

ANNEXATION AGREEMENT

(R C 709.102)

This Annexation Agreement (the "Agreement") is made and entered into by and between the Township of Deerfield, Warren County, Ohio, an Ohio township (the "Township") the city of Mason, Warren County, Ohio, an Ohio municipal corporation (the "City"), and Boxwood Farms, LLC, an Ohio limited liability company, whose address is 7259 St. Ives Place, West Chester, Ohio 45069 (hereinafter "Owner" or "Developer"), its successors and assigns pursuant to the Ohio Revised Code Section 709.192 and in accordance with the terms and provisions set forth herein.

RECITALS

WHEREAS, Boxwood Farms, LLC is the owner and developer of approximately 9.7337 acres of real property within Deerfield Township more fully described in Exhibit A attached hereto and show on the annexation map attached hereto exhibit B ("Annexation Property"). The Annexation Property is located north of Mason Road across from Birchwood Farms Drive and is completely surrounded (on all sides) by the city of Mason; and

WHEREAS, Owner desires to annex its property into the city of Mason, to develop it in the City, and to have the property removed from Deerfield Township and placed into Mason Township to allow for the provision of services from the city of Mason, relieve Deerfield Township from the obligation of providing services to the annexation territory, and eliminate overlapping services and taxes on the property, particularly police and fire services and levies; and

WHEREAS, in order to facilitate the conformity of boundaries of the city of Mason, Deerfield Township, and Mason Township; the elimination of multiple levies and real property tax obligations to various taxing districts; an the provision of uniform services to its property; Owner desire to defray the City's costs and expenses of annexation the conformity of boundaries including payments made by the City to Deerfield Township resulting from the conformity of boundaries and to provide Deerfield Township assurance of those payments as the property develops; and

WHEREAS, the City desires to accept the annexation of approximately 9.7337 acres of real property within Deerfield Township, and to provide for the owner to make annual payments to Mason to facilitate its conformity of boundaries and defray the costs associated with the annexation, services and boundary adjustment; and

WHEREAS, the Township is desirous of having the City conform the boundaries of the Annexation Property in order to exclude Deerfield Township from such area and make payments to the township based upon the calculations in Section 709.19 of the Ohio Revised Code (the "R.C.") and having the owner of the annexed property facilitate and provide the Township with a means to assure that payment; and

WHEREAS, the City and Township have determined that this Agreement is in the best interests of their respective residents, citizens and taxpayers, is for their mutual benefit and will provide for government services, and promote and support economic development and the creation and preservation of economic opportunities in the region; and

WHEREAS, the Owner has determined that this Agreement is in the best interests of the owner and the Annexation Property and that it will facilitate the economic development and the creation and preservation of economic opportunities to the owner, property and region; and

WHEREAS, the City, Township and Owner desire to enter into an Annexation Agreement for the purpose of providing for the annexation of Annexation Property, with consent of all parties as provided in R.C. 709.022 ; and

WHEREAS, the legislative authorities of the City and the Township have each authorized and directed the City and the Township, respectively, to make and enter into this Agreement by and through their respective legislative authorities in accordance with Ordinance No. 2009-09 adopted by the city of Mason on August 17, 2009 and Resolution No. 2009-057 adopted by the Board of Township Trustees of Deerfield Township on July 23, 2009.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth in this Contract, the City, the Township and the Owner agree and bind themselves, their respective agents, officers, elected officials, employees, successors and assigns as follows:

Section 1. Purpose. This Annexation Agreement is entered pursuant to the provisions of R.C. 709.192 to permit the annexation of the Annexation Property to the City with the consent of all parties pursuant to the provisions of R.C. 709.021 and 709.022 (an 'Expedited Type 1' annexation); for the changing of township boundaries under R.C. Chapter 503 to exclude the newly annexed territory from the Township; to provide for government services and facilities to the newly annexed territory; to eliminate overlapping services and taxes on the Annexation Property; to relieve Deerfield Township from the obligation of providing services to the annexation territory; to defray the costs and expenses to both the Township and the City, to relieve the Annexation Property of an ongoing obligation for concurrent levies for overlapping governmental services that would have been provided to the Annexation Property without the conformity of boundaries; and to promote and support economic development and to create and preserve economic opportunities. The parties intend by this agreement to exercise all of the powers granted to the City, Township and Owner by the constitution, municipal charter and the laws of the state of Ohio to the fullest extent permitted by law.

Section 2. Territory Subject to Agreement. The territory that is subject to this Agreement is certain real property within Deerfield Township located north of Mason Road across from the intersection of Birchwood Farms Drive and Mason Road being approximately 9.7337 acres described on Exhibit A and further shown on the annexation map attached as Exhibit B, both of which are attached hereto ("Annexation Property").

Section 3. Annexation. The City, Township and Owner support, consent to and agree with the annexation of Annexation Property to the City, provided such annexation complies with the terms of this Annexation Agreement. The City shall, in cooperation with the Agent for the annexation petitioner(s), process the annexation of the Annexation Property pursuant to the provisions of "Expedited Type 1" procedure as contained in R.C. 709.021 and 709.022 as such provisions exist on the effective date of this Agreement. The City and Township shall individually or jointly provide the agent for the annexation petitioner(s) with a certified copy of

this Agreement for filing with an annexation petition with the Warren County Board of County Commissioners pursuant to R.C. 709.022. The City and Township shall also each provide the annexation petitioners' agent with a certified copy of their legislation referred to in the preamble hereto approving this Agreement.

Section 4. Acceptance of Annexation. Upon the approval of the annexation by the board of county commissioners and the City clerk's receipt of the record of the annexation proceedings from the clerk of the Warren County Board of County Commissioners, the City shall timely accept the annexation and process it according to law.

Section 5. Changing of Township Boundaries. After the annexation becomes effective, the City shall file a petition with the Warren County Board of County Commissioners, pursuant to R.C. Chapter 503 including R.C. 503.07, to have the annexation territory excluded from Deerfield Township. The Township agrees that the territory annexed shall be removed from the Township following annexation and that it will support and shall not oppose the City's request to exclude the territory from the Township.

Section 6. Services. The territory to be annexed is presently zoned residential single-family and Owner desires to develop single-family residences upon the Annexation Property following its annexation, to have services to its property provided by the city of Mason, and to have the Annexation Property excluded from Deerfield Township to eliminate overlapping services and multiple levies and real property tax obligations to various taxing districts. It is in the interest of the Annexation Property, Owner, Township and City to have services to the Annexation Property be provided by the City, to relieve Deerfield Township of its service obligations, to relieve the Annexation Property of overlapping tax burdens, to have the property excluded from the Deerfield Township with payments equivalent to the statutorily required payments be made to the township to continue the tax expectations for the township over the next twelve years, and for the Annexation Property to support both the provision of city services and facilities and to reimburse the city of Mason for any payments it makes to Deerfield Township over the next twelve years for its lost tax revenues resulting from the conformity of boundaries once the territory is excluded from the township.

Section 7. Payments. It is acknowledged by the parties that the City will incur additional costs and expenses associated with the provision of services and facilities to the Annexation Property outside of the costs and expenses attributable to other property within the City, along with making payments to Deerfield Township for a period of twelve years upon the exclusion of the Annexation Property from the Township. The City shall make payments to the Township upon the exclusion of the property from the Township. Owner shall make payments to the City to defray the additional costs and expenses the City will incur to remove the Annexation Property from the Township and to provide city facilities and services to the property immediately upon the effective of the annexation and as it develops outside the Township. Payments shall be made as follows:

- a. The City shall make payments to the Township following the schedule provided by R.C. 709.19(D) in effect at the time of the execution of this Agreement commencing on the first day of January in the year following the effective date of the exclusion of the territory from Deerfield Township.

- b. To defray the City's initial additional costs and expenses, the Owner shall pay the City \$10,000 within thirty (30) days after the City accepts the annexation of the Annexation Property and the annexation becomes final.
- c. To defray the City's continuing additional costs and expenses for the Annexation Property, Owner, its successors and assigns shall make 'additional payments' to the City at the time of the issuance of building permits for the construction of each single family residence upon the Annexation Property. Additional payments shall be made over a period of twelve (12) years commencing upon the effective date of the exclusion of the territory from Deerfield Township. No additional payments shall be due to the City for any building permits issued for incidental improvements to the single family residence or lot that has made an additional payment as provided herein after a certificate of occupancy has been issued, including remodeling, decks, sheds, fences and swimming pool improvements. The Owner, its successors and assigns and the City agree that the additional payments by the Owner to the City shall be determined as follows:

<u>Year¹ in which building permit is applied for.</u>	<u>Amount due for each gross square foot of building subject to the permit</u>
1 - 3	\$1.32
4 - 5	\$0.90
6 - 10	\$0.54
11 - 12	\$0.13

¹Year 1 begins on the effective date of the exclusion of the territory from Deerfield Township.

- d. To assure payment of its additional payments to the City due at the time of the issuance of building permits as provided herein, the Owner shall provide the City with a letter of credit ("LOC") in the amount of \$25,000 for a period of twelve (12) years from the date it is first provided to the City. The LOC may be for a period of not less than a one (1) year that is automatically renewable so long as it remains continuously effective during the twelve year period provided herein. Reduction of the letter of credit may be made by the City, on a prorated basis, if the bond exceeds the estimated amount due for all unpaid additional payments. Owner shall provide the letter of credit to the City simultaneously with the paragraph 7(b) payment (and within thirty (30) days after the City accepts the annexation of the Annexation Property and the annexation becomes final).

The Owner and the City acknowledge and agree that the use of building permits is a "source" to determine the date and calculation of payment that is reasonably related to the timing of actual fees and costs the City will incur resulting from the annexation and conformity of boundaries of the Annexation Property over and above tax obligations of the Annexation Property in the City and is not an additional fee or cost of the building permit itself.

Section 8. Relative Rights. The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof and will inure to the benefit of, and be binding on the city of Mason, Deerfield Township and their respective agents, officers, elected officials, employees, successors and assigns, the Owner and the Annexation Property, and its agents, successors and assigns. Owner may only assign its rights, duties, and obligations hereunder with the express written consent of the city of Mason. Owner shall place a deed restriction upon the Annexation Property making the Annexation Property expressly subject to the terms of this Annexation Agreement and the obligations contained herein.

Section 9. Waiver. The Owner hereby acknowledges and affirms, for the Annexation Property, itself and its successors and assigns that the elimination of multiple levies and real property tax obligations to various taxing districts, and the provision of uniform services to its property by a single political subdivision, (rather than overlapping political subdivisions) benefit Owner and the Annexation Property. Owner further recognizes that the amount and timing of payments to the City and Township to defray their fees, costs, payments and reimbursements associated with the annexation, the conformity of boundaries, and the provision and elimination of services to the Annexation Property are related to the value of the Annexation Property and that a reasonable means to calculate changes in the value of the Annexation Property and the resulting respective changes in fees, costs, payments and reimbursements is based upon the building permit applications for property improvements. Owner agrees that the payments provided in Section 7 are not additional fees or costs for the issuance of a building permit or construction within the City. Owner, for itself, the Annexation Property, and all successors and assigns hereby covenants and agrees that it shall timely pay all amounts due under Section 7(b) and Section 7(c) and consents to the City executing upon the letter of credit and placing an affidavit or lien on the Annexation Property for any unpaid amounts due under this agreement, and waives any right, claim or damages it, its successors and assigns has or may have for themselves or for any of the Annexation Property to proceed against the city of Mason, its respective agents, officers, elected officials, employees, successors and assigns for any affidavit, lien or claim or collection against the letter of credit.

Section 10. Enforcement. If any party to this Annexation Agreement believes another party has failed to perform its part of any provision of this Agreement, including the failure to make any payment of moneys due under this Agreement, that party shall give notice to the other party clearly stating what breach has occurred. The party receiving the notice has ninety days from the receipt of that notice to cure the breach. If the breach has not been cured within that ninety-day period, the party that sent the notice may sue for recovery of the money due under the agreement or may sue for specific enforcement of the agreement. In addition, the Owner agrees that if the Owner, or its successors or assigns fails to timely make 'payment' within thirty (30) days after the city accepts the annexation of the Annexation Property and the annexation becomes final as provided in Section 7(b) above or 'additional payment' at the time of the application of a building permit as provided in Section 7(c) above, the City may, in its sole discretion, collect the monies due from the letter of credit posted in accordance with Section 7(d) above, and place an Affidavit against and/or lien upon the Annexation Property until all payments due are paid in full.

Section 11. Entire Agreement/Amendments. This Annexation Agreement constitutes the entire agreement between the parties. This Annexation Agreement may only be amended, revised or altered pursuant to an amendment, in writing, executed by the Owner, and the City,

Township properly promulgated and approved in accordance with their respective legislative authorities, except that the City and the Owner may amend Section 7(b), (c) and (d) without the consent of the Township.

Section 12. Headings And Captions. Headings and captions in this Annexation Agreement are for the convenience of reference only and shall not limit or affect the meaning hereof.

Section 13. Severability. If any provision of this Annexation Agreement or the application of any provision to any person or entity or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Annexation Agreement or the application of said provision to any other person, entity or circumstance, all of which other provisions shall remain in full force and effect.

Section 14. Counterparts. This Annexation Agreement may be executed in multiple counterparts, each of which is identical and each of which shall be deemed to be an original and all such counterparts together shall constitute but one instrument.

Section 15. Governing Law. This Annexation Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Section 16. Effective Date. This Annexation Agreement is effective upon the latter of the date last executed below and the effective date of the ordinance or resolution approving the Annexation Agreement referred to herein.

This Agreement is executed this 23rd day of November, 2009 by Boxwood Farms, LLC, an Ohio limited liability company, and is effective upon the date provided above.

BOXWOOD FARMS, LLC

By: 

James McVicker
Printed Name

Its: Managing Member

This Agreement was authorized by the Deerfield Township Board of Township Trustees in Resolution No. 2009-057, adopted on July 23, 2009 at an open

meeting and in accordance with the laws of the state of Ohio, and is executed this 18th day of August, 2009 by the undersigned Trustees and is effective upon the date provided above.


TOWNSHIP OF DEERFIELD

By: 
Trustee

By: 
Trustee

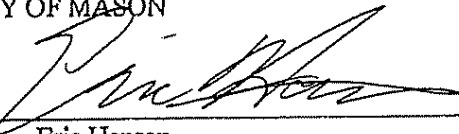
By: 
Trustee

Approved as to legal form and correctness:

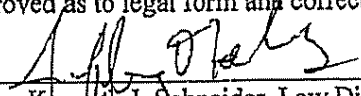
By: 
Thomas A. Swope, Legal Advisor
Deerfield Township

This Agreement was authorized by the city of Mason by Ordinance No. 2009-89 adopted on August 17, 2009 at an open meeting and in accordance with the laws of the state of Ohio, and the ordinances and Charter of the City of Mason, is executed by the City Manager this 1st day of October, 2009 and is effective upon the date provided above.

CITY OF MASON

By: 
Eric Hansen
City Manager

Approved as to legal form and correctness:

By: 
Kenneth J. Schneider, Law Director
City of Mason