foregoing provisions inserted in all subcontracts for any work covered by this Agreement, so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d. The Architect will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Architect will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the County and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Architect's non-compliance with the clauses of this Subsection or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Architect may be declared ineligible for future Government Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Architect will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. The Architect will take such action with respect to any subcontract or purchase order as the County may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the Architect becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the County, the Architect may request the United States to enter into such litigation to protect the interests of the United States.
- h. Under Title VI of the Civil Rights Act, as amended, no person shall, on the grounds of race, color, creed, sex, familial status, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- i. Under Section 109 of the Housing and Community Development Act, as amended, no person in the United States shall on the grounds of race, color, national origin, familial status, handicap, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

13.12 Section 3 Compliance in the Provision of Training, Employment, and Business Opportunities:

- a. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Community Development Act, as amended. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties of this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The Architect will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

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- d. The Architect will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Architect will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the Agreement, shall be a condition of the federal financial assistance provided to the project, binding upon its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Architects, and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or Agreement through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

13.13 Independent Contractor: Architect agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. Architect also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

RESOLUTION NO. 11-358

IN THE MATTER OF AUTHORIZING THE USE OF DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES FUNDS TO ASSIST IN FUNDING THE PURCHASE OF COFFEE, MEALS, REFRESHMENTS AND OTHER AMENITIES FOR THE REENTRY TASK FORCE TRAINING:

It was moved by Mr. Thompson, seconded by Mr. O'Brien to approve the following:

WHEREAS, The Ohio Attorney General Opinion No. 82-006 addresses the issue Expenditure of Public Funds For Proper "Public Purpose", and

WHEREAS, The October 20, 2003, State Auditor's ruling on payment of Expenditures Of Public Funds For Proper "Public Purpose" states that for persons who are employees or non-employees of the County, the Commissioners must pre-approve expenditures for the purchase of coffee, meals, refreshments and other amenities.

WHEREAS, the Delaware County Department of Job and Family Services has the responsibility for reentry task force activities; and

WHEREAS, Delaware County has received funds for the purpose of Reentry Task Force meetings, training and activities in Delaware County; and

WHEREAS, a training has been scheduled for June 24, 2011. The purpose of the training is to provide free training to human resource personnel regarding the barriers and benefits to hiring offenders. The training will be provide companies with the legal framework to hire offenders, information regarding the federal bonding programs and tax incentives to hire offenders. This activity is a community outreach activity identified in the strategic plan of the Reentry Task Force.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED, by the Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. That the Delaware County Board of Commissioners hereby authorizes the use of Department of Job and Family Services funds in an amount not to exceed \$100.00, to assist in funding the purchase of food, refreshments and other amenities for The Reentry Task Force Human Resource Training.

Vote On Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-359

IN THE MATTER OF APPROVING THE SANITARY SUBDIVIDER'S AGREEMENT FOR SHEFFIELD PARK SECTION 3B PART 3:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following::

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Whereas, the Director of Environmental Services recommends the following agreement;

Therefore Be It Resolved, that the Board of Commissioners approve the agreement.

Sheffield Park Section 3B Part 3

**SUBDIVIDER'S AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER**

THIS AGREEMENT executed on this 11th day of April 2011, by and between M/I HOMES OF CENTRAL OHIO, L.L.C., herein after called "SUBDIVIDER", and the BOARD OF COUNTY COMMISSIONERS of Delaware County, Ohio, as evidenced by the SHEFFIELD PARK SECTION 3B PART 3 Subdivision Plat filed with the Delaware County Recorder, Delaware County, Ohio, is governed by the following considerations and conditions, to wit:

The SUBDIVIDER shall upon executing this AGREEMENT pay to the DELAWARE COUNTY SANITARY ENGINEER **\$85,550**, representing the payment of fifty percent (50%) of the capacity charges then in effect for each single family residential connection, for **29** equivalent single family residential connections. The remaining capacity charge shall be fifty percent (50%) of the rate currently in effect at the time connection is made and shall be paid for each single family residential connection upon application to the DELAWARE COUNTY SANITARY ENGINEER for a tap permit to connect the single family residence to the sanitary sewer. Ownership of more than one (1) lot will not cause aggregation of the payments.

Said SUBDIVIDER is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for Sheffield Park Section 3B PARTS 1, 2 & 3, all of which are a part of this AGREEMENT. The SUBDIVIDER shall pay the entire cost and expense of said improvements.

OPTIONS:

- (1) Should SUBDIVIDER elect to record the plat prior to beginning construction, SUBDIVIDER shall execute Bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$125,536.31**) which is acceptable to the COUNTY COMMISSIONERS to insure faithful performance of this AGREEMENT and the completion of all improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should SUBDIVIDER elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as SUBDIVIDER elects to record the plat. At that time, the SUBDIVIDER shall execute Bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the SANITARY ENGINEER.

The SUBDIVIDER hereby elects to use Option 2 for this project.

The SUBDIVIDER shall indemnify and save harmless the County, Townships and/or Villages and all of their officials, employees and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of any contractor or sub-contractor or from any material, method or explosive used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or the contractor's agents or employees.

All public improvement construction shall be performed within one (1) year from the date of the approval of said SUBDIVIDER by the COUNTY COMMISSIONERS, but extension of time may be granted if approved by the COUNTY COMMISSIONERS.

The SUBDIVIDER shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the COUNTY. The representative shall be replaced by the SUBDIVIDER, when in the opinion of the COUNTY, the representative's performance is deemed inadequate.

The SUBDIVIDER further agrees that any violations of or noncompliance with any of the provisions and stipulations of this AGREEMENT shall constitute a breach of contract, and the COUNTY shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public improvements within this Subdivision.

Should the SUBDIVIDER become unable to carry out the provisions of this AGREEMENT, the SUBDIVIDER'S heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this AGREEMENT.

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SANITARY SEWER CONSTRUCTION

It is further agreed that upon execution of this AGREEMENT, the SUBDIVIDER shall pay the DELAWARE COUNTY SANITARY ENGINEER **\$4,393.77** which is equal to three and one-half percent (3½%) of the estimated construction cost of the IMPROVEMENTS for plan review. The SUBDIVIDER shall also deposit with the DELAWARE COUNTY SANITARY ENGINEER the sum of **\$10,725** estimated to be necessary to pay the cost of inspection by the DELAWARE COUNTY SANITARY ENGINEER. The DELAWARE COUNTY SANITARY ENGINEER shall in his or her sole discretion inspect, as necessary, the IMPROVEMENTS being installed or constructed by the SUBDIVIDER and shall keep accurate records of the time spent by his or her employees and agents in such inspections for which the SANITARY ENGINEER shall be reimbursed from charges against said deposit. At such time as said fund has been depleted to a level of \$1,000.00 or less, as a result of charges against the same at the rate of:

INSPECTOR \$75.00 per hour
CAMERA TRUCK \$150.00 per hour

for time spent by said SANITARY ENGINEER or his or her staff, the SUBDIVIDER shall make an additional deposit of \$1,000.00 to said fund. On completion of all IMPROVEMENTS provided herein and acceptance of same by the COUNTY, any unused portions of the inspection fund shall be repaid to the SUBDIVIDER less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

The SUBDIVIDER, for a period of five (5) years after acceptance of the IMPROVEMENTS by the COUNTY, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the IMPROVEMENTS shall be the same as new equipment warranties and shall be assigned to the COUNTY upon acceptance of the IMPROVEMENTS.

The SUBDIVIDER shall provide to the COUNTY all necessary easements or rights-of-way required to complete the IMPROVEMENTS, all of which shall be obtained at the expense of the SUBDIVIDER.

The COUNTY shall, upon certification in writing from the DELAWARE COUNTY SANITARY ENGINEER that all construction is complete according to the plans and specifications, by Resolution accept the IMPROVEMENTS described herein and accept and assume operations and maintenance of the same.

ALL CONSTRUCTION UNDER COUNTY JURISDICTION:

The SUBDIVIDER shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to DELAWARE COUNTY as required:

- (1) "as built" drawings of the IMPROVEMENTS which plans shall become the property of the COUNTY and shall remain in the office of the DELAWARE COUNTY SANITARY ENGINEER and DELAWARE COUNTY ENGINEER. The drawings shall be on reproducible MYLAR (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in DWG format & PDF format.
- (2) An excel spreadsheet, from a template as provided by the DELAWARE COUNTY SANITARY ENGINEER, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) an itemized statement showing the cost of IMPROVEMENTS
- (4) an Affidavit or waiver of lien from all Contractors associated with the project that all material and labor costs have been paid. The SUBDIVIDER shall indemnify and hold harmless the COUNTY from expenses or claims for labor or materials incident to said construction of the IMPROVEMENTS.
- (5) documentation showing the required sanitary sewer easements

The SUBDIVIDER shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the DELAWARE COUNTY SANITARY ENGINEER a five (5) year maintenance Bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The SUBDIVIDER shall during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the COUNTY regarding submission of shop drawings, construction schedules, operation of facilities and other matters incident hereto.

The SUBDIVIDER shall obtain all other necessary utility services incident to the construction of said IMPROVEMENTS AND FOR THEIR CONTINUED OPERATION. The SUBDIVIDER shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the SUBDIVIDER and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the COUNTY.

IN CONSIDERATION WHEREOF, the DELAWARE COUNTY BOARD OF COMMISSIONERS hereby grants the SUBDIVIDER or its agent the right and privilege to make the IMPROVEMENTS stipulated herein and as shown on the approved plans.

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Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

RESOLUTION NO. 11-360

IN THE MATTER OF CERTIFYING TO THE COUNTY AUDITOR SANITARY SEWER CAPACITY CHARGES FOR 2904 RUTHERFORD ROAD, POWELL, OHIO:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to certify the Sanitary Sewer Capacity Charges as follows:

Whereas, 2904 Rutherford Road, Powell, Ohio has requested to make tap connections to the Delaware County sewer system; and

Whereas, 2904 Rutherford Road, Powell, Ohio has requested to pro-rate charges over a 10 year period, and

Whereas, the Sanitary Engineer recommends approval of the connection and the 10 year pro-rated charge;

Now Therefore Be It Resolved, that The Board of Commissioners approve the following:

2904 Rutherford Road, Powell, Ohio

In the amount of \$5,900.00 with \$2,218.40 finance charge (pro-rated over a 10 year period) making total of \$8,118.40 for placement on tax duplicate. Bi-annual payment being \$405.92.

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

RESOLUTION NO. 11-361

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. O'Brien, seconded by Mr. Thompson to approve the following:

The Director Emergency Medical Services recommends hiring Kevin John Bercik as a part-time paramedic with the EMS Department; effective date May 11, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Kevin John Bercik as a part-time paramedic with the EMS Department; effective date May 11, 2011.

The Director Emergency Medical Services recommends hiring Michael Sherron as a part-time paramedic with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Michael Sherron as a part-time paramedic with the EMS Department; effective date April 27, 2011.

The Director Emergency Medical Services recommends hiring Joshua Harper as a part-time paramedic with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Joshua Harper as a part-time paramedic with the EMS Department; effective date April 27, 2011.

The Director Emergency Medical Services recommends hiring Drew Desimone as a part-time paramedic with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Drew Desimone as a part-time paramedic with the EMS Department; effective date April 27, 2011.

The Director Emergency Medical Services recommends hiring Lindsey Matheny as a part-time paramedic with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Lindsey Matheny as a part-time paramedic with the EMS Department; effective date April 27, 2011.

The Director Emergency Medical Services recommends hiring Dana Phillips as a part-time paramedic with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Dana Phillips as a part-time paramedic with the EMS Department; effective date April 27, 2011.

The Director Emergency Medical Services recommends hiring Bryan Jeffers as a part-time paramedic

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with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Bryan Jeffers as a part-time paramedic with the EMS Department; effective date April 27, 2011.

The Director Emergency Medical Services recommends hiring Robert Meredith as a part-time paramedic with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Robert Meredith as a part-time paramedic with the EMS Department; effective date April 27, 2011.

The Director Emergency Medical Services recommends hiring Jeffery Allard as a part-time paramedic with the EMS Department; effective date April 27, 2011;

Therefore Be It Resolved, that the Board of Commissioners approve hiring Jeffery Allard as a part-time paramedic with the EMS Department; effective date April 27, 2011.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

RESOLUTION NO. 11-362

**IN THE MATTER OF APPROVING SETTLEMENT AGREEMENT AND RELEASE BY AND BETWEEN
TULLER SQUARE NORTHPOINTE LLC., THE DELAWARE COUNTY COMMISSIONERS AND GEORGE
KAITSA, THE CURRENT DELAWARE COUNTY AUDITOR:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as "Agreement"), is made and entered into on this 11th day of April, 2011, by and between Tuller Square Northpointe LLC ("Tuller"), a Delaware limited liability company, the Delaware County Commissioners ("Commissioners") and George Kaitsa ("Kaitsa"), the current Delaware County Auditor, (hereinafter collectively referred to as "Parties"), with regard to the following:

WITNESSETH:

WHEREAS, Tuller is the owner of certain commercial premises generally known as Northpointe Plaza Shopping Center ("Shopping Center"), which Shopping Center is located in Delaware County, Ohio, containing a certain Storeroom No. 01160, which consists of 2,000 square feet, more or less, and having an address of, and being generally known as, 8625 Columbus Pike, Lewis Center, Ohio 43035 ("Premises"); and

WHEREAS, Todd Hanks ("Hanks"), the then sitting Delaware County Auditor, executed, on behalf of the County of Delaware and in his official capacity as Delaware County Auditor, a certain written Lease Agreement ("Lease"), dated April 28, 2005, and the County of Delaware entered into possession of the Premises, and having a seven (7) year original term ("Term") commencing August 5, 2005 and expiring August 31, 2012, as evidenced by a Commencement Date Agreement dated September 12, 2005; and

WHEREAS, the County operated in the Premises as a Bureau of Motor Vehicles, and subsequently ceased operating in the Premises on or about August 14, 2009; and

WHEREAS, a dispute arose between the Parties as to whether the Lease was breached and/or as to whether the Lease met the statutory requirements for a contract involving a governmental subdivision to be a valid and enforceable contract; and

WHEREAS, on November 3, 2009, Tuller filed a Complaint ("Complaint I") against Kaitsa and the Commissioners with respect to breach of the Lease, being a civil action captioned Tuller Square Northpointe LLC v. Delaware County Commissioners, et al., pending in the Court of Common Pleas of Franklin County, Ohio, being Case No. 09 CVH 11-16429 ("Litigation I"); and

WHEREAS, on May 19, 2010, Kaitsa and the Commissioners filed a Complaint ("Complaint II") against Tuller seeking declaratory judgment with respect to the Lease, being a civil action captioned Delaware County Commissioners, et al. v. Tuller Square Northpointe LLC., pending in the Court of Common Pleas of Delaware County, Ohio, being Case No. 10 CVH 05-0788 ("Litigation II"); and

WHEREAS, the Parties hereto, now desire to settle, compromise and resolve, in good faith, all of the differences, disagreements and disputes, causes of action, damages and claims that have arisen or could have arisen between the parties hereto which concern, arise out of or are in any way connected or related to the relationship between the parties, and/or arising out of the Lease or the Premises including, but not limited to, any and all claims made or that could have been made in connection with or related to the Premises or Litigation I or Litigation II (collectively, "the

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Dispute”); and

WHEREAS, the Parties acknowledge that all terms of this Agreement and the discussions leading up thereto shall remain confidential to the extent possible as provided by law and pursuant to the requirements for public disclosure for a governmental subdivision; and

WHEREAS, the Parties acknowledge that each of them is entering into this Agreement voluntarily for the purpose of compromising all claims and avoiding additional litigation expense and specifically not as any admission of wrongdoing or liability.

NOW, THEREFORE, for good and valuable consideration as set forth herein, the receipt and sufficiency of which are hereby acknowledged, and the mutual terms and provisions hereof, the Parties agree:

1. **Stipulated Notice(s) Of Dismissal With Prejudice.** Upon execution of this Agreement, and in consideration of the releases described below, and for other good and valuable consideration as set forth in Paragraph 3 hereof, the parties will cause a Stipulated Notice Of Dismissal With Prejudice to be filed in Litigation I and in Litigation II, in substantially the form and substance attached hereto as Exhibit “A” and “B”.
2. **Release of Tuller by the Commissioners and Kaitsa.** In consideration of the release described and for other good and valuable consideration as set forth in Paragraph 3 and 4 hereof, the Commissioners and Kaitsa, for itself/himself and its/his heirs, agents, servants, employees, attorneys, representatives, predecessors, successors, assigns, officers, directors, shareholders, and each of them, and on behalf of the County of Delaware, do hereby forever release and discharge Tuller, and any and all of its agents, servants, employees, attorneys, representatives, predecessors, successors, assigns, officers, directors, shareholders, and each of them, from any and all claims, demands, actions, causes of action, obligations, costs and expenses, attorneys’ fees, damages, losses and liabilities of whatsoever nature, whether known or unknown, suspected or unsuspected, matured or contingent, which concern, arise out of, or are in any way connected with or related to the relationship between or amongst the Parties, and/or arising out of the Premises including, but not limited to, any and all claims that were asserted or that could have been asserted in the Dispute, Litigation I or Litigation II.
3. **Release of the Commissioners, Kaitsa and Hanks.** In consideration of the release described and for other good and valuable consideration as set forth in Paragraph 2 and 4 hereof, Tuller, for itself and its, agents, servants, employees, attorneys, representatives, predecessors, successors, assigns, officers, directors, shareholders, and each of them, do hereby forever release and discharge the Commissioners, Kaitsa, and Hanks, in their official and/or personal capacity, and any and all of its/their agents, servants, employees, attorneys, representatives, predecessors, successors, assigns, and each of them, from any and all claims, demands, actions, causes of action, obligations, costs and expenses, attorneys’ fees, damages, losses and liabilities of whatsoever nature, whether known or unknown, suspected or unsuspected, matured or contingent, which concern, arise out of, or are in any way connected with or arising out of the Premises at issue including, but not limited to, any and all claims that were asserted or that could have been asserted in the Dispute, Litigation I or Litigation II.
4. **Consideration.** The Commissioners and Kaitsa shall pay to Dan J. Binau, Esq., counsel for Tuller, at 37 W. Broad Street, Suite 950, Columbus, Ohio 43215, the amount of Eighty Six Thousand Five Hundred Twenty Seven and 96/100 Dollars (\$86,527.96) (“Settlement Amount”), on or before May 1, 2011, for past due rent accrued and due Tuller through April 30, 2011. Furthermore, the Parties shall cause a new written Lease Agreement to be validly executed pursuant to and statutorily compliant with Ohio law, including but not limited to the requirements contained in Ohio Revised Code §307, §319 and §5705.41, for the Premises with minimum rent to be the same as provided for in the Lease subject to the Dispute, and with rent commencing May 1, 2011 and expiring June 30, 2013.
5. **Advice Of Counsel.** This Agreement was drafted by Tuller’s counsel and has been presented to counsel for the Commissioners and Kaitsa for review, comment, rejection and/or acceptance. The Commissioners and Kaitsa each represent and warrant that she/he/it has not relied on the advice of the drafter as to any aspect of this Agreement and each has relied solely upon the advice of his/her/its own counsel and attorney. Furthermore, the Commissioners and Kaitsa each hereby releases and discharges Tuller and its attorneys from any claims, rights, damages and/or costs that may arise by reason of the legal or other consequences of this Agreement. Likewise, Tuller hereby represents and warrants that it has not relied on the advice of the Commissioners’ and Kaitsa’s counsel and attorney with regard to any aspect of this Agreement. As such, Tuller hereby releases and discharges the Commissioners’ and Kaitsa’s counsel and attorneys from any claims, rights, damages, and/or costs that may arise by reason of the legal or other consequences of this Agreement.

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6. **Incorporation of Recitals.** The recitals are incorporated into this Agreement and are hereby made a part of this Agreement.
7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
8. **Entire Agreement.** All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties hereto concerning the subject matter hereof, are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party hereto to any other party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof are merged herein.
9. **Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, representatives, successors and assigns of the Parties hereto.
10. **Partial Invalidity.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
11. **Counterpart Execution.** This Agreement may be signed in multiple counterparts, and each counterpart when taken with the other executed counterparts, shall constitute a binding agreement among the Parties executed as of the date first written above.
12. **Statutory Requirements.** The Commissioners and Kaitsa covenant and warrant that this Agreement has been validly executed pursuant to all statutory requirements for the State of Ohio, including but not limited to Ohio Revised Code §307, §319 and §5705.41. A copy of the Auditor's Certificate is attached hereto as Exhibit "C".

The Parties hereto further state that they have carefully read the foregoing Agreement and know and understand the contents thereof, and they sign the same as their own free will and act.

Vote On Motion Mr. Thompson Aye Mr. O'Brien Nay Mr. Stapleton Aye

RESOLUTION NO. 11-363

IN THE MATTER OF APPROVING A LEASE AGREEMENT WITH TULLER SQUARE NORTHPOINTE, LLC, FOR DELAWARE COUNTY OFFICES ANNEX:

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Delaware County Board of Commissioners (the "Board") has entered into a settlement agreement with Tuller Square Northpointe, LLC, to resolve ongoing litigation between the parties; and

WHEREAS, the settlement agreement provides for the proper execution of a lease agreement for the premises subject to the litigation; and

WHEREAS, the Board has determined that Delaware County residents will benefit from the location of an annex for various Delaware County offices at the subject premises;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio to approve the following Lease Agreement:

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), made and entered into at Columbus, Ohio, as of the date stated in Section 1.01 (A) below, by and between Tuller Square Northpointe LLC, an Ohio limited liability company, 191 West Nationwide Boulevard, Suite 200, Columbus, Ohio 43215, hereinafter referred to as "Landlord" and the Delaware County Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015 hereinafter referred to as "Tenant".

**ARTICLE I
GRANT AND TERM**

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SECTION 1.01. Basic Lease Provisions.

- (A) DATE OF LEASE: April 11, 2011
- (B) ADDRESS FOR NOTICES AND PAYMENTS:
- | | | |
|------------------|--|--|
| <u>Landlord</u> | <u>Tuller Square Northpointe LLC</u> | <u>Landlord's</u> |
| <u>Notice</u> : | 191 West Nationwide Boulevard
Suite 200
Columbus, Ohio 43215 | Phone No.: (614) 228-5331
Fax No.: (614) 744-2038 |
| <u>Landlord</u> | <u>Tuller Square Northpointe LLC</u> | |
| <u>Payment</u> : | c/o Casto
P.O. Box 1450
Columbus, Ohio 43216 | |
| <u>Tenant</u> : | <u>Delaware County Commissioners</u> | |
| | Delaware County Offices <u>Tenant's</u> :
101 North Sandusky Street
Delaware, Ohio 43015 | Phone No.: <u>740.833.2100</u>
Fax No.: <u>740.833.2099</u> |
- (C) PERMITTED USE (Section 6.01): As further detailed in Section 6.01, the Premises shall be used as annex offices for various Delaware County agencies, offices, and/or departments providing goods or services to the public. Except as set forth in the preceding sentence, the Premises shall not be used for any other purpose unless mandated by state law.
- (D) TENANT'S NAME (Section 6.01): Delaware County Offices or such other name as Tenant may desire.
- (E) SHOPPING CENTER: NorthPointe Plaza Shopping Center ("Shopping Center"), situated in the unincorporated community of Lewis Center, County of Delaware and State of Ohio.
- (F) PREMISES (Section 1.03): That certain enclosed space within the Shopping Center, said space being cross-hatched on Exhibit "A" hereof and having the following approximate dimensions and leasable area: Width: 20 ft.; Depth: 100 ft.; Leasable Area: 2,000 sq. ft.; Space Number: 01160; and further known as 8625 Columbus Pike, Lewis Center, Ohio 43035.
- (G) TERM (Section 1.04): Beginning on May 1, 2011 and ending on June 30, 2013.
- (H) MINIMUM RENT (Section 2.01):
- | | | | |
|---------------|-----------------------|--------------------|-------------------------------|
| | <u>Annual Minimum</u> | <u>Monthly</u> | <u>Rate Per Leasable</u> |
| <u>Period</u> | <u>Rent</u> | <u>Installment</u> | <u>Sq. Ft. Per Lease Year</u> |
| Term | 43,460.00 | \$3,621.67 | \$21.73 |
- (I) PERCENTAGE RENTAL RATE (Section 2.02): None.
- (J) PERCENTAGE RENT BREAKPOINT: None.
- (K) INITIAL COMMON AREA MAINTENANCE PAYMENT (Section 9.01): \$388.33 per month (\$233 per leasable sq. ft.).
- (L) INITIAL REAL ESTATE TAX EXPENSE (Section 2.04): None.
- (M) INITIAL INSURANCE PAYMENT (Section 12.02): \$33.33 per month (20¢ per leasable sq. ft.).
- (N) SECURITY DEPOSIT (Section 1.07): None.
- (O) RENEWAL OPTIONS: None.
- (P) GUARANTOR(S): None.

The Basic Lease Provisions have been presented hereinabove for the purpose of stating or restating certain key terms of the Lease in a summary format. Such presentation is not in derogation of the importance of any other provisions of this Lease, and shall not imply that such Basic Lease Provisions are to be construed in any other

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manner than in the context of all of the other terms and conditions of this Lease, taken as a whole, and in the event there are any inconsistencies between the Basic Lease Provisions and the following sections of this Lease, the following sections shall control.

SECTION 1.02. Enumeration of Exhibits and Addenda

The Exhibits and Addenda enumerated in this Section and attached to this Lease are incorporated into this Lease by this reference and are to be construed as part of this Lease, as follows (any attachments which are inapplicable to this Lease having been lined through):

Exhibit "A" - Site Plan of Shopping Center (showing location of Premises and any presently designated employee parking areas)

Exhibit "B" - Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA)

Exhibit "A" to this Lease (Site Plan) has been included herein for the primary purpose of showing the approximate location of the Premises and the secondary purpose of showing any areas currently designated as employee parking areas, and the inclusion of such Site Plan as an Exhibit does not constitute a covenant or warranty that the present layout of the Shopping Center will be maintained throughout the Lease Term.

SECTION 1.03. Leased Premises.

Landlord, in consideration of the rents and the performance of the covenants and agreements herein after set forth to be paid and performed by Tenant, hereby leases to Tenant for the term hereafter stated the premises described in Section 1.01(F) (hereinafter referred to as the "Premises"), together with the right to use, in common with Landlord's other tenants and subject to all terms and conditions of this Lease, all of Landlord's rights, easements and appurtenances in adjoining and adjacent land, highways, roads, and streets, whether public or private, reasonably required for (i) the installation, maintenance, and operation of, and the drawing of service from, sewer, water, gas, electric and other utility lines and (ii) for ingress and egress to, from, and between the Premises and such public roads as may abut the Shopping Center.

SECTION 1.04. Term.

This Lease shall have a term of two (2) lease years and two (2) months (i.e. 26 calendar months) (the "Term", "term", "original term" or "Lease Term"). If Landlord is delayed in delivering possession of the Premises to Tenant, whether by reason of force majeure during construction, the holding over of a previous occupant, or any other cause beyond Landlord's control, Landlord shall have no liability to Tenant for the delay, and the Date of Delivery, as more specifically defined in Section 1.05 below, shall be deemed postponed, and all rights, remedies and obligations of both parties hereunder shall be deemed tolled, until Landlord is able to deliver such possession.

SECTION 1.05. Commencement Date

The date on which the Term shall commence (hereafter, the "Commencement Date" and/or "Date of Delivery") shall be May 1, 2011 and the date on which the Term shall end shall be the last day of the twenty-seventh (26th) calendar month following therefrom. Tenant shall execute a Commencement Date Agreement at the request of Landlord which sets out the Commencement Date.

Notwithstanding anything else in this Lease to the contrary, if for any reason whatsoever the Term of this Lease and the payment of rent at the full Lease Term rate have not both commenced within one (1) year from the date of full execution of this Lease, Landlord shall thereafter have the option to cancel this Lease at any time, unless such Term and full rent commencement have in the meantime occurred, by giving written notice of cancellation to Tenant.

SECTION 1.06. Lease Year; Calendar Year

(a) Lease Year. For purposes of this Lease, the term "lease year" or "Lease Year" shall mean, for the first (1st) such lease year, the period beginning on the Commencement Date and ending at the end of the twelfth (12th) full calendar month to elapse therefrom, and thereafter shall mean each successive period of twelve (12) consecutive calendar months during the Term and any extensions thereof. If the Commencement Date occurs on a date other than the first (1st) day of a calendar month, then the first (1st) lease year shall include, in addition to twelve (12) full calendar months, a partial month running from the Commencement Date until the first (1st) day of the next calendar month, and a prorated installment of Minimum Rent and all additional rental items payable on a monthly basis under this Lease shall be calculated for such partial month at the initial payment rates hereinafter provided for, such installment to be payable by not later than the fifth (5th) day from of the Commencement Date.

(b) Calendar Year. The term "calendar year" or "Calendar Year", for the purpose of this Lease, shall mean each successive January 1 to December 31 period falling within the Lease Term. The periods from the Commencement Date to the end of the Calendar Year in which commencement occurs, and from January 1st of the Calendar Year in which the Lease Term ends until the date on which the Term ends, shall be considered "Fractional Calendar Years", except to the extent the Term may commence on January 1st or end on a December 31st. Unless the context clearly requires otherwise, the words "Calendar Year" or "calendar year" shall be deemed wherever used to include any Fractional Calendar Years which may fall within the Lease Term.

SECTION 1.07. Security Deposit [Intentionally Deleted.]

SECTION 1.08. Financial and Organizational Information [Intentionally Deleted.]

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**ARTICLE II
RENT**

SECTION 2.01. Annual Minimum Rent

(A) Tenant, in consideration of the leasing to it of the Premises and the covenants and agreements herein contained, hereby covenants and agrees to pay to Landlord each Lease Year, in addition to all other sums payable from time to time hereunder, without demand and without any deductions, offsets, or counterclaims whatsoever, at Landlord's offices or such other place as Landlord may from time to time designate, as the annual minimum rent for the Premises ("Minimum Rent" or "minimum rent"), the following annual sums throughout the Term of this Lease:

(i) Forty Three Thousand Four Hundred Sixty and 00/100 Dollars (\$43,460.00) annually, payable in monthly installments due on the first day of each calendar month during such period in the amount of Three Thousand Six Hundred Twenty One and 67/100 Dollars (\$3,621.67) each.

(B) The above minimum rents have been computed at the respective rates per lease year per square foot of gross leasable area in the Premises stated in Section 1.01(H) above. In the event that upon completion of construction of the Premises the leasable floor space thereof as measured in accordance with Section 2.06 below shall exceed the assumed square footage stated in Section 1.01(F), the above stated minimum rents for each lease year shall be adjusted by adding thereto the product derived by multiplying the number of additional "as-measured" square feet in the Premises by the underlying rental rate per leasable square feet stated in Section 1.01(H) to be applicable in such lease year.

(C) Minimum rent and all other sums due under this Lease are denominated in and shall be payable only in monetary units of the United States of America. All checks rendered as payment must be good on presentation to the bank upon which drawn. Landlord shall have the right to impose a bad check fee if any check tendered by Tenant is returned for insufficient funds, and to also thereafter require payment by cashier's check, money order, wire transfer, or automated monthly transfer from Tenant's bank account.

(D) In the event of a partial calendar month, a prorated installment of Minimum Rent and Additional Rental items shall be calculated and payable at the rates then applicable under this Lease.

(E) This Lease shall be deemed and construed to be a "totally net lease" except as otherwise specifically provided herein, and the Landlord shall receive all rental and other payments to be made by Tenant hereunder free from any and all charges, assessments, sales or use taxes, impositions, expenses or deductions of any kind or nature whatsoever. However, nothing contained herein shall be construed to obligate Tenant to pay any franchise, corporation, transfer, estate, inheritance or income tax imposed upon Landlord.

(F) Any and all other sums payable by Tenant under this Lease shall be considered rent or additional rent ("additional rent" or "Additional Rent"), whether or not specifically so identified.

SECTION 2.02. Percentage Rent. [Intentionally Deleted.]

SECTION 2.03. Definition of Gross Sales. [Intentionally Deleted.]

SECTION 2.04. Real Estate Taxes.

Landlord shall pay or cause to have paid all taxes and assessments, special or otherwise, which may be assessed against the land and improvements constituting the realty of the Premises and Shopping Center.

SECTION 2.05. Definition of Additional Rent and "Rents"

All sums of money or charges required to be paid by Tenant under this Lease above and beyond Minimum Rent shall be regarded to be additional rent ("Additional Rent" or "additional rent"), whether or not the same be specifically so designated. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectible as additional rent with the next installment of Minimum Rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of the Landlord. The term "Rents" or "rents" when used herein shall mean all monies due from Tenant to Landlord hereunder, of whatever type, or any particular type of money so payable, as the context may indicate.

SECTION 2.06. Method of Floor Area Measurement.

For the purpose of this Lease the term "gross leasable floor area" shall be deemed to mean (i) with respect to the Premises, the actual number of square feet of floor space within the Premises, measured from the center line of joint partitions and from outside wall faces, without deduction or exclusion for any space occupied by or used for columns, stairs, hallways, or other interior construction or equipment, and (ii) with respect to the Shopping Center or any particular part thereof shall mean the aggregate total gross leasable floor area of all of the separate premises or spaces located therein, as measured in accordance with the method of measurement described in the foregoing item (i) of this sentence.

**ARTICLE III
RECORDS AND BOOKS OF ACCOUNT**

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SECTION 3.01. Tenant's Records. [Intentionally Deleted.]

**ARTICLE IV
AUDIT**

SECTION 4.01. Right to Examine Books. [Intentionally Deleted.]

**ARTICLE V
LANDLORD'S WORK AND TENANT'S WORK**

SECTION 5.01. Construction of and Improvements to Premises

Landlord has no further responsibilities for new construction, improvements or alterations to the Premises.

Tenant shall make the improvements and other installations necessary for its use of the Premises (collectively, the "Tenant's Work"). Any changes in the existing structure which Tenant may so request are subject to Landlord's prior written approval, and if Landlord approves such work, it shall be performed at Tenant's expense by Tenant's contractor. All of the Tenant's Work shall be completed in a good and workmanlike manner and in conformance with all applicable federal, state and local laws, or ordinances, rules, regulations and building, health, safety, fire and environmental codes. In the event Tenant does not complete Tenant's Work to Landlord's satisfaction or does not comply with the provisions of the preceding sentence, Landlord shall have the right, in addition to any and all other rights herein, to cure any deficiency in Tenant's Work and Tenant shall be responsible for the cost of such action. Landlord reserves the right to require Tenant to furnish a payment bond guaranteeing completion of the Tenant's Work and saving Landlord harmless from payment of any claims, either by way of liens or damages, real or statutory.

The planning, performance and installation of Tenant's Work and any subsequent improvements and alterations performed by Tenant shall be further subject to any other applicable provisions of this Lease, including particularly but without limitation the provisions of Article X hereof.

SECTION 5.02. Remodel of Shopping Center. [Intentionally Deleted.]

SECTION 5.03. Shopping Center Configuration. [Intentionally Deleted]

**ARTICLE VI
CONDUCT OF BUSINESS BY TENANT**

SECTION 6.01. Use of Premises.

The Premises are to be used under this Lease as a Delaware County Regional Service Center, which the Tenant shall utilize as annex office space for various Delaware County agencies, departments, and/or offices or those associated with Delaware County, including but not limited to Job & Family Services, Child Support Enforcement Agency, Code Compliance, Sheriff Substation, and/or any department or agency associated with the operation of Delaware County government providing goods and services to the public. Except as set forth in the preceding sentence, the Premises shall not be used for any other purpose unless mandated by state law. The Premises shall be operated under the Name specified in Section 1.01 (D) and under no other name whatsoever without the express written consent of the Landlord first had. Tenant agrees to occupy the Premises and open its doors for business promptly upon the commencement of the original Term of this Lease and thereafter continuously during the Term of this Lease to actively conduct business in the Premises.

SECTION 6.02. Operation of Business.

(a) [Intentionally Deleted.]

(b) Tenant will keep the Premises open for business from at least 8:30 a.m. to 4:30 p.m. of each business day, Monday through Friday, subject however to restrictions imposed by law and except as it may be necessary that the Premises be closed by order of any governmental authority, or for the purpose of making repairs or improvements, or during the period of strikes, lockouts, emergencies or other causes beyond Tenant's control, provided that Tenant shall make all reasonable efforts to minimize the duration of any such period. Tenant shall, except as may be controlled under a Shopping Center master switch, keep any lighting or signage (if any) underneath the front canopy and the storefront signs upon the Premises illuminated from dusk until 11:00 o'clock p.m., local time each day.

(c) Tenant will not conduct any auction, fire, bankruptcy, liquidation, going out of business, or close-out sales, nor shall it operate a "wholesale", "outlet" or "surplus" store, or utilize any unethical or disreputable method of business operation. This provision shall not preclude the conduct of periodic promotional, seasonal, or clearance sales.

(d) Tenant shall maintain the Premises in a reasonably neat, clean and orderly condition, consistent with other tenant premises within the shopping center. Tenant shall not permit solicitation, demonstrations, itinerant vending, loitering or any other activities inconsistent with reasonable standards of the operation of a shopping center, and shall not use or permit the Premises to be used for any unlawful, disreputable or immoral purpose, or which in any way will injure the reputation of the Shopping Center, or be a nuisance to other tenants of the Shopping Center. (e) No game machines, video games, pool tables, recreation equipment, or the like, shall be installed by Tenant in the Premises without the prior written approval of the Landlord. Any such machines or

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equipment not so approved shall be removed immediately upon Landlord's demand. Tenant shall at all times maintain order and prohibit loitering and disorder on the Premises and the exterior area thereto, to the extent arising directly or indirectly out of Tenant's business. If disturbances caused by or arising out of Tenant's business or by persons drawn to the Shopping Center by Tenant's business are excessive to other tenants, customers and invitees of the Shopping Center, as determined by Landlord in its sole discretion, Landlord may require Tenant to hire security personnel from a security company acceptable to Landlord or off-duty police officers, as Landlord may determine, to maintain quiet and order.

(f) Tenant will not allow excessive noise from crowds or activities in the Premises to occur and shall not use or permit the use of any radio, Muzak, stereo system, loudspeaker, or other sound-producing or transmitting apparatus or any musical instrument in such manner that the sound so generated, transmitted or produced shall be audible beyond the interior of the Premises. In addition, Tenant shall not cause or permit objectionable odors to emanate from the Premises. Landlord may have any vehicle which is parked or standing in a drive lane or fire lane, and any vehicle which without Landlord's written consent has been parked anywhere in the Shopping Center for more than twenty four (24) hours consecutively, towed without warning at the expense of the owner of such vehicle. Any passageway used for delivery purposes in common with other tenants shall be kept reasonably clear and unobstructed.

(g) In the event Tenant (a) shall fail to take possession and open for business in the Premises fully fixtured, stocked and staffed on the Rent Commencement Date, or (b) shall vacate, abandon or desert the Premises, or (c) shall cease operating Tenant's business therein, (except where the Premises are rendered untenable by reason of fire, casualty or other causes beyond Tenant's control not resulting from the negligent acts or omissions of Tenant or Tenant's employees, agents, contractors, licensees, concessionaires or invitees), then and in any of such events (hereinafter collectively referred to as "failure to do business") Landlord shall have the right, in addition to other remedies herein provided, at its option, either (i) to collect not only Minimum Rent and other rents and charges herein reserved, but also additional rent equal to one-half (1/2) of the Minimum Rent reserved for the period Tenant's failure to do business, computed at a daily rate for each and every day during such period, and/or (ii) to treat such failure to do business as a default under the terms of this Lease.

SECTION 6.03. Radius Clause [Intentionally Deleted.]

SECTION 6.04. Rules & Regulations.

Landlord reserves the right to make such other and further reasonable rules and regulations as may from time to time in its judgment be necessary or desirable for the orderly use, reputation, safety, care, and cleanliness of the Premises and Shopping Center and for the preservation of any property therein and the comfort, quiet and convenience of other occupants of the Shopping Center. Any failure by the Landlord for any period or in any instance to enforce any rules and regulations against either Tenant or any other tenants of the Shopping Center shall not constitute a waiver of such rule or regulation or prevent Landlord from subsequently requiring compliance therewith. Tenant shall be obligated to cause its employees, invitees and agents to likewise observe such rules and regulations and any violation of such rules and regulations by any such person shall be regarded as a violation by Tenant.

ARTICLE VII

OPERATION OF CONCESSIONS WITHIN THE PREMISES

SECTION 7.01. Consent of Landlord Required.

Tenant shall not permit any business to be operated in or from the Premises by any subtenant, concessionaire or licensee (collectively referred to as a "subtenant" for the remainder of this Section) without the prior written consent of Landlord. Landlord, at its option, may from time to time require Tenant to furnish and supply in writing an accurate itemized list showing the names of any and all subtenants, the terms of all subtenancies, the amounts of rents to be paid, the date of termination of any and all leases or tenancies given to or made with any and all subtenants and any and all other information which Landlord may request. Nothing in the preceding sentence shall be construed to be an advance consent to any subletting or a waiver of the restrictions against subletting and assignment contained in Article XIV hereof.

ARTICLE VIII

COMMON AREAS AND FACILITIES; SIDEWALKS

SECTION 8.01. Control of Common Areas by Landlord

(a) Definition. In addition to the use of the Premises, Tenant, its agents, licensees, customers, employees and invitees shall have, together with other tenants or future tenants of the Shopping Center, their customers, employees, agents, licensees and invitees, the joint use, for their intended purposes, of the Common Areas and facilities of the Shopping Center, which shall be such parking areas, driveways, service driveways, sidewalks and other facilities as shall from time to time be designated by Landlord to be for common use. Such use shall be subject to such rules and regulations as Landlord may from time to time adopt governing the same. Landlord shall, at all times, have full control over the layout and extent of said Common Areas and facilities, and the right, at any time, to change the location, shape, height and size of buildings, or to construct additional buildings and improvements on the site.

(b) Parking Areas and Regulations. Landlord shall maintain lighting of the parking areas after dusk during all hours when substantially all of the tenants in the Shopping Center are open for business, but not in any event later than 11:00 p.m. Tenant agrees that all persons employed in the Premises shall park their vehicles only in

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parking areas designated by Landlord for employee parking, and that it shall not allow its employees to park their cars outside said areas nor on the streets adjacent to the Premises. Any areas which may be currently so designated for employee parking are shown on Exhibit "A". Landlord shall have the right from time to time to change the area, level, location and arrangement of parking areas and other facilities hereinabove referred to; to restrict parking by tenants, their officers, agents and employees to employee parking areas; and to enforce parking charges (by operation of meters or otherwise), with appropriate provisions for free parking ticket validating by Tenants. In the event that any vehicle owned or operated by Tenant or by any of its concessionaires, or by any of their respective officers, agents or employees shall be parked in any part of the Shopping Center other than the designated employee parking areas, Tenant shall pay Landlord an amount equal to the uniform daily rate theretofore established by Landlord for the Shopping Center (such rate presently being Twenty Dollars (\$20.00) per day, which amount Landlord may in its sole discretion adjust from time to time), for each such vehicle for each day, or part thereof, such vehicle is so parked, and Landlord may tow any vehicle which is so parked at the expense of Tenant or of the owner of the car which was towed. Upon request of Landlord, Tenant shall furnish Landlord the license plate numbers of all employees of Tenant. The parking areas shall not be used for the storage or servicing of vehicles. No vehicle whatsoever, including without limitation vehicles owned or controlled by Tenant or any officer, agent or employee of Tenant, shall be parked in the parking facilities or other Common Areas for more than twenty four (24) hours consecutively. Landlord may tow any vehicle which is so parked at the expense of the owner of such vehicle, or at Tenant's expense if such vehicle is owned by Tenant, or one of its officers, agents, employees, or vendors. Landlord shall have the right to temporarily close any and all portions of the parking areas to such extent as may, in the opinion of the Landlord's legal counsel, be legally necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein or to close temporarily, if necessary, any part of the parking area or areas in order to discourage noncustomer parking or for repairs. If the amount of such space, areas or facilities are diminished, this Lease shall remain in full force and effect and Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or reduction of rent nor shall any such diminution be deemed a constructive or actual eviction. Tenant shall prevent the parking or standing in drive lanes and fire lanes outside the front of the Premises of trucks, trailers or other vehicles or equipment engaged in making deliveries to or from the Premises and Landlord may, in addition to any other remedies, including towing such vehicles, levy a fee of Twenty Dollars (\$20.00) per violation of this provision.

(c) Alterations and Additions. Landlord hereby reserves the right, at any time, to make alterations or additions to and to build additional stories on the building in which the Premises are contained and to build adjoining the same. Landlord also reserves the right to construct other buildings or improvements at the Shopping Center from time to time and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same and to construct double-deck or elevated parking facilities. The sole purpose of the site plan attached hereto as Exhibit "A" is to show the approximate location of the Premises and any presently designated employee parking areas. Landlord reserves the right, at any time, to construct additional buildings and/or relocate, reconfigure or change this size of the various buildings, automobile parking areas, and other Common Areas shown on said site plan. If Landlord shall subsequently develop any land adjoining the Shopping Center for similar retail use, whether or not such land is now owned by Landlord, or if Landlord shall subsequently acquire any land adjoining the Shopping Center which at the time of acquisition has already been developed for similar retail use, Landlord shall have the option in its sole discretion of treating or of not treating such land as part of the Shopping Center for all purposes of this Lease or for such purposes hereof as it may determine are appropriate. Notwithstanding the above, Landlord shall not have any obligation to make any alterations or additions, and in the event that it does, it shall not be liable to the Tenant for any reduction or abatement of rent, diminution in value of the Premises or claims of constructive or actual eviction resulting from such activities.

SECTION 8.02. License for Use of Common Areas. Error! Bookmark not defined.

All of Tenant's rights to use Common Areas and facilities not within the Premises as stated in this Lease shall be considered to be in the nature of a license for the Term of this Lease, which license shall be considered partially revocable to the extent and in the sense that if the amount of such areas shall be diminished or altered at any time or from time to time during the Term, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such diminution of such areas be deemed constructive or actual eviction.

SECTION 8.03. Sidewalk and Loading Area Clearance; Trash and Debris

(a) Sidewalk Clearance. Tenant shall at all times keep the entire sidewalk area in front of the Premises (for the entire depth of the sidewalk, along the entire front of the Premises), and the loading area to the rear of Premises, clean and free of litter, ice and snow, and all other hazards, hindrances and obstructions.

(b) No Exterior Sales. Use by Tenant of all or any part of the sidewalk area in front of the Premises, or of the drive lanes, parking areas, or any Common Areas or any courtyard areas, or any other areas of the Shopping Center outside of the Premises, for the sale, display, or placement of merchandise, display tables, display cases, signboards, and the like, or for any other promotional or selling activities, including vehicles with Tenant's name affixed thereon parked so as to serve as a promotional device, is prohibited.

(c) Definition. For purposes of this Section and any other Sections of the Lease concerning or addressing sidewalks, the term "sidewalk area in front of the Premises" and any like or similar term shall be deemed to include the entire depth of the sidewalk from outside curb face to building face, along the entire front of the Premises, and shall include any segment of sidewalk which may wrap around any corner and/or run along any side wall of the Premises, for the entire width and length of such segment of sidewalk, and shall further include any handicap ramps lying within such front and/or side segments of such sidewalks.

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(d) Cleaning and Debris. Tenant shall immediately remove all snow, ice and debris from the front and rear areas contiguous to the Premises and shall keep and maintain the same free and unobstructed. Tenant shall arrange for regular pick-up of rubbish, debris and garbage and not permit it to accumulate or a fire hazard to exist in and around the Premises and contiguous sidewalks. Tenant will keep the entry, the inside and the outside of all doors and windows clean, will not place or maintain articles in the vestibule or entry areas of the Premises, on the sidewalks adjacent thereto, or the exterior thereof, or elsewhere; will maintain all said areas and entry at its own expense in a clean, secure, orderly, sanitary, and safe condition, free of insects, rodents, termites, vermin and other pests, and free of all litter, including but not limited to paper, wrappers, and glass. Tenant shall furnish waste receptacles for customers' convenience or if required by Landlord.

(e) Dumpsters. All trash dumpsters are to be provided by Tenant and must be located along the rear lot line of the Shopping Center or other location designated by Landlord for such purpose. Tenant shall not permit garbage in said dumpsters to accumulate or overflow. Dumpsters shall be maintained in a reasonably clean condition. Landlord shall not be obligated, but shall have the right, to remove the rubbish, etc., and the costs thereof shall be paid by Tenant upon demand. Tenant shall provide any dumpster enclosures required by applicable codes, subject to Landlord's prior approval of the plans therefor.

ARTICLE IX
COST OF MAINTENANCE OF COMMON AREAS

SECTION 9.01. Tenant to Pay Prorata Share of Expenses.

In addition to the minimum rent and all other payments required herein, Tenant shall, on the first day of the first month of the original term of the Lease, as additional rent, pay to Landlord for or towards Tenant's share of common area maintenance expenses (the "Common Area Maintenance" expenses), a sum equal to Two and 33/100 Dollars (\$2.33) per gross leasable square foot of the Premises per year, or Three Hundred Eighty Eight and 33/100 Dollars (\$388.33). Thereafter, Tenant shall, during the remainder of the original term of the Lease, as additional rent, pay to Landlord for or towards Tenant's share of Common Area Maintenance expenses, the following amounts, to be paid in equal monthly installments due on the first (1st) day of each calendar month:

<u>Period</u>	<u>\$ Per Square Foot</u>	<u>Monthly Installment</u>
6/1/11 – 5/31/12	\$2.45	\$408.33
6/1/12 – 6/30/13	\$2.57	\$428.33

The purpose for or manner in which said payments shall be used shall be within the sole control of the Landlord, without any need of an accounting therefor to Tenant. Landlord may expend Common Area Maintenance funds and incur Common Area Maintenance expenses in such proportions as it may in its sole discretion determine in order to: (1) operate, maintain, repair, replace, clean, landscape, and/or mow the common areas and any landscaping thereon; (2) perform snow and ice mitigation on parking areas and drive lanes; (3) maintain, replace or repair drainage systems and any other utility systems; (4) maintain, resurface, seal, repair, replace or stripe parking lots, parking lot lighting and service driveways; (5) maintain, replace, repair or light the parking lot, sidewalks, service drives or any other common areas; (6) identify the Shopping Center and/or construct, replace or maintain any Shopping Center directory; (7) pay any utility costs and any governmental assessments or surcharges on or relating to the common areas and facilities; (8) maintain, repair, and/or replace any roof or down spouts in the Shopping Center; (9) maintain, repair, and/or replace awnings, if any, in the Shopping Center; (10) providing personnel for security and on-and off-site traffic control; (11) collect, as a common area maintenance cost, an administrative fee not in excess of 15% of all Common Area Maintenance expenses other than such fee; and (12) generally maintain the common areas and facilities of the Shopping Center in whatever manner the Landlord sees fit. Nothing in the foregoing shall be deemed to create an obligation on Landlord's part to remove ice and snow.

SECTION 9.02. Increased Maintenance Costs [Intentionally Deleted.]

ARTICLE X
FIXTURES AND ALTERATIONS; SIGNAGE

SECTION 10.01. Tenant Installation of Improvements

(a) Generally; Prior Approval by Landlord Required. The initial Tenant's Work and any and all other fixtures, improvements, and furnishings installed by Tenant in the Premises shall be comprised of only high quality new or completely reconditioned materials and components. Tenant shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any trade fixture, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades, awnings or any device on the exterior or roof of the Premises, including but not limited to antenna, aerial, air conditioner, ventilating equipment or make any changes to the storefront without first obtaining Landlord's written approval and consent. The preceding sentence applies both to the initial Tenant's Work and to changes or additions Tenant may subsequently propose to make. Tenant shall present to the Landlord plans and specifications for any such work at the time approval is sought. In the event that Tenant should make any such alteration, improvement or installation without the receipt of Landlord's prior written approval, Landlord shall have the right to require Tenant at Tenant's cost to immediately remove the same and

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restore the Premises to its prior condition. No materials installed by Tenant shall contain asbestos, PCB's, or any other substance which is considered toxic or hazardous under any federal, state, or local building, environmental, health or safety law, code, ordinance or regulation.

(b) Access for Work. Tenant shall not without Landlord's prior written consent have access to the Premises for the purpose of making improvements or moving in its equipment, trade fixtures or construction materials prior to the Date of Delivery under Section 1.05. In the event that Landlord does grant such consent, Tenant and all persons working under Tenant shall enter the Premises at their own risk and Landlord shall have no liability for any injuries suffered by any of them arising out of or during their presence in the Premises during such pre-delivery period.

(c) Utility Usage. Landlord shall not be obligated to furnish electricity, heat, water or other utility service while Tenant is performing any work in the Premises. Tenant shall be responsible, at its sole cost and expense, for the removal and clean up of all rubbish and refuse caused to the Premises or the Shopping Center by Tenant's making of improvements or by the delivery of Tenant's furniture, fixtures and other personal property into the Premises. Tenant shall further be responsible for the repair of any damage to Landlord's property occurring prior to delivery of possession if caused by the willful act or negligence of Tenant, or of Tenant's agents, servants, contractors, subcontractors or employees.

Tenant understands that the marquee lights in front of the Premises and parking lot floodlights are connected to Tenant's electric meter and Tenant agrees to pay for the electricity consumed in operating them. In addition, Tenant shall maintain, repair and replace the marquee lights and/or lamps.

In the event that the common area lighting system is restricted so that the floodlights now attached to Tenant's electric meter will be separately metered, to Landlord, then in order to partially reimburse Landlord for the costs, charges and expenses of constructing, erecting, installing, connecting, maintaining, and repairing the light standards, light fixtures, conduit, wiring and meter, of replacing lamps and of operating the parking lot lighting, Tenant agrees to pay to Landlord the annual sum of Five Cents (5¢) per each square foot of the Premises, to be added to the Common Area Charge and paid in monthly installments, in advance, on the first (1st) day of each month.

Tenant shall be solely responsible for and shall promptly pay for all public utility and private services rendered or furnished to or for the benefit of Tenant and to the Premises during the term hereof including heat, water, gas, electricity and sewer rental, together with all taxes, levies or other charges based on use of such utilities.

Should any such services be furnished by Landlord, Tenant agrees to pay Landlord for same. The rates charged shall not exceed those of a public utility company furnishing similar service in the area. All billings by Landlord for any such service shall be paid within fifteen (15) days of billing, or among Landlord's other remedies, such services may be discontinued. Landlord shall in no event be liable for the quality, quantity or interruptions of such services.

(d) Fire Codes and Prevention. Tenant shall observe all applicable fire codes. If during the term of this Lease Landlord or any public authority requires that the Premises be provided with a sprinkler fire protection system, Landlord agrees to make water available to the Premises in sufficient quantity and with sufficient pressure so as to adequately service such a system and Tenant agrees, at Tenant's sole cost and expense, to install such a system in the Premises. Tenant shall supply and maintain, at its sole cost and expense, any and all fire prevention and fire extinguishing equipment, supplies and facilities, including but not limited to fire extinguishers and smoke detectors, which may be recommended or required by Landlord's insurer or applicable public authorities. For each cooking facility to be installed in the Premises Tenant shall provide an "Underwriters Laboratories Approved Fire Extinguishing System" which shall include a filter type grease guard mounted upon the roof installed according to the requirements of the local Insurance Service Office. In addition, each of said systems shall be equipped by Tenant with an automatic fuel cut-off device, which provides for shut down of fuel lines when the extinguishing system is activated. Tenant shall also provide a service contract which shall provide for semi-annual inspection and maintenance of the said systems, copies of which shall be furnished to Landlord for its approval.

(e) Noise or Heat-Generating Equipment. Tenant shall not install, keep or operate in the Premises machines or mechanical equipment which cause noise or vibration which may be transmitted to such a degree as to be objectionable to Landlord or other tenants without Landlord's prior written consent and in the event such consent is given Tenant shall place or maintain the same on vibration eliminators or other devices sufficient to eliminate noise and vibration to Landlord's satisfaction. Machines or equipment which generate heat or otherwise affect the air conditioning system in the Premises sufficiently to cause overloading of the air conditioning system shall not be allowed, except with Landlord's written approval, which Landlord may condition upon Tenant's installation of supplementary air conditioning equipment at Tenant's expense.

SECTION 10.02. Tenant Contractors; Ownership of Improvements; Liens; Roof

Any alteration, improvement, or installation made to the Premises by Tenant shall be made by a contractor approved by Landlord and shall be performed in accordance with all applicable laws. All such improvements shall remain for the benefit of the Landlord, but Landlord shall, however, have the option, at the time of or within thirty (30) days after the expiration or any cancellation or termination of this Lease or upon Tenant's vacating the Premises, to require Tenant to remove any such alteration, improvement, or installation. In the event that Tenant has taken over or succeeded to an existing business in the Premises or any of the installations thereof, Tenant shall also be liable to repair any damage left by the prior occupant, and at Landlord's option exercised at the time of or within sixty (60) days after the end of the Lease term to remove such prior occupant's alterations, improvements and installations. Upon any request by Landlord pursuant to this paragraph for the removal of an improvement, alteration or installment, Tenant shall have twenty (20) days to complete the removal and if Tenant fails to positively do so Landlord may complete same and collect from Tenant, upon demand, the cost of such removal and any repair or restoration costs related thereto.

Tenant further agrees to fully pay for any alteration, improvement or installation and the cost of any

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necessary repairs, arising out of or resulting from any such alteration, improvement or installation.

Tenant is expressly prohibited from doing anything to or on the roof of the Premises without Landlord's prior written approval. The contractor selected by Tenant for any roof alteration shall be subject to the prior written approval of the Landlord and any such alteration shall be conducted in a manner that will not void any warranties applicable to such roof. Any roof repairs required due directly or indirectly to the actions of Tenant or Tenant's equipment, and any extra expense incurred in re-roofing or repairing the roof, due directly or indirectly to any installation or alteration made by Tenant, shall be at Tenant's expense.

SECTION 10.03. Removal of Tenant Improvements and Restoration of Premises

At or before the time of surrender of the Premises to Landlord, Tenant may remove any trade equipment owned by Tenant which can be removed without damaging or defacing the Premises, provided that all rents and charges stipulated to be paid by Tenant have been paid in full and further provided that any damage to the Premises, whether caused by the removal of such trade equipment or otherwise, has been repaired. With the exception of the removal of Tenant's trade equipment, any alteration, improvement or installation shall, as described in Section 10.02 above, remain the property of the Landlord. However, as set out in Section 10.02 above, Landlord shall have the option of requiring, as part of Tenant's restoration responsibilities, the removal of any such alteration, improvement or installation, including but not limited to the removal of partitions, floor coverings, wall coverings, and signs. In the event of Tenant's failure to perform the required restoration, Landlord may perform same and collect the costs thereof from Tenant.

Any fixtures, personalty, or other property not removed by Tenant upon Lease expiration or termination (whether by default or otherwise) shall at Landlord's option be considered abandoned, and Landlord may dispose of such property as it deems expedient, without notice, without liability for trespass, and without liability for any damage to such property. Tenant shall, upon demand, reimburse Landlord for any expenses (including storage and cleaning) incurred by Landlord in connection with such property disposition.

SECTION 10.04. Signs, Awnings and Canopies

(A) STOREFRONT TENANT IDENTIFICATION SIGN. Tenant shall be required to display, on the storefront, one sign stating Tenant's trade name, which shall be located, sized, colored, and designed according to Landlord's specifications.

(1) FABRICATION AND INSTALLATION OF AND PAYMENT FOR STOREFRONT TENANT IDENTIFICATION SIGN.

Landlord Fabrication, Installation and Payment, with Tenant Reimbursement. Landlord's signage contractor shall design, fabricate and install Tenant's storefront signage. The signage contractor will work in consultation with the Tenant to design the graphic content and style of such sign, which shall then be subject to Landlord's approval as stated above. Within fifteen (15) days of Landlord's request of Tenant, Tenant shall pay to Landlord as additional rent Tenant's prorata share of the total cost of the Storefront Tenant Identification Signs in the Shopping Center based on the ratio of the lineal footage of Tenant's sign to the total lineal footage in the Storefront Tenant Identification Signs in the Shopping Center, (which total lineal footage shall not include signage for pad sites, outlots, or anchor Tenants). Tenant shall not be permitted to open for business until Landlord has been reimbursed for Tenant's prorata share of the Storefront Tenant Identification Sign. In addition, Landlord reserves the right not to install any such sign until Tenant has paid for it, and to take down any such sign if Tenant's payment therefor is past due.

The sign shall become the property of Landlord upon installation, and shall not be removed by Tenant during the Lease term or upon any expiration, cancellation or termination of the Lease term, except with Landlord's written consent. However, Landlord shall have the right to require, upon termination of this Lease or upon Tenant's vacating the Premises, that Tenant remove said sign and restore the area in which the sign was attached.

(2) ELECTRIC SERVICE FOR THE STOREFRONT TENANT IDENTIFICATION SIGN. Tenant's share of the cost of the electric service for the Storefront Tenant Identification Signs for all stores in the Shopping Center (based on the same ratio used to compute Tenant's share of the common area maintenance charges at the Shopping Center) shall be included within the Common Area Maintenance expense payments which Tenant is obligated to make pursuant to Sections 9.01 and 9.02 hereof.

(3) MAINTENANCE OF STOREFRONT TENANT IDENTIFICATION SIGN. Tenant's share of the maintenance cost, including liability insurance, of the Tenant Identification Signs for all stores in the Shopping Center (based on the same ratio used to compute Tenant's share of the common area maintenance charges at the Shopping Center) shall be included within the Common Area Maintenance expense payments which Tenant is obligated to make pursuant to Sections 9.01 and 9.02 hereof.

(4) HOURS OF STOREFRONT TENANT IDENTIFICATION SIGN ILLUMINATION. Tenant shall, at a minimum, to the extent not on the Shopping Center master switch, illuminate Tenant's storefront sign from dusk until 12 a.m. each night or during such other hours, if any, as Landlord may direct.

(B) SHOPPING CENTER IDENTIFICATION SIGNS. For purposes of this provision, "Shopping Center Identification Sign" means any pylon, pole, monument or other style of sign placed in the common areas, typically in close proximity to the abutting public roads, for purposes of identifying the Shopping Center to the general public. In the event that Landlord shall determine to install any such sign or signs, Tenant agrees to pay to Landlord Tenant's prorata share of the cost of designing, fabricating and installing the same, based on the ratio of Tenant's lineal storefront footage to the total lineal storefront footage in the Shopping Center (excepting the storefront footage of outlots and anchor tenants). In addition, Tenant shall be required to pay to Landlord the cost of fabricating, installing or wiring Tenant's particular identification panel, if any, which may be included on any such Shopping Center Identification Sign. Tenant further agrees that such portion of its common area maintenance payments under Sections 9.01 and 9.02 as may be reasonably necessary therefor may be used for purposes of

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covering the cost of the maintenance replacement and operation of the Shopping Center's existing and/or future Identification Signs. Such sign maintenance replacement and operation costs may include, but shall not be limited to: cost of electricity; the cost of repairs whether required due to acts of God, malicious mischief or otherwise; and any and all other costs or expenses relating to the maintenance, repair, replacement or operation thereof.

SECTION 10.05. Discharge and Non-Attachment of Liens; General Disclaimer

(a) Mechanics' Liens. Tenant shall not suffer or permit any mechanic's lien to be filed against the Landlord's fee simple interest in the Premises. Any mechanic's lien for labor and materials furnished to or at the request of Tenant shall attach only to Tenant's leasehold interest and shall not attach to or affect the Landlord's fee simple interest in the Premises. Tenant hereby agrees to cause the release of record of any such lien, by payment, successful defense, or placement of payment bond or deposit, within sixty (60) days of the date such lien was filed, and the Landlord may, if Tenant fails to comply with this covenant within such time period, pay or discharge the same and Tenant shall pay all costs thereof including attorneys' fees to Landlord upon demand.

(b) Non-Attachment of Liens From Tenant Work. Landlord and Tenant hereby agree, and notice is hereby given to all third parties, that Tenant, in procuring work, labor and materials for improvements to the Premises, is not in any way acting as Landlord's agent and that Landlord shall not be liable for any work, labor or materials furnished to Tenant by any contractor, subcontractor, laborer, materialman, or vendor, and no mechanic's or other lien for any such work, labor or materials shall attach to or affect the reversionary or other estate or interest of the Landlord in and to the Premises. It is understood and agreed that the improvements and installations being installed by Tenant are specific to Tenant's business and are being procured for the sole purpose of enhancing Tenant's business and not to confer any permanent benefit or enhancement in value on the Landlord.

(c) Landlord not Liable for Plan Approvals. No approval given by Landlord at any time with respect to any plans, specifications, materials, or contractors of Tenant shall create or be regarded as grounds for any liability on Landlord's part (a) to any contractor, subcontractor, laborer, materialman, or vendor performing work on or furnishing materials for the Premises for Tenant's account; (b) to any governmental agency for any legal or code violations or use of improper materials or the like; or (c) to any third party sustaining an injury due to poor workmanship, improper design or improper materials. It is agreed and understood that Landlord's review of any plans, specifications or contractor of Tenant is for a very limited purpose and that Landlord undertakes absolutely no responsibility as to the safety or compliance with laws and codes of any improvements made by Tenant nor for the payment of persons working on or supplying materials for such improvements. No approval by Landlord of any of Tenant's plans, specifications, building materials, drawings or the like constitutes a representation, warranty or opinion as to the compliance thereof with applicable building, health, environmental, or safety codes or other applicable state, federal or local laws, codes or regulations including the Americans with Disabilities Act, and the entire responsibility to see to it that Tenant's plans, specifications, drawings and improvements so comply shall lie with Tenant.

**ARTICLE XI
MAINTENANCE OF LEASED PREMISES**

SECTION 11.01. Maintenance Responsibilities.

(a) Tenant. Except as otherwise specifically stated herein, Tenant will, using the Delaware County Maintenance Department or such other qualified contractor approved in writing by Landlord, maintain in a good and workmanlike manner, and make all necessary repairs and replacements, structural (subject to Landlord's hereinafter-stated obligations) and nonstructural, foreseen or unforeseen, ordinary or extraordinary, to the interior and the exterior of the Premises, including but not limited to the heating, air conditioning, sprinkler, electrical, plumbing and sewer systems, exterior doors, door frames, door hardware, and door openers, windows and window frames, plate glass, and if necessary, or required by governmental authority, will make modifications or replacements thereto, during the term of this Lease and will, at the expiration or termination of this Lease, return the property to the Landlord in good, clean condition, and in as good order and state of repair as the same are now, ordinary wear and tear excepted. Tenant shall, using the Delaware County Maintenance Department or such other reputable service company approved in writing by Landlord, regularly and periodically (at a minimum semi-annually) service the heating and air conditioning equipment, and shall provide Landlord with an inspection report resulting therefrom within thirty (30) days after such regular and periodic service. Tenant warrants that the personnel used by the Delaware County Maintenance Department are certified by the State of Ohio to perform heating, ventilation and air conditioning (HVAC) maintenance and repair. Tenant shall also be responsible for removing litter, ice and snow (but no salt or chemicals shall be used), and all hazards or obstructions from the sidewalk area in front of and the loading area in the rear of the Premises. All repairs and replacements made by Tenant shall be equal in quality to the original installations. If Tenant fails to make or perform any repair, replacement, or maintenance within its responsibility, and if within five (5) days after receipt of Landlord's written notice, Tenant fails to commence and thereafter prosecute with diligence such repair, replacement, or maintenance to conclusion, Landlord shall have the right but shall not be required to enter upon the Premises and make or complete such repairs, maintenance and replacements for Tenant's account, and the cost to the Landlord of so doing shall be payable by Tenant to Landlord on demand, together with interest thereon at the rate of Twenty Percent (20%) per annum from the date or dates of payment of any such cost by Landlord.

(b) Landlord. Landlord shall be responsible, except as hereinafter stated, at its expense to maintain and as necessary make replacements of or to structural walls (excluding plate glass), foundations, the floor slab, the roof, and any utility lines running through the Premises (other than utility lines specifically intended for service within the Premises, the maintenance repair and replacement of which shall be Tenant's responsibility). Repairs and

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replacements made by Landlord under the foregoing sentence shall be deemed part of common area maintenance as provided for in Sections 9.01 and 9.02 of this Lease. Notwithstanding the foregoing, to the extent that any repair or replacement is needed to the roof or any other element of the Premises which is otherwise Landlord's responsibility on account of the negligence, actions, or fault of the Tenant, including, without limitation, on account of any alterations or modifications made by Tenant to the Premises (whether or not consented to or approved by Landlord) the cost thereof shall be paid by Tenant.

(c) Requirement to Notify Landlord. Tenant shall report all maintenance or repair responsibility of Landlord to Landlord's office for performance by Landlord's personnel or contractors, and Landlord shall have no liability for maintenance or repair work, even if otherwise within its scope of responsibility, if Tenant shall proceed in some other manner.

SECTION 11.02. Condition Upon Surrender of Premises. Error! Bookmark not defined.

Tenant shall surrender possession of the Premises upon the expiration or termination of this Lease, in as good condition and repair, clean, orderly free of debris and in compliance with all governmental orders, rules, regulations and statutes, as the same shall have been upon the delivery of possession to Tenant (with only ordinary wear and tear and loss by fire or other casualty covered by the Landlord's standard extended coverage insurance policy as carried by it under Section 12.02 (a) excepted), and shall deliver the keys and inform Landlord of all combinations on locks, safes, vaults, if any, at the office of Landlord or Landlord's agent. Tenant hereby expressly authorizes Landlord as agent of Tenant, to remove such debris and make such changes and repairs as may be necessary to restore the Premises to such condition, at the expense of Tenant, without notice to Tenant, in the event that the foregoing covenant and other covenants of this Lease on the part of the Tenant in respect to repair are not complied with at the termination of this Lease. Damages suffered by Landlord through the breach of this Section shall survive the termination of this Lease. Tenant's obligations under this Section are supplemental to those it may have under Section 10.02. Tenant shall not, in the absence of Landlord's prior written consent, have any utility service discontinued in its name prior to the last day of the term of this Lease or any later date on which any holding over by it (whether welcome or unwelcome) shall end.

**ARTICLE XII
INSURANCE AND INDEMNITY**

SECTION 12.01. Tenant's Insurance

(a) Liability Coverage. Tenant agrees to carry, at its own expense, throughout the Term of this Lease, commercial general public liability insurance in the broadest form obtainable (including contractual liability coverage) covering the Premises and Tenant's use of the Premises and operations within the Shopping Center, with Landlord as an additional insured, in companies and in a form satisfactory to Landlord with a minimum coverage of Three Million Dollars (\$3,000,000.00) combined single limit for bodily injury and property damage. At least the first \$1,000,000 of such coverage shall be primary, the balance may be provided through an "umbrella" policy.

(b) Contents Policy. Tenant shall bear the entire risk of loss for all of its property, furniture, fixtures, carpets, machinery, equipment, inventory, stock in trade and goods placed in the Premises, and Tenant shall be obligated to insure the same with an all-risk extended coverage form of commercial renter's insurance policy at replacement value, which policy shall include, without limitation, fire insurance with extended coverage, business interruption coverage, and coverage for vandalism, burglary, malicious mischief, sprinkler damage, and water damage, and the same shall include a waiver of subrogation against Landlord as to loss or damage covered by such policy. It is agreed and understood that the casualty coverage to be maintained by Landlord under the following Section 12.02(a) covers only the realty.

(c) Proof of Coverage. Tenant shall deposit the aforesaid policies (or certificates thereof) with Landlord prior to the date of occupancy by Tenant, said policy or policies to name as insured both Tenant and Landlord as their interest may appear. Should Tenant fail to carry such insurance, Landlord may, at its option, but shall not be required, to cause such insurance to be issued and in such event, Tenant agrees to pay the premium for such insurance promptly upon Landlord's demand. Such policies shall bear endorsement to the effect that the insurer agrees to notify Landlord in writing not less than ten (10) days in advance of the modification or cancellation thereof. Tenant shall provide updated certificates to Landlord of the foregoing insurance coverages annually within thirty (30) days of each respective policy anniversary date. All such insurance policies or certificates submitted by Tenant shall clearly indicate an obligation on the insurer's part to provide the Landlord with at least thirty (30) days prior written notice of intent to cancel or not renew the coverage of Tenant in question. A "best efforts" notice provision shall not be sufficient to satisfy the foregoing requirement.

(d) Workers' Compensation Coverage. Tenant shall also carry at all times such workers' compensation insurance as may be required of it under Ohio law, and shall provide Landlord evidence of such coverage within ten (10) days of any written request by Landlord therefor. Any and all injuries or claimed injuries to Tenant's employees occurring on or around the Premises or Shopping Center or the vicinity of either shall be regarded as a worker's compensation matter, to be adjusted through the workers' compensation system, and in the event any such employee shall claim that his or her injury is of a nature allowing pursuit of a claim in addition to or in lieu of a workers' compensation claim, such matter shall be handled by Tenant solely as an employer/employee matter, without the involvement of Landlord.

Notwithstanding anything contained herein to the contrary, Tenant, being a government entity, shall be permitted to self-insure for all the insurance requirements set forth in this Section 12.01. Tenant agrees that it shall, at its sole cost and expense, assume the risk of and pay for all costs, expenses, damages, claims, losses, and

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liabilities relating to injury or death to persons or damage to property relating thereto and hold Landlord harmless therefrom.

SECTION 12.02. Landlord's Insurance.

(a) Building and Liability Coverages: Tenant Payments Towards Cost. Landlord will pay or cause to have paid all premiums for fire, windstorm, and extended coverage all-risk casualty insurance upon the realty of the Premises and Shopping Center (including without limitation flood coverage, in areas where such coverage is required, and loss of rents coverage) and for commercial general liability insurance for the common areas of the Shopping Center. Tenant shall have no rights in said policy or policies and shall not be entitled to be named insured thereof. Tenant shall, during the original term of the Lease, as additional rent, pay to Landlord for or towards the cost for the aforesaid insurance coverages a sum equal to Twenty Cents (~~20¢~~) per gross leasable square foot of the Premises per year, to be paid as additional rent in equal monthly installments due on the first (1st) day of each calendar month in the amount of Thirty-Three and 33/100 Dollars (\$~~33.33~~). Tenant expressly acknowledges that the provisions of this Subsection 12.02(A) shall not override any other provision of this Lease, including, but not limited to, Tenant's obligation to repair under Subsection 17.01(B).

(b) Directly Traceable Premium Increases. Tenant will not do, or permit anything to be done, in or upon the Premises or bring or keep or permit anything to be brought into or kept on the Premises, or fail to comply with the terms of this Lease, which in any manner shall constitute a fire hazard or which shall increase the premiums for fire and extended coverage insurance on the building of which the Premises form a part or on the property on which it is located. Tenant shall pay any such increased cost of insurance, including increases brought about by increased replacement cost of the building, that may result from any such act or omission of Tenant. In the event the nature of Tenant's occupancy, even though permitted by this Lease, results in the payment of any deductible or causes any increase of premium for the property or casualty insurance rates on the Premises and the building in which it is located above the rate for the least hazardous type of occupancy legally permitted therein, Tenant shall pay Landlord upon demand such deductible or additional premiums on said fire or casualty insurance policies incurred by reason thereof.

(c) Insurance Rating and Insurance Recommendations. In determining the insurance premiums, a schedule issued by the organization determining the insurance rate on the Premises or the building of which it is a part, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the relevant insurance rate. Tenant will comply with all recommendations of Landlord's insurance carrier and any other organization or public agency, the compliance with which may have an effect on the authority insurance rates obtainable or payable with respect to the Premises or Shopping Center.

SECTION 12.03. Indemnification of Landlord [Intentionally Deleted.]

SECTION 12.04. Plate Glass, Burglary, Vandalism, Malicious Mischief, Doors

Tenant assumes all risk of loss from, and will repair all damage (other than structural) due to burglary, vandalism or malicious mischief, and Landlord shall have no obligation to maintain insurance for Tenant's benefit against burglary, vandalism or malicious mischief. In addition, notwithstanding anything in this Lease to the contrary, all costs of repair or replacement of plate glass, or of repairs to or replacement of front or rear doors, door frames, door closers and door hardware at the Premises, however caused, shall be Tenant's.

SECTION 12.05. Adjustment of Coverages. [Intentionally Deleted.]

**ARTICLE XIII
UTILITIES**

SECTION 13.01. Utilities Generally Tenant shall throughout the term of this Lease and any holding over by it (whether welcome or unwelcome) be solely responsible for and shall promptly pay all charges for heat, water, gas, electricity, sewer, garbage collection, sprinklering, air conditioning, municipal storm water charges, or any other utility or service used or consumed in or with regard to the Premises and shall not permit any lien or claim to be filed against Landlord by reason of such charges. Tenant shall at all times keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures. Tenant shall not, in the absence of Landlord's prior written consent or direction, have any utility service discontinued in its name prior to the last day of the term of this Lease or any later date on which any holding over by it (whether welcome or unwelcome) shall end. Landlord shall have the option without notice to Tenant to pay any past due amounts owed by Tenant to any utility provider and Tenant shall reimburse Landlord for any such amount as additional rent within ten (10) days of demand. Should Landlord elect to directly supply any such utility or service used or consumed in the Premises, Tenant agrees to pay or reimburse Landlord on a monthly or quarterly basis upon invoice, and all such payments shall be due Landlord or any submetering service retained by Landlord, whichever the invoice therefor may specify, within fifteen (15) days of the mailing of said invoice to Tenant. In no event shall Landlord be responsible or liable for the quality or quantity, or any interruption or failure in the supply of any utility to the Premises. Landlord reserves the right to cut off and discontinue, without notice to Tenant, said utilities, or any other services, whenever and during any period for which bills for same are not promptly paid by Tenant or Tenant has failed to timely pay rent or is otherwise in default under this Lease. Tenant further agrees to pay, or reimburse Landlord for, the cost of any meter or meters installed to measure utility usage in the Premises and to pay for the installation and maintenance of any such meter equipment. In the event Landlord pays any costs referred to in this Section, such costs shall become due and payable from Tenant to Landlord as Additional Rent, regardless of whether or not they are billed or payment demanded.

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SECTION 13.02. Utilities Switchover

Tenant shall pay for all utilities consumed in the Premises through the end of the Term and beginning with the Date of Delivery and Tenant shall see in advance to the switch over of accounts with the applicable utilities so as to be effective from such date. In the event that Tenant shall fail to timely cause the utilities to be switched over to its account, Landlord may charge to Tenant, in addition to the cost of the utilities so used by Tenant but billed to Landlord, the sum of Twenty Five Dollars (\$25.00) per day as a fee for Landlord's cost of overhead, administrative and staff time in such matter and Landlord shall be deemed by this Lease to have power of attorney to make such switchover on Tenant's behalf.

**ARTICLE XIV
ASSIGNMENT AND SUBLETTING**

SECTION 14.01. Assignment and Subletting

Tenant shall not sell, assign, mortgage or transfer this Lease, in whole or in part, or sublet the Premises or any part thereof without in each case the written consent of Landlord, which consent may be withheld for any reason, first had, and provided further that any assignment, subleasing or associated proposed change in the use of the Premises from that specified in Section 6.01: (i) shall require Landlord's separate consent, (ii) shall at a minimum not conflict with any then existing exclusive use given to another tenant of the Shopping Center, (iii) shall otherwise meet with Landlord's approval, (iv) Tenant shall not be in default of this Lease and (v) the proposed assignee or subtenant shall be acceptable to Landlord in its sole discretion. If Tenant is a corporation, partnership, limited liability company, or other non-personal entity, any change in control and/or ownership of Tenant by merger, consolidation, liquidation, sales of shares or interests, changes in composition, withdrawals of partners, or otherwise, shall constitute an assignment for purposes of this Lease and shall require the prior written consent of Landlord. Upon receiving a written request from Tenant or an assignee or sublessee for approval of an assignment of or sublease under this Lease, Landlord shall have the option for a period of thirty (30) days thereafter to terminate this Lease by written notice to Tenant, in the event of the exercise of which the Premises shall be vacated promptly. Any consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity of Landlord's consent to any subsequent assignment or subletting. Any transfer by operation of law of Tenant's interest in the Premises shall be regarded as an assignment or sublease requiring Landlord's prior consent in the manner provided above. Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the Minimum Rent, Additional Rent and adjustments of rent, and for the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be paid or performed. No assignment shall be binding on Landlord unless, in addition to all other requirements, such assignee or Tenant shall deliver to Landlord a counterpart of such assignment and an instrument in recordable form which contains a covenant of assumption by the assignee, but any failure or refusal of an assignee to execute an instrument of assumption shall not release or discharge the assignee from its liability as set forth above. Acceptance by Landlord of rent or other monies from a purported sublessee or assignee as to whom Landlord's written consent has not been obtained shall not be deemed to imply Landlord's acceptance of or consent to such assignment or subletting (regardless of the number of occasions on which such monies are so accepted), and any monies so paid shall be deemed to have been paid on behalf of or by Tenant for Tenant's account. Landlord's consent to any sale, assignment, mortgage, transfer or sublease shall not constitute a waiver of the future applicability of the provisions of this Section, if or a release of Tenant from the full performance by it of its covenants under this Lease. If this Lease contains an option to Tenant to renew this Lease, upon any assignment or transfer of this Lease such option shall automatically be deemed cancelled, to be of no further force and effect, in the absence of Landlord's contemporaneous written agreement to the contrary. It shall be a condition to approval of any proposed assignment or sublease that if Tenant reserves the right to receive from the assignee or sublessee rent, and/or other periodical payments not so named but attributable to the right to occupy and use the Premises, in excess of the rent to be paid by Tenant to Landlord hereunder, then Tenant shall either pay to Landlord all such sums in excess of the rent due hereunder or assign to Landlord Tenant's right to collect such excess, in which event Tenant shall instruct assignee or sublessee to pay such excess directly to Landlord. Tenant shall not enter into any agreement whatsoever which will have the effect of negating this provision.

SECTION 14.02. Administrative Fee for Lease Assignment

In the event of any request from Tenant to Landlord for Landlord's approval (pursuant to Section 14.01) of any proposed assignment of this Lease or subletting of the Premises, if such approval is given by Landlord, Tenant shall pay to Landlord, concurrently, with, and as a condition of, the delivery of Landlord's written consent, an administrative fee in the amount of Five Hundred Dollars (\$500.00), as compensation to Landlord for its administrative and legal time and expenses incurred in reviewing and considering such request and in preparing any documentation needed in connection therewith. No consent or approval by Landlord of an assignment or sublease shall be considered binding on Landlord until such fee is paid and such written consent delivered.

SECTION 14.03. Transfer of Landlord's Interest

Tenant agrees that if Landlord should sell or otherwise transfer its interest in the Premises, that upon an undertaking by the purchaser or transferee to be responsible for all of the covenants and undertakings of Landlord hereunder, that the transferor Landlord shall thereafter have no liability to Tenant under this Lease or any modifications, amendments or extensions thereof, except for such liabilities as might have accrued prior to the date of such sale or transfer, and that Tenant shall recognize and attorn to such purchaser or transferee as its new

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Landlord hereunder. Tenant expressly agrees that the covenant of quiet enjoyment and all other covenants in this Lease on the part of the Landlord are not personal covenants but shall transfer with the ownership of the land.

SECTION 14.04. Corporate, Partnership, or Other Business Entity Tenants [Intentionally Deleted]

**ARTICLE X
SANITATION, GOVERNMENTAL REGULATIONS**

SECTION 15.01. Sanitation.

Tenant shall use, occupy and keep the Premises in a careful, safe, clean and proper manner and condition in accordance with local ordinances and lawful direction of proper public officers. Tenant shall arrange for regular pick-up of rubbish, debris and garbage and shall not permit the same to accumulate or a fire hazard to exist in or around the Premises and contiguous sidewalks. All trash dumpsters must be located behind the Premises, along the rear lot line of the Shopping Center or where otherwise designated by Landlord, and any enclosures thereof, if any, required by law shall be provided by Tenant at its expense and in accordance with plans and specifications approved by Landlord. Tenant shall not permit garbage in said dumpsters to accumulate or overflow. Dumpsters shall be maintained in a reasonably clean condition. Landlord shall not be obligated but shall have the right to remove any rubbish, debris, and garbage generated by Tenant; if Tenant fails to do so, and the costs thereof shall be paid by Tenant upon demand. Tenant will keep the entry, the inside and the outside of all doors and windows clean, will not place or maintain articles in the vestibule or entry areas of the Premises, on the sidewalks adjacent thereto, or the exterior thereof, will not block any fire exits, and will maintain all said areas and entries and exists at its own expense in a clean, secure, orderly, sanitary, and safe condition, free of insects, rodents, termites, vermin and other pests, and of trash, including but not limited to paper, wrappers, and glass. Tenant shall furnish exterior waste receptacles for the sidewalk in front of the Premises if required by Landlord, the same to be of a type and appearance satisfactory to Landlord.

SECTION 15.02. Governmental Regulations; Hazardous Materials; ADA

(a) Governmental Regulations. Tenant shall, at Tenant's sole expense, comply with any and all past, present or future laws, ordinances, orders, rules, regulations and statutes of the Government of the United States, the State of Ohio or of any applicable municipal authorities, or of any agency or office or officer thereof, with respect to the use, occupancy, or maintenance of the Premises by Tenant, including without limitation all building, zoning, fire, health and safety codes, and all federal state or local environmental laws, rules and regulations, including without limitation those concerning trash disposal, waste disposal and the use, storage, transport, and disposal of toxic or hazardous wastes, materials, and substances. Tenant shall keep the Premises equipped with all fire and safety appliances, devices, equipment and applications so required, including but not limited to, smoke and fire alarms, sprinkler system and approved fire extinguishers of the type and number recommended to procure any licenses and permits required.

(b) Hazardous Materials. Tenant agrees that it will not place, hold, or dispose of any Hazardous Material (hereinafter defined) on, under, or at the Premises or the Shopping Center in which the Premises are located, and that it will not use the Premises or any other portion of said Shopping Center as a treatment, storage, or disposal site for any Hazardous Material. Tenant further agrees that it will not cause or allow any asbestos to be incorporated into any improvements or alterations which it makes or causes to be made to the Premises. The provisions of and undertakings set out in this paragraph shall survive the termination of this Lease, and shall continue to be the liability and obligation of Tenant, binding upon Tenant, forever. The provisions of the preceding sentence shall govern and control over any inconsistent provision of this Lease. For purposes of this Lease, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substance Control Act, or any other federal, state or local statute, law, ordinance, code, rule, regulation, or order relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereafter in effect, or any other hazardous, toxic, or dangerous waste, substance, or material including, but not limited to medical waste, (herein referred to collectively as "Environmental Laws"). Notwithstanding the foregoing, if the use permitted under Section 6.01 hereof requires Tenant to bring onto the Premises substances which are included in the definition of "Hazardous Material", but which are permitted by law to be stored for use and used in connection with said use permitted under Section 6.01 hereof (e.g., cleaning fluids in a dry cleaners store), Tenant may bring such substances onto the Premises for said lawful use, but Tenant shall be solely responsible for the proper storage, use and off-site disposal of such substances (including medical waste) in accordance with applicable law.

(c) Americans with Disabilities Act. Tenant shall have the sole and complete responsibility, as between itself and Landlord, for all compliance with the Americans with Disabilities Act (the "ADA") (including any modifications or alterations required thereby) within the Premises and with respect to the sidewalk in front thereof and the loading dock and loading area to the rear and its dumpster pad, and the Landlord shall have the sole and complete responsibility, as between itself and Tenant, for all compliance with the ADA (including any modifications or alterations required thereby) in the common area of the Shopping Center. Nothing in the preceding sentence shall, however, be construed to prevent Landlord from allocating ADA compliance responsibilities to other tenants of the Shopping Center with respect to each such tenant's premises, sidewalks, and rear delivery, service and dumpster areas.

ARTICLE XVI

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SUBORDINATION, MODIFICATION, ATTORNMENT, EXCULPATION

SECTION 16.01. Mortgage Subordination.

This Lease shall, at the option of Landlord, be subject, subordinate and inferior in lien with respect to any and all mortgages which may now or hereafter be placed on all or part of the Shopping Center, by a bank, trust company, insurance company, or other lender and in such case such mortgages, and any and all renewals, modifications, consolidations, replacements and extensions thereof shall without regard to the date of recordation be deemed prior in time to this Lease. Tenant shall, upon demand and without cost to Landlord, execute any instrument necessary to effectuate or confirm the subordination of this Lease to any such mortgage and if it shall fail to do so within ten (10) days after submission of such instrument, Landlord may execute the same as attorney in fact for Tenant, or may terminate this Lease on three (3) days prior written notice, which termination shall become effective in the absence by Tenant of such failure or refusal within such three (3) days. It is a condition, however, to Tenant's obligation to sign any such instrument of subordination that Landlord shall procure from the mortgagee an agreement in writing which shall be delivered to Tenant, or contained in the aforesaid subordination agreement, providing, in substance, that so long as Tenant shall faithfully discharge the obligations on its part to be kept and performed under the terms of this Lease, its tenancy will not be disturbed nor this Lease affected by any default under such mortgage.

SECTION 16.02. Cancellation or Modification of Lease in Connection With Financing

If Landlord should mortgage or propose to mortgage all or any part of the Shopping Center, and if (a) Landlord is unable to obtain satisfactory financing or, for purposes of inducing financing, satisfactory leases covering other premises in the Shopping Center or phase of the Shopping Center with respect to which this Lease has been negotiated, or if (b) a financial institution proposing to make a loan commitment should require modification of this Lease as a condition to making a loan, and Tenant should refuse to consent to such modification by executing the same and returning it to Landlord within ten (10) days of its submission by written notice to Tenant, then in either such case (a) or (b) Landlord shall have the right at its option to cancel this Lease on three (3) days prior written notice to Tenant, which termination shall become effective in the absence of a Tenant's curing such failure or refusal within such three (3) days. Notwithstanding anything in the preceding sentence to the contrary, however, no modification pursuant to this paragraph need be agreed to by Tenant if it would substantially change the size or location of the Premises or the rentals or maintenance charges provided for in this Lease.

SECTION 16.03. Estoppel Certificates

Tenant agrees, at any time, and from time to time, not later than ten (10) days following notice from Landlord, to execute, acknowledge and deliver to Landlord, and/or any lender or potential lender on, or purchaser or potential purchaser of all or a part of the Shopping Center, a statement in writing (hereafter, an "estoppel certificate") certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the Minimum Rent and Additional Rent and other charges have been paid, and attesting as to the status of any other matters reasonably pertinent to the status of this Lease and the performance of the parties thereunder. Landlord shall have the option to terminate this Lease on three (3) days prior written notice, or shall have power of attorney to execute such certificate on Tenant's behalf, if a requested estoppel certificate is not executed by Tenant within the aforesaid time limits.

SECTION 16.04. Attornment

In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

SECTION 16.05. Exculpation

Notwithstanding anything else whatsoever in this Lease, at law, or in equity to the contrary, Tenant agrees that it shall look to and shall have recourse solely to the estate and property of the Landlord in the land and buildings comprising the deed parcel of real estate of which the Premises are a part, for the collection of any judgment (or any other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord, or in the event of any other judgment or judicial process obtained by Tenant in any way arising directly or indirectly out of or under this Lease or the performance hereof or out of the relationship of Landlord or Tenant established hereunder, and no other real or personal property of the Landlord, tangible or intangible, shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies. In the event of the sale of any of Landlord's right, title and interest in the Shopping Center, Landlord shall be released from all liabilities and obligations under this Lease after the sale.

ARTICLE XVII

DESTRUCTION OF LEASED PREMISES

SECTION 17.01. Total or Partial Destruction of Premises.

Rebuilding vs. Termination. If at any time after the execution hereof, the Premises are destroyed or damaged in whole or in part by fire, the elements, or casualty, this Lease shall not terminate and Tenant shall notify Landlord in

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writing of such damage or destruction and Landlord shall, if permitted by all public authorities, replace the real property of the Premises giving to the Tenant space equal to the present leased space and of the same general type of construction or better, the same to be done as soon as possible after the completion of insurance adjustments, but in no event later than nine (9) months from the date of the receipt of said insurance adjustment in the case of total destruction of the Premises and within one hundred twenty (120) days of receipt of the insurance adjustment in the case of partial damage or destruction; except that if said incident shall occur at a time when there are fewer than five (5) lease years remaining in the term hereof, then Landlord shall have the option to rebuild as above stated or of terminating this Lease. No penalty shall accrue for reasonable delay in commencing rebuilding on the part of Landlord which may arise by reason of delays in the adjustment of insurance. Landlord's obligation to repair or rebuild the Premises shall be limited to the base building. The responsibility of insuring and replacing Tenant's leasehold improvements, furnishings, merchandise, inventory and equipment shall lie with Tenant.

(b) Effect on Rent. In the event of total destruction to the Premises, Tenant's rent shall completely abate from the date of such destruction until possession of the rebuilt Premises is delivered to the Tenant. In the event of partial destruction resulting (being any destruction which results in Tenant's being deprived of the occupancy of only a portion of the Premises), a reduction shall be made in the minimum rent during such period, by that proportion which the square footage of the Premises which the Tenant is deprived the use of bears to the total square footage of the Premises. If such total or partial damage is due to the fault or neglect of Tenant, its employees, agents, visitors or licensees, then without prejudice to any other rights and remedies of Landlord and without prejudice to the rights of subrogation of Landlord's insurer, the damage shall be repaired by Tenant and there shall be no abatement of rent, otherwise, Landlord shall proceed diligently to rebuild said Premises and to repair the damage thereto as hereinabove stated.

SECTION 17.02. Destruction of Shopping Center Rentable Area

In the event that Twenty-Five Percent (25%) or more of the rentable area of the Shopping Center shall be damaged or destroyed by fire or other cause, whether or not the Premises itself shall have been so unaffected, Landlord at its option may terminate this Lease by giving to Tenant thirty (30) days' prior written notice of its election to do so, which notice shall be given, if at all, by not later than the sixtieth (60th) day following the date of said occurrence.

**ARTICLE XVIII
CONDEMNATION**

SECTION 18.01. Damages

In the event the Premises or any part thereof shall be taken or condemned either permanently or temporarily by any competent authority in appropriation proceedings or by any right of eminent domain or by settlement in lieu thereof, the entire compensatory award therefor, for all estates in the realty including leasehold, reversion, and fee, shall belong to Landlord without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all of its right, title and interest, if any, to any such award. Tenant shall, however, be entitled to claim, prove and receive in such condemnation proceedings such awards as may be allowed for moving expenses and for the depreciated value of fixtures installed by Tenant at Tenant's own cost and expense and which are not part of the realty, but only if such award shall be in addition to an award to Landlord for the land and building containing the Premises and does not reduce such award.

SECTION 18.02. Total Condemnation of Premises.

If the entire Premises shall be taken, then this Lease shall terminate and shall become null and void from the time possession thereof is required for public use, and from that date on, Landlord and Tenant shall accrue no further obligation hereunder.

SECTION 18.03. Partial Condemnation of Premises.

If less than Twenty Percent (20%) of the Premises shall be taken or condemned, then Landlord, at its own expense, shall repair and restore the portion not affected by the taking and thereafter the minimum and additional rents to be paid by Tenant shall be equitably and proportionately adjusted. If Twenty Percent (20%) or more of the Premises shall be so taken, Landlord, at its option, may give Tenant written notice of its decision not to rebuild and this Lease shall be deemed canceled. No such appropriation or condemnation proceeding shall be deemed to be or constitute an eviction of Tenant or a breach of Landlord's covenant of quiet enjoyment.

SECTION 18.04. Partial Condemnation of Parking Area

If any part of the parking area shall be acquired or condemned as aforesaid, and if, as the result thereof, the ratio of parking spaces to gross leasable square feet in the Shopping Center is reduced to a ratio below 1 space for each 750 square feet of gross leasable area, then the Term of this Lease shall cease and terminate upon the vesting of title in the condemning authority in such proceeding, unless Landlord shall give Tenant notice to the contrary, and if Landlord gives such notice it shall take immediate steps toward restoring the parking ratio to such ratio, and until a reasonable time shall have passed, and if during such time such ratio is restored any cause for the termination of this Lease pursuant to this paragraph based on such appropriation shall be deemed no longer to exist and this Lease shall continue in existence without any reduction or abatement of rent. In event of termination of this Lease as aforesaid, Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired term of this Lease.

SECTION 18.05. Taking of Shopping Center Rentable Area

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In the event that Twenty-Five Percent (25%) or more of the acreage or rentable area of the Shopping Center shall be taken by condemnation, whether or not the Premises itself may have been so affected, Landlord at its option may terminate this Lease by giving to Tenant thirty (30) days prior written notice of Landlord's election so to do, which notice shall be given, if at all, by the sixtieth (60th) day following the effective date of said occurrence.

**ARTICLE XIX
DEFAULT BY TENANT**

SECTION 19.01. Default Defined; Right to Re-enter and Terminate

Tenant covenants and agrees that in the event:

- (1) Tenant shall fail, neglect or refuse to pay any installment of Minimum Rent or additional rent at the times and in the amounts provided in this Lease, or to pay any other monies agreed by it to be paid promptly when and as the same shall become due and payable under the terms hereof; or,
- (2) Tenant shall fail to move into and take possession of the Premises and open for business within the forty fifth (45th) day after Landlord's giving notice that the Premises are ready for occupancy; or,
- (3) Tenant shall become insolvent or shall make an assignment for the benefit of creditors or if the interest of Tenant in the Premises shall be sold under execution or other legal process; or,
- (4) Tenant shall file for bankruptcy or be adjudged a bankrupt or if a receiver or trustee shall be appointed for Tenant by any court; or,
- (5) Tenant shall abandon or vacate the Premises or fail to keep the Premises continuously and uninterruptedly open for business each business day; or,
- (6) Tenant shall fail, neglect or refuse to keep and perform any of the other covenants, conditions, stipulations or agreements herein contained and covenanted and agreed to be kept and performed by it, and in the event any such failure, neglect, or refusal shall continue for a period of more than ten (10) days after notice thereof is given in writing to Tenant by Landlord (provided, however, that if the cause for giving such notice involves the making of repairs or other matters reasonably requiring a longer period of time than ten (10) days, Tenant shall be deemed to have complied with such notice so long as it has commenced to comply with said notice within the period set forth in the notice and is diligently prosecuting compliance of said notice or has taken proper steps or proceedings under the circumstances to prevent the seizure, destruction, alteration or other interference with the Premises by reason of noncompliance with the requirements of any law or ordinance or with the rules, regulations, or directions of any governmental authority as the case may be);

Then in any of such events identified in items (1) through (6) above, Tenant shall be deemed to be in default of this Lease, Tenant agrees that Landlord is authorized and fully empowered to cancel or annul this Lease at once and to re-enter and re-take possession of the Premises immediately, without legal process and without any previous notice of intention to re-enter, removing all persons and their property therefrom and using such force and assists in effecting such removal as may be necessary or advisable, so as to recover at once first and exclusive possession of all of the Premises whether in possession of Tenant or of third persons or otherwise, without Landlord being deemed guilty of any manner of trespass and without prejudice to Landlord's right to utilize any other remedies which may be legally available to it, and in which event Tenant's rights to possession of the Premises under or pursuant to this Lease shall immediately terminate. In determining the rent which would be payable by Tenant hereunder subsequent to default during the residue of the Term, the rent for each year and month of the unexpired term shall be equal to the Minimum and Additional Rents of this Lease to be payable during such period. In addition to all other remedies Landlord is entitled to obtain a restraining order and/or injunction against all violations, actual, attempted or threatened of any covenant, condition or provision of this Lease, whichever period is shorter. In addition, Tenant covenants and agrees to pay to Landlord all costs and expenses, including reasonable attorneys' fees to restore the Premises to the same condition as original condition, ordinary wear and tear excepted, and for all costs, expenses, or concessions incurred by Landlord in reletting the Premises to another Tenant.

SECTION 19.02. Right to Re-Enter Without Termination

Landlord may at its option in lieu of the remedies provided in Section 19.01 above, re-enter and take possession of the Premises at any time after a default by Tenant under this Lease has occurred without such re-entry causing or effecting a termination of the Lease nor a forfeiture of the rents to be paid nor of Landlord's right to enforce the covenants, agreements and conditions to be kept and performed by Tenant hereunder during the residue of the Term. In such event, Landlord shall have the right, but not the obligation, to divide or subdivide the Premises in any manner it may determine and to lease or let the same or portions hereof for such periods of time and at such rentals and for such use and upon such covenants and conditions as it may elect, applying the net rentals for such letting first to the payment of such expenses as it may have incurred in dispossessing Tenant and the cost and expense of making such improvements in the Premises as may be necessary in order to re-let the same, and to the payment of any brokerage commissions or other necessary expense incurred in connection with such re-letting, with any balance to be applied by Landlord as received from time to time on account of the payments due or payable by Tenant hereunder. Landlord shall have the right to bring such actions or proceedings for the recovery of any deficits remaining unpaid as Landlord may deem favorable from time to time, without being obligated to await the end of the Term hereof for the final determination of Tenant's account. Tenant shall have no interest in any monies received upon re-letting.

SECTION 19.03. Confession of Judgment. [Intentionally Deleted.]

SECTION 19.04. Overhead Charge; Interest on Late Payments

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If Tenant shall, at any time, fail to pay on or by the applicable due date any installment of minimum rent, additional rent, taxes, assessments, insurance premiums, utility charges, liens, or to timely make any other payment required by this Lease to be made by Tenant, Landlord, without waiving or releasing Tenant from any obligation or default under this Lease, may assess an overhead charge in the amount of Ten Percent (10%) of the delinquent amount, and interest on the delinquency and overhead charge at a rate of Twenty Percent (20%) per annum or Four Percent (4%) above the prime lending rate of the Huntington National Bank of Columbus, Ohio, whichever is higher. In addition, if Tenant fails to pay any monies it is obligated to pay to third parties under the terms of this Lease, including but not limited to utility charges, insurance charges, or repair charges, then Landlord shall have the option of paying same. In such event, Landlord may collect such amount and any related costs incurred by Landlord from Tenant, together with an overhead charge and interest at the rates set out above assessable on and from the date of Landlord's payment of such amount. The interest and overhead charges set forth above shall constitute additional rent payable by Tenant under Section 2.05 of this Lease and shall be due and payable without demand. All late charges and overhead charges shall be retroactive to the first (1st) day any payment due hereunder becomes due and payable and is not paid. All payments shall be applied in the following order: oldest outstanding account balance, real estate taxes, common area maintenance, insurance, miscellaneous charges, overhead charges, late charges and current rent.

Nothing herein contained shall be construed or so operate as to require Tenant, or any Guarantor to pay interest in an amount or at a rate greater than the highest rate permissible under applicable law. Should any interest or other charges paid by Tenant, or any Guarantor result in the computation or earning of interest in excess of the highest rate permissible under applicable law, then any and all such excess shall be and the same is hereby waived by Landlord, and all such excess shall be automatically credited against and in reduction of the outstanding balance owed Landlord, and any portion of said excess which exceeds the outstanding balance owed Landlord shall be paid by Landlord to Tenant and any Guarantor, it being the intent of the parties hereto that under no circumstances shall Tenant or any Guarantor be required to pay interest in excess of the highest rate permissible under applicable law.

SECTION 19.05. Bankruptcy

If Landlord shall not be permitted, Section 19.01 notwithstanding, to terminate this Lease in the event of Tenant's filing for bankruptcy or being adjudged a bankrupt because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended previously or hereafter, and any successor law (collectively, the "Bankruptcy Code"), then Tenant as a debtor-in-possession or any bankruptcy trustee for Tenant shall promptly, and in any event within no more than fifteen (15) days upon motion by Landlord to the Bankruptcy Court, elect either to assume or reject this Lease, and Tenant on behalf of itself and any trustee agrees not to seek or request any extension or adjournment as to any application to compel assumption or rejection this Lease filed by Landlord with such Court, nor shall Tenant seek or obtain without Landlord's written consent any extension to the statutory time limit for assumption or rejection. Tenant or any trustee for Tenant may only assume this Lease if it: (A) cures immediately or provides adequate assurance that it will promptly (within not more than ten (10) days from the date of assumption) cure any monetary default hereunder as to both pre- and post-petition rent, (B) compensates or provides adequate assurance that Landlord will be promptly compensated for any other actual pecuniary loss resulting from Tenant's defaults and for any attorneys' fees and other expenses incurred by Landlord in proceedings against Tenant or in connection with Tenant's bankruptcy filing and all proceedings associated therewith or following therefrom, and (C) provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this Lease to be performed by Tenant. In no event after the assumption of this Lease shall any then-existing default remain uncured for a period in excess of ten (10) days from the date of assumption. Adequate assurance of performance of this Lease, as set forth hereinabove, shall include, without limitation, adequate assurance (1) of the source of the rent reserved under this Lease, and (2) that the assumption of this Lease will not breach any provision of this Lease. In the event that any tendered assurance of the source of rents shall fail to include evidence of a reasonable amount of immediately available cash, such assurance shall be rebuttably presumed to be inadequate. In the event of a filing by or against Tenant of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required, unless Tenant shall have paid and is current in all payments for common area maintenance, utilities or other charges therefor. In the event that Tenant shall ever file or have filed against it a bankruptcy proceeding to which this Lease is subject, and the venue of such proceeding is other than the U. S. Bankruptcy Court sitting in Columbus, Ohio, Landlord shall be entitled to an immediate release of stay and/or change of venue upon application or motion to the court in which such action was filed, and Tenant shall not oppose any such application or motion. Tenant hereby represents and warrants that it is presently solvent, is not the subject of any bankruptcy proceeding, and has no present intention to make any bankruptcy filing within the next twelve (12) months. If Tenant shall make a bankruptcy filing within such twelve (12) month period, such filing shall be presumed to be abusive, and Landlord shall in any event be entitled upon application or motion to the court in question to an immediate release of stay and Tenant shall not oppose such motion or application. If Landlord shall have served on the Tenant an Ohio statutory three day notice to vacate under the Ohio forcible entry and detainer statute and the three (3) day period stated in such notice shall have run (thereby terminating the Lease under Ohio law) before Tenant files or has filed against it a bankruptcy petition, then this Lease shall be regarded as having been terminated before the bankruptcy stay went into effect, and Landlord shall not be prevented by the stay from proceeding with a Municipal or Common Pleas Court action to evict Tenant from the Premises. The parties agree that no bankruptcy court or trustee may or shall without Landlord's prior written consent authorize the Premises to be used for any use or under any other trade name other than those permitted by Section 6.01 hereof.

SECTION 19.06. Lien [Intentionally Deleted.]

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SECTION 19.07. Remedies Cumulative

The various rights, remedies, powers and elections of Landlord, reserved expressed or contained in this Lease are cumulative, and no one of them shall be deemed exclusive of the others or of such other rights, remedies, powers, options or elections as are now or may hereafter be conferred upon Landlord by law or in equity.

SECTION 19.08. Legal Expenses

In the event suit shall be brought by Landlord for recovery of possession of the Premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained herein on the part of Landlord or Tenant to be performed, and a breach shall be established, each party shall pay its own legal and other costs and reasonable attorneys' fees and expenses incurred in connection therewith.

SECTION 19.09. Waiver of Jury Trial and Counterclaims Intentionally Deleted.]**SECTION 19.10. Venue; Service of Process**

Landlord and Tenant hereby stipulate and agree that in any litigation arising out of this Lease, venue and jurisdiction over the subject matter and the parties involved shall be proper both in the courts sitting in the County in which the Premises is located and in the Common Pleas or Municipal Courts of Delaware County, Ohio. Service of process upon Tenant in any such action may be effected by certified mail or personal service upon Tenant at the address contained in Section 1.01(b) or at the Premises, or in any other manner authorized under the Ohio Rules of Civil Procedure.

**ARTICLE XX
ACCESS BY OWNER**

SECTION 20.01. Landlord's Rights of Access

Landlord or its agents may have free access to the Premises at all reasonable times: (a) for the purpose of examining the Premises or to show the same to prospective purchasers and mortgagees or tenants; (b) to make any repairs which Landlord is required to perform under this Lease or otherwise; (c) during the last six (6) months of the term or at any time that this Lease is being terminated for any reason, for the purpose of exhibiting the Premises and putting up a "For Lease" or similar sign, which sign shall not be removed, obliterated, or hidden by Tenant. Landlord shall have immediate and unobstructed access to the Premises in the case of an emergency. During or after any time Tenant abandons, vacates or ceases to actively operate its business in the Premises or is otherwise in default hereunder, Landlord may enter the Premises, without such entry being deemed a taking of possession, in order to decorate, remodel, repair, alter or otherwise prepare the Premises for occupancy, to secure the Premises against vandalism or burglary, and to take reasonable measures to preserve the good image of the Shopping Center. Landlord shall have the right at any time to install or place upon, or affix to the roof and exterior walls of the Premises equipment, signs, displays, antennas, and any other objects or structures of any kind provided the same shall not materially affect the structural integrity of the building. The exercise of any right of access reserved in this article or elsewhere in this Lease by Landlord or its agents shall not be deemed an eviction or disturbance of Tenant, and Tenant shall not be allowed any abatement of rent or damages for any injury or inconvenience or loss of or interruption of business occasioned thereby to Tenant or to any other person.

**ARTICLE XXI
TENANT'S PROPERTY**

SECTION 21.01. Taxes and Insurance on Tenant Property

Tenant covenants and agrees to pay promptly when due all taxes and insurance costs assessed against Tenant's fixtures, furnishings, equipment, stock-in-trade, leasehold improvements, or personal property of any kind owned by or placed in, upon, or about the Premises during the term of this Lease. In the event the taxing authorities or Landlord's casualty insurer shall ever, in calculating the overall real estate taxes or casualty insurance costs for the real estate of which the Premises is a part, include the value of improvements, replacements, alterations and additions made by Tenant or the value of any machinery, equipment, fixtures, tools, stock-in-trade, inventory, or other assets of Tenant in a manner or to an extent not customary in the county in which the Premises is located, then and in that event Tenant shall upon notice from Landlord pay all of the additional real estate taxes or insurance costs allocable to such items.

SECTION 21.02. Landlord's Non-liability

Landlord shall have no liability whether direct, indirect, or consequential, to Tenant or any other person for any expense, damage or injury: (a) done or occasioned by or from (or by leakage or odors from) any electrical, gas, water, steam, heating, air conditioning, plumbing, sprinkler and sewer lines and systems located in, upon or about the Premises or the building in which the Premises is located, unless the same is due to the negligence of Landlord; (b) occasioned by water, snow, ice, or dampness being upon or coming into the Premises through the roof, walls, floors, windows, doors, sewers, or otherwise, regardless of the source, unless the same is due to Landlord's negligence; (c) arising from acts of negligence or omissions of Tenant, its employees, or invitees; (d) arising from the acts or omissions of adjoining tenants or of any owners or occupants of adjoining or contiguous property; (e) for any expense, damage or injury incurred by reason of forced entry by any person or by any attempt thereof; (f)

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arising from acts by the public or caused by operations or construction of any private, public or quasi-public work; or (g) for any latent defect in the Premises or in the building of which it forms a part or for any change or modification thereof. Landlord shall not be liable for any expense, damage or injury occasioned by reason of failure to make repairs as required on its part under this Lease unless written notice of the need for repairs has been given Landlord and a reasonable time has elapsed. In no event shall Landlord be liable for any expense or damage to Tenant's leasehold improvements, fixtures, carpets, personal property, or merchandise resulting from fire, water damage or other insurable hazards, regardless of the cause thereof, and Tenant hereby releases Landlord from all liability for such damage, such release including a release of all subrogation claims by Tenant's insurance carrier.

**ARTICLE XXII
HOLDING OVER, SUCCESSORS**

SECTION 22.01. Holding Over

(a) Consent Required. Tenant must obtain Landlord's written consent prior to the last day of the Lease term in the event it shall propose to remain in possession after such date. In the absence of such consent any holding over shall be considered unwelcome.

(b) Without Landlord's Consent. In the event Tenant shall continue in occupancy without Landlord's prior written consent after the expiration or termination of this Lease, Tenant shall be regarded as an unwelcome holdover and shall vacate immediately at any time upon Landlord's demand and in addition to any other rights Landlord may have shall pay to Landlord, double the highest per diem amount of minimum, percentage and additional rents previously payable under this Lease, for each day Tenant retains possession of the Premises.

(c) With Landlord's Consent. Should, however, Tenant hold over in the Premises after the expiration of this Lease with Landlord's prior written consent, such occupancy and payment shall be construed as an extension of this Lease on a month-to-month basis from the date of such expiration, unless other terms are agreed to by the parties in writing. In the event either Landlord or Tenant desires to terminate such a month-to-month occupancy at the end of any calendar month after the termination of this Lease, the party so desiring to terminate the same shall give the other party at least thirty (30) days prior written notice to that effect. Any failure on the part of the Tenant to timely give such notice shall obligate it to pay rent for an additional calendar month, whether or not it occupies during such period.

**ARTICLE XXIII
QUIET ENJOYMENT & TENANT'S RIGHT TO CONTEST**

SECTION 23.01. Quiet Enjoyment.

Landlord hereby covenants and agrees that if Tenant shall timely pay all rents when due and shall faithfully and timely perform and observe all the other terms, covenants, conditions, rules and regulations and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from Landlord or person or persons lawfully claiming the Premises through Landlord, subject to the conditions and terms of this Lease, mortgages and encumbrances as herein further set forth.

SECTION 23.02. Tenant's Right to Contest

Subject to Landlord's prior written consent in each instance, Tenant may contest, by appropriate proceedings diligently conducted, the validity or applicability, as the case may be, of any:

- (a) existing or proposed law or requirement of any governmental authority; or
- (b) tax, assessment or other governmental charge; which, during the Term or any renewal thereof, shall be levied, assessed, imposed or demanded by any governmental authority or insurance carrier in connection with the possession, occupation, alteration, maintenance, repair, improvement or use of the Premises or any part thereof. Any such contest shall be at Tenant's sole cost and expense.

**ARTICLE XXIV
MISCELLANEOUS**

SECTION 24.01. Waiver.

No waiver of any condition, covenant, or legal right or remedy shall be implied by failure or delay of Landlord to declare a default or forfeiture in any instance, nor by any other means other than through a writing signed by Landlord. No waiver by Landlord in respect to one tenant of the Shopping Center shall forbid Landlord's enforcement of the same condition or covenant against any other tenant. No failure by Landlord to insist on strict compliance with any provision of this Lease, for whatever duration, shall estop or prevent Landlord from later insisting on strict compliance in the future and on the prompt performance of any past obligations previously forborne. The mention in this Lease of any specific right or remedy shall not preclude Landlord from exercising any other right nor from having any other remedy nor from maintaining any action to which it may be otherwise entitled either at law or in equity; and for the purpose of any suit by Landlord brought or based on this Lease, it is further agreed that the failure to include in any such suit or action any particular sum whether or not then matured shall not be a bar to the maintenance of any subsequent suit or action for the recovery of said sum.

SECTION 24.02. Accord and Satisfaction

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No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed to work an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other applicable remedy whether provided in this Lease or otherwise.

Every demand for rent due wherever and whenever made shall have the same effect as if made at the time the rent fell due. Landlord may receive and collect all or part of any rent due, notwithstanding its having commenced any suit to collect or any judgment having been rendered in any such suit, and such collection or receipt shall not operate as a waiver nor affect such notice, suit or judgment. Nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

SECTION 24.03. Titles, Entire Agreement; Modifications; Severability; Binding Obligation

All marginal titles are for reference and convenience only and do not form a part of this Lease. This Lease contains the entire agreement between Landlord and Tenant, and all prior communications and negotiations, whether written or oral, are deemed merged herein, and any agreement hereafter made shall be ineffective to change, modify, or discharge this Lease in whole or in part unless such agreement is in writing and signed by both parties, and duly delivered between them. This Lease may not be modified by oral agreement, usage, course of conduct, estoppel, partial performance, performance based on a writing not signed by both parties, nor in any other manner, other than in a writing which has been signed by both parties and has been duly delivered between them. This Lease and all rights and duties hereunder shall inure to the benefit of and shall be binding upon Landlord and Tenant and their respective personal representatives, administrators, executors, heirs, successors and assigns. If more than one person is identified as Tenant herein, obligations of Tenant under this Lease shall be the joint and several obligation of each such person.

SECTION 24.04. No Representations; "As-Is" Basis; Miscellaneous

This Lease is made without representations, promises or warranties of any kind, express or implied, by Landlord as to the order, repair or condition of the Premises, the building or buildings of which it forms a part, or of any appurtenances thereto, or as to the fitness of the Premises or its appurtenances for any use or purpose, or as to any of the terms or conditions of this Lease, except as may be expressly set forth in this Lease. It is understood and agreed that the Premises are being taken by Tenant on an "as-is" basis, except as may be specifically provided otherwise in this Lease. Tenant shall make no claims on account of representations, promises or assurances whatsoever, whether made orally or in writing by any renting agent, broker, partner, attorney, officer or other representative of Landlord relating to the Premises, or otherwise, unless the same is specifically set forth in this Lease. In and by taking occupancy of the Premises, Tenant agrees (i) that Landlord has satisfactorily completed all improvements, if any, to the Premises on Landlord's part to be performed, and (ii) that as it relates to the condition of the Premises, and the fitness thereof generally and for Tenant's specific use, Tenant is relying on its own inspections, investigations and observations, and not on any representations alleged to have been made (whether expressly or impliedly) by Landlord or its agents, except for any representations expressly stated in this Lease. Tenant's exercise of any contingency or cancellation provision running to its benefit in this Lease shall be of no force or effect if Tenant has delayed unreasonably in notifying Landlord of the occurrence or non-occurrence of the event on which such exercise is or purports to be based, or if Tenant has failed to pursue satisfaction of the matter on which such exercise is or purports to be based with reasonable diligence, or otherwise undertakes such exercise in bad faith. Upon Tenant's taking possession of the Premises any unexpired or unwaived contingency or cancellation provisions running to Tenant's benefit in this Lease shall thereby become void notwithstanding any time periods to the contrary in any such provision. Nothing in the foregoing is intended to create any implied contingency or cancellation rights on Tenant's behalf.

SECTION 24.05. Acts Beyond Control of Landlord

In the event that Landlord shall be delayed or hindered in or prevented from the performance of any act required on its part hereunder by any reason not the fault of or not within the reasonable control of Landlord, including, without limitation, strikes, lockouts, labor troubles, materials shortages, power failures, restrictive laws or regulations, riots, insurrection, war, and other reasons of like nature, then Landlord's performance of such act shall be excused for the period of the delay and for a reasonable cure period after the end of such delay. This provision shall not operate to excuse Tenant from the prompt payment of rent, additional rent or any other payments required by the terms of this Lease.

SECTION 24.06. Interpretation; Governing Law

Wherever the word "Landlord" or "Tenant" is used in this Lease, it shall be considered to be in the plural as necessary, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons, firms, partnerships, associations and corporations designated respectively as Landlord or Tenant in the heading of this instrument wherever the context requires. Where multiple persons have signed this Lease as Tenant, their liability hereunder shall be regarded to be joint and several. This Lease shall be governed by and construed under the laws of the State of Ohio.

SECTION 24.07. Notices

Any notice required to be given by or on behalf of either Landlord or Tenant upon the other shall be in

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writing and shall be deemed given on the third (3rd) day after its mailing by Certified Mail, addressed to Landlord at the address hereinabove specified on page one (1), or to Tenant at the Premises or Tenant's residence or central business office. Neither party shall refuse to accept delivery of notice. Proof of the posting of any notice by Certified Mail and of the date of any acceptance or refusal of delivery or of the final attempt at the delivery thereof shall be deemed sufficient proof that such notice was given and delivered or refused as the case may be. Either party may change its address for purposes of notice by due notice given to the other party by the method herein provided.

SECTION 24.08. Recording

This Lease shall not be recorded, but a Memorandum of Lease describing the Premises, giving the commencement and ending dates of the Term, and restating such other non-economic provisions of this Lease as the parties may mutually agree on, may be recorded by either party only after Landlord has notified Tenant in writing that such Memorandum may be recorded. Such recordation shall be at the sole cost and expense of the party seeking recordation.

SECTION 24.09. Submission of Lease.

The submission of this Lease, unsigned, for Tenant's examination or signature does not constitute an offer to lease.

This Lease shall become effective only upon the full execution hereof by both Landlord and Tenant, with such witnesses and acknowledgment as may be required by the laws of Ohio or other state in which signed, and the mutual delivery and receipt between them of at least one fully executed counterpart hereof for each party.

SECTION 24.10. Broker's Commission

Each of the parties hereto severally represents and warrants to the other party hereto that it knows of no claims for brokerage commissions or finder's fees in connection with the execution of this Lease.

SECTION 24.11. Guaranties

The Guaranties of those persons or entities guaranteeing this Lease, if any are listed at Section 1.01, are intended to be attached to and in any event shall be considered an integral part of the consideration of this Lease and this Lease shall not be considered fully executed and delivered between the parties, unless, in addition to all other requirements therefor having been met, said Guaranties properly and fully executed, including the required contact information, have been duly and properly delivered to Landlord.

SECTION 24.12. Execution on Behalf of Tenant.

Notwithstanding anything to the contrary contained in this Lease or any other document attached hereto or executed and given to Landlord or Landlord's agent in conjunction or connection herewith or the leasing of the Premises, each signatory thereto, when purportedly executing this Lease or such other document on behalf of a legal entity (i.e., a partnership, limited partnership, corporation, limited liability company, or joint venture) and whether domestic or foreign, warrants and represents to Landlord that, at the time of execution of this Lease, or such other document, the: (1) named legal entity/political subdivision is in existence, validity created, in good standing and registered/organized in accordance with all applicable laws in the State of Ohio; (2) complete and correct legal name and entity/subdivision designation of the entity/subdivision appears as set forth in the first paragraph of this Lease; (3) signatory is duly authorized to execute this lease or such other document on behalf of the entity/subdivision the signatory purports to represent in the capacity noted below the signature of such signatory; and (4) correct title of the signatory appears below the signature of such signatory.

This Lease shall not be deemed to be fully executed on behalf of Tenant unless and until: (a) Tenant, by appropriate action or resolution taken and/or passed by the Delaware County Commissioners in general or executive session, has authorized and agreed to enter into and undertake Tenant's obligations set forth herein; (b) the number of Delaware County Commissioners, as required by applicable law, rule or code to legally obligate Tenant under this Lease, have signed this Lease in the space provided below and such signatures have been acknowledged by a Notary Public; (c) the Delaware County Prosecutor has affixed his or her signature to this Lease in the space provided below; and (d) the Delaware County Auditor has affixed his or her signature to the Auditor's Certificate appearing below. Tenant agrees to comply with and complete any other requirements necessary to cause this Lease to be a valid, binding and enforceable obligation of Tenant under applicable law. On or before Tenant's delivery of an executed copy or copies of this Lease to Landlord for Landlord's execution, Tenant shall provide Landlord with reasonable evidence that the requirement set forth in subsection (a), above, has been satisfied.

SECTION 24.13. [Intentionally Deleted.]

SECTION 24.14. Relocation.

During the term of the Lease, provided other premises are available in the Shopping Center, Landlord shall have the right to relocate Tenant to such other premises in the Shopping Center, in the event that Landlord needs to combine the Premises with premises that are or may become available immediately adjacent to the Premises in order to accommodate a new tenant or the expansion of an existing adjacent tenant whose total premises would consist of at least 6,000 square feet.

Within thirty (30) days of receipt of notice from Landlord that Landlord wishes to relocate Tenant (which notice shall include a designation of the space to which Landlord desires to relocate Tenant) Landlord and Tenant shall use good faith to agree upon the space to which Tenant shall be relocated, the configuration and

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improvements to be provided by Landlord in the agreed space and the rental and additional charges to be paid by Tenant for same. Upon the agreement by Landlord and Tenant of the above described items, Landlord and Tenant shall execute a new Lease or an amendment to this Lease evidencing such agreement and containing or continuing all other provisions of this Lease. Tenant shall have sixty (60) days to construct its improvements in the new premises. Landlord shall pay all costs to move Tenant's then existing equipment, trade fixtures, cabling and wiring, inventory and personal property to the new location together with the cost of any improvements to the new location agreed upon by Landlord and Tenant and the unamortized balance (computed on a straight line basis over the term of this Lease), if any, of any leasehold improvement to the Premises which was paid for by Tenant but not able to be moved to the new location.

In the event that Tenant fails or refuses to relocate to a new premises as provided for herein, then Landlord shall have the right to terminate this Lease upon notice to Tenant specifying the effective date of such termination (which date shall be not earlier than ninety (90) days after the date of such notice).

SECTION 24.15. Patriot Act Compliance.

(a) Tenant represents and warrants that (a) Tenant is (1) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") or on any other similar list maintained by the OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (2) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction or other prohibition of law, regulation or executive order; (b) none of the funds or other assets of Tenant constitute property of any Embargoed Person (as defined herein), (c) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that this Lease is in violation of law, and (d) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times during the Term. The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any executive orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

Tenant shall: (1) comply with all laws related to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect; (2) immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached; and (3) not use funds from any "Prohibited Person" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under this Lease.

Tenant's inclusion on the List, or Tenant's active participation or complicity in the use or occupation of the Premises by any person on the List, or by any Embargoed Person, at any time during the Term, shall be a material default of this Lease. In connection with any proposed assignment of this Lease, Tenant shall provide Landlord with the names of all persons holding an ownership interest in any proposed assignee for purposes of compliance with Presidential Executive Order 13224 (issued September 24, 2001) as amended.

(b) Landlord represents and warrants that (a) Landlord is (1) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the OFAC or the List, and (2) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction or other prohibition of law, regulation or executive order; (b) none of the funds or other assets of Landlord constitute property of any Embargoed Person, (c) none of the funds of Landlord have been derived from any unlawful activity with the result that the investment in Landlord is prohibited by law or that this Lease is in violation of law, and (d) Landlord has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times during the Term.

Landlord shall: (1) comply with all laws related to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect; (2) immediately notify Tenant in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached; and (3) not use funds from any Prohibited Person to make any payment due to Tenant under this Lease.

Landlord's inclusion on the List, or Landlord's active participation or complicity in the use or occupation of the Premises by any person on the List, or by any Embargoed Person, at any time during the Term, shall be a material default of this Lease. In connection with any proposed assignment of this Lease, Landlord shall provide Landlord with the names of all persons holding an ownership interest in any proposed assignee for purposes of compliance with Presidential Executive Order 13224 (issued September 24, 2001) as amended.

At the time of execution of this Lease Agreement, Landlord shall complete and return to Tenant the Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA) form which is included as Exhibit "B".

SECTION 24.16. Termination of Prior Lease.

Landlord and Tenant entered into a prior lease agreement, dated April 28, 2005, for the Premises (as

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amended, modified and/or assigned, the “Prior Lease”). Both parties hereby agree and acknowledge that the Prior Lease is hereby terminated and of no further force or effect.

LEASE EXHIBIT "A"
SITE PLAN

LEASE EXHIBIT "B"
DECLARATION REGARDING MATERIAL ASSISTANCE/NON-ASSISTANCE TO A TERRORIST
ORGANIZATION (DMA) FORM

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Nay

COMMISSIONERS’ COMMITTEES REPORTS

Commissioner O’Brien
-No Additional Comments

Commissioner Thompson
-Reminder And Thank-You On Two Very Important Issues (National Crime Victims Rights Week And
National Public Safety Telecommunicator Week)

Commissioner Stapleton
-Attended A Columbus Chamber Meeting
-Toured A Local Manufacturing Plant With County Administrator
-Meeting With County Administrator And A Community Authority
-Continuing To Have Meetings With Other Local Leaders; Mayor Of Powell, Village Of Sunbury Council
Members Most Recently
-Will Be Attended CCOA Meetings Later In The Week
-Asked For Comments From Auditor Kaita On 2164 Property Valuations Complaints Being Filed

Auditor Kaita
-Board Of Revision Process

County Administrator Hansley
-The 911 Levy Is Approaching; Remembers Growing Up When Emergency Calls Only Went To Regular
Operators And Multiple Transfers Had To Take Place For Response To Occur; Single Point Dispatching Is
Important; Many Under 35 Do Not Remember A Time Without 911.

RESOLUTION NO. 11-364

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF
APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR
COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR PENDING OR IMMINENT
LITIGATION; TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES AND FOR
COLLECTIVE BARGAINING:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to adjourn into Executive Session at 10:55AM.

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

RESOLUTION NO. 11-365

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. O’Brien, seconded by Mr. Thompson to adjourn out of Executive Session at 12:35PM.

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

There being no further business, the meeting adjourned.

1:30PM WORK SESSION

FAIR BOARD

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**DOUG PAYAUYS, CONSOLIDATED’S CIO
REGIONAL FIBER/BROADBAND SYSTEMS AND DEPLOYMENT.**

**CHRIS BAUSERMAN, COUNTY ENGINEER;
SCIOTO TOWNSHIP OHIO PUBLIC WORKS PROJECT FOR DEGOOD ROAD**

Other Business To Come Before The Board

Ken O’Brien

Dennis Stapleton

Tommy Thompson

Jennifer Walraven, Clerk to the Commissioners