



**CITY OF HUBER HEIGHTS
STATE OF OHIO
City Council Meeting
Regular Session
August 22, 2011
5:00 P.M.**

1. **Call The Meeting To Order - Mayor Ron Fisher**
2. **Invocation - Pastor Randy Griffith of the Free Methodist Church at 6875 Old Troy Pike, Huber Heights, Ohio**
3. **Pledge Of Allegiance**
4. **Roll Call**
5. **Approval Of Minutes**
 - A. City Council Meeting Minutes - August 8, 2011
6. **Special Presentations/Announcements**
 - A. Commercial Development Presentation - Mr. Gary Adams, City Manager
 - B. An Ordinance Authorizing The Execution Of A 201/202 Corridor Development Agreement Relating To The Commercial Development Of Certain Real Property Within The City, And Declaring An Emergency.
(first reading)

City Council Recess
 - C. DP&L Reliability Programs Presentation - Ms. Jennifer Sycks, Project Manager/Engineer, DP&L
7. **Citizens Comments**
8. **Citizens Registered to Speak on Agenda Items**
9. **City Manager Report**

10. **Pending Business**

11. **New Business**

CITY COUNCIL

- A. A Resolution Endorsing The City Of Huber Heights, Ohio Joining The National Moment Of Remembrance Of The Tenth Anniversary Of September 11, 2001.
(first reading)
- B. A Motion To Appoint Kristen Maiden To The Parks And Recreation Board To A Term Expiring March 31, 2013.
- C. An Ordinance Establishing A Fee For The Performance Of Civil Wedding Ceremonies.
(first reading)

FINANCE DEPARTMENT

Don Jones, Finance Director

- D. An Ordinance Authorizing Transfers Between Various Funds Of The City Of Huber Heights, Ohio; And Amending Ordinance 2010-O-1860 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2011 And Ending December 31, 2011 (Various Capital Improvement And Operations Funding, And Utility Transfers Per Trust Indenture), And Declaring An Emergency.
(first reading)

LEGAL

Alan Schaeffer, City Attorney

- E. An Ordinance Amending Ordinance No. 2003-O-1409 To Provide That All Service Payments In Lieu Of Taxes Collected Pursuant To That Ordinance Will Be Paid To The City And That The City Will Make Compensation Payments To The Huber Heights City School District, And Approving A First Amendment To The Hold Harmless Compensation Agreement, And Declaring An Emergency.
(first reading)
- F. A Resolution Imposing A Temporary Moratorium On Consideration Of Any Applications For Zoning, Occupancy, Or Other Permits To Operate Businesses Commonly Known As Internet Sweepstakes Cafes, And Declaring An Emergency.
(first reading)

ENGINEERING DIVISION

Russ Bergman, City Engineer

- G. A Resolution Authorizing The City Manager To Submit An Application For Funding Through The State Issue II Fund For Taylorsville Road For Northside Widening Improvements From Old Troy Pike (S.R. 202) To Brandt Pike (S.R. 201), And Declaring An Emergency.
(first reading)
- H. A Resolution Authorizing The City Manager To Submit An Application For Funding Through The State Issue II Fund For Chambersburg Road Water Main Extension From Bellefontaine Road To S.R. 4/235, And Declaring An Emergency.
(first reading)

12. **City Official Reports and Comments**
13. **Executive Session**
14. **Adjournment**

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2011-O-

AN ORDINANCE AUTHORIZING THE EXECUTION OF A 201/202 CORRIDOR DEVELOPMENT AGREEMENT RELATING TO THE COMMERCIAL DEVELOPMENT OF CERTAIN REAL PROPERTY WITHIN THE CITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City has financed and constructed significant improvements to the U.S. Interstate 70 / State Route 201 and Interstate 70 / State Route 202 interchanges (collectively, the “*Interchange Projects*”); and

WHEREAS, the City desires to further benefit from the Interchange Projects by stimulating economic development on certain parcels of real property in the geographic vicinity of the Interchange Projects (such area being referred to as the “*Development Site*”); and

WHEREAS, the City has discussed with 201 Corridor Management LLC (the “*Developer*”) the possibility of the Developer acquiring some or all of the Development Site, together with certain real property which may hereafter be acquired by the City, to construct or support a mixed-use project which will include retail, office, residential and hospitality components to be located on the Development Site (the “*Commercial Project*”) and the construction by the City of certain public infrastructure improvements which the City and the Developer have determined, or hereafter may determine, will directly benefit and support the development of the Commercial Project (the “*Infrastructure Improvements*”); and

WHEREAS, the City heretofore passed Ordinance No. 2003-O-1409 on April 28, 2003, pursuant to Ohio Revised Code Sections 5709.40 through 5709.43, thereby exempting from taxation any improvements to the real property subject to that Ordinance and requiring the current and future property owners to make service payments in lieu of taxes (those payments, and any other related payments received by City in connection with that Ordinance are collectively referred to as the “*Montgomery County TIF Payments*”); and

WHEREAS, the City anticipates that the Montgomery County TIF Payments will be sufficient to pay the costs of the Infrastructure Improvements related to the economic development projects which are expected to hereafter be constructed within and in proximity to the Development Site; and

WHEREAS, to facilitate the construction of the Commercial Project as well as the related Infrastructure Improvements, and to facilitate the creation of new employment opportunities within the City, this Council finds that it is in the best interest of the City to provide for the execution and delivery of the 201/202 Corridor Development Agreement with the Developer.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The 201/202 Corridor Development Agreement by and between the City and the Developer, in the form presently on file with the Clerk of Council, providing for the Developer's agreement to undertake the development of the Commercial Project and the City's agreement to undertake the construction of the Infrastructure Improvements, is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that 201/202 Corridor Development Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the 201/202 Corridor Development Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Finance, the City Attorney, the Clerk of Council, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 3. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City, and for the further reason that this Ordinance is required to be immediately effective to facilitate the acquisition of real property described in the 201/202 Corridor Development Agreement and to facilitate the construction of the Commercial Project and the related Infrastructure Improvements and thereby create employment opportunities for the residents of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2011-O-_____ passed by the Council of the City of Huber Heights, on _____, 2011.

Clerk of Council

**201/202 CORRIDOR
DEVELOPMENT AGREEMENT**

by and between

CITY OF HUBER HEIGHTS, OHIO

and

201 CORRIDOR MANAGEMENT LLC

relating to

201 & 202 COMMERCIAL CORRIDOR DEVELOPMENT

dated as of

AUGUST _____, 2011

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201/202 CORRIDOR DEVELOPMENT AGREEMENT

This 201/202 CORRIDOR DEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into this ____ day of August, 2011 (the “*Effective Date*”) by and between the CITY OF HUBER HEIGHTS, OHIO (“*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “*State*”) and its Charter and 201 CORRIDOR MANAGEMENT LLC, an Ohio limited liability company (“*Developer*” and together with City, the “*Parties*” and each of the Parties individually referred to herein as a “*Party*”), under the circumstances summarized in the following recitals.

RECITALS

WHEREAS, City and the Montgomery County Transportation Improvement District (the “*District*”) entered into the Intergovernmental Agreement – Huber Heights Transportation Improvements (the “*IGA*”) dated as of June 24, 2002, as amended, pursuant to which City and District established their interest and responsibilities relating to the design, construction (including right-of-way acquisition), financing, operation and maintenance of certain public infrastructure improvements including the upgrade within City of interchanges located at the intersections of U.S. Interstate 70 with State Route 201 and State Route 202 (collectively, the “*Interchange Projects*”); and

WHEREAS, City desires to further benefit from the Interchange Projects by stimulating economic development on certain parcels of real property in the geographic vicinity of the U.S. Interstate 70 / State Route 201 interchange and the U.S. Interstate 70 / State Route 202 interchange (which real property is depicted on **EXHIBIT A** attached hereto and collectively referred to herein as the “*Property*”); and

WHEREAS, pursuant to the IGA, City Council heretofore passed Ordinance No. 2003-O-1409 on April 28, 2003 (the “*Montgomery County TIF Ordinance*”), pursuant to Ohio Revised

Code Sections 5709.40 through 5709.43, thereby exempting from taxation any improvements to the real property subject to the Montgomery County TIF Ordinance and requiring the current and future property owners to make service payments in lieu of taxes (those payments, and any other payments received by City in connection with the Montgomery County TIF Ordinance under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time, are collectively referred to as the “*Montgomery County TIF Payments*”); and

WHEREAS, City entered into the Loan Agreement with the Ohio Department of Transportation dated as of May 19, 2004 (the “*202 SIB Agreement*”) to provide for the financing and construction of various public infrastructure improvements in proximity to the U.S. Interstate 70 / State Route 202 interchange as described in the Montgomery County TIF Ordinance and City pledged the Montgomery County TIF Payments to meet City’s obligations under the 202 SIB Agreement; and

WHEREAS, City entered into the Loan Agreement with the Ohio Department of Transportation dated as of September 29, 2005 (the “*201 SIB Agreement*”) and together with the 202 SIB Agreement, the “*SIB Agreements*”) to provide for the financing and construction of various public infrastructure improvements in proximity to the U.S. Interstate 70 / State Route 201 interchange as described in the Montgomery County TIF Ordinance and City pledged the Montgomery County TIF Payments to meet City’s obligations under the 201 SIB Agreement; and

WHEREAS, in order to determine whether City has the economic capacity to support additional public infrastructure improvements and other economic development projects on the Property, City and District entered into the Agreement to Provide Additional Services, dated December 15, 2010 (the “*Additional Services Agreement*”), pursuant to which District agreed to: (i) provide a more detailed analysis of City’s capacity to finance other public infrastructure

improvements and other economic development projects with payments in lieu of taxes and other revenues available to City, (ii) recommend future public infrastructure improvements and other capital improvements to be constructed upon or in proximity to the Property, (iii) review how City might fund such future improvements, and (iv) advise City with respect to future development, design, construction (including right-of-way acquisition) and financing plans for such future improvements; and

WHEREAS, City owns or intends to acquire certain of the Property (which real property is expected to be described in the Land Assembly Agreement and is hereinafter referred to as the “*City Property*”) and has discussed with Developer the possibility of Developer using some or all of the City Property together with portions of the Property which Developer will identify and assemble to construct or support a mixed-use project which will include retail, office, residential and hospitality components to be located on the Property (the “*Commercial Project*”), a recreational amenity including an aquatic center and other recreational facilities, together with necessary parking facilities (the “*Recreation Complex*”), and public infrastructure improvements which City and Developer have determined, or hereafter may determine, will directly benefit and support the development of the Commercial Project and the Recreation Complex (the “*Infrastructure Improvements*”); and

WHEREAS, City, District and Developer entered into the Construction Agency Agreement, dated as of March 29, 2011, wherein City and District agreed to cooperate to facilitate the acquisition, design, construction and financing of the Recreation Complex and related real property by appointing District as City’s agent to assist City in that acquisition, financing, design and construction and Developer agreed to perform such duties delegated to it by District; and

WHEREAS, District and Developer entered into the Project Support and Management Agreement, executed as of June 14, 2011, wherein Developer agreed to serve as project manager to District to facilitate the acquisition, design and construction of the Recreation Complex; and

WHEREAS, as a result of District's activities pursuant to the Additional Services Agreement, City anticipates that it will have the capacity to support the acquisition of all or a portion of the City Property and the development of all or a portion of the Infrastructure Improvements, all as provided in this Agreement;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the Parties hereto agree and obligate themselves as follows:

(END OF RECITALS)

ARTICLE I

DEFINITIONS

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

Section 1.2 Definitions. As used herein:

“**201 SIB Agreement**” means the Loan Agreement, dated as of September 29, 2005, by and between City and the Ohio Department of Transportation.

“**202 SIB Agreement**” means the Loan Agreement, dated as of May 19, 2004, by and between City and the Ohio Department of Transportation.

“**Additional Services Agreement**” means the Agreement to Provide Additional Services, dated December 15, 2010, by and between City and District.

“**Agreement**” means this 201/202 Corridor Development Agreement, dated as of the Effective Date, by and between City and Developer.

“**Assessed Property**” means any real property in respect of which a Petition has been filed and against which special assessments have been levied to pay the costs of certain Infrastructure Improvements, all in accordance with Section 8.8.

“**Available Assessment Monies**” means those monies as described in Section 8.8 and which are estimated to be available for paying the costs of constructing and installing the Infrastructure Improvements required for any Phase and the debt service on any related City Securities.

“**Available Financing Monies**” means, collectively, the Available Assessment Monies and Available TIF Monies which are estimated to be available for paying the costs of acquiring

the City Property and/or constructing and installing the Infrastructure Improvements required for any Phase and the debt service on any related City Securities.

“Available Financing Monies Analysis” means an analysis prepared by City or at the direction of City in connection with each Phase of the Project which shall evaluate, among other factors, the Available Financing Monies Factors, and determine whether City Securities may be issued in an amount which will be sufficient to pay the costs of the requested Infrastructure Improvements.

“Available Financing Monies Factors” means, collectively, the sufficiency of Available Financing Monies, the type(s) of City Securities which may be issued, the debt service requirements for any City Securities issued in connection with any previous Phase(s), the costs of the related Infrastructure Improvements, the anticipated interest rates, market-based debt service coverage requirements, market-based debt service reserve requirements, the then current legal debt limitations of City, additional debt which City may need to issue based on City’s then current capital improvement plan and anticipated issuance expenses.

“Available TIF Monies” means those monies as described in clause **THIRD** of Section 4.3 and which are estimated to be available for paying the costs of acquiring the City Property and/or constructing and installing the Infrastructure Improvements required for any Phase and the debt service on any related City Securities.

“City” means the City of Huber Heights, Ohio, an Ohio municipality.

“City Attorney” means the City Attorney of City.

“City Codified Ordinances” means the Codified Ordinances of City, as amended and supplemented from time to time.

“City Council” means the City Council of City.

“City Default” shall have the meaning set forth in Section 9.2.

“City Initiated Special Assessment” means any special assessments which are determined by City, without the filing of a Petition, to be levied and collected for the purpose of paying the costs of constructing and installing Infrastructure Improvements for any Phase of the Project and the debt service on any related City Securities, all in accordance with Section 8.8.

“City Manager” means the City Manager of City.

“City Property” means that real property to be acquired by City pursuant to the Land Assembly Agreement. This term shall also include all related costs as defined in Ohio Revised Code Section 133.15(B).

“City Securities” means, but shall not be limited to, general obligation, revenue and/or lease rental revenue securities (any of which may be of varying maturities) which may be issued by City from time to time for the purpose of paying the costs of acquiring the City Property and/or constructing and installing the Infrastructure Improvements required to complete any particular Phase, together with any related financing structure requirements and issuance expenses.

“Commence” or ***“Commenced”*** means, in the context of beginning construction of a specifically identified portion of the Commercial Project for any Phase, the date on which all of the following conditions are satisfied: (a) Developer has identified such portion of the Commercial Project and the City has approved the same, (b) Developer has prepared construction drawings and specifications for that portion of the Commercial Project, (c) Developer has obtained all required building permits for that portion of the Commercial Project and (d) Developer has begun the onsite construction process for that portion of the Commercial Project in a meaningful way with the intent of completing that portion of the Commercial Project in a timely manner without interruption.

“Commercial Project” means the proposed mixed-use development, including retail, office, residential and hospitality components, to be financed and constructed on the Property by Developer as a master-planned development in a manner consistent with this Agreement.

“County” means the County of Montgomery, Ohio.

“County Recorder” means the County Recorder of the County.

“Developer” means 201 Corridor Management LLC, an Ohio limited liability company.

“Developer Default” shall have the meaning set forth in Section 9.1.

“Developer Mortgage” shall have the meaning set forth in Section 10.5.

“Developer Mortgagee” shall have the meaning set forth in Section 10.5.

“District” means the Montgomery County Transportation Improvement District, an Ohio transportation improvement district.

“Effective Date” means the date as defined in the preamble of this Agreement.

“Final Inspection Approval” means the certificate by that name (or such other name as may be hereafter determined by City) issued by City’s then current building code official (currently the County’s Building Code Department is designated by City as that official) in respect of the completion of a building constructed as part of any Phase prior to the time that the interior of such building is completed for any tenant build-out and occupancy.

“IGA” means the Intergovernmental Agreement – Huber Heights Transportation Improvements, dated as of June 24, 2002, as amended, by and between City and District.

“Improvements” shall have the same meaning as set forth in Ohio Revised Code Section 5709.40(A)(4).

“Infrastructure Agreement” shall have the meaning set forth in Section 8.4.

“Infrastructure Analysis” means the individual infrastructure analyses, each of which shall be prepared from time to time pursuant to Section 6.4(b), and each of which will identify,

among other items, the specific Infrastructure Improvements required to be constructed or installed to support the completion of a particular Phase of the Project.

“Infrastructure Improvements” means those on-site and off-site public infrastructure improvements which City and Developer have determined, or hereafter may determine, or in the case of a Phase being developed by a Third Party Developer, which City has determined or hereafter determines, will (a) directly benefit and support the development of all or part of the Commercial Project, the Recreation Complex or any Third Party Development, (b) be generally accessible by the public, (c) be more specifically described in each Infrastructure Analysis and (d) be designed, financed, constructed and installed by City in accordance with this Agreement. Except as may otherwise be agreed to in writing by City, no more than ten percent (10%) of the cost of the Infrastructure Improvements for any Phase shall be allocated to right-of-way or detention areas to be acquired by City. This term shall also include all related costs as defined in Ohio Revised Code Section 133.15(B).

“Initial Conceptual Development Plan” means the initial conceptual design and financial analysis for the Project (which analysis is attached as **EXHIBIT B** hereto and incorporated herein by reference) which the Parties agree will be revised from time to time as the various Phases of the Project are finalized, financed and constructed.

“Interchange Projects” means, collectively, the upgrade of the U.S. 70 / State Route 201 interchange and the U.S. 70 / State Route 202 interchange as more fully described in the SIB Agreements.

“Land Assembly Agreement” means the proposed Land Assembly Agreement by and between City and Developer which Land Assembly Agreement is expected to be executed following the execution of this Agreement.

“Montgomery County TIF Ordinance” means Ordinance No. 2003-O-1409 passed by the City Council on April 28, 2003.

“Montgomery County TIF Payments” means those monies distributed by County to City in respect of the TIF Exemption authorized by the Montgomery County TIF Ordinance and which will include service payments in lieu of taxes remitted by owners of real property subject to the TIF Exemption and any other payments received by City in connection with the Montgomery County TIF Ordinance under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time. Montgomery County TIF Payments shall not include any monies received by City which (a) City is legally required to distribute to the local school district in accordance with the Montgomery County TIF Ordinance or (b) City reasonably determines are required to pay the costs, including but not limited to accounting, financial and legal, relating to the administration of the Montgomery County TIF Ordinance and the Tax Exemption.

“Notice Address” means:

as to City:

City of Huber Heights, Ohio
6131 Taylorsville Road
Huber Heights, Ohio 45424
Attention: City Manager
Telephone: (937) 233-1423
Facsimile: (937) 233-1272

as to Developer:

201 Corridor Management LLC
255 Bradenton Avenue
Dublin, Ohio 43017
Attention: George L. Jenkins
Telephone: (614) 717-4444 ext. 110
Facsimile: (614) 717-4440
Email: george-jenkins@dec-investment.com

with a copy to: Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Attention: John P. Wellner, Esq.
Telephone: (614) 464-5614
Facsimile: (614) 719-5028
Email: jpwellner@vorys.com

“Parties” means, collectively, City and Developer.

“Petition” means, individually, each petition for special assessments which is executed by Developer or the then owner of the applicable portion of the Property, as required by law, and submitted to and accepted by City, all in accordance with Section 8.8.

“Phase” means, individually, each separate component part of the Project which component part will necessarily include the coordinated and concurrent construction and installation of a specifically identified portion of the Commercial Project or a Third Party Development and the related Infrastructure Improvements, all of which will be specifically identified in accordance with Article VI.

“Project” means, collectively, the acquisition of the Property and the design, financing, construction and installation of all Phases of the Commercial Project and the Infrastructure Improvements.

“Project Budget” means the individual budgets, each of which shall be prepared from time to time pursuant to Section 6.4(c), and each of which will identify, among other items, the specific costs of constructing a particular Phase of the Commercial Project and the related Infrastructure Improvements.

“Project Schedule” means the individual schedules, each of which shall be prepared from time to time pursuant to Section 6.4(c), and each of which will identify, among other items, the

specific schedule to complete the design, financing, construction and installation of a particular Phase of the Commercial Project and the related Infrastructure Improvements.

“Property” means the approximate 150 acres of real property in the geographic vicinity of the U.S. Interstate 70 / State Route 201 interchange and the U.S. Interstate 70 / State Route 202 interchange (which real property is depicted on **EXHIBIT A** which is attached hereto and incorporated herein by reference).

“Recreation Complex” means City’s recreational complex located near the Property which is expected to include an aquatic center and other recreational facilities, including but not limited to, an amphitheater, bike and pedestrian trails, soccer fields, tennis, volleyball and basketball courts, playgrounds, open space and other recreational improvements, together with necessary parking facilities and all other appurtenances thereto.

“SIB Agreements” means, collectively, the 201 SIB Agreement and the 202 SIB Agreement.

“State” means the State of Ohio.

“Third Party Developer” shall have the meaning set forth in Section 2.2.

“Third Party Development” shall have the meaning set forth in Section 2.2.

“TIF Exemption” means the exemption from real property taxation for the Improvements as authorized by the TIF Statute and Montgomery County TIF Ordinance.

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

Section 1.3 Interpretation. Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, a section, provision or chapter of the Ohio Revised Code, or a section or provision of the City Codified Ordinances includes the section, provision or chapter as modified, revised, supplemented or superseded from time to time; *provided*, that no amendment, modification, revision, supplement or superseding section, provision or chapter will be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “*hereof*”, “*hereby*”, “*herein*”, “*hereto*”, “*hereunder*” and similar terms refer to this Agreement; and the term “*hereafter*” means after, and the term “*heretofore*” means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

(END OF ARTICLE I)

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1 General Agreement Among Parties. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements between the Parties, the Parties intend to and shall cooperate in the manner described herein to facilitate the design, financing, construction, acquisition and installation of the Project.

Section 2.2 Exercise of Coordinated Efforts. The Parties acknowledge and agree that it will be necessary to work in a coordinated manner to complete the Project in a timely and cohesive manner which will be as economically advantageous to City and its residents as possible. Accordingly, but subject to the following paragraph, City intends to work in good faith and exclusively with Developer to coordinate the development of the Project in a manner which is generally consistent with the Initial Conceptual Development Plan and the terms of this Agreement.

Developer acknowledges that certain portion(s) of the Property are not currently owned, and during the term of this Agreement it is possible that such portions will not be acquired, by City or Developer and that if a current or future owner (each a “*Third Party Developer*”) of such portion(s) of the Property submits a development plan to City for such portion(s) of the Property (each a “*Third Party Development*”), City will be required to consider, and possibly approve, such Third Party Development in the manner required by law; *provided that*, in connection with any such Third Party Development, City agrees (a) that City will act in good faith and in such manner as is reasonably practicable to ensure that any such Third Party Development will contribute in an overall manner to the timely and cohesive development of the Project (factors to be considered will include, without limitation, view corridors, visibility, accessibility and

viability) together with any other Third Party Developments; *provided however*, the Parties acknowledge that City must consider and if applicable, approve, any Third Party Development in accordance with the then applicable law and such considerations and any approvals shall be within City's sole, reasonable discretion, (b) that if any Third Party Developer requests City to construct and install Infrastructure Improvements and to pay the costs of those Infrastructure Improvements from Available TIF Monies, in order to achieve parity for Developer with respect to the expenditure of Available TIF Monies, City will limit the expenditure of Available TIF Monies for those Infrastructure Improvements in a manner consistent with this Agreement and will also require such Third Party Developer to file a Petition with City in the manner consistent with this Agreement and (c) that when and as legally permissible, City shall brief Developer with respect to any such Third Party Development in an effort to ensure that any such Third Party Development proceeds in accordance with the provisions of this Section 2.2.

Section 2.3 Term of Agreement. This Agreement shall become effective as of the Effective Date and will continue until the Project is completed, unless earlier terminated in accordance with the provisions set forth in Section 2.5 and/or Article IX.

Section 2.4 Satisfaction of Parties' Obligations in Phases. The Parties agree that the Project contemplated pursuant to this Agreement is intended to be designed, financed, acquired, constructed and installed in Phases over an extended period of time and that the various obligations of the Parties set forth herein are also anticipated to be satisfied in phases and in coordination with the requirements to complete the various Phases of the Project.

Section 2.5 Early Termination of Agreement. Unless otherwise extended by the written agreement of the Parties, this Agreement shall be terminable by City upon the occurrence

of any of the following events and Developer's failure to cure within sixty (60) days after written notice of termination by City:

(a) **Execution of Land Assembly Agreement.** The Parties, after having acted in good faith, shall fail to enter into the Land Assembly Agreement by the date which is nine (9) months following the Effective Date;

(b) **Commencement, Completion and Assessed Valuation of Phases.**

(i) **First Phase.** Developer shall have failed to satisfy any of the following requirements with respect to the first Phase of the Commercial Project:

(A) Construction of the first Phase of the Commercial Project shall Commence no later than four (4) years following the Effective Date,

(B) Construction of the first Phase of the Commercial Project shall be completed (as evidenced by the issuance of a (1) Final Inspection Approval for the shell of each building comprising that Phase and (2) certificate of occupancy for the leased portions of each building comprising that Phase as described in Section 2.5(b)(i)(C), which, in each case, City agrees to not unreasonably withhold, condition or delay) no later than two (2) years following the date on which construction of that first Phase Commenced, but in no event, not later than six (6) years following the Effective Date,

(C) As of the date of completion of that first Phase, at least fifty (50%) percent of that first Phase of the Commercial Project shall have been leased for occupancy, and

(D) As of the date of completion of that first Phase, that first Phase of the Commercial Project shall have, or shall be reasonably estimated by City to

have, an assessed valuation (for real property taxation purposes) of at least \$10,000,000.00.

(ii) **Second Phase.** Developer shall have failed to satisfy any of the following requirements with respect to the second Phase of the Commercial Project:

(A) Construction of the second Phase of the Commercial Project shall Commence no later than six (6) years following the Effective Date,

(B) Construction of the second Phase of the Commercial Project shall be completed (as evidenced by the issuance of a (1) Final Inspection Approval for the shell of each building comprising that Phase and (2) certificate of occupancy for the leased portions of each building comprising that Phase as described in Section 2.5(b)(ii)(C), which, in each case, City agrees to not unreasonably withhold, condition or delay) no later two (2) years following the date on which construction of that second Phase Commenced,

(C) As of the date of completion of that second Phase, at least fifty (50%) percent of that second Phase of the Commercial Project shall have been leased for occupancy, and

(D) As of the date of completion of that second Phase, that second Phase of the Commercial Project shall have, or shall be reasonably estimated by City to have, an assessed valuation (for real property taxation purposes) of at least \$12,500,000.00.

(iii) **Third and Subsequent Phases.** Developer shall have failed to satisfy any of the following requirements with respect to the third or any subsequent Phase of the Commercial Project:

(A) Construction of the third and each subsequent Phase of the Commercial Project shall Commence no later than one (1) year following the completion of each immediately preceding Phase,

(B) Construction of the third and each subsequent Phase of the Commercial Project shall be completed (as evidenced by the issuance of a (1) Final Inspection Approval for the shell of each building comprising that Phase and (2) certificate of occupancy for the leased portions of each building comprising that Phase as described in Section 2.5(b)(iii)(C), which, in each case, City agrees to not unreasonably withhold, condition or delay) no later than two (2) years following the date on which construction of that Phase Commenced,

(C) As of the date of completion of the third and each subsequent Phase, at least fifty (50%) percent of that third or subsequent Phase of the Commercial Project shall have been leased for occupancy, and

(D) As of the date of completion of the third and each subsequent Phase, that third or subsequent Phase of the Commercial Project shall have, or shall be reasonably estimated by City to have, an assessed valuation (for real property taxation purposes) of at least \$15,000,000.00.

(iv) **Third Party Developer Phases.** Notwithstanding Sections 2.5(b)(i), 2.5(b)(ii) and 2.5(b)(iii), the Parties agree that if Developer fails to satisfy the requirements of any of those Sections but a Third Party Developer has completed a Phase in accordance with the timing, leasing and assessed valuation requirements of that respective Section not satisfied by Developer, then Developer's failure shall not result in a termination of this Agreement.

The occurrence of any of the events detailed in this Section 2.5 shall not be an Event of Default under this Agreement.

(END OF ARTICLE II)

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

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

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

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

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

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

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

(g) Ordinance No. 2011-O-_____ passed by City Council on August __, 2011, authorizing the execution and delivery of this Agreement, has been duly passed and is in full force and effect as of the Effective Date.

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

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

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

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

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

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

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

(g) It, each of its members, each spouse of its members, each child of its members, and each political action committee affiliated with Developer complies with Ohio Revised Code Section 3517.13 limiting political contributions.

(END OF ARTICLE III)

ARTICLE IV

CITY FUNDING AVAILABILITY AND PRIORITY

Section 4.1 General. The Parties acknowledge that in order for City to fulfill all of its intended commitments under this Agreement, City will be dependent upon the generation of additional Montgomery County TIF Payments arising from Developer's construction of the Commercial Project contemplated under this Agreement.

Section 4.2 Montgomery County TIF Payments. The Parties acknowledge that City has collected and is entitled to continue to collect the Montgomery County TIF Payments in accordance with the Montgomery County TIF Ordinance and that City has heretofore pledged those Montgomery County TIF Payments to meet its obligations under the SIB Agreements. The Parties further acknowledge that City intends to use those Montgomery County TIF Payments available after meeting its obligations pursuant to the SIB Agreements for the payment of the principal of and interest and redemption premium on securities issued by City to pay the costs of constructing the Recreation Complex, and to fulfill its intended commitments under this Agreement.

Section 4.3 Priorities of Use of Montgomery County TIF Payments. The Parties agree to the following order of priorities for the use by City of the Montgomery County TIF Payments in support of certain existing obligations of City, City's obligations hereunder and for any other lawful purpose: **FIRST**, Montgomery County TIF Payments received by City in each calendar year shall be applied to the payment of all principal of and interest and redemption premium on City's obligations pursuant to the SIB Agreements and in accordance with any documentation which may be executed and delivered by City in connection with any subsequent financing (including any refinancing) related to the Interchange Projects; **SECOND**, the remaining Montgomery County TIF Payments received by City in each calendar year shall be

applied to the payment of the costs of the land acquisition and development of the Recreation Complex, including the payment of the principal of and interest and redemption premium on any related City securities; **THIRD**, Eighty Percent (80%) of the remaining Montgomery County TIF Payments received by City in each calendar year shall be applied to the payment of the costs of the acquisition of the City Property and the costs of the Infrastructure Improvements, and in each case, including the payment of the principal of and interest and redemption premium on any related City securities (monies described in this clause **THIRD** shall be referred to herein as the “*Available TIF Monies*”); *provided*, that (a) if any portion of the remaining Montgomery County TIF Payments described in this clause **THIRD** collected in any calendar year are not used for the purposes described in this clause **THIRD** within three (3) calendar years following receipt by City, then such portion of those remaining Montgomery County TIF Payments may thereafter be used in accordance with clause **FOURTH** and (b) Available TIF Monies shall not include any monies received by City in respect of tax year 2010 (collection year 2011) or any preceding tax year; and **FOURTH**, the remaining Montgomery County TIF Payments received by City in each calendar year shall be applied to the payment of any other legally permitted costs and expenses which City may identify in its sole discretion.

Section 4.4 Special Assessments. The Parties acknowledge and agree that Available Assessment Monies may also be collected by City and available, in addition to the Available TIF Monies, to pay a portion of the costs of the Infrastructure Improvements for each Phase and the debt service on any related City Securities, as more particularly described in Article VIII.

Section 4.5 Additional Funding. Notwithstanding the respective obligations of the Parties to finance the Project as provided in this Agreement, the Parties acknowledge and agree that the receipt of additional funding or incentives will enhance the Project. The Parties agree to

use good faith efforts to identify and effect additional funding sources and/or tax incentive programs that might be beneficial to the Project, and to negotiate appropriate agreements among themselves or with other entities as the Parties determine to be in the best interest of the Project and the Parties.

Section 4.6 County Participation. The Parties acknowledge and agree that the Project is estimated to generate significant additional tax revenues for County. Since County will be an economic beneficiary of the Project, the Parties agree to work in good faith to obtain financial commitments from County to assist in paying the costs of the Infrastructure Improvements and such other incentives as may be legally contributed by County.

(END OF ARTICLE IV)

ARTICLE V

ACQUISITION OF PROPERTY

Section 5.1 General. Promptly following the Effective Date, the Parties will each proceed in good faith and with all reasonable dispatch to perform any and all of their respective duties and obligations relating to the acquisition of the Property in a manner consistent with this Agreement and the Land Assembly Agreement.

Section 5.2 Land Assembly Agreement. As soon as is reasonably practicable following the execution of this Agreement, the Parties shall negotiate and enter into an agreement (the “*Land Assembly Agreement*”) that identifies the specific parcels to be included in the City Property and that details the obligations of the Parties with respect to the acquisition of the City Property and related matters. Provisions in the Land Assembly Agreement shall include, but not be limited to, the following: (a) the timing, which shall be as soon as is reasonably practicable following the effective date of the Land Assembly Agreement, for the acquisition of an approximately 17 acre portion of the Property (identified as Parcels 7, 8, 9 and 10 on **EXHIBIT A** attached hereto), (b) the timing, which shall be subject to market conditions, for the acquisition of the remainder of the Property, (c) a description of the City Property, (d) identification of the components of the Commercial Project or Infrastructure Improvements relating to each parcel of City Property, (e) procedures for obtaining appraisals and conducting other due diligence, (f) a schedule for the acquisition of the identified properties, (g) any obligation to exercise the power of eminent domain to the extent necessary for Infrastructure Improvements, (h) determination of and terms for the sale of City Property to Developer when ready for development, including timing and price (which will include City’s cost of acquisition, plus all carrying costs), (i) allocation, payment and/or reimbursement of qualifying costs of pre-acquisition activities, and (j) while at all times insuring that the land acquisition is consistent with and in accord with the

Initial Conceptual Development Plan as updated from time to time pursuant to Articles VI and VII hereof.

Section 5.3 Eminent Domain. The Parties agree that City's power of eminent domain may be exercised in connection with the acquisition of real property for the purpose of constructing thereupon the Infrastructure Improvements, but that such power, based on current law and subject to certain exceptions, may not be exercised by City to acquire real property for the purpose of conveying that real property to Developer.

Section 5.4 TIF Exemption Applications. The Parties agree to cooperate in the preparation, execution and filing of all necessary applications and supporting documents to obtain from time to time the TIF Exemption with respect to the Property and to enable City to collect the Montgomery County TIF Payments with respect to the Property. City will perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain the TIF Exemption and collect those Montgomery County TIF Payments including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with the TIF Exemption or the Montgomery County TIF Payments. Developer agrees that it will, at such times as agreed to by City and only in respect of such portion(s) of the Property then currently owned by Developer, but in no event later than the date on which Developer transfers any such portion(s) of the Property, execute and file any applications necessary to obtain from time to time the TIF Exemption with respect to such portion(s) of the Property as may be provided in the Montgomery County TIF Ordinance; *provided, however,* to the extent that Developer is unable to file such applications, Developer hereby authorizes and consents to City filing any such applications necessary to obtain from time to time the TIF Exemption as may be provided in the Montgomery County TIF Ordinance.

(END OF ARTICLE V)

ARTICLE VI

DEVELOPMENT OF PROJECT

Section 6.1 General. Promptly following the Effective Date, the Parties will each proceed in good faith and with all reasonable dispatch to perform any and all of their respective duties and obligations relating to the development of the Project in a manner consistent with this Agreement.

Section 6.2 Project to be Developed in Phases. Consistent with Section 2.4, the Parties agree that the Project will be designed, financed, acquired, constructed and installed in Phases and generally in accordance with this Article.

Section 6.3 Initial Conceptual Development Plan. Developer has prepared the Initial Conceptual Development Plan for the Project. Except as otherwise agreed to herein, the Parties agree that the Initial Conceptual Development Plan is not final and neither Party will be obligated hereunder to design, finance, acquire, construct or install any of the private improvements and/or public infrastructure improvements specifically identified in the form of such plan attached hereto as **EXHIBIT B** and that the Initial Conceptual Development Plan is prepared solely to identify for the Parties the types of private improvements and public infrastructure improvements that may be constructed upon or in proximity to the Property. At the same time the Initial Conceptual Development Plan shall represent the conceptual development plan for the Project and to the extent that any portion of the Project is planned to be developed in a manner different than the Initial Conceptual Development Plan, it shall first be amended as provided for in this Article VI and Article VII hereof.

Section 6.4 Identification of a Specific Phase. Following the execution of this Agreement, Developer shall, from time to time, identify specific Phases of the Project to be designed, financed, acquired, constructed and installed. Each identified Phase of the Project

shall be a separate component part of the Project which will necessarily include the coordinated and concurrent construction and installation of a specifically identified portion of the Commercial Project and the related Infrastructure Improvements. Once Developer has determined to proceed with a specific Phase of the Project, Developer shall notify City and deliver to City each of the following:

(a) **Updated Conceptual Development Plan.** The Initial Conceptual Development Plan, which shall have been updated to reflect the current status (both financial and construction) of the development of any prior Phases, the financial analysis of the proposed Phase, and any other modifications to reflect the anticipated conceptual development plan for the development of the remaining portions of the Property. The updated Initial Conceptual Development Plan for each Phase shall specifically include the following: (i) for each prior Phase for which all construction has been completed, the then current assessed valuation of the real property included in that Phase and the estimated annual Montgomery County TIF Payments expected to be collected by City in respect of that Phase in the then current calendar year, (ii) for each prior Phase for which all construction has not yet been completed, the then current assessed valuation of the real property included in that Phase, the estimated post-construction assessed valuation of the real property included in that Phase, the estimated annual Montgomery County TIF Payments expected to be collected by City in respect of that Phase in the then current calendar year, and the estimated annual Montgomery County TIF Payments expected to be collected by City in respect of that Phase in the first calendar year following completion of construction of that Phase and (iii) the estimated post-construction assessed valuation of the real property included in the proposed Phase and the estimated annual Montgomery County TIF Payments expected to be collected by City in respect of that Phase in the first calendar year following completion of construction of

that Phase. Developer shall be responsible for the preparation, and related cost of preparing, the Initial Conceptual Development Plan and any updates thereto.

(b) **Infrastructure Analysis.** An Infrastructure Analysis, which shall have been prepared by an engineering firm which is reasonably acceptable to City, which provides an analysis of the existing public infrastructure improvements on or near the portion of the Property to be included in the Phase to be developed by identifying the existing roadway, sanitary sewer, storm sewer, water, electric, gas, telecommunications and any other public infrastructure improvements servicing that portion of the Property and determines the Infrastructure Improvements which will be required to support that Phase of the Commercial Project (including any necessary right-of-way or detention areas to be dedicated to or acquired by City from Developer and/or from other persons). City will review the Infrastructure Analysis and either approve the Infrastructure Analysis or request that Developer cause the Infrastructure Analysis to be revised and present the revised Infrastructure Analysis to City for further review. If City requests any revisions to the Infrastructure Analysis, Developer agrees that such revised Infrastructure Analysis shall, to the extent reasonably practicable, be revised and returned to City as soon as is reasonably practicable following delivery of such request by City to Developer. City shall not be required to design, finance, construct or install any Infrastructure Improvements in accordance with this Agreement until City has approved the related Infrastructure Analysis (and all other related conditions set forth herein have been satisfied) which approval will not be unreasonably withheld, conditioned or delayed. Developer shall be responsible for the preparation, and related cost of preparing, the Infrastructure Analysis and any updates thereto.

(c) **Project Budget and Project Schedule.** A Project Budget and Project Schedule, which Developer will develop, in consultation with City, and taking into account the results of

the Infrastructure Analysis and the Available Financing Monies projected to be available to pay the costs of the Infrastructure Improvements required for that Phase, a proposed Project Budget and Project Schedule for the Phase of the Project. The Project Budget and Project Schedule will consist of separate budgets and schedules for the Commercial Project and the Infrastructure Improvements. Developer will present the proposed Project Budget and Project Schedule to City as promptly as is reasonably possible after finalization of the related Infrastructure Analysis for that Phase. City will review the proposed Project Budget and Project Schedule and either approve the Project Budget and/or Project Schedule or request that Developer modify the proposed Project Budget and/or Project Schedule and present the revised proposed Project Budget or Project Schedule to City for further review. If City requests any revisions to the Project Budget and/or Project Schedule, Developer agrees that such revised Project Budget and/or Project Schedule shall, to the extent reasonably practicable, be revised and returned to City as soon as is reasonably practicable following delivery of such request by City to Developer. City shall not be required to design, finance, construct or install any Infrastructure Improvements in accordance with this Agreement until City has approved the related Project Budget and Project Schedule (and all other related conditions set forth herein have been satisfied) which approval will not be unreasonably withheld, conditioned or delayed. Developer shall be responsible for the preparation, and related cost of preparing, the Project Budget and Project Schedule and any updates thereto.

(d) **Available Financing Monies Analysis.** The Parties agree that following receipt of the documents specified in Sections 6.4(a), 6.4(b) and 6.4(c) and prior to the time that City is requested to approve those documents, City shall be given a reasonable period of time to prepare an Available Financing Monies Analysis. The Parties further agree that if the City concludes in

its sole, reasonable discretion, based on the Available Financing Monies Analysis, that the cost of the proposed Infrastructure Improvements may not be supported by the Available Financing Monies, the Parties agree that the Infrastructure Analysis, Project Budget and Project Schedule will be revised in such a manner which is reasonably satisfactory to City and Developer in order that the cost of the proposed Infrastructure Improvements will be supported by the Available Financing Monies.

(e) **Cooperation of City Staff.** City agrees that members of City staff will be available to and will work in good faith with Developer and its representatives in connection with the preparation and review of the documents specified in Sections 6.4(a), 6.4(b) and 6.4(c) and in connection with the Project generally.

Section 6.5 Commencement of a Specific Phase. Promptly following receipt of the items described in Section 6.4 and approval by City, and satisfaction of the conditions set forth in Section 8.6, the Parties agree to proceed in good faith and with all reasonable dispatch to complete the portion of the Commercial Project and Infrastructure Improvements related to a particular Phase of the Project.

Section 6.6 Progress Reports and Meetings. The Parties agree to meet periodically (quarterly if a particular Phase of the Project is not then currently under construction and bi-weekly if a particular Phase of the Project is then currently under construction) to discuss the progress of each Party's obligations under this Agreement, the scheduling and timing for each Party's obligations, and potential modifications, problems and resolutions related thereto. At least three business days prior to each such meeting, (a) Developer shall provide a written report to City, in such detail as may be reasonably requested, as to the progress of Developer with respect to the Commercial Project, and (b) City shall provide similar reports to Developer with

regard to progress of City with respect to City's obligations contemplated in this Agreement, including the design, financing, construction and installation of the Infrastructure Improvements. The requirements of this section shall continue from the date of this Agreement until all work (both public and private) is completed; *provided, however*, the Parties may elect to delay a progress meeting upon mutual consent.

Section 6.7 Public Information. The Parties desire to maintain flexibility in planning and refining the Project and desire to limit public announcements relating to the Project. The Parties will agree to the manner, timing and content of any public announcements, including descriptions of Project status. Notwithstanding the foregoing, Parties acknowledge that City is a public body subject to Ohio "sunshine" laws, and the Parties further acknowledge that City may be required to release certain information relating to the Project pursuant to public records requests. Parties agree that compliance with a public records request will not constitute a violation of this section or an event of default hereunder.

Section 6.8 Non-Developer Phases. In accordance with Section 2.2, the Parties acknowledge that if a portion or portions of the Property are not acquired by City or Developer, a Third Party Developer may have the right to develop such portion(s) of the Property as a Phase of the Project. In the event that a Third Party Developer determines to develop such Phase and such Third Party Developer requests that City finance, construct and install certain related Infrastructure Improvements which Infrastructure Improvements will be paid from Available TIF Revenues, City agrees to act in good faith to require such party to prepare and deliver to City the documents described in Sections 6.4(b) and 6.4(c) and a Petition as described in Section 8.8. City also agrees to prepare an Available Financing Monies Analysis in accordance with Section

6.4(d) to determine the amount of City Securities that may be issued in accordance with Section 8.7 to pay the costs of constructing and installing the Infrastructure Improvements for that Phase.

(END OF ARTICLE VI)

ARTICLE VII

COMMERCIAL PROJECT

Section 7.1 General. Developer agrees that it will proceed in good faith and with all reasonable dispatch to design, finance and construct the Commercial Project and perform any and all of its duties and obligations relating to the Project in a manner consistent with this Agreement, subject to market conditions as they may exist from time to time during the term of this Agreement.

Section 7.2 Submittal of Plans for Commercial Project. For each Phase of the Commercial Project, Developer shall prepare and submit a site plan, architectural renderings and related plans to City, in such detail as is reasonably necessary for review and approval by appropriate City Boards or Commissions in accordance with the ordinary exercise of their respective rights and duties under the pertinent City Codified Ordinances.

The Parties acknowledge that the Initial Conceptual Development Plan for the Project and any basic development plan for the Commercial Project (which it is contemplated will include a separate basic development plan for each Phase of the Project) will be submitted for review first by the City administrative staff, second by the Planning Commission for review and action and third by the City Council for review and approval, all in accordance with Chapter 1171 of the City Codified Ordinances. Developer acknowledges and agrees that it will be required to prepare and submit for approval detailed development plan(s) for the Commercial Project as required by the pertinent City Codified Ordinances and in accordance with Article VI hereof.

Section 7.3 Installation of Utilities and Roadways. Except for certain of the Infrastructure Improvements which shall be the responsibility of City and identified in the

Infrastructure Analysis for each Phase, Developer shall be responsible for the following for each Phase of the Commercial Project:

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

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

(c) **Storm Sewer**. Except as otherwise provided herein, at no cost to City, Developer shall provide to City storm sewer drainage easements, as necessary, and will dedicate a storm sewer collection system and related onsite and offsite regional detention and/or retention ponds to City which will be designated on the detailed development plan(s) and plat(s) for the Commercial Project. The exact location and size of such storm sewer drainage easements and regional ponds shall be determined by the detailed development plan(s) and final plat(s) as approved by City, consistent with the zoning thereof, as herein provided, engineering standards and all other applicable rules and regulations. Except for underground storm sewer pipes, Developer shall be responsible for all maintenance of the storm sewer management system

(including but not limited to easements and ponds) on each phase of development of the Commercial Project.

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

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

(e) **Cross Easements for Utility Services.** The Parties agree among themselves to grant, without charge, reciprocal cross-easements or easements to public or private utilities, as appropriate, for construction of utilities described in this Section 7.3, or other public or private utilities to service the Property; *provided, however*, that all easements shall be within or adjacent to the various proposed public road or driveway rights-of-way, as set forth on the revised basic development plan for the Commercial Project, except as may otherwise be reasonably necessary to assure utility services to all parts of the Commercial Project. Easements for surface drainage shall follow established water courses, unless otherwise agreed to by the affected Party. Developer shall restore any easement areas to a condition which is reasonably satisfactory to City promptly following any construction work by a private entity. City shall restore any

easement areas following any construction work by City in accordance with the City Codified Ordinances.

(f) **Dedication.** All public utilities and public roadways (including related rights-of-way) installed and/or constructed within the Commercial Project (except certain of the storm sewer improvements referenced in Section 7.3(c) which may hereafter be identified by City and the utility cross easements described in Section 7.3(e)) shall be dedicated (free and clear of any liens, encumbrances and restrictions except as may be permitted in writing by City) to City and recorded with the County Recorder at such time as is consistent with the City Codified Ordinances and the terms of this Agreement (including Sections 8.3 and 8.4 hereof) and any pertinent Infrastructure Agreement.

Section 7.4 Developer Obligations. Developer shall be responsible for developing the Commercial Project in accordance with the detailed development plans, as may be modified from time to time, and as such plans are approved by City as hereinbefore provided. Except as otherwise provided in this Agreement, in the Land Assembly Agreement, in any pertinent Infrastructure Analysis or in any pertinent Infrastructure Agreement, Developer shall provide all funds necessary to acquire the Property and to design, finance and construct the Commercial Project. Developer will comply with all applicable provisions of the City Codified Ordinances.

Section 7.5 Permits. Prior to commencing construction of the Commercial Project, Developer shall obtain all necessary permits from all levels of government to allow Developer to build and develop the Commercial Project consistent with the detailed development plan(s) for the Commercial Project. Standards for permit approval shall comply with all applicable standards (as may be set forth in City Codified Ordinances or elsewhere) at the time of zoning

permit application or, in the case of City administrative plan review requirements, at the time of application for those predevelopment permits.

Section 7.6 Fees, Charges and Taxes. Developer, or any successor developer of a portion of the Commercial Project as the case may be, shall, as and when customarily payable to City on projects comparable to the Commercial Project, pay the then current standard fees in connection with any construction of the Commercial Project, which fees shall include, but not be limited to, the provision of water, sanitary sewer and storm sewer services, and which fees, City agrees, will be determined in a manner consistent and uniform with the manner of fee determination on projects comparable to the Commercial Project. Developer acknowledges and agrees that City reserves the right to adjust the standard fees described in this Section 7.6 from time to time in a manner consistent and uniform with the manner of fee determination on projects comparable to the Commercial Project. Developer, or any successor developer of a portion of the Commercial Project as the case may be, shall also ensure that any other standard fees, sales and use taxes, if any, license and inspection fees necessary for the completion of the Commercial Project shall be timely paid.

Section 7.7 Provision of City Services. City agrees to provide to the Project any City services usually and customarily provided by City, including but not limited to, fire and police protection and road maintenance; *provided however*, City shall not be required to construct and install improvements related to the provision of those services except as otherwise provided herein.

Section 7.8 Insurance and Bonds. Insurance and bonds shall be provided by Developer or its contractors and subcontractors during the course of development of the

Commercial Project only if and as otherwise required by the City Codified Ordinances and other applicable development regulations.

Section 7.9 Compliance with Laws. In connection with the construction of the Commercial Project and in performing its obligations under this Agreement, Developer agrees that it shall comply with, and require all of its employees, agents, contractors and consultants to comply with, all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence affecting the Commercial Project or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Developer, at any time in force affecting the Commercial Project or any part thereof.

Section 7.10 Expeditious Completion of Commercial Project. The Parties agree that the expeditious completion of the Commercial Project will benefit both Parties. To that end, the Parties agree to act in good faith and in a cooperative manner to complete the Commercial Project in accordance with the terms of this Agreement. City also agrees to act in good faith and diligently review the various applications and other matters which must be approved by City as compliant with applicable laws and regulations in connection with the Commercial Project; *provided, however,* Developer acknowledges and agrees that the various approvals of City relating to planning and zoning described in this Article VII shall not be effective until approved

by the appropriate body as contemplated hereby. The Parties each agree that City shall have no rights and shall bear no responsibility relative to the marketing or sale of retail or commercial real property or improvements thereto within the Commercial Project.

(END OF ARTICLE VII)

ARTICLE VIII

INFRASTRUCTURE IMPROVEMENTS

Section 8.1 General. City agrees that it will proceed in good faith and with all reasonable dispatch to design, finance, construct and install the Infrastructure Improvements and perform any and all of its duties and obligations relating to the Project in a manner consistent with this Agreement.

Section 8.2 Infrastructure Improvements. The Parties agree that City shall not be obligated to construct and install or cause the construction and installation of any Infrastructure Improvements that would cost more than the principal amount of securities which City reasonably believes could be serviced from the Available Financing Monies. Any City obligations under this Agreement will be further subject to the conditions specified in Section 8.6.

Section 8.3 Dedication of Right of Way and Grants of Easements. Prior to commencement of construction of the Infrastructure Improvements, and to the extent not otherwise owned by City, Developer agrees to dedicate to City (either without cost to City or as part of the cost of the related Infrastructure Improvements payable from Available Financing Monies) such portion of the Property as is necessary, as reasonably determined by City, to construct the Infrastructure Improvements in accordance with the pertinent Infrastructure Analysis and/or any pertinent Infrastructure Agreement. The Parties agree to cooperate in filing necessary plats to dedicate the street and utility areas affected for the Infrastructure Improvements contemplated by this Agreement. The dedicated title and rights-of-way shall be free from liens or encumbrances except existing easements of record and those other matters that are approved by City in writing, which approval shall not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that the preliminary title commitments may disclose certain utility easements that may be inconsistent with or require relocation in connection with the

development contemplated by this Agreement. Each Party agrees to cooperate with the other as reasonably requested to remove or relocate the affected easements and the utility facilities located therein, *provided* that any financial commitment of City to facilitate such cooperation will be subject to sufficient Available Financing Monies being available for that purpose.

Developer agrees to grant to City such temporary construction easements over the Property (after acquired by Developer) as are reasonably necessary from time to time to enable City to construct the Infrastructure Improvements, and shall execute and deliver to City upon request from time to time temporary construction easements in forms satisfactory to City. City agrees to promptly terminate any such construction easement once the Infrastructure Improvements have been completed.

City agrees to grant to Developer such temporary construction easements over any portions of the Property owned by City or public rights-of-way as are reasonably necessary from time to time to enable Developer to construct and complete the Commercial Project, and shall execute and deliver to Developer upon request from time to time temporary construction easements in forms satisfactory to Developer. Developer agrees to promptly terminate any such construction easement once the related Commercial Project has been completed.

Section 8.4 Expedited Bidding Process. In order to expedite the completion of the Infrastructure Improvements for each Phase, City may waive the competitive bidding requirements of the City Codified Ordinances. Further, if City so determines, the Parties may enter into one or more infrastructure improvement agreements to provide for the construction of the proposed Infrastructure Improvement (each an “*Infrastructure Agreement*”). The Parties agree to work cooperatively to prepare and agree upon a form of Infrastructure Agreement (which form shall be approved by the City Attorney) as soon as is reasonably practicable

following the Effective Date. Each Infrastructure Agreement shall provide for the specific terms relating to the construction of the proposed Infrastructure Improvements which shall include provision for, but not necessarily be limited to, the preparation of plans and specifications, construction costs, bidding procedures, paying for or financing the related costs, and providing warranties therefor. Notwithstanding anything to the contrary herein or therein, any contract shall comply with the City Codified Ordinances, as applicable.

Section 8.5 Plan for Infrastructure Improvements. City, working in cooperation with Developer and in accordance with documents provided to and approved by City pursuant to Section 6.4, shall identify, design finance, construct and install the Infrastructure Improvements. To the extent feasible and to the extent the funding contemplated hereunder is available, City shall use good faith efforts to communicate and cooperate with Developer so that the Infrastructure Improvements related to a particular Phase will be completed at or about the same time as the Commercial Project for that particular Phase.

Section 8.6 Conditions to City Obligations. City shall not be obligated to design, finance, construct or install the Infrastructure Improvements for any Phase until it has received all of the following:

(a) The documents specified in Sections 6.4(a), 6.4(b) and 6.4(c) which shall have been approved by City;

(b) An Available Financing Monies Analysis which in City's sole, reasonable discretion, concludes that City will be able to issue City Securities sufficient in amount to pay the costs of designing, constructing and installing those Infrastructure Improvements and that the Available Financing Monies will be sufficient to pay the principal of and interest and redemption premium on those City Securities, all in accordance with Section 8.7;

(c) Sufficient property interests to construct or cause the construction of the Infrastructure Improvements which City agrees to proceed with reasonable dispatch and in good faith to acquire;

(d) Satisfactory evidence that Developer has obtained sufficient property rights in the portion of the Property required for the construction and development of the Phase of the Commercial Project to be constructed and developed upon that portion of the Property;

(e) Satisfactory evidence that Developer has received sufficient financing and other commitments for the construction and development of the Phase of the Commercial Project to be served by those Infrastructure Improvements; and

(f) A Petition (which must be in a form reasonably satisfactory to the City Attorney) from the owner of the portion(s) of the Property (which shall be Developer or such other person or entity as is required by law) to be specially benefited by the Infrastructure Improvements required to be constructed for that Phase, all in accordance with Section 8.8, which Petition must provide for special assessments in an amount equal to the costs of the Infrastructure Improvements required for that Phase (except as may otherwise be approved in writing by City) and must be proposed to be levied against the Property (or a portion thereof) which, at the time when the special assessments are levied for collection, will have a then current estimated fair market valuation at least equal to three (3) times the amount of the special assessments (including applicable interest) levied against that Assessed Property (or such portion thereof). The then current estimated fair market value of the Assessed Property (or such portion thereof) must be determined by a qualified appraiser independent from Developer and its affiliates and selected by Developer and City, or in the case of a Third Party Development, selected by the Third Party Developer and City.

Section 8.7 Issuance of Securities by City. The Parties acknowledge and agree that the Available Financing Monies received by City in any particular calendar year will likely be insufficient to pay the entire costs of acquiring the City Property and constructing and installing the Infrastructure Improvements required to complete any particular Phase. Accordingly, the Parties agree that to provide sufficient funds to pay the initial costs of acquiring the City Property and designing, constructing and installing the Infrastructure Improvements for any Phase, City will need to issue City Securities and pledge to the repayment of those securities Available Financing Monies thereafter expected to be collected by City and, in the case of the Available TIF Monies, not otherwise required to satisfy City obligations pursuant to Section 4.3 (which shall include the repayment of securities theretofore issued to pay the costs of the acquisition of City Property or the design, construction and installation of Infrastructure Improvements for prior Phases).

The Parties acknowledge and agree that the type and amount of City Securities which City may issue will be subject to City's determination of the anticipated amount of Available Financing Monies which are expected to be available (subject to Section 4.3 and subject to reduction for Available TIF Monies which are required to support the payment of debt service on City securities issued for prior Phases in accordance with this Agreement) for the payment of the costs of acquiring the City Property and constructing and installing the Infrastructure Improvements for that Phase.

City agrees that it will act in good faith and take such steps as are reasonably necessary to issue City Securities. However, the Parties acknowledge and agree that issuance of City Securities is subject to legislative approval of City Council and the type(s) of City Securities to be issued and the appropriate principal sizing thereof will be subject to the Available Financing

Monies Factors, and that conditions in the public debt markets may require an alternative approach or modification of the Project Schedule or Project Budget, all as determined by City in its sole, reasonable discretion, and that City is entitled to reasonably rely on consultations with City's investment banking firm and bond counsel to determine the financing structure(s) for the City Securities that are in the best interest of City.

Section 8.8 Special Assessments. Developer agrees that it will sign and deliver, or cause future owners of the Property to sign and deliver, to City one or more Petitions for each Phase requesting that the Infrastructure Improvements required for that Phase (as specified in each Petition) be designed, constructed and installed and that the costs of those specific Infrastructure Improvements be specially assessed against the Assessed Property. The special assessments shall be levied over such period of years as described in each Petition (which shall not exceed that maximum period permitted by law) and City agrees that it will certify such special assessments for collection commencing in the year described in each Petition; *provided* that City shall not be required to accept any Petition (a) which includes a certification deferral of more than five (5) years following completion of the proposed Infrastructure Improvements and (b) that does not comply in all respects with the provisions of Article VI including specifically Section 6.4 applying those provisions specifically to the special assessments. The Parties also agree that in connection with any Phase, City may, based on its determination and without the requirement of a Petition, levy and collect special assessments for Infrastructure Improvements which City determines will specially benefit the portion(s) of the Property included in that Phase (a "*City Initiated Special Assessment*").

City agrees that it will provide a credit against such portion (as will be specified in the related Petition) of the aggregate amount of special assessment payments owing against the

Assessed Property for any year equal to the aggregate amount of Available TIF Monies received in respect of the Assessed Property by City by December 1 of the preceding calendar year and available (according to the priority of payments in Section 4.3) to pay the costs of the Infrastructure Improvements; *provided, however*, the amount of any credit calculated pursuant to this Section may be reduced by City in any year it has reason to believe that, as a result of any reduction or elimination in tax valuation, tax rate or tax levies on all or any portion of the Assessed Property or as a result of an increase in debt service payments, the Available TIF Monies to be received by the City in the succeeding year, taking into account the priority of payments detailed in Section 4.3, will be insufficient to provide for the payment of the costs of debt service on City securities issued for the purpose of paying the costs of the Infrastructure Improvements due in such succeeding year.

For purposes of this Agreement, the term “*Available Assessment Monies*” shall collectively refer to (a) any portion of the aggregate amount of special assessment payments in respect of any Phase which are not eligible (in accordance with the related Petition) to be reduced as a result of a credit for Available TIF Monies (as such credit is described in the preceding paragraph) plus (b) the aggregate amount of special assessment payments in respect of any Phase which are collected pursuant to a City Initiated Special Assessment.

Developer agrees that it will not, and it will prohibit any successor in interest to the Property or any part thereof to, engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Assessed Property or any portion thereof which shall have priority over any lien resulting from the levy of special assessments in accordance with any Petition. Developer further agrees that if such lien or encumbrance shall exist at the time such Petition is filed with City, City shall have no obligation to accept such Petition and

finance, construct and install such requested Infrastructure Improvements until such time as said lien or encumbrance is eliminated or subordinated to the special assessment lien.

Section 8.9 Compliance with Laws. In connection with the construction of the Infrastructure Improvements and in performing its obligations under this Agreement, City agrees that it shall comply with, and require all of its employees, agents, contractors and consultants to comply with, all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence affecting the Infrastructure Improvements or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to City, at any time in force affecting the Infrastructure Improvements or any part thereof.

(END OF ARTICLE VIII)

ARTICLE IX

EVENTS OF DEFAULT; REMEDIES

Section 9.1 Developer Default. Any one or more of the following shall constitute a Developer Default under this Agreement:

(a) Default by Developer in the due and punctual performance or observance of any obligation under this Agreement or the Land Assembly Agreement and such default is not cured within thirty days after written notice from City, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a Developer Default shall not be deemed to occur so long as Developer commences to cure the default within the thirty day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by Developer in this Agreement is false or misleading in any material respect as of the time made;

(c) The filing by Developer of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(d) The making by Developer of a general assignment for the benefit of creditors;

(e) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with Developer as debtor; or

(f) The filing by Developer of an insolvency proceeding with respect to such party or any proceeding with respect to such party for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

Section 9.2 City Default. Any one or more of the following shall constitute a City Default under this Agreement:

(a) Default by City in the due and punctual performance or observance of any obligation under this Agreement or the Land Assembly Agreement and such default is not cured within thirty days after written notice from Developer, *provided* that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a City Default shall not be deemed to occur so long as City commences to cure the default within the thirty day period and diligently pursues the cure for completion within a reasonable time;

(b) Any representation or warranty made by City in this Agreement is false or misleading in any material respect as of the time made; or

(c) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with City as debtor.

Section 9.3 Remedies.

(a) **Discussion and Mediation.** In the event that Developer shall create or suffer a Developer Default under this Agreement which remains uncured as aforesaid, or in the event that City shall create or suffer a City Default under this Agreement which remains uncured as aforesaid, or in the event of any dispute arising out of or relating to this Agreement which does not necessarily rise to the level of a default hereunder, then absent facts or circumstances which compel a Party's pursuit of immediate injunctive or other equitable relief, the Parties agree to and shall first proceed as follows prior to pursuit of any other remedies hereunder, in equity or at law:

(i) the complaining Party shall notify the other Party of the dispute and/or claimed default, and thereafter the Parties shall undertake good faith discussions for the purpose of resolving the dispute and/or the issues giving rise to the claimed default.

(ii) If the dispute and/or the issues giving rise to the claimed default are not resolved by such good faith discussions within thirty (30) days after such notice is provided under foregoing clause (i), then, upon the request of either Party by written notice to the other Party, mediation shall be initiated through the use of a mutually-acceptable neutral mediator not affiliated with either of the Parties, and thereafter the Parties shall proceed in good faith with such mediation for the purpose of resolving the dispute and/or the issues giving rise to the claimed default. If the Parties are unable to agree upon a neutral mediator, then either Party may solicit the Administrative Judge of the Common Pleas Court of Montgomery County, Ohio to appoint the mediator. If the dispute and/or the issues giving rise to the claimed default are not resolved within thirty (30) days after the identification or appointment of the mediator, then the Parties may pursue their other remedies hereunder, in equity or at law. Each Party shall pay its own costs and one-half (1/2) of the mediator's fees and expenses in connection with any such mediation. Developer acknowledges that before the Parties may proceed with mediation in accordance with this Section 9.3(a), City Council must first authorize and appropriate sufficient monies to pay City's portion of the cost.

(b) **Remedies for Developer Default.** In the event that Developer shall create or suffer a Developer Default under this Agreement and the Parties are unable to resolve all issues arising out of such a Developer Default in accordance with the discussion and mediation provisions set forth in Section 9.3(a) above, then, in addition to any other rights or remedies available to City hereunder, in equity or at law, City, at its option, shall have the right to cancel and terminate this Agreement by written notice to Developer.

(c) **Remedies for City Default.** In the event that City shall create or suffer a City Default under this Agreement and the Parties are unable to resolve all issues arising out of such a City Default in accordance with the discussion and mediation provisions set forth in Section 9.3(a) above, then, in addition to any other rights or remedies available to Developer hereunder, in equity or at law, Developer, at its option, shall have the right to cancel and terminate this Agreement by written notice to City.

Section 9.4 Other Rights and Remedies; No Waiver by Delay. The Parties each have the further right to institute any actions or proceedings (including, without limitation, actions for specific performance, injunction or other equitable relief) as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; *provided*, that any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement will not operate as a waiver of those rights or to deprive it of or limit those rights in any way; nor will any waiver in fact made by either Party with respect to any specific default or breach by any other Party under this Agreement be considered or treated as a waiver of the rights of that Party with respect to any other defaults by the other Party or with respect to the particular default or breach except to the extent specifically waived in writing. It is the further intent of this provision that no Party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise any remedy at a time when it may still hope otherwise to resolve the problems created by the default involved.

Section 9.5 Force Majeure. Except as otherwise provided herein, no Party will be considered in default in or breach of its obligations to be performed hereunder if delay in the performance of those obligations is due to unforeseeable causes beyond its control and without

its fault or negligence, including but not limited to, acts of God, acts of terrorism or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of obligations shall be extended for the period of the enforced delay; *provided, however,* that the Party seeking the benefit of the provisions of this Section must, within a reasonable period following commencement of the enforced delay, notify the other Party in writing of the delay and of the cause of the delay and of the duration of the delay or, if a continuing delay and cause, the estimated duration of the delay, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Parties in writing of the duration of the delay. Delays or failures to perform due to lack of funds shall not be deemed unforeseeable delays.

(END OF ARTICLE IX)

ARTICLE X

MISCELLANEOUS

Section 10.1 Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties; *provided, however*, that Developer may assign its rights and responsibilities under this Agreement to an affiliate of Developer. City may withhold consent for assignments to non-affiliates of Developer in its sole, reasonable discretion.

Section 10.2 Binding Effect. The provisions of this Agreement are binding upon the successors or assigns of the Parties, including successive successors and assigns. The Parties acknowledge that all matters subject to the approval of City Council will be approved or disapproved in City Council's sole discretion.

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

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

Section 10.5 Developer Mortgagee Rights. City hereby acknowledges that, from time to time during the development of the Project, Developer will obtain financing in connection with the various Phases of the Project which will be secured in whole or in part by assignments, pledges or mortgages of Developer's interests in the Property (each a "*Developer Mortgage*"). In connection therewith, City agrees to and shall cooperate with Developer to provide to the holder of any such Developer Mortgage (each a "*Developer Mortgage*") such reasonable factual representations and/or consents regarding this Agreement and/or Developer's rights hereunder as

such Developer Mortgagee may request from time to time. By way of example, such reasonable factual representations and/or consents may take the form of: (a) factual representations regarding the status of Available Financing Monies and/or the issuance of City Securities in connection therewith, and/or the status of the Land Assembly Agreement, any Infrastructure Analysis, any Infrastructure Agreement, any Project Schedule and/or any Project Budget; (b) estoppel certificates certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that it is in full force and effect as modified and stating the modifications), that neither City nor Developer is in default in the performance of any obligations under this Agreement (or specifying any such default of which City has knowledge), and certifying as to other facts as reasonably requested by such Developer Mortgagee; and/or (c) consents to the collateral assignment of certain of Developer's rights under or in respect of this Agreement. Any such requested assurance and/or consent shall be in a form reasonably approved by City, and City shall endeavor reasonably to respond to any such request in a prompt and timely manner. Developer agrees to pay on behalf of City any fees and expenses incurred by City in connection with any request pursuant to this Section.

Section 10.6 Document Submissions to City. Except as otherwise required by the City Codified Ordinances, any documents required to be submitted to City pursuant to this Agreement shall be submitted to the City Manager or such other City department as may be directed by the City Manager.

Section 10.7 Entire Agreement. This Agreement, including the exhibits and the corollary agreements contemplated hereby, embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 10.8 Executed Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to constitute an original, but all of which together constitute but one and the same instrument. It is not necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 10.9 Extent of Covenants; Conflict of Interest; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement are effective to the extent authorized and permitted by applicable law. No member, official or employee of City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects his personal interest or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No covenant, obligation or agreement may be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent, director, member or employee of City or Developer other than in his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement nor any present or future member, officer, agent, director or employee of Developer, are liable personally under this Agreement or subject to any personal liability or accountability by reason of the execution hereof or by reason of the covenants, obligations or agreements of City and Developer contained in this Agreement.

Section 10.10 Governing Law. This Agreement is governed by and is to be construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between City, its agents and employees and Developer, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

Section 10.11 Limits on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event will City or Developer be liable to each other for punitive, special, consequential or indirect damages of any type and regardless of whether those damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law unless otherwise expressly agreed by the Party against which the damages could be assessed.

Section 10.12 No Third Party Beneficiary. Except for an assignment effected pursuant to Section 10.1, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the Parties, any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Parties hereto, as provided herein. With the exception of the Parties and any assignee effected pursuant to Section 10.1, it is not intended that any other person or entity shall have standing to enforce, or the right to seek enforcement by suit or otherwise of any provision of this Agreement whatsoever.

Section 10.13 Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the recipient at the Notice Address, or to another address of which the recipient has previously notified the sender in writing, and the notice will be deemed received upon actual receipt, unless sent by certified mail, in which case the notice will be deemed to have been received when the return receipt is signed or refused.

Any process, pleadings, notice or other papers served upon any Party must be sent by registered or certified mail at its Notice Address, or to another address or addresses as may be furnished by one party to the other.

Section 10.14 Recitals and Exhibits. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto and the information contained in the Exhibits hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 10.15 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination will not affect any other provision, covenant, obligation or agreement contained herein, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein. If any provision, covenant, obligation or agreement contained herein is subject to more than one interpretation, a valid and enforceable interpretation is to be used to make this Agreement effective. That invalidity or unenforceability will not affect any valid and enforceable application, and each provision, covenant, obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 10.16 Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(END OF ARTICLE X – SIGNATURE PAGES TO FOLLOW)

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Huber Heights, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2011 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: August _____, 2011

Donnie R. Jones
Director of Finance
City of Huber Heights, Ohio

EXHIBIT A

PROPERTY

The parcels comprising the Property include the following:

Parcel	Acreage	Tax Parcel Number¹
1	16.5340	P70 04002 0048
2	0.9093	P70 01820 0003
3	24.3907	P70 01820 0004
4	21.8430	P70 01820 0001
5	14.0000	P70 01820 0005
6	51.5979	P70 03910 0005
7	9.3370	P70 03910 0040 P70 03910 0041
8	1.1300	P70 03910 0012
9	5.7010	P70 03910 0013
10	1.0000	P70 03910 9958

¹ City of Huber Heights, Montgomery County, Ohio

The Property is depicted as follows:

EXHIBIT B

INITIAL CONCEPTUAL DEVELOPMENT PLAN

201 DEVELOPMENT PARTNERS

THE HEIGHTS

**TAX REVENUES GENERATED
FOR VARIOUS GOVERNMENT ENTITIES**

JUNE 2011



OVERVIEW AND INTRODUCTION

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PROJECT OVERVIEW:

The Heights is envisioned as a regional mixed-use destination, located in a strategic position with high visibility and direct access to US 201 and Interstate 70 and within 5-minutes of Interstate 675 and Interstate 75.

It is planned to offer a variety of retail, hospitality and professional office. The intent of the development is to craft a park like setting inviting external visitors as well as connecting to neighboring developments by way of roadway connections and the extension of adjacent bike/pedestrian trails.

RESEARCH OBJECTIVE:

This document serves to estimate the tax revenues generated by the project for the City of Huber Heights, Montgomery County and the State of Ohio.

EXECUTIVE SUMMARY

The Heights retail, hospitality and office development will significantly increase the economic activity in the region and generate millions of dollars of public funds for the City of Huber Heights, Huber Heights Consolidated School District, Montgomery County and the State of Ohio.

Summary Tax Revenues		Annual	Over 30-Years*
City of Huber Heights			
	Property Taxes**	\$4.4 Million	\$70 Million
	Income Taxes - Corp / Indiv	\$1.7 Million	\$51 Million
	Local Bed Taxes	\$429,000	\$13 Million
	Total	\$6.5 Million	\$122 Million
Huber Heights Consolidated School District			
	Total School Taxes**	\$1.4 Million	\$122 Million
Montgomery County			
	County Sales Taxes	\$4.6 Million	\$138 Million
	County Occupancy Taxes	\$429,000	\$13 Million
	Total	\$5.5 Million	\$151 Million
State of Ohio			
	Ohio Sales Taxes	\$16.9 Million	\$507 Million
	State Income Taxes	\$1.1 Million	\$33 Million
	State CAT Taxes	\$567,000	\$17 Million
	Total	\$17.6 Million	\$554 Million
All Tax Revenues		\$31 Million	\$949 Million

* Conservative 30-year estimate based on no inflation.

** The existing TIF agreement specifies certain allocations by year. See following pages for details on 30-year total.

The Heights

201 Corridor
Management Partners

PRELIMINARY CONCEPT



Regional Mixed-Use Destination

Huber Heights / Montgomery County Ohio

- Pedestrian Trail Connections*
- Interstate Convenience*
- Park-like Setting*
- Retail*
- Restaurant*
- Entertainment*
- Hospitality*
- Residential*
- Office / Medical / Technology*

ANALYSIS

METHODOLOGY:

To better estimate how the Heights will serve as a growth engine for the regional and local economies, we modeled the cost to construct the developments, the revenues expected from the operations and the downstream direct and indirect impacts to the local, county, and state economy as a result of this investment.

Economic activity and its associated tax revenues will come in many forms:

- + Property taxes will grow for the City of Huber Heights through an existing Tax Increment Financing district encompassing the development.
- + Jobs supported by business in the development will increase income tax revenues for the City of Huber Heights and the State of Ohio.
- + Businesses located in the development will Generate Corporate Earnings Taxes for the City of Huber Heights and the State of Ohio. Additionally, Commercial Activity Taxes (C.A.T.) will be collected by the State.
- + Sales Taxes will grow Montgomery County and the State of Ohio

ASSUMPTIONS:

Due to the preliminary nature of the project, the estimates presented in this report are based on an projected office / retail mix set forth in the analysis. All estimates illustrate the final build out totals after build out occurs and to not establish a phasing plan or absorption estimate.

The Costs to build office and retail components of the project have been established an average cost per square foot (/sf) based on the developer's experience constructing like product.

Sales of office structures are expected to generate an **estimated market values** of \$125 / sf. The retail values vary depending on the exact type of development. These values are based on sales of office and retail products within the area of the planned development in the last 12-months. The Heights Development is likely to demand a premium due to its strategic position with high visibility and direct access to US 201 at Interstate 70 as well as I-675 and I-75 nearby. Consequently, this estimate is conservative. Furthermore, the current depressed state of office and retail development sales in the local region / nationwide has influenced recent transaction values. In a more normal economic environment, sales would likely yield higher values.

DEVELOPMENT SECTIONS



The Heights of Huber Heights
 Area Plan

Phase 1 - 32 Acres
 Neighborhood / Convenience Retail
 Theater / Restaurants
 Trail Connections North to Parks
 and Adjacent Neighborhoods Including
 Carriage Trails

Phase 2 - 77 Acres
 Regional Shopping and
 Entertainment District
 Park Like Setting with
 Trail Connections and
 Outdoor Gathering

Phase 3 - 36 Acres
 Hospitality and Conference
 Prominent Interstate Exposure /
 Convenient Regional Location

Phase 4 - 22 Acres
 Huber Heights Tech Park
 Technology / Light Industrial /
 Office Campus

201 Development
 Partners

PHASE DETAILS

Phase 1 (32 Acres) - Neighborhood / Convenience Retail / Convenience Theatre / Restaurants

Use Type	Site Size	Built Size	Cost Sq. Ft	Est. Market Value	Assessed Value
<i>Inline Neighborhood / Specialty</i>	<i>5.0 ac</i>	<i>30,000 sf</i>	<i>\$150/sf</i>	<i>\$5,500,000</i>	<i>\$1,925,000</i>
<i>Small Retail</i>	<i>5.3 ac</i>	<i>32,000 sf</i>	<i>\$130/sf</i>	<i>\$5,220,000</i>	<i>\$1,827,000</i>
<i>Small Retail</i>	<i>5.3 ac</i>	<i>32,000 sf</i>	<i>\$130/sf</i>	<i>\$5,220,000</i>	<i>\$1,827,000</i>
<i>Theatre (10 Screens)</i>	<i>5.0 ac</i>	<i>50,000 sf</i>	<i>\$200/sf</i>	<i>\$11,500,000</i>	<i>\$4,025,000</i>
<i>Restaurant - Sit Down</i>	<i>2.0 ac</i>	<i>7,500 sf</i>	<i>\$175/sf</i>	<i>\$2,312,500</i>	<i>\$809,375</i>
<i>Restaurant - Drive Through</i>	<i>1.0 ac</i>	<i>2,500 sf</i>	<i>\$175/sf</i>	<i>\$937,500</i>	<i>\$328,125</i>
<i>Restaurant - Drive Through</i>	<i>1.0 ac</i>	<i>2,500 sf</i>	<i>\$175/sf</i>	<i>\$937,500</i>	<i>\$328,125</i>
Open Space / Infrastructure	<i>7.4 ac</i>			<i>\$1,850,000</i>	
Totals	32.0 ac	156,500 sf		\$33,477,500	\$11,069,625

Analysis Notes:

The above table details the estimates for building type, size, and estimated construction costs. Market value for the purposes of this analysis is defined as the total cost of the construction. Assessed values for the purposes of property tax valuation is based on 35% of the estimated market value.

The following pages similarly set forth phases 2, 3 and 4 based on a general estimate for the types of uses considered for the property.

PHASE DETAILS CONTINUED

Phase 2 (77 Acres) - Regional Shopping / Entertainment District

<i>Use Type</i>	<i>Site Size</i>	<i>Built Size</i>	<i>Cost Sq. Ft</i>	<i>Est. Market Value</i>	<i>Assessed Value</i>
Large Retail	15.0 ac	110,000 sf	\$130/sf	\$17,300,000	\$6,055,000
Large Retail	15.0 ac	110,000 sf	\$130/sf	\$17,300,000	\$6,055,000
Small Retail	5.3 ac	32,000 sf	\$150/sf	\$5,860,000	\$2,051,000
Small Retail	5.3 ac	32,000 sf	\$150/sf	\$5,860,000	\$2,051,000
Small Retail	5.3 ac	32,000 sf	\$150/sf	\$5,860,000	\$2,051,000
Small Retail	5.3 ac	32,000 sf	\$150/sf	\$5,860,000	\$2,051,000
Restaurant - Sit Down	2.0 ac	7,500 sf	\$175/sf	\$2,312,500	\$809,375
Restaurant - Sit Down	2.0 ac	7,500 sf	\$175/sf	\$2,312,500	\$809,375
Neighborhood - Sit Down	1.5 ac	5,000 sf	\$175/sf	\$1,625,000	\$568,750
Neighborhood - Sit Down	1.5 ac	5,000 sf	\$175/sf	\$1,625,000	\$568,750
Open Space / Infrastructure	18.8 ac			\$4,700,000	
Totals	77.0 ac	373,000 sf		\$70,615,000	\$23,070,250

Phase 3 (36 Acres) - Hospitality, Conference and Office

<i>Use Type</i>	<i>Site Size</i>	<i>Built Size</i>	<i>Cost Sq. Ft</i>	<i>Est. Market Value</i>	<i>Assessed Value</i>
Hotel / Convention	10.0 ac	172,000 sf	\$235/sf	\$43,420,000	\$15,197,000
Office Building	5.0 ac	75,000 sf	\$125/sf	\$9,975,000	\$3,491,250
Office Building	5.0 ac	75,000 sf	\$125/sf	\$9,975,000	\$3,491,250
Office Building	5.0 ac	75,000 sf	\$125/sf	\$9,975,000	\$3,491,250
Limited Service Hotel	3.0 ac	80,000 sf	\$150/sf	\$12,450,000	\$4,357,500
Open Space / Infrastructure	8.0 ac			\$2,000,000	
Totals	36.0 ac	477,000 sf		\$87,795,000	\$30,028,250

PHASE DETAILS CONTINUED

Phase 4 (22 Acres) - Technology / Light Industrial / Office Campus

<i>Use Type</i>	<i>Site Size</i>	<i>Built Size</i>	<i>Cost Sq. Ft</i>	<i>Est. Market Value</i>	<i>Assessed Value</i>
<i>Office Building</i>	<i>5.0 ac</i>	<i>75,000 sf</i>	<i>\$125/sf</i>	<i>\$9,975,000</i>	<i>\$3,491,250</i>
<i>Office Building</i>	<i>5.0 ac</i>	<i>75,000 sf</i>	<i>\$125/sf</i>	<i>\$9,975,000</i>	<i>\$3,491,250</i>
<i>Office Building</i>	<i>5.0 ac</i>	<i>75,000 sf</i>	<i>\$125/sf</i>	<i>\$9,975,000</i>	<i>\$3,491,250</i>
<i>Open Space / Infrastructure</i>	<i>7.0 ac</i>			<i>\$1,750,000</i>	
Totals	22.0 ac	225,000 sf		\$31,675,000	\$10,473,750

PROPERTY TAXES

The total estimated value of improvements to be made throughout the Heights property is estimated to be in excess of \$220 million. The calculated Assessed Value is 35% of this amount or approximately \$75 million.

Property taxes annually will approach \$6 million in its first fully assessed year and move with the level of property appreciation thereafter.

The Heights Property Tax Summary

Total Build Market Value		\$223,562,500
Estimated Assessed Property Value	35%	\$74,641,875
Effective Tax Rate*		79.021972 Mills
	Annual Contribution	
Total Local and County Tax		\$5,898,348

* Montgomery County Auditor web site - parcel inspection.

Existing Tax Increment Financing agreements specify that 75% of all property tax revenue for the first 10 years of the development goes to the City of Huber Heights with the balance going to the Huber Heights CSD.

Depending upon property value inflation, the City of Huber Heights stands to gain between \$78 million (assuming 1% inflation) to \$100 million if average inflation is 3% over the next 30-years. Likewise, the Huber Heights CSD is estimated to experience net new tax revenues of between \$126 million and \$180 million.

Baseline property tax values have been ignored here for the sake of this initial analysis. Research has found the contribution of these currently vacant parcels to be minor in relation to their contribution in a developed state.

Property Tax Contribution Over Time

Inflation Estimate	0.0%	Huber Heights	Huber Heights
Year	TIF Portion to City	City Revenues	CSD Revenues
Year 1	75%	\$4,423,761	\$1,474,587
Year 2	75%	\$4,423,761	\$1,474,587
Year 3	75%	\$4,423,761	\$1,474,587
Year 4	75%	\$4,423,761	\$1,474,587
Year 5	75%	\$4,423,761	\$1,474,587
Year 6	75%	\$4,423,761	\$1,474,587
Year 7	75%	\$4,423,761	\$1,474,587
Year 8	75%	\$4,423,761	\$1,474,587
Year 9	75%	\$4,423,761	\$1,474,587
Year 10	25%	\$1,474,587	\$4,423,761
Year 11	25%	\$1,474,587	\$4,423,761
Year 12	25%	\$1,474,587	\$4,423,761
Year 13	25%	\$1,474,587	\$4,423,761
Year 14	25%	\$1,474,587	\$4,423,761
Year 15	25%	\$1,474,587	\$4,423,761
Year 16	25%	\$1,474,587	\$4,423,761
Year 17	25%	\$1,474,587	\$4,423,761
Year 18	25%	\$1,474,587	\$4,423,761
Year 19	25%	\$1,474,587	\$4,423,761
Year 20	25%	\$1,474,587	\$4,423,761
Year 21	25%	\$1,474,587	\$4,423,761
Year 22	25%	\$1,474,587	\$4,423,761
Year 23	25%	\$1,474,587	\$4,423,761
Year 24	25%	\$1,474,587	\$4,423,761
Year 25	25%	\$1,474,587	\$4,423,761
Year 26	25%	\$1,474,587	\$4,423,761
Year 27	25%	\$1,474,587	\$4,423,761
Year 28	25%	\$1,474,587	\$4,423,761
Year 29	25%	\$1,474,587	\$4,423,761
Year 30	25%	\$1,474,587	\$4,423,761
30-Year Total		\$70,780,178	\$106,170,267

Other Inflation Estimates:

	City of Huber Heights	Huber Heights CSD
1% Inflation	\$78,922,768	\$126,250,633
3% Inflation	\$100,115,064	\$180,501,302

PROFESSIONAL OFFICE REVENUES

The Heights is uniquely suited for professional office space with its high visibility and direct access to US 201 at I-70 as well as I-675 and I-75 nearby. The 450,000 sf of office space is estimated to generate over **1,250 new jobs**.

Based on general estimates of office development and associated taxes, tax revenues for direct economic activity are listed to the right.

Annual Huber Heights and State income taxes are anticipated to grow by \$1.1 million and \$2.2 million respectively.

Local corporate earnings taxes are expected to grow by over \$400,000.

The State's Commercial Activity Tax will grow by over \$350,000.

The Heights Professional Office	
Total Size of Office Space in Plan	450,000 sf
Space Allocated per Employee (per sq. ft.)	350 sf
Employees Expected	1,286
Business Revenue per Employee¹	\$110,000
Anticipated Gross Business Revenues	\$141,428,571
Commercial Activity Tax (.26%)	\$367,714
Profit based on 15% Margin²	\$21,214,286
Huber Heights Corporate Earnings Tax (2%)	\$424,286
Salary Generation (40% of Gross)³	\$56,571,429
Huber Heights Annual Income Tax (2%)	\$1,131,429
Ohio Annual Income Tax (4%)	\$2,262,857

¹Based on industry statistics for legal, accounting, medical and other professional office tenants.

²Rough estimate based on professional service industry benchmarks for profitability and margin.

³Based on efficiency ratio benchmarks.

The Heights of Huber Heights Tax Revenues Generated for Various Government Entities

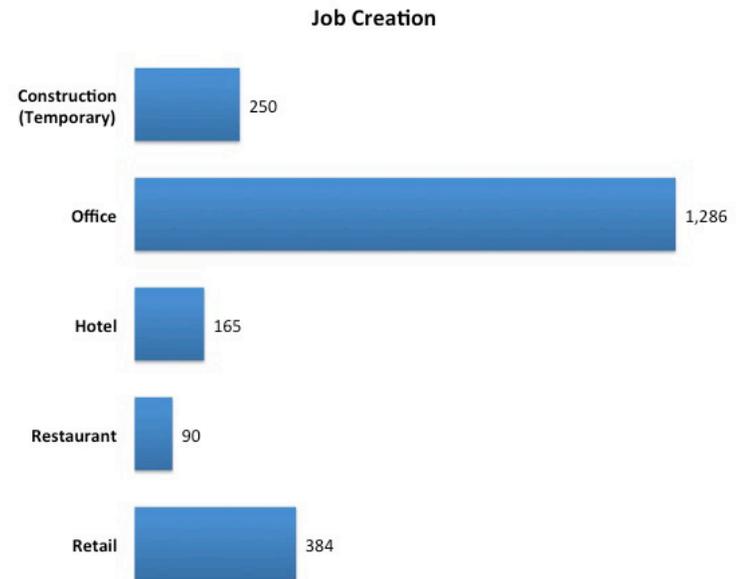
RETAIL, RESTAURANT AND HOSPITALITY REVENUES

The new retail center planned at the intersection of Interstate 70 and Brand Pike (SR 201) will include a mixture of retail, restaurants and potential hotel / convention space. Over **750,000 square feet of development** is planned.

In addition to the over 1,200 office jobs already discussed, the project is expected generate nearly 400 retail jobs, over 150 hotel jobs and nearly 100 restaurant jobs. Additionally, construction activity is estimated to contribute an additional 250 jobs during the build-out process.

The various sales, employee and corporate taxes are shown to the lower right. It is expected that Sales Tax revenues will increase by over \$15 million.

The following pages details the underlying analysis of job creation, business earnings, sales and employment income tax contribution.



Other Tax Revenues Summary	Annual Amounts
Huber Heights Corporate Earnings Tax	\$261,722
Huber Heights Income Tax	\$566,760
Local Bed Tax	\$429,062
Sub-Total	\$1,257,545
County Sales Tax Operations	\$3,271,531
Count Sales Tax from Construction	\$1,338,000
County Occupancy Tax	\$429,062
Sub-Total	\$5,038,593
State Sales Tax	\$11,995,614
State Sales Tax from Construction	\$4,906,000
Ohio Income Tax	\$1,133,520
State CAT Tax	\$567,065
Sub-Total	\$18,602,200
Total	\$24,898,337

RETAIL MODELING

A. Retail

Programmed Space By Type	Space	Sales Per Square Ft.	Annual Sales
Large Retail	220,000 sf	\$400	\$88,000,000
Small Retail	192,000 sf	\$400	\$76,800,000
Inline Neighborhood / Specialty	30,000 sf	\$300	\$9,000,000
Theatre	50,000 sf	\$300	\$15,000,000
Totals	492,000 sf		\$188,800,000
	Profit Margin Estimate (6%)		\$11,328,000
	Huber Heights Corporate Earnings Tax (2%)		\$226,560
	Commercial Activity Tax (.26%)		\$490,880
	Sales Tax (1.5% County 5.5% State)		\$13,216,000
	Total		\$25,261,440

Employment and Compensation

Employees	Basis (/sq ft):	Number:	Compensation:	Payroll:
Management	1 per 12,500	39	\$80,000	\$3,148,800
Staff	3 per 10,000	148	\$45,000	\$6,642,001
Support	2 per 5,000	197	\$34,000	\$6,691,200
Totals		384		\$16,482,001
	Huber Heights Annual Income Tax (2%)			\$329,640
	Ohio Annual Income Tax (4%)			\$659,280
	Total			\$988,920

RESTAURANT MODELING

B. Restaurant

Programmed Space By Type	Space	Sales Per Square Ft.	Annual Sales
Full Service Sit Down (ala Olive Garden)	22,500 sf	\$400	\$9,000,000
Neighborhood Sit Down (ala Panera)	10,000 sf	\$400	\$4,000,000
Fast Food Drive Through (ala Starbucks)	5,000 sf	\$400	\$2,000,000
Totals	37,500 sf		\$15,000,000

Profit Margin Estimate (6%)	\$900,000
Huber Heights Corporate Earnings Tax (2%)	\$18,000
Commercial Activity Tax (.26%)	\$39,000
Sales Tax (1.5% County 5.5% State)	\$1,050,000
Total	\$2,007,000

Employment and Compensation

Employees	Basis (/sq ft):	Number:	Compensation:	Payroll:
Management	1 per 2,500	15	\$80,000	\$1,200,000
Staff	3 per 2,500	45	\$45,000	\$2,025,008
Support	2 per 2,500	30	\$34,000	\$1,020,000
Totals		90		\$4,245,008

Huber Heights Annual Income Tax (2%)	\$84,900
Ohio Annual Income Tax (4%)	\$169,800
Total	\$254,700

HOTEL MODELING

C. Hotel

Programmed Space By Type	Space	Rooms	Revenue
Hotel / Convention (ala Marriot)	172,000 sf	297	\$10,976,006
Limited Service Hotel (ala Days Inn)	80,000 sf	90	\$3,326,063
Totals	252,000 sf	387	\$14,302,069

Profit Margin Estimate (6%)	\$858,124
Huber Heights Corporate Earnings Tax (2%)	\$17,162
Commercial Activity Tax (.26%)	\$37,185
Sales Tax (1.5% County 5.5% State)	\$1,001,145
Occupancy Tax (3%)	\$429,062
Additional City Tax (3%)	\$429,062
Total	\$2,771,741

Employment and Compensation

Employees	Basis (/sq ft):	Number:	Compensation:	Payroll:
Management	1 per 10,000	25	\$80,000	\$2,016,000
Staff	3 per 10,000	76	\$45,000	\$3,402,000
Support	1 per 6 rooms	65	\$34,000	\$2,193,000
Totals		165		\$7,611,000

¹ Revenue per available room of \$135 based on average occupancy rate of 75%

Huber Heights Annual Income Tax (2%)	\$152,220
Ohio Annual Income Tax (4%)	\$304,440
Total	\$456,660

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2011-R-

ENDORING THE CITY OF HUBER HEIGHTS, OHIO JOINING THE NATIONAL MOMENT OF REMEMBRANCE OF THE TENTH ANNIVERSARY OF SEPTEMBER 11, 2001.

WHEREAS, the City Council of Huber Heights, Ohio expresses their support of the United States Senate regarding coming together as a Nation and ceasing all work or other activity for a moment of remembrance beginning at 1:00 p.m. Eastern Daylight Time on September 11, 2011, in honor of the 10th anniversary of the terrorist attacks committed against the United States on September 11, 2001; and

WHEREAS, at 8:46 a.m., on September 11, 2001, hijacked American Airlines Flight 11 crashed into the upper portion of the North Tower of the World Trade Center in New York City, New York; and

WHEREAS, 17 minutes later, at 9:03 a.m., hijacked United Airlines Flight 175 crashed into the South Tower of the World Trade Center; and

WHEREAS, at 9:37 a.m., the west wall of the Pentagon was hit by hijacked American Airlines Flight 77, the impact of which caused immediate and catastrophic damage to the headquarters of the Department of Defense; and

WHEREAS, at approximately 10:00 a.m., the passengers and crew of hijacked United Airlines Flight 93 acted heroically to retake control of the airplane and thwart the taking of additional American lives by crashing the airliner in Shanksville, Pennsylvania, and, in doing so, gave their lives to save countless others; and

WHEREAS, nearly 3,000 innocent civilians were killed in the heinous attacks of September 11, 2001; and

WHEREAS, tens of thousands of individuals narrowly escaped the attacks at the Pentagon and World Trade Center and, as witnesses to this tragedy, are forever changed; and

WHEREAS, countless fire departments, police departments, first responders, governmental officials, workers, emergency medical personnel, and volunteers responded immediately and heroically to those horrific events; and

WHEREAS, the Fire Department of New York suffered 343 fatalities on September 11, 2001, the largest loss of life of any emergency response agency in United States history; and

WHEREAS, the Port Authority Police Department suffered 37 fatalities in the attacks, the largest loss of life of any police force in United States history in a single day; and

WHEREAS, the New York Police Department suffered 23 fatalities as a result of the terrorist attacks; and

WHEREAS, the impact of that day on public health continues through 2011, as nearly 90,000 people are at risk of or suffering from negative health effects as a result of the events of September 11, 2001, including 14,000 workers and 2,400 community residents who are sick, and tens of thousands of others whose health is being monitored; and

WHEREAS, 10 years later, the people of the United States and people around the world continue to mourn the tremendous loss of innocent life on that fateful day; and

WHEREAS, 10 years later, thousands of men and women in the United States Armed Forces remain in harm's way defending the United States against those who seek to threaten the United States; and

WHEREAS, on the 10th anniversary of this tragic day, the thoughts of the people of the United States are with all of the victims of the events of September 11, 2001 and their families; and

WHEREAS, the lives of Americans were changed forever on September 11, 2001, when events threatened the American way of life; and

WHEREAS, in 2009, Congress and the President joined together to designate September 11 as a National Day of Service and Remembrance under the Serve America Act (Public Law 111-13; 123 Stat. 1460); and

WHEREAS, in September 2009 and 2010, President Obama issued Proclamation 8413 (74 Fed. Reg. 47045) and Proclamation 8559 (75 Fed. Reg. 56463) proclaiming September 11, 2009, and September 11, 2010, respectively, as Patriot Day and National Day of Service and Remembrance; and

WHEREAS, September 11 will never, and should never, be just another day in the hearts and minds of all people of the United States.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City of Huber Heights recognizes September 11, 2011, as a day of solemn commemoration of the events of September 11, 2001, and a day to come together as a Nation.

Section 2. The City of Huber Heights offers its deepest and most sincere condolences to the families, friends, and loved ones of the innocent victims of the September 11, 2001, terrorist attacks.

Section 3. The City of Huber Heights honors the heroic service, actions, and sacrifices of first responders, law enforcement personnel, State and local officials, volunteers, and countless others, who aided the innocent victims of those attacks and, in doing so, bravely risked and often gave their own lives.

Section 4. The City of Huber Heights recognizes the valiant service, actions, and sacrifices of United States personnel, including members of the United States Armed Forces, the United States intelligence agencies, the United States diplomatic service, homeland security and law enforcement personnel, and their families, who have given so much, including their lives and well-being, to support the cause of freedom and defend the security of the United States.

Section 5. The City of Huber Heights reaffirms that the people of the United States will never forget the challenges our country endured on and since September 11, 2001, and will work tirelessly to defeat those who attacked the United States; and

BE IT FURTHER RESOLVED that on the 10th anniversary of this tragic day in United States history the City Council of Huber Heights, Ohio calls upon all of the people and institutions of the United States to observe a moment of remembrance on September 11, 2011, including (i) media outlets; (ii) houses of worship; (iii) military organizations; (iv) veterans organizations; (v) airlines; (vi) airports; (vii) railroads; (viii) sports teams; (ix) the Federal Government; (x) State and local governments; (xi) police, fire, and other public institutions; (xii) educational institutions; (xiii) businesses; and (xiv) other public and private institutions; and

BE IT FURTHER RESOLVED that the City Council of Huber Heights, Ohio encourages the observance of the moment of remembrance to last for 1 minute beginning at 1:00 p.m. Eastern Daylight Time by, to the maximum extent practicable ceasing all work or other activity; and marking the moment in an appropriate manner, including by ringing bells, blowing whistles, or sounding sirens.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2011-O-

ESTABLISHING A FEE FOR THE PERFORMANCE OF CIVIL WEDDING CEREMONIES.

WHEREAS, the Mayor of the City of Huber Heights is authorized to solemnize marriages pursuant to Section 3101.08 of the Ohio Revised Code; and

WHEREAS, the Huber Heights City Council has determined that a fee of fifty (\$50.00) dollars is a just and reasonable fee to be charged to those persons receiving solemnization of marriages through the City; and

WHEREAS, the Huber Heights City Council has further determined that the fee derived from such solemnization of a wedding shall be used for activities within the City of Huber Heights which promote the health, safety, well-being, and morals of the citizens.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. There is hereby established a fee for civil wedding services solemnized by the City Mayor which are scheduled through City of Huber Heights Staff in the amount of \$50.00; This fee shall not be applicable to ceremonies performed by the Mayor for friends and family of the Mayor that are arranged directly through the Mayor and not through the use of City Staff.

Section 2. The Director of Finance is hereby authorized and place any fees received from the solemnization of civil wedding ceremonies into the General Fund.

Section 3. This Ordinance shall take effect and be in force from and after the earliest date allowed by law.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2011-O-

AUTHORIZING TRANSFERS BETWEEN VARIOUS FUNDS OF THE CITY OF HUBER HEIGHTS, OHIO; AND AMENDING ORDINANCE 2010-O-1860 BY MAKING SUPPLEMENTAL APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2011 AND ENDING DECEMBER 31, 2011 (VARIOUS CAPITAL IMPROVEMENT AND OPERATIONS FUNDING, AND UTILITY TRANSFERS PER TRUST INDENTURE), AND DECLARING AN EMERGENCY.

WHEREAS, transfers of monies from one fund to another are authorized under Ohio Revised Code Section 5705.14 upon a two-thirds affirmative vote of the members of City Council; and

WHEREAS, the City Council desires to authorize certain transfers for the purposes cited in Exhibit A incorporated as a part of this ordinance; and

WHEREAS, supplemental appropriations for expenses of the City of Huber Heights must be made to reflect appropriations of funds for various 2011 operations and capital funding.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. Authorization is hereby given to transfer certain monies up to amounts not exceeding those shown and for the purposes cited in Exhibit A.

Section 2. Ordinance 2010-0-1860 is hereby amended as shown in Exhibit B of this Ordinance.

Section 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of Huber Heights and for the further reason of the need to immediately provide for improved organizational structures in the City, therefore this Ordinance shall take effect immediately upon its adoption by Council in accordance with Section 5.07(A) of the City Charter.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

Transfers:

\$ 1,000,000.00	240 Montgomery County TIF	406 Capital Improvement	Montgomery County TIF Land Acquisition and Development
67,500.00	551 Sewer Fund	552 Sewer Acq/Capital	Shull/Brandt Sewer Lift Station

EXHIBIT B

AMENDING ORDINANCE NO 2010-O-1860 BY MAKING APPROPRIATIONS FOR EXPENSES OF THE CITY OF HUBER HEIGHTS, OHIO FOR THE PERIOD BEGINNING JANUARY 1, 2011 AND ENDING DECEMBER 31, 2011.

- 1) Section 14 of Ordinance No. 2010-O-1860 is hereby amended to reflect a decrease in the appropriation of the #240 Montgomery County TIF Fund, Operations and Capital of \$ 1,000,000.00 and an increase in Transfers of \$ 1,000,000.00.
- 2) Section 18 of Ordinance No. 2010-O-1860 is hereby amended to reflect an increase in the appropriation of the #406 Capital Improvement Fund, Operations and Capital of \$ 1,000,000.00.
- 3) Section 24 e) of Ordinance No. 2010-O-1860 is hereby amended to reflect an increase in the appropriation of the #551 Sewer Fund, Transfers of \$ 67,500.00.

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2011-O-

AMENDING ORDINANCE NO. 2003-O-1409 TO PROVIDE THAT ALL SERVICE PAYMENTS IN LIEU OF TAXES COLLECTED PURSUANT TO THAT ORDINANCE WILL BE PAID TO THE CITY AND THAT THE CITY WILL MAKE COMPENSATION PAYMENTS TO THE HUBER HEIGHTS CITY SCHOOL DISTRICT, AND APPROVING A FIRST AMENDMENT TO THE HOLD HARMLESS COMPENSATION AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, this Council passed Ordinance No. 2003-O-1409 (the "*TIF Ordinance*") on April 28, 2003, which TIF Ordinance granted a 30-year 100% tax increment financing real property tax exemption to the parcels of real property identified in that TIF Ordinance (the "*TIF Exemption*"); and

WHEREAS, by a resolution adopted on March 13, 2003, the Board of Education of Huber Heights City School District (the "*School District*") approved the TIF Exemption and the passage of the TIF Ordinance and waived the income tax sharing requirements of Section 5709.82 of the Ohio Revised Code with respect to the TIF Exemption on the condition that the City and the School District negotiate and enter into a compensation agreement with respect to the TIF Exemption; and

WHEREAS, the School District and this City entered into a Hold Harmless Compensation Agreement dated as of March 13, 2003, providing for compensation payments to the School District with respect to the TIF Exemption (the "*Compensation Agreement*"); and

WHEREAS, the Compensation Agreement and the TIF Ordinance provided that the Montgomery County Treasurer was to pay a portion of the service payments in lieu of taxes collected from owners of property subject to the TIF Exemption (the "*Service Payments*") directly to the School District; and

WHEREAS, the City and the School District have determined that the Service Payments heretofore remitted to the School District exceeded those amounts required by the Compensation Agreement to have been paid to the School District and the City and the School District now desire to temporarily reduce the level of future compensation payments to the School District in order to ensure that the actual aggregate compensation payments made to the School District equal the compensation payments required to be made pursuant to the Compensation Agreement; and

WHEREAS, the City and the School District further desire to amend the Compensation Agreement and require the Montgomery County Treasurer to deposit all Service Payments with the City, with the City thereafter making compensation payments directly to the School District pursuant to the Compensation Agreement, as amended; and

WHEREAS, by a resolution will be adopted on August 23, 2011, the Board of Education of the School District will approve the amendments to the TIF Ordinance set forth herein and the First Amendment to Hold Harmless Agreement; and

WHEREAS, it is necessary to amend the TIF Ordinance to provide that all Service Payments will be paid to the City and the City will make compensation payments to the School District from those Service Payments.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. Section 2 of the TIF Ordinance is hereby amended and restated in its entirety as follows:

Section 2. As provided in Section 5709.42 of the Ohio Revised Code, the then Owners of the Improvements to a parcel are hereby required to, and shall

make, service payments in lieu of taxes to the Treasurer of Montgomery County, Ohio (the “*County Treasurer*”) on or before the final dates for payment of real property taxes, which service payments shall be remitted to the City for further deposit into the Fund (as defined below). Each payment shall be in the same amount as the real property taxes that would have been charged and payable against the Improvements (after credit for any other payments received by the City under Section 319.302 of the Ohio Revised Code) had an exemption from taxation not been granted, and otherwise shall be in accordance with the requirements of the TIF Statute. Any late payments shall be subject to penalty and bear interest at the then current rate established under Sections 323.121(B)(1) and 5703.47 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time (the payment of penalties and interest are collectively referred to herein with the payments in lieu of taxes as the “*Service Payments*”). The Service Payments, and any other payments in respect of the TIF Area which are received by the County Treasurer in connection with the reduction required by Ohio Revised Code Section 319.302, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the “*Property Tax Rollback Payments*”), shall be allocated and deposited in accordance with Section 4 of this Ordinance.

Section 2. Section 4 of the TIF Ordinance is hereby amended and restated in its entirety as follows:

Section 4. This Council hereby authorizes and directs the Director of Finance to establish pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the Montgomery County TIF Municipal Public Improvement Tax Increment Equivalent Fund (the “*Fund*”) to be maintained in the custody of the City. In accordance with the provisions of Sections 5709.42 and 5709.43 of the Ohio Revised Code, the County Treasurer shall pay all Service Payments and Property Tax Rollback Payments made in respect of the Property to the City for deposit into the Fund. The City shall have no right, title or interest in the amounts deposited into the Fund that are to be paid to the Huber Heights City School District as described in the following paragraph.

Pursuant to Section 5709.43 of the Ohio Revised Code, the Director of Finance shall make semi-annual payments to the Huber Heights City School District, solely from the Service Payments and Property Tax Rollback Payments made in respect of the Improvement to each Parcel, in the following amounts: (a) for the period commencing on the effective date of the exemption granted for each Parcel pursuant to Section 1 of this Ordinance and ending ten (10) years thereafter, the amount that the Huber Heights City School District would otherwise receive as a semi-annual real property tax payment derived from the Improvement to that Parcel if only 75% of that Improvement had been exempted from taxation pursuant to this Ordinance and (ii) for the period commencing ten (10) years after the effective date of the exemption granted for each Parcel pursuant to Section 1 of this Ordinance and ending on the date of termination of such, the amount that the Huber Heights City School District would otherwise receive as a semi-annual real property tax payment derived from the Improvement to that Parcel absent the passage of this Ordinance. The Service Payments and Property Tax Rollback Payments necessary to make the foregoing payments are deemed appropriated and authorized to be expended from the Fund for that purpose.

Notwithstanding the foregoing, and to correct certain prior excess distributions to the Huber Heights City School District in the aggregate amount of \$283,440.95 which should have been distributed to the City, the Service Payments required to be remitted by the City to the Huber Heights City School District pursuant to this Ordinance shall be reduced by an amount equal to \$28,344.00 for each of the following payments: (i) the payment to the Huber Heights City School District in respect of the second final settlement payment from the County Treasurer to the City in calendar year 2011, (ii) the payments to the Huber

Heights City School District in respect of the first and second final settlement payments from the County Treasurer to the City in each of the calendar years 2012 through 2015 and (iii) the payment to the Huber Heights City School District in respect of the first final settlement payment from the County Treasurer to the City in calendar year 2016.

The Fund shall remain in existence so long as such Service Payments are collected and used for the aforesaid purposes, after which the Fund shall be dissolved in accordance with Section 5709.43 of the Ohio Revised Code. Upon such dissolution, any incidental surplus remaining in the Fund shall be disposed of as provided in Section 5709.43(D) of the Ohio Revised Code. Moneys deposited in the Fund shall be used, except as necessary to make compensation payments to the School District as described in the preceding paragraph, as otherwise provided in the Intergovernmental Agreement (as amended from time to time) or as otherwise approved in writing by the Montgomery County TID, as follows:

a. first, to pay for or finance the costs of the Phase I Improvements identified in this Ordinance, including but not limited to, the payment of debt service on debt issued to pay the costs of those Phase I Improvements, and

b. second, to pay for or finance the costs of the Phase II Improvements identified in this Ordinance, including but not limited to, the payment of debt service on debt issued to pay the costs of those Phase II Improvements.

Section 3. The First Amendment to Hold Harmless Agreement by and between the City and the Huber Heights City School District, in the form presently on file with the Clerk of Council, is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that First Amendment to Hold Harmless Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the First Amendment to Hold Harmless Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 4. The City Manager is authorized and directed to execute and deliver any other agreements and to take all other actions and do all other things necessary and consistent with this Ordinance in order to accomplish the purposes of this Ordinance. The City Manager is directed to send a copy of this Ordinance to the Director of the Ohio Department of Development and to the Montgomery County Treasurer.

Section 5. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 6. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City, and for the further reason that this Ordinance is required to be immediately effective to remit timely payment to the School District following receipt by the City from the County Treasurer of the second final settlement payment in calendar year 2011; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2011-O-_____ passed by the Council of the City of Huber Heights, on _____, 2011.

Clerk of Council

FIRST AMENDMENT TO HOLD HARMLESS COMPENSATION AGREEMENT

This First Amendment to Hold Harmless Compensation Agreement (this “*First Amendment*”) is made and entered into this 24th day of August, 2011, by and between the HUBER HEIGHTS CITY SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of Ohio (the “*School District*”) and the CITY OF HUBER HEIGHTS, OHIO, a municipal corporation organized and existing under the laws of the State of Ohio and its Charter (the “*City*”). (Terms used herein without definition shall have the meanings for such terms as set forth in the Compensation Agreement, as defined below).

WITNESSETH:

WHEREAS, the School District and the City entered into a Hold Harmless Compensation Agreement (the “*Compensation Agreement*”), dated as of March 13, 2003, providing for compensation payments to the School District with respect to the tax increment financing real property tax exemption granted by the City to certain parcels of real property identified in the Compensation Agreement as the Property; and

WHEREAS, the Compensation Agreement provided that the County Treasurer was to make certain payments directly to the School District as consideration for the School District’s approval of the TIF Ordinance and waiver of the application of Section 5709.82 of the Ohio Revised Code; and

WHEREAS, the parties have determined that the Service Payments heretofore remitted to the School District exceeded those amounts required by the Compensation Agreement to have been paid to the School District and the parties now desire to temporarily reduce the level of future compensation payments to the School District in order to ensure that the actual aggregate compensation payments made to the School District equal the compensation payments required to be made pursuant to the Compensation Agreement; and

WHEREAS, the parties further desire to amend the Compensation Agreement and require the County Treasurer to deposit all Service Payments with the City, with the City thereafter making compensation payments directly to the School District pursuant to the Compensation Agreement; and

WHEREAS, the Board of Education of the School District has consented to the Amending Ordinance and authorized this First Amendment by a resolution adopted on August 23, 2011; and

WHEREAS, the City passed Ordinance No. 2011-O-1906 on August 22, 2011, authorizing this First Amendment and making certain other changes to the TIF Ordinance necessary to implement this First Amendment (the “*Amending Ordinance*”);

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree to the foregoing and as follows:

Section 1. Amendment Compensation Agreement. Section 1 of the Compensation Agreement is hereby amended and restated in its entirety to read as follows:

Section 1. City Payments to the School District. As consideration for the School District's agreement to waive the application of Section 5709.82 of the Ohio Revised Code to the TIF Ordinance (as amended by Ordinance No. 2011-O-1906) and the exemptions for the Improvements referred to therein, the City shall transmit to the School District all the Service Payments due to the School District under the TIF Ordinance (as amended by Ordinance No. 2011-O-1906) as all such terms are defined in the TIF Ordinance (as amended by Ordinance No. 2011-O-1906). The City shall transmit the payments described in this Section to the School District within thirty (30) days after receipt by the City from the County Treasurer of each final settlement of Service Payments (expected to occur semi-annually). Each distribution shall be accompanied by any documentation with respect thereto provided to the City by the County Auditor or County Treasurer. The School District further acknowledges and agrees that this Agreement provides for the only compensation to be received by the School District from the City (either directly or indirectly) in connection with the real property tax exemptions granted pursuant to the TIF Ordinance (as amended by Ordinance No. 2011-O-1906) and the compensation provided herein is in lieu of any other compensation that may be provided for in Section 5709.82 of the Ohio Revised Code.

Reference is made to current Chapter 3317 of the Revised Code. The City acknowledges that the School District is entering into this Agreement based on its assessment of the combined net economic benefit to the School District of (i) the amounts to be paid to the School District by the City (or County Treasurer) under this Agreement, and (ii) the effect of the exemptions under the TIF Ordinance (as amended by Ordinance No. 2011-O-1906) on the District's local tax revenues and State Foundation payments under those current State of Ohio laws (collectively the "*Sources*"). In the event the School District demonstrates to the City that a change in those Ohio laws has, at the end of the first ten (10) calendar years, caused the gross amounts to be received by the School District from those Sources, as to that parcel subject to the real property tax exemption granted pursuant to the TIF Ordinance (as amended by Ordinance No. 2011-O-1906), to be less than the School District would have received had no real property tax exemption been granted by the TIF Ordinance (as amended by Ordinance No. 2011-O-1906), then the City shall make a payment to the School District equal to the "*Difference*". The "*Difference*" shall be that amount the School District would have received had no real property tax exemption been granted pursuant to the TIF Ordinance (as amended by Ordinance No. 2011-O-1906) less the actual amounts the School District will have received from those Sources. Upon receipt of notice and supporting documentation as to the Difference, the City shall have one hundred twenty (120) days to verify the calculations and notify the School District of its conclusion regarding the Difference. Once the City and School District have agreed on the Difference, the City shall pay such amount to the School district within the first ninety (90) days of the next City fiscal year after the Difference has been agreed upon. The payment due hereunder shall be from all Service Payments received by the City during the period from the original adoption of

this Agreement to the time such payment is due less all payments made by the City during that period to pay for Infrastructure Improvements.

The City and the School District also acknowledge and agree that since 2006, the School District has received \$283,440.95 of Service Payments in excess of the Service Payments required to be paid to the School District as compensation payments pursuant to this Agreement, and that such amount should have been distributed to the City. To correct the overpayment, and to minimize the financial impact on the School District in the current fiscal year, the City and the School District agree that the Service Payments required to be remitted by the City to the School District pursuant to this Agreement shall be reduced by an amount equal to \$28,344.00 for each of the following payments: (i) the payment to the School District in respect of the second final settlement payment from the County Treasurer to the City in calendar year 2011, (ii) the payments to the School District in respect of the first and second final settlement payments from the County Treasurer to the City in each of the calendar years 2012 through 2015 and (iii) the payment to the School District in respect of the first final settlement payment from the County Treasurer to the City in calendar year 2016.

Section 2. Final Settlement Relating to Prior Payments. The City and the School District agree that the aggregate payment in the amount of \$283,440.95 to the City is being made to correct, and represents full and final payment in respect of, prior overpayments by the Montgomery County Auditor to the School District in respect of certain parcels of real property described in the TIF Ordinance and for which a DTE Form 24 has, as of the date of this First Amendment, been approved by the Ohio Department of Taxation.

Section 3. Continued Effectiveness of Compensation Agreement. The Compensation Agreement, as amended by this First Amendment, shall remain in full force and effect in accordance with its terms. Terms of the Compensation Agreement not modified herein shall remain in full force and effect.

Section 4. Counterparts. This First Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this First Amendment may execute this First Amendment by signing any such counterpart.

(Remainder of page intentionally left blank – signatures begin on next page)

WHEREFORE, the parties hereto, each by a duly authorized representative, have entered into this First Amendment to Hold Harmless Compensation Agreement on the date first set forth above.

HUBER HEIGHTS CITY SCHOOL
DISTRICT

By: _____
Superintendent

By: _____
Treasurer

By: _____
President of the Board of Education

CITY OF HUBER HEIGHTS, OHIO

By: _____
City Manager

Approved as to Form

By: _____
City Attorney

FISCAL OFFICER'S CERTIFICATE

As the Director of Finance of the City of Huber Heights, Ohio, I certify that the money required to meet the obligations of the City under the Compensation Agreement, as amended by the attached First Amendment during the year 2011 has been lawfully appropriated for those purposes and is in the treasury of the City or in the process of collection to the credit of the appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: August 24, 2011

Director of Finance
City of Huber Heights, Ohio

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2011-R-

IMPOSING A TEMPORARY MORATORIUM ON CONSIDERATION OF ANY APPLICATIONS FOR ZONING, OCCUPANCY, OR OTHER PERMITS TO OPERATE BUSINESSES COMMONLY KNOWN AS INTERNET SWEEPSTAKES CAFES, AND DECLARING AN EMERGENCY.

WHEREAS, Based on investigation and reports of staff, news reports, discussions with members of other communities, and on findings incorporated in cases decided by Ohio courts, it appears that in other communities where Internet Sweepstakes Cafés and similar types of businesses currently exist in the State of Ohio, there has been numerous incidents of illegal gambling; an increase in reports of criminal activities in the areas near the businesses; an increase in the number of constituent complaints related to the businesses; and an increase in the need for police oversight to ensure illegal gambling is not occurring; and

WHEREAS, City Council is considering legislation to regulate Internet Sweepstakes Café; and

WHEREAS, in order to better protect the general health and welfare of the City of Huber Heights, a temporary moratorium on issuance of zoning permits and certificates and other approvals for such establishments will create a more stable environment so that revisions to the City's zoning code, comprehensive plan and/or general regulatory ordinances, if necessary, can be considered and possibly adopted, in an orderly and thorough process.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. A moratorium on the consideration of any applications for zoning, occupancy, or other permits to operate Internet Sweepstakes Cafes is hereby imposed for a period not to exceed one hundred eighty days.

Section 2. "Internet Sweepstakes Café" means any premise upon which there are situated five (5) or more Computerized Sweepstake Devices that are available for the use or entertainment of the public within such premises whether or not such premise has any other business purpose. "Computerized Sweepstakes Device" means any computer, machine, or apparatus which, is capable of connection to the internet, regardless of whether such connection is utilized, through a wireless router telephone line, digital subscriber line, satellite, cellular telephone, cable connection or any other method, which is engaged or accessed upon the insertion of a coin, token, or similar object, or the sliding of a magnetic card or entry of a code, or similar process, or upon payment of anything of value, either directly or indirectly, and which may be operated by the public generally for use as entertainment, amusement or a contest of skill, whether or not generally for use as a contest of skill, entertainment of amusement, whether or not registering a score, and which when so utilized produces, announces, reveals or discloses the eligibility, award or payment of a cash prize redeemable on or at the Internet Sweepstakes Café, whether or not said prize was in fact announced, revealed or disclosed through the usage of

the Computerized Sweepstakes Devise. Computerized Sweepstakes Devise does not include machines designated for use by the State Lottery Commission.

Section 3. This moratorium shall not apply to Internet Sweepstakes Cafes projects for which site plan approvals or permits have been issued or applied for prior to the effective date of this Resolution.

Section 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety and urgent benefit and protection of the inhabitants of the City of Huber Heights and for the further reason to ensure that the City does not become inundated with permits for unregulated Internet Sweepstakes Café business, wherefore, this Resolution shall take effect and be in force immediately upon its passage.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION 2011 R-

AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR FUNDING THROUGH THE STATE ISSUE II FUND FOR TAYLORSVILLE ROAD FOR NORTHSIDE WIDENING IMPROVEMENTS FROM OLD TROY PIKE (S.R. 202) TO BRANDT PIKE (S.R. 201), AND DECLARING AN EMERGENCY.

WHEREAS, the City of Huber Heights has demonstrated the need for the continued widening of Taylorsville Road as identified in the application; and

WHEREAS, the City Council wishes to make application for assistance from appropriate funding sources; and

WHEREAS, the City's current funding sources are inadequate to fully fund this important project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. This legislation shall serve to authorize the transmittal and submission of an application for funding under the State Issue II Funds. The application authorized by this Resolution shall be for roadway improvements to Taylorsville Road.

Section 2. The City Manager and/or the City Engineer are hereby authorized to sign the application for funds as described in Section 1 of this legislation.

Section 3. This legislation shall also authorize the provision of any additional information which may be requested during the review of this application conducted by the District 4 Public Works Integrating Committee ("Committee") or any other appropriate committee or state agency.

Section 4. The City of Huber Heights hereby commits to the local contribution for the project as identified in the project application as pertains to the improvement located within the corporate boundaries of the City of Huber Heights and further commits to those costs exceeding the estimate and which, therefore, exceed the grant amount.

Section 5. The City of Huber Heights hereby agrees to voluntarily contribute up to 1% of the approved grant amount for the funds spent within the City of Huber Heights from general funds to help pay for expenses of the Committee.

Section 6. The City of Huber Heights also commits to additional reporting requirements by the Committee, and required as part of the funding process.

Section 7. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason

that improvements to this heavily used roadway will dramatically improve traffic safety and quality of life for the citizens of the City of Huber Heights, therefore, this Resolution shall be in full force and effect immediately upon its adoption by Council.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION 2011 R-

AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR FUNDING THROUGH THE STATE ISSUE II FUND FOR CHAMBERSBURG ROAD WATER MAIN EXTENSION FROM BELLEFONTAINE ROAD TO S.R. 4/235, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Huber Heights has demonstrated the need for a water main extension on Chambersburg Road from Bellefontaine Road to S.R. 4/235 as identified in the application; and

WHEREAS, the City Council wishes to make application for assistance from appropriate funding sources; and

WHEREAS, the City's current funding sources are inadequate to fully fund this important project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. This legislation shall serve to authorize the transmittal and submission of an application for funding under the State Issue II Funds. The application authorized by this Resolution shall be for roadway improvements to Bellefontaine Road.

Section 2. The City Manager and/or the City Engineer are hereby authorized to sign the application for funds as described in Section 1 of this legislation.

Section 3. This legislation shall also authorize the provision of any additional information which may be requested during the review of this application conducted by the District 4 Public Works Integrating Committee ("Committee") or any other appropriate committee or state agency.

Section 4. The City of Huber Heights hereby commits to the local contribution for the project as identified in the project application as pertains to the improvement located within the corporate boundaries of the City of Huber Heights and further commits to those costs exceeding the estimate and which, therefore, exceed the grant amount.

Section 5. The City of Huber Heights hereby agrees to voluntarily contribute up to 1% of the approved grant amount for the funds spent within the City of Huber Heights from general funds to help pay for expenses of the Committee.

Section 6. The City of Huber Heights also commits to additional reporting requirements by the Committee, and required as part of the funding process.

Section 7. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason

that this will provide water to all of Chambersburg Road and improve water pressure to Adams Road, therefore, this Resolution shall be in full force and effect immediately upon its adoption by Council.

Passed by Council on the _____ day of _____, 2011;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date