

## **SERVICE AGREEMENT**

This Service Agreement (the "Agreement"), made and entered into as of the 25th day of October, 2011, among the CITY OF MASON, OHIO (the "City"), a municipal corporation organized and existing under the Constitution and the laws of the State of Ohio (the "State"), and BUNNELL HILL DEVELOPMENT CO., INC., an Ohio corporation, and its successors, assigns and transferees as herein permitted (the "Developer" and the "Owner"), and MICHAEL SCHUELER, his heirs, successors, assigns and transferees, as herein permitted, (the "Guarantor").

### **WITNESSETH:**

**WHEREAS**, the Council of the City (the "Council") has, on June 13, 2011 adopted Ordinance No. 2011-61 (the "Ordinance"), declaring to be a public purpose certain commercial improvements, described in Exhibit "A" hereto (collectively, the "Improvements"), to a parcel or parcels of real property located within the boundaries of the City, and designating as public improvements specific roadway and appurtenant public improvements, described in Exhibit "B" hereto (the "Public Improvements"), that will benefit the Improvements to be made by the Developer and/or Owner; and

**WHEREAS**, the Owner, owns certain parcels of real property located within the boundaries of the City commonly known as “Everybody’s Farm” and more particularly described in Exhibit “C” hereto (the “Site”), which Site contains a total of approximately 10.0709 acres of which the Owner is the owner, which Site may be or will be developed by the construction of the Improvements and the Public Improvements; and

**WHEREAS**, pursuant to Section 5709.42, Ohio Revised Code (“O.R.C.”), upon declaring the Improvements to be a public purpose, the City may require the Owner to agree, for itself and for all future owners of all or a portion of the Site (the owners of all or a portion of the Site hereinafter referred to as the “Owners” and individually as an “Owner”, such term may include Developer while Developer has a fee simple interest in all or any portion of the Site) to pay semi-annually to the City an amount equal to the amount of real property taxes that would have been paid on the increased value of the land and Improvements had an exemption with respect thereto not been applied for by the Owner and allowed under Section 5709.40, O.R.C. (such amount being hereinafter referred to as the “Statutory Service Payments”); and

**WHEREAS**, it is contemplated by the parties to this Agreement that one hundred percent (100%) of the assessed increased value of the land and the assessed value of the Improvements on the Site will be exempt from real property taxation for a period of thirty years; and

**WHEREAS**, the City has agreed that it will provide financing and may issue Bonds (as defined in Section 6 hereof) in order to pay the cost of constructing the Public Improvements and that the debt service on the Bonds or such other financing will be paid from the “Service Payments” which means the Statutory Service Payments, the Minimum Service Payments (as

defined in Section 4B hereof) and the Mandatory Service Payments (as defined in Sections 4F, 4G, 10B and 11B hereof) to be paid pursuant to this Service Agreement; and

**WHEREAS**, the City, and the Owner/Developer have agreed that the obligation to make Statutory Service Payments hereunder will be borne by the respective Owners, their heirs, successors, assigns and transferees based upon the increased value of the land and the value of the Improvements constructed on the portion of the Site owned by each such Owner; and

**WHEREAS**, the Developer intends that the obligation to supplement the Statutory Service Payments in order to meet the schedule of Minimum Service Amounts (as defined in Section 4B hereof) hereunder will be borne by the Developer; and

**WHEREAS**, the parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by Section 5709.42, Ohio Revised Code, and shall define the obligation of the Owner, the Developer and subsequent Owners with respect to the Service Payments.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereinafter contained, the City, and the Owner/Developer its heirs, successors, assigns and transferees, covenant, agree, and bind themselves as follows:

**SECTION 1. Construction of Improvements.** The Developer shall construct the Improvements set forth in Exhibit A, as specified in Exhibit A. All Improvements constructed on the Site shall be developed and re-developed in accordance with applicable zoning requirements and building codes, and shall be used principally for commercial purposes. Failure to use and occupy the Improvements as aforesaid shall not relieve Developer, the Owners, or

their respective heirs, successors, assigns and transferees of their obligations to make Service Payments as required hereunder.

**SECTION 2. Construction and Acquisition of Public Improvements.** The Public Improvements set forth in Exhibit B shall be constructed by a contractor or contractors chosen by the City in consultation with the Developer and in accordance with the requirements for construction of public improvements established by Chapter 1105, Mason, Ohio Code of Ordinances, which contractor or contractors shall be under the management of City as Construction Manager. The City shall receive a fee equal to five percent of the construction cost of the Public Improvements for its services as Construction Manager. The fee may be paid from the proceeds of the bonds described in Section 6 herein. If the fee is not paid from the proceeds of the bonds, then the Developer shall pay such fee within 30 days of the closing date of the bonds. The Public Improvements shall be constructed after the City receives competitive bids solicited in accordance with Article 5.04 of the Charter of the City of Mason, Ohio. Nothing herein shall limit the City and Developer from deciding to acquire some of the construction services through sole source procurement where both parties agree that this is the best method of procurement for a part of the project. Prevailing wages, to the extent required by law, shall be paid for all construction of the Public Improvements. The City and Developer reserve the right to reject any and all bids received for construction of the Public Improvements. The City shall pay for such Public Improvements a price equal to the total of the accepted construction bids and additional reasonable costs for general conditions including reimbursement to the Developer for eligible engineering fees, up to a maximum of one million five hundred twenty thousand dollars (\$1,520,000). All costs of constructing the Public Improvements in excess of \$1,520,000 shall

be the responsibility of the Developer and the Developer shall pay all costs in excess of \$1,520,000 for the Public Improvement set forth in Exhibit B, such Public Improvements being determined to be necessary and required to support the Improvements. The Public Improvements shall be constructed in such a fashion that they will qualify for acceptance by the City according to Chapter 1105, Mason, Ohio Code of Ordinances, and the contractor(s) will provide a guarantee to assure the correction of any defect or failure of the Public Improvements, as required by City of Mason Code Section 1105.09. The assignment of responsibility of the City and Developer with respect to the construction of the Public Improvements shall be as outlined on Exhibit "D" attached hereto.

**SECTION 3. Consideration.**

To further induce City to construct the Public Improvements, and in furtherance of the project, the Owner/Developer agrees that Owner shall, upon the City entering into duly authorized contracts for the construction of the Public Improvements, convey to the City, at no cost to the City, all right of way and other land necessary for the construction of the Public Improvements, by limited warranty deed free of any liens or encumbrances (except for easements acceptable to City) or by recorded plat. Owner shall provide all documents necessary to convey such land to City and to effectuate such transfer in the records of the County Auditor and Recorder for Warren County, Ohio. To the extent that the City determines actual conveyance of property is not necessary for the construction of any of the Public Improvements, Owner agrees to provide any easements, which the City determines shall be necessary to construct such Public Improvements and Owner shall provide such documentation as is required by the City to evidence such easements.

**SECTION 4. Obligation to Make Service Payments.**

A. The Owner/Developer, and City hereby agree that one hundred percent (100%) of the assessed increased value of the land and the assessed value of the Improvements on the Site will be exempt from real property taxation under Section 5709.40 of the O.R.C. for a period of thirty years; therefore, the Statutory Service Payments to be made under this Agreement will equal that portion of the real property taxes that would have been payable had the exemptions described in this paragraph above not been granted subject to any other valid real property tax abatement properly granted before the required tax exemption applications are filed with respect to all or any portion of the Site, as provided for in Section 5709.42 of the Ohio Revised Code. The Owners shall commence Statutory Service Payments on the first January 15, or such other date as is determined by the County Treasurer as the date on which real property taxes are due in Warren County (the "Real Estate Tax Payment Date"), after the calendar year with respect to which any of the Improvements would first have been assessed for real property taxes had an exemption with respect to such Improvements not been applied for by the Owner and allowed under Section 5709.40, O.R.C., and shall continue to make Statutory Service Payments on each January 15 and July 15, or the Real Estate Tax Payment Date (the first such January 15 and each January 15 and July 15 thereafter during the term of the property tax exemption hereinafter referred to as a "Payment Date") thereafter until termination or expiration of the property tax exemption. The responsibility for supplementing the Statutory Service Payments in order to meet the schedule of Minimum Service Amounts, as hereinafter defined, shall be borne by the Developer as set forth in Section 4B.

Each Statutory Service Payment shall be in an amount equal to one-half (1/2) of the annual amount which would have been payable as real property taxes with respect to the increased value of the land and the Improvements for the real property tax year next preceding the calendar year of payment had an exemption with respect to the increased value of the land and the Improvements not been applied for and allowed as aforesaid. In the event that as of the date any Statutory Service Payment is due the real property taxes on the exempted increased value of the land and Improvements cannot be or have not been finally determined for the real property tax year next preceding the due date, the amount of such taxes shall be determined from the Warren County Treasurer's tax duplicate if available, and, if said duplicate is not available, the same shall be estimated (even though such taxes may be subject to contest, later determination, or adjustment because of revaluation of the Site and Improvements) for such year. In the event that the sum of Statutory Service Payments so calculated and paid with respect to the Site in any year is subsequently determined not to be equal to the total amount of real property taxes which would have been paid with respect to the real property tax year next preceding such payments had an exemption not been applied for and allowed as aforesaid in the first clause of paragraph A of this Section 4, the Owners shall promptly pay City any deficiency, or the City shall promptly repay the Owners any excess, as appropriate; provided, however, that nothing in this sentence shall be construed to require City to repay to the Owners or the Developer any portion of the "Minimum Service Payments" or "Mandatory Service Payments" (each as hereinafter defined) required to be paid under this Agreement in any year, except and to the extent as may be provided in any bond documents for the Bonds (as defined in Section 6 hereof) and except and to the extent that the Developer paid Minimum Service Payments because an Owner underpaid its

Statutory Service Payments or Mandatory Service Payments, either through such Owner's actions or because such Statutory Service Payments or Mandatory Service Payments were incorrectly billed, which under payments are later collected.

**B.** Notwithstanding paragraph A of this Section 4, there is hereby established the "Minimum Service Amount," which shall be as set forth on Exhibit "E" attached hereto and which shall be an amount equal to Annual Debt Service (as defined in Exhibit "E" attached hereto) on the Bonds or other financing, plus the annual School Compensation Amount due and payable to the Mason City School District (the "School") pursuant to the Tax Incentive Agreement entered into between the School, the City and attached hereto as Exhibit "F".

If and to the extent that in any year the total of (i) the Statutory Service Payments and/or Mandatory Service Payments paid with respect to the Site, computed pursuant to paragraphs A, F and G of this Section 4 and Section 11, plus (ii) any Service Payments in Lieu of Taxes received by the City from the parcels set forth in Exhibit G, after any required School Compensation payments are paid (iii) any remaining capitalized interest funded by any Bonds supported by the Service Payments required by this Agreement, plus (iv) the rollback and homestead exemption payments received from the State with respect to the Site, is less than the Minimum Service Amount, required in such year the Developer its heirs, successors, and assigns shall pay or cause to be paid directly to the City an amount sufficient to make up the difference between the required Minimum Service Amount and the sum of (i), (ii), (iii) and (iv) above (the "Minimum Service Payment"). The required Minimum Service Payment must be made even in the event that the Statutory Service Payments, as described in paragraph A of this Section 4, never come due. If applicable, the annual Minimum Service Payment shall be due and payable ten (10) days



after Developer's receipt of written notice from the City that a Minimum Service Payment is required pursuant to this Section 4B.

C. After the first Payment Date on which the Statutory Service Payment computed pursuant to this Agreement and Section 5709.42 of the Ohio Revised Code exceeds the Minimum Service Amount, and continuing for each successive year in which the Statutory Service Payment exceeds the Minimum Service Amount for such year, such excess amount shall be used to reimburse the City or the Developer, as appropriate, for (i) all amounts the City has advanced (if any) to make payments of principal and/or interest on the Bonds (as defined in Section 6 hereof); (ii) all amounts the City has expended for unforeseen project costs associated with the Public Improvements (if any) until the City has been fully reimbursed; (iii) all amounts Developer has previously paid as Minimum Service Payments pursuant to Section 4B (if any); and then (iv) to effect defeasance, purchase or redemption of the Bonds or to pay for additional public improvements as determined by the City.

D. In the event that any Statutory Service Payment, Minimum Service Payments or Mandatory Service Payment, or any installment thereof, is not paid when due, the City may impose and collect a late payment charge from the Developer, the Owner or any entity who or which is responsible therefore in the same manner as is currently provided in Section 323.121 of the Ohio Revised Code in regard to payment of penalty and interest for failure to pay real estate taxes and installments when due.

Should any Owner fail to make any Statutory Service Payment or Mandatory Service Payment required hereunder, such Owner shall pay, in addition to the Service Payments such Owner was required to pay hereunder, such amount as is required to reimburse the City for any

and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) required by the City to enforce the provisions of this Agreement against such Owner or the real property owned by such Owner within the Site. The City hereby covenants to petition Warren County (the "County") to start foreclosure proceedings against a defaulting Owner as soon as the County would be permitted pursuant to the laws of the State of Ohio to institute foreclosure proceedings against a defaulting Owner for failure to pay Service Payments when due. In the event that the Developer is obligated to make a Minimum Service Payment(s) due to an Owner's failure to pay Service Payments when due and subsequently such delinquent Service Payments are collected by the County via foreclosure proceedings or otherwise, the Developer shall be promptly reimbursed by the City for such Minimum Service Payment(s) previously made.

E. Notwithstanding anything to the contrary set forth in this Agreement, neither the Developer, any Owner nor the City, nor their respective heirs, successors, assigns or transferees shall take any action which may endanger the status of or cause the revocation of the exemption approved and granted by the State of Ohio (as described in Section 15, below).

F. Notwithstanding anything to the contrary set forth in this Agreement, each Owner, its heirs, successors, assigns or transferees, with respect to its portion of the Site, shall not cause any Improvement or portion thereof once constructed to be voluntarily removed from the portion of the Site owned by it or to be demolished prior to the expiration and satisfaction of this Agreement or the expiration of the tax exemption, whichever is the last to occur, unless (i) such Owner promptly replaces said Improvement with another Improvement of equal or greater value than the original Improvement; or (ii) each year until the expiration of this Agreement,

such Owner shall be required to make payments in the same amounts and on the same dates as the Statutory Service Payments which were due and payable with respect to that portion of the Improvements removed or demolished in the year immediately preceding the removal or demolition, said payments to be “Mandatory Service Payments”. The Owner shall at all times during the term of this Agreement maintain all Improvements and shall not cause or allow deterioration other than normal wear and tear of any Improvements which results in a loss of valuation of such Improvement.

G. Notwithstanding anything to the contrary set forth in this Agreement, until the expiration of this Agreement, if for any reason, the real property tax policy in the State of Ohio or Warren County should change such that real property taxes and/or Statutory Service Payments are significantly reduced or eliminated, each Owner shall be required to make payments in the same amount and on the same dates as the Statutory Service Payments which were due and payable with respect to each Owner’s respective portion of the Site in the year immediately preceding the change in tax policy, said payments to be “Mandatory Service Payments”.

**SECTION 5. Additional Obligations.**

A. The Developer shall cause this Agreement to be recorded in the Warren County, Ohio real estate records, and the Developer and each subsequent Owner shall cause all instruments of conveyance of interests in the Improvements and Site (or portions thereof) to subsequent successors, assigns or transferees (except leases of space in the Improvements and mortgages) to be made expressly subject to this Agreement and the Tax Incentive Agreement.

In the event that any Owner (including Developer while Developer is an Owner of all or any portion of the Site) transfers to a third party any portion (less than all) of the property owned

by such Owner within the Site, then the Statutory Service Payments required by Section 4 shall be allocated between the property conveyed (the “Transferred Portion”) and the property retained by such Owner (the “Retained Portion”). Said allocation shall be based upon the relative values of the Retained Portion and the Transferred Portion (including improvements thereon), as assessed from time to time on the records of the Warren County, Ohio Auditor, without reference to any exemption under Section 5709.40, O.R.C. Prior to the date that such separate assessment appears of record, the relative values of the Retained Portion and the Transferred Portion shall be determined by a qualified real estate appraiser selected by the Owner making the transfer and approved by City, or by another method mutually agreed to by such Owner and City.

**B.** The obligation on the part of the Developer and the Owners to perform and observe their respective agreements contained herein shall be binding and enforceable by the City, and the holders from time to time of any Bonds, against the Developer, the Owners and their respective heirs, successors, assigns and transferees but only with respect to their respective interests in the Site and Improvements, or any parts thereof or any interest therein.

The obligation on the part of the City to perform and observe the agreements contained herein shall be binding and enforceable by the Developer, the Owners and their respective heirs, successors, assigns and transferees against the City.

**C.** From and after the date that any person or entity transfers to any third party all or any portion of the Site, then such third party (i.e., the new Owner) shall be solely responsible for payment of all Statutory Service Payments and Mandatory Service Payments with respect to the portion of the Site so transferred and the City, and the holders from time to time of any of the Bonds, shall have no cause or right of action against the person or entity making the transfer with

respect to the Statutory Service Payments and Mandatory Service Payments attributable to the portion of the Site so transferred.

**D.** As a requirement of the City granting the tax exemption that is the subject of this Agreement, the Developer hereby agrees, during each year this Agreement is in place, to make an annual payment to the Mason Community Improvement Corporation (“CIC”) in the amount of three percent (3.00%) of annual debt service on the Bonds subject to a maximum payment of ten thousand dollars (\$10,000) annually or a minimum of five thousand dollars (\$5,000) annually for the purpose of marketing the City of Mason for economic development. The annual payment shall be made to the CIC on or before January 15 of each year. The City represents to Developer that such payments paid by the Developer will not be used to provide economic incentives to projects under circumstances which may be contrary to Developer’s interests.

**E.** The developer shall, prior to the issuance of the certificate of occupancy on the fifth lot in the Site, be responsible for the following tasks not included in Exhibit B:

- (a) a 12-inch water main extension will be constructed on the north side of Tylersville Road creating a water main loop between Sound Wave Drive and Nicholas Way; and
- (b) a tower feature will be constructed on the site at the location agreed upon by the developer and the City.

**F.** As a condition of the City granting the property tax exemption to properties within the Commerce West District along Tylersville and Snider Roads, Developer hereby agrees to cause to be developed certain landscaping and gateway improvements along Tylersville and Snider Road corridors, as outlined and incorporated into this agreement in Exhibit B-1 and B-2. The

description of said gateway and corridor improvements shall be installed as outlined in Exhibit B-1 and B-2 or as otherwise approved in writing by the City.

**SECTION 6. Issuance of Bonds.**

**A.** As used in this Agreement, the term “Bonds” means one or more issues or series of Tax Increment Bonds (or notes in anticipation thereof) or other financing instruments issued by the City under Section 5709.40 of the O.R.C. or any other Section of the ORC pursuant to which the City may lawfully issue debt obligations, which shall be payable from Service Payments required to be made under this Agreement.

**B.** Subject to the provisions of this Section 6, Bonds shall be issued under this Agreement at such times as are necessary to provide timely funding for (i) the construction of the Public Improvements; (ii) capitalized interest and (iii) the costs of issuance of the Bonds. The Bonds may be issued in one or more series. All Bonds shall finally mature not later than December 31, 2031.

**C.** Any proceeds from the sale of the Bonds remaining in the construction fund upon completion of the Public Improvements shall be used to effect defeasance purchase or redemption of the Bonds on the earliest possible date.

**D.** The Developer shall have the option of purchasing all or a portion of any Bonds or other debt obligations issued by the City to finance the Public Improvements for Everybody’s Farm. The Bonds shall be registered in the name of the Developer, or an Owner of the Developer and will not be transferable or assignable. If the Developer purchases all or a portion of the Bonds the Developer will not be obligated to provide credit enhancement with respect to the Bonds purchased and held by the Developer.

E. In the Event that Developer does not purchase all of the Bonds, the City may sell all or a portion of the Bonds as a private placement to a financial institution, which financial institution intends to hold such Bonds for investment purposes and does not intend to resell the Bonds to other investors. The Bonds shall be registered in the name of such financial institution and will not be transferable or assignable.

Prior to the City selling Bonds to a financial institution, Developer and Guarantor shall each provide and maintain with the City on a continuing basis, an unconditional, irrevocable corporate guarantee and personal guarantee, respectively, each acceptable to the City and the City's underwriter or financial advisor, securing the repayment of the Bonds, by guaranteeing the payment of Statutory Service Payments, Minimum Service Payments and Mandatory Service Payments. Developer and Guarantor shall provide such corporate guarantee (the "Corporate Guarantee") and personal guarantee (the "Personal Guarantee") to the City on or prior to the date of the original issuance of the Bonds. The Corporate Guarantee and the Personal Guarantee shall each have an expiration date of no less than the term of the Bonds.

If the Bonds are sold to a financial institution, Developer shall on or before December 31, 2013, fund a debt service reserve fund (the "Reserve Fund") in the amount of \$50,000. Such fund shall be an escrow account set up at the financial institution which purchases the bonds and such account shall be for the benefit of the bondholders. The account shall be drawn upon at the written direction of the City to make debt service payments on the Bonds. The Reserve Fund shall only be drawn upon if Service Payments, net of any School Compensation, are insufficient to make debt service payments and the Developer and Guarantor fail to make any necessary requested payments under the Corporate or Personal Guarantee. Should the balance in the

Reserve Fund fall below \$25,000 prior to the release of the Reserve Fund, as set forth below, the Developer shall, within 120 days of written notification, provide for an additional deposit such that the Reserve Fund balance is not less than \$25,000. On December 15 of each year, commencing December 15, 2014, any amount in the Reserve Fund in excess of \$50,000 shall be transferred to the Developer.

The Reserve Fund shall be released and any amounts therein shall be transferred to the Developer, when five lots in the Site have been developed and annual Statutory Service Payments from the Site are sufficient to pay school compensation and annual debt service for two consecutive years.

F. If the Bonds are not purchased by the Developer or sold subject to a Corporate Guarantee and Personal Guarantee as a private placement to a financial institution, the City may publicly sell Bonds. If the City sells Bonds publicly, then until such time as the Bonds are paid in full, the Developer shall provide to the City (and shall maintain with the City on a continuing basis) an unconditional, irrevocable letter of credit in an amount equal to the entire outstanding unpaid principal amounts due under the Bonds plus interest which would accrue on the outstanding Bonds (at the interest applicable to the principal amount of the Bonds) during the 195 day period after the date of the letter of credit. The Developer shall provide the first such letter of credit (the "Original Letter of Credit") to the City on or prior to the date of the original issuance of the Bonds. The Original Letter of Credit shall have a maturity date of no less than one (1) year. At least ninety (90) days prior to the expiration date of the Original Letter of Credit, and at least ninety (90) days prior to the expiration date of any Substitute Letter of Credit (as hereafter defined), the Developer shall provide the City a substitute letter of credit (a



“Substitute Letter of Credit”), which has a term of not less than one (1) year, in an amount equal to the entire outstanding unpaid principal amounts due under the Bonds plus interest which would accrue on such Bonds (at the interest applicable to the principal amount of the Bonds) during the 195 day period after the date of the letter of credit. The institution issuing such Original Letter of Credit and the institution issuing any such Substitute Letter of Credit shall satisfy those criteria specified in the Trust Indenture which is executed with respect to the issuance and sale of the Bonds. The trustee under the Trust Indenture shall reimburse the Developer for the reasonable cost of obtaining and maintaining the Original Letter of Credit and any Substitute Letter of Credit, such reimbursement to be made promptly after the receipt from the Developer of a notice requesting such reimbursement together with evidence of the payment in full of any cost incurred in obtaining or maintaining of the Original Letter of Credit or any Substitute Letter of Credit. If the Developer fails to provide a Substitute Letter of Credit within ninety (90) days of the expiration date of the Original Letter of Credit or Substitute Letter of Credit the City may draw upon any such letter of credit then in its possession.

**G.** The City is only obligated to issue bonds and construct the Public Improvements if the provisions of paragraph D, E, or F of this Section 6 have been complied with.

**SECTION 7. Binding Nature of Obligations; Security for Payment.** The obligations of the Owners to pay the Statutory Service Payments and Mandatory Service Payments and to perform and observe the other agreements on their part contained herein shall be absolute and unconditional, and shall be covenants running with the land, and shall be binding and enforceable by the City, and the holders from time to time of any of the Bonds, against the Owners (as the same exist from time to time) and their respective heirs, successors, assigns and

transferees with respect to their respective interests in the Site and Improvements, or any parts thereof or any interest therein, subject to the provisions set forth in Section 5(A) of this Agreement with respect to the allocation of the Service Payments.

The obligation of the Developer to pay Minimum Service Payments, if required pursuant to Section 4B, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and shall be binding and enforceable by the City, and the holders from time to time of any of the Bonds, against the Developer.

Except to the extent otherwise provided in this Agreement, the obligations of the Developer and the Owners and their respective heirs, successors, assigns and transferees under this Agreement will not be terminated for any cause, including, without limiting the generality of the foregoing, but by way of example, failure to complete the Improvements; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Improvements; commercial frustration of purpose; any change in the constitution, tax or other laws or judicial decision or administrative rulings of or administrative action by or under authority of the United States of America, or of the State or any political subdivision thereof; provided that in the event the tax exemption sought for the Site is not obtained, the Owners shall not be liable or responsible for the Statutory Service Payments (provided that nothing contained herein shall relieve the Developer from the obligation to make Minimum Service Payments if required pursuant to Section 4B.

Failure to use or to occupy the Improvements shall not relieve the Owners of its or their obligations to make Service Payments as required hereunder. The obligations of any person or entity that is or becomes an Owner hereunder shall apply during such period and only during

such period, that such person or entity owns real property or Improvements which are a part of or which are located on any portion of the Site.

Nothing contained in this Agreement shall be construed to release any of the Owners from the performance of any of the agreements or obligations on its part contained in this Agreement other than a transfer of the portion of the Site owned by such Owner to a third party which shall release the transferring Owner from all future obligations hereunder, including the obligation to make Service Payments hereunder.

**SECTION 8. Delay in Completion of Improvements.** The Developer agrees to make Minimum Service Payments, if required pursuant to Section 4B, whether or not construction of the Improvements is ever commenced or completed.

**SECTION 9. Payment of Taxes; Contests.**

A. Each of the Owners their heirs, successors, assigns and transferees, shall pay or cause to be paid, as the same become due, all Service Payments, taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against, or with respect to, the property of such Owners which is a part of the Site or the Improvements or any personal property or fixtures of such Owners installed or brought therein or thereon (including, without limiting the generality of the foregoing, but by way of example, any taxes levied against such Owners with respect to the Improvements, receipts, income or profits from the operations of such Owners at the Site and Improvements, which, if not paid, may become or be made a lien on all or a portion of the Site or the Improvements) and all utility and other charges incurred by such Owners in the operation, maintenance, use, occupancy and upkeep of that portion of the Site and the Improvements owned

by such Owners, respectively; provided, however, that nothing herein is intended to prevent such Owners, at their respective expense and in good faith, from contesting any such service payments, taxes, assessments or other charges, but in the event of any such contest, the Owners pursuing such contest may not permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. No special tax shall be imposed upon any Owner due to a sale of such Owner's property to another party. Nothing in this paragraph shall be construed to relieve the Developer of the duty (if such a duty otherwise exists under this Agreement) to make Minimum Service Payments as required by this Agreement.

**B.** The Developer, the Owners and their respective heirs, successors, assigns and transferees and the City hereby agree that notwithstanding any other provisions in the laws of the State of Ohio, the Statutory Service Payments required pursuant to Section 5709.40 et seq of the Ohio Revised Code and hereunder will have the same lien rights and priority as real property taxes. The Developer, the Owners and their respective heirs, successors, assigns and transferees agree not to contest the lien rights or priority of the Statutory Service Payments with respect to the Site.

**C.** Nothing in this Agreement shall require the Developer or any Owner to pay or reimburse the payment by City of any federal, state or local tax of any kind or character (whether based on gross or net income, gross receipts, or otherwise) which is imposed or levied on the City or on the holders of the Bonds.

**SECTION 10. Insurance Coverage and Proceeds.**

A. The Owners, their heirs, successors, assigns and transferees agree that they shall provide and maintain, or cause to be provided and maintained on their respective parcels:

(i) Commercial insurance coverage or such other insurance coverage acceptable to the City, (including, but not limited to, self insurance) on or including the Improvements and other insurable improvements on the Site or any replacements or substitutions therefor against loss by fire and extended coverage perils and against loss by such other insurable hazards as may from time to time be commonly insured against in the case of premises similarly situated (or as may be required by any mortgagee) in such amounts as would ordinarily be carried by a reasonably prudent owner and operator of a comparable property, due regard being given to the height and type of the Improvements and other insurable improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor, all as determined by the Owner of the Site or portion thereof, and

(ii) Comprehensive commercial public general liability insurance, or such other insurance coverage acceptable to the City (including, but not limited to, self insurance), covering bodily injury and death to persons in the minimum amount of \$1,000,000 for each death or bodily injury to one person and or occurrence in connection with the Site and/or Improvements and \$500,000 for property damage for any occurrence in connection with the Site and/or Improvements.

Notwithstanding the foregoing provisions of clauses (i) and (ii), if at any time an Owner shall be unable to obtain or provide such insurance coverage on reasonable terms to the extent above required, either as to amount of such insurance or as to the risks covered thereby, it shall

not constitute a breach of this Agreement if such Owner shall carry or provide or cause to be carried or provided such insurance to the extent reasonably obtainable or shall have made other provisions satisfactory to the City. Each Owner further agrees that each insurance policy required by this Section 10 shall be by one or more insurers which are financially responsible, qualified to write the respective insurance, and of recognized standing, or shall be provided by any Owner subject to subsection C of this Section 10, shall be in such form and with such provisions as are generally considered reasonable and appropriate provisions for the type of insurance involved, and shall prohibit cancellation or substantial modification by the insurer or provider without at least thirty (30) days prior written notice to the City, to the extent such notification timing is commercially available, or otherwise the longest notice commercially available, if less than thirty (30) days. From time to time upon request by City or holders of any of the Bonds, an Owner shall furnish such evidence or confirmation of the insurance required under this Section 10 as City or such holder may reasonably request. The requirement to provide insurance pursuant to this Section 10 only applies to property on which Service Payments are being made under the Ordinance.

**B.** In the event of an occurrence which would result in a recovery of insurance proceeds under subsection A(i) of this Section 10, such affected Owner shall be subject to either clause (i) or (ii) below, the option to be selected by the Owner:

(i) Unless otherwise agreed to between the affected Owner and such Owner's mortgagee, the proceeds of any insurance recovery under subsection A(i) of this Section 10 shall be applied first, to pay the principal amount and all other sums owed all mortgage lenders holding loans for the respective portion of the Site and Improvements to the extent required;

second, to restore and replace the Improvements and other improvements on the Site; third, to the extent the Improvements are not replaced at an equal or greater value, then to the extent required under the Bonds and related documents, to affect defeasance and/or purchase and/or redemption of the balance of such Owner's pro rata share of the Bonds, based on the valuation of the land and the Improvements (in which event the Mandatory Service Payments applicable to such affected portion of the Site shall be reduced or cancelled appropriately); and fourth, any excess over the amounts required for such previously listed purposes shall be the property of and shall be paid the respective affected Owner; or

(ii) Each year until the Bonds have been paid in full, the affected Owner shall be required to make payments in the same amounts and on the same dates as the Statutory Service Payments which were due and payable with respect to that portion of the Site subject to recovery of insurance proceeds in the year immediately preceding the occurrence which resulted in a recovery of insurance proceeds such payments shall be the "Mandatory Service Payments".

C. In the event of an occurrence which would result in a recovery of insurance proceeds under subsection A(ii) of this Section 10, the proceeds shall be applied to satisfaction of the liability.

D. In consideration of the purchase by the Developer of all of the outstanding Bonds, the City waives any right to direct the payment or use of any insurance proceeds and agrees that the Owner's shall have the right to self insure against property loss and liability claims.

#### **SECTION 11. Condemnation Proceeds.**

Each Owner, its heirs, successors, assigns and transferees agrees that in the event any portion of the Site owned by such Owner on which Service Payments are being made shall be

taken as a result of the exercise of eminent domain by any governmental entity or other person, association or corporation possessing the right to exercise the power of eminent domain other than the City, such affected Owner shall be subject to either clause (i) or (ii) below, the option to be selected by such Owner:

(i) Unless otherwise agreed to between any Owner and such Owner's mortgagee, the proceeds of such eminent domain award received by such Owner shall, be applied first, to pay the principal amount and all other sums owed to all mortgage lenders holding loans for the respective portion of the Site and Improvements to the extent required; second, for the purpose of restoring the Site and Improvements to substantially the same condition as they existed prior to the exercise of said power of eminent domain; third, to the extent the Improvements are not replaced at an equal or greater value, then to affect defeasance, purchase or redemption of the balance of such Owner's pro rata share of the Bonds, based on the valuation of the land and the Improvements, and fourth, any excess over the amounts required for such previously listed purposes shall be the property of, and shall be paid to the affected Owner. To the extent there is any such defeasance, purchase or redemption of the Bonds, the Mandatory Service Payments applicable to such affected portion of the Site shall be reduced or cancelled as the case may be. No Owner shall be required to apply such proceeds to effect defeasance, purchase or redemption of the Bonds if the annual Service Payments following any revaluation of the Improvements as a result of the exercise of eminent domain are sufficient to cover the Minimum Service Amount; or

(ii) Each year until the Bonds have been paid in full, the affected Owner shall be required to make payments in the same amounts and on the same dates as the Statutory Service Payments which were due and payable with respect to the portion of the Site subject to eminent



domain in the year immediately preceding the exercise of eminent domain proceedings, such payments to be the "Mandatory Service Payments".

**SECTION 12. Tax-Exemption.** The City, the Owner/Developer and their respective heirs, successors, assigns and transferees shall refrain from any and all activities, including, but not limited to, failure to comply with the provisions of the Internal Revenue Code of 1986, as amended, and all regulations, rulings and decisions thereunder, which would cause the interest on the Bonds to be includable in gross income of any holder of the Bonds for federal income tax purposes. The Developer and the Owners consent to all covenants made by the City in any and all documents relative to the issuance of the Bonds and will take no action which, to the extent of the Developer's and the Owner's knowledge, would jeopardize the City's ability to comply with all such covenants, provided such covenants shall not create new or further obligations on the part of the Developer and the Owners except as set forth herein.

**SECTION 13. Notices.** All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the City at 6000 Mason-Montgomery Road, Mason, Ohio 45040, Attn: City Manager; to the Owner/Developer at Bunnell Hill/Henkle Schueler, 3000-G Henkle Drive Suite G, Lebanon, Ohio 45036, Attn: Theodore A. Gilbert, CFO; and to any other Owner at the tax mailing address for the property owned by such Owner in the Site. The City, the Developer, the Owner, and any other Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices, designations, certification, requests or other communications shall be sent.

**SECTION 14. Representation and Warranties.** The Owner/Developer represents and warrants that Owner/Developer is a duly organized and existing Ohio corporation, is in good standing under the laws of the State of Ohio and is qualified to do business in the State.

**SECTION 15. Exemption Application.** Owner shall have primary responsibility to prepare, execute and file within thirty (30) days after this Agreement is signed such applications, documents and other information with the appropriate officials of the State, County of Warren, Ohio, or other public body as may be required to effect the exemption from real property taxation described in Section 5709.40, O.R.C. The City shall cooperate in such preparation and filing by Owner, including, without limitation, executing such applications and documents as may be appropriate in assisting the Owner in obtaining such exemption. City and Owner intend that such exemption from real property taxation will apply to the 2012 tax year, and shall use due diligence and best efforts to that end. Both parties agree to use due diligence to cause the application for exemption from real property taxation to be filed with the appropriate officials. The Owners shall continuously use due diligence and employ their best efforts to keep such exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within such Owner's control. In the event that the exemption with respect to the Improvements contemplated by Section 5709.40 O.R.C. is not allowed, or in the event that subsequent to allowance of such exemption, the same is at any time revoked or suspended, the Developer is nonetheless required to make Minimum Service Payments in an amount sufficient only to cover debt service on the Bonds issued to construct the Public Improvements.

**SECTION 16. Duration of Agreement.** This Agreement shall become effective on the date that it is executed and delivered, and unless sooner terminated, shall expire on the earlier of:

(i) December 31, 2031, or (ii) the day following the date on which the final payment of principal of and premium, if any, and interest on the Bonds or any refunding issue thereof is made, or deemed to be made to a trustee for the benefit of the holder or holders thereof.

**SECTION 17. Application of Payment.** Statutory Service Payments shall initially be made by the Owners, including Developer if and while Developer is an Owner, as appropriate, to the Warren County Treasurer on or before the respective dates required in this Agreement. Upon distribution of such Service Payments to the City, such Service Payments shall be deposited in the City of Mason Public Improvement Tax Increment Equivalent Fund established by the Ordinance. Minimum Service Payments and Mandatory Service Payments shall be paid by the Developer or Owners, as appropriate to the City and shall be deposited immediately by the City into the City of Mason Public Improvement Tax Increment Equivalent Fund.

**SECTION 18. Reporting Requirements.**

On or before January 31 of each year during which the tax exemption granted pursuant to O.R.C. 5709.40 remains in effect, Developer, the Owners and their respective heirs, successors, assigns and transferees shall provide a report under oath to the City regarding the progress of the Improvements. Such report shall include a summary of the Service Payments made in lieu of taxes and a quantitative summary of change in employment and private investment resulting from the project. In the event an Owner, including the Developer while the Developer is an Owner, or its heirs, successors, assigns and transferees rent or lease all or a portion of the Improvements to third parties; such Owner and its heirs, successors, assigns and transferees shall endeavor to obtain as a condition of such rental agreement or lease, a provision requiring such information from its renters or lessees or their sub-renters or sub-lessees. The parties hereto

acknowledge that a failure to provide such information could result in a loss of the tax exemption under O.R.C. 5709.40 and would constitute a breach of this Agreement.

Upon Developer's request, the City shall provide to Developer copies of all accounting information regarding the project, including, but not limited to, account statements pertaining to the City of Mason Public Improvement Tax Increment Equivalent Fund and any reconciliation spreadsheets of forms itemizing the receipt and disbursement of funds related to the project and redemption of the Bonds.

**SECTION 19. Defaults and Remedies.** The following shall be events of default under this Agreement:

(i) the failure of an Owner or its heirs, successors, assigns or transferees to pay, when due, any Statutory Service Payment or Mandatory Service Payment or any installment thereof, including any applicable late payment charges;

(ii) the failure of the Developer, its heirs, successors, assigns or transferees to pay, when due, any Minimum Service Payment or any installment thereof, including any applicable late payment charges;

(iii) the failure of an Owner, its heirs, successors, assigns or transferees to maintain the insurance which is required under Section 10 of this Agreement; which failure shall continue for more than thirty (30) days following written notice thereof by the City; provided that such thirty (30) day period may be extended for a reasonable period of time necessary to cure such default provided such Owner is diligently pursuing such cure;

(iv) the failure of an Owner, its heirs, successors, assigns or transferees to provide the information required under Section 18 herein; which failure shall continue for more than thirty

(30) days following written notice thereof by the City; provided that such thirty (30) day period may be extended for a reasonable period of time necessary to cure such default provided such Owner is diligently pursuing such cure;

(v) a default by the Developer, its heirs, successors, or assigns under the Corporate Guarantee or any other Bond document to which the Developer is a party;

(vi) a default by the Guarantor, his heirs, successors, or assigns under the Personal Guarantee or any other Bond document to which the Guarantor is a party;

(vii) a default by the Developer, its heirs, successors, or assigns under any of the Letter of Credit documents required by the Letter of Credit Bank or any other Bond document to which the Developer is a party;

(viii) the Developer fails to fund the Reserve Fund in the required amount by the required date or the Developer fails to maintain the required balance in the Reserve Fund;

(ix) the failure of any Owner or the Developer, their heirs, successors, assigns or transferees to perform or observe any other covenant made by it in this Agreement, which failure shall continue for more than thirty (30) days following written notice thereof by the City; provided that such thirty (30) day period may be extended for a reasonable period of time necessary to cure such default provided such Owner or the Developer is diligently pursuing such cure; and

(x) The failure of the City to perform or observe any other covenant made by it in this Agreement, which failure shall continue for more than thirty (30) days following written notice thereof by the trustee, any Owner or the Developer, their respective heirs, successors, assigns or transferees; provided that such thirty (30) day period may be extended for a reasonable period of

time necessary to cure a default that cannot be cured within thirty (30) days after written notice thereof provided City is diligently pursuing such cure.

Upon the occurrence and continuation of any event of default by any Owner, the Developer, or the City any party not in default shall be entitled to exercise any and all remedies available to it to compel performance of such defaulting party's obligations, or to recover damages for non-performance. Provided that no event of default by an Owner other than the Developer shall entitle the City to exercise any remedies or recover any damages against the Developer in excess of the Minimum Service Payments. Waiver by any party not in default of any event of default shall not be deemed to extend to any subsequent or other event of default under this Agreement.

**SECTION 20. Choice of Law.** This Agreement shall be governed by the laws of the State of Ohio and shall be interpreted and enforced in accordance with the laws of that State without regard to the principles of conflicts of laws.

**SECTION 21. Dispute Resolution.** All disputes, differences or questions arising out of or relating to the Agreement (including without limitation those as to validity, interpretation, breach, violation or termination) shall, at the written request of either party, be determined and settled, if possible, pursuant to the following procedure before proceeding with any action in court. If a claim, dispute, or other matter in question arises out of this Agreement which the parties are unable to resolve through mutual, good faith negotiations, it shall be submitted to mediation by written notice of the party seeking mediation to the other party. The same shall be mediated by the Center For Resolution of Disputes, 8 West 9th Street, Cincinnati, Ohio 45202. The mediation shall be held within thirty (30) days of the written notice and the mediation

process shall continue until the dispute is resolved or the mediator declares an impasse. Mediating fees shall be shared equally by the City and the Owner with whom the dispute has arisen and any additional participating disputants having a financial interest in the outcome of the dispute. Except for negotiation, attempts to resolve the dispute by mediation must take place prior to any other resolution process. If the claim, dispute, or other matter between the parties to the Agreement cannot be resolved by mediation, the parties may, but shall not be obligated to, agree, in writing, to binding arbitration in accordance with the arbitration rules of the American Arbitration Association then in effect. The legal fees for such arbitration shall be segregated by the arbitrator for each party relating to its respective disputes and claims. If the parties do not agree to arbitration, each party shall be free to pursue such legal remedies as the party believes it is entitled to under the terms of this Agreement.

**SECTION 22. Severability.** In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

All illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application,

all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

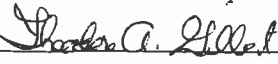
**SECTION 23. Counterparts; Captions.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

**SECTION 24. Additional Documents; Amendment.** The City, the Owner, the Developer, the Guarantor, and their respective successors, assigns and transferees, agree to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Service Agreement. To the extent permitted by this Agreement, and in compliance with all laws and ordinances controlling this Agreement, the City, the Owner, the Developer, and the Guarantor, and their respective successors, assigns and transferees, agree that any amendment to this Agreement must be in writing and signed by all parties.



IN WITNESS WHEREOF, the City, the Owner/Developer, and the Guarantor have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first written above.

**THE DEVELOPER AND OWNER:**  
Bunnell Hill Development Co., Inc.

By: 


Name: Theodore A. Gilbert

Its: CFO/Treasurer

**THE CITY:**  
City of Mason, Ohio

By:   
City Manager

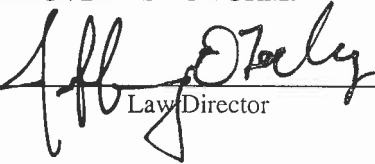
**THE GUARANTOR**  
Michael Schueler

By: 

Name: Michael P. Schueler

Its: President

**APPROVED AS TO FORM:**

  
Law Director

STATE OF OHIO )  
 ) SS:  
COUNTY OF WARREN )

BE IT REMEMBERED, that on this 25 day of OCTOBER, 2011, before me the subscriber, a notary public in and for said County and State, personally appeared ERIC HANSEN the City Manager of the City of Mason, Ohio an municipal corporation organized and existing under the Constitution and laws of the State of Ohio, who acknowledged to me that they executed the foregoing instrument, and that the same is their free act and deed on behalf of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

*Joan Bernard*  
Notary Public

[NOTARY  
SEAL]

**JOAN BERNARD**  
Notary Public, State of Ohio  
My Commission Expires **May 7, 2015**

STATE OF OHIO )  
 ) SS  
COUNTY OF WARREN )

BE IT REMEMBERED, that on this 19 day of October, 2011, before me the subscriber, a notary public in and for said County and State, personally appeared Michael T. Schueck, M.D. and Theodore A. Gilbert of Bunnell Hill Development Co., Inc., an Ohio corporation, who acknowledged to me that he executed the foregoing instrument, and that the same is his free act and deed on behalf of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

*Carolyn K. Byrd*  
Notary Public

[NOTARY  
SEAL]

**CAROLYN K. BYRD**  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES  
**MAY 22, 2015**



31  
33

**EXHIBIT "A"**

**THE "IMPROVEMENTS"**

The following building projects are the commercial "Improvements" declared to be a public purpose by the City Council of the City of Mason per Ordinance No. 2011-61 on June 13, 2011:

<b>Lot No.</b>	<b>Lot Size</b>	<b>Potential Use or User*</b>	<b>Description</b>
3	2.64 acres	Marion's Piazza	10,000 sf family-style restaurant
4	1.59 acres	<i>Unknown</i>	3,000 sf +/- retail use
5	1.83 acres	<i>Unknown</i>	4,000 sf +/- office use
6	1.11 acres	Dermatologists of Southwest Ohio, Inc.	9,000 sf professional office
7	1.30 acres	<i>Unknown</i>	6,000 sf +/- office use

The City and Developer acknowledge that no less than fifty percent (50%) of the Improvements described herein, Phase I on 9.34 acres, shall be office use, consistent with Mason City zoning district O-1 as a requirement of the property tax exemption and public improvement funding commitments of the City.

\* The City and Developer acknowledge that the "Improvements" itemized above are projected only and that the "Potential Users" listed are not closed transactions as of the date of execution of this Service Agreement.

EXHIBIT "B-1"

**THE "PUBLIC IMPROVEMENTS"**

The following roadway and appurtenant infrastructure components are the "Public Improvements" designated by the City Council of the City of Mason per Ordinance No. 2011-61 on June 13, 2011. This scope of work is described on the improvement plans titled, "Everybody's Farm Section Three – Public Bid," prepared by Bayer Becker Engineers, approved by the City on August 23, 2011 and incorporated herein by reference.

<u>SCOPE OF WORK</u>	<u>ESTIMATED VALUE</u>
Installation of right turn lane improvement on eastbound Tylersville Road at Snider Road and thru lane on southbound Snider Road south of Tylersville Road.	\$175,000
Construction of public Sound Wave Drive and Radio Way including pavement, concrete curb and gutter, public storm system, striping, signage and sidewalk.	\$550,000
Installation of public utilities to serve building lots within the development including extension of sanitary sewer main, water main, gas main and installation of conduits for electric, telephone and secondary power for operation of public street lights.	\$300,000
Review, inspection, project management and testing fees	\$75,000
Installation of public street lights (Duke Energy installed and maintained).	Paid by Developer to Duke Energy over 10 year period on electric bills.
Landscaping including street trees along Sound Wave Drive, Radio Way, Snider Road and Tylersville Road.	\$50,000
Installation of street lights, irrigation system, banner poles, and landscaping in the medians in Tylersville Road on both east and west of Snider Road.	\$170,000
Public asphalt walking path along creek	\$37,000
Icon tower feature/Subdivision Historic Identification	\$70,000 Sole Source Contract, to be paid for from TIF Funds if there are sufficient TIF funds and construction is completed within 2 years of the issue date of the Bonds, otherwise to be paid for directly by Developer, as referenced in Section 5E. \$15,000 committed toward this item plus any remaining funds will be used. Total cost expected to be approximately \$70,000.

Reimbursement to Developer for advancement of design and engineering fees allocated to the public improvements. See note.	\$150,000
<b>Total</b>	<b>\$1,522,000</b>

Note: The Public Improvements outlined herein, Landscaping, Gateway Landscaping and Elements and other additional work are requirements of the project and must be completed before additional TIF monies will be considered for contingency use.

Note: The "Estimated Values" noted above are for reference only. If there is a savings realized in any Scope of Work category, such savings shall be applied by the City to any other Scope of Work category with the intent of completing the entire scope of work for Public Improvements. If funds remain in the "contingency" category after all construction is completed and paid for, such amounts remaining in the "contingency" category shall reimburse the developer for additional engineering expenses incurred by developer for the public improvement. The City will determine how much and when the reimbursement may occur after the completion of the items in the scope of work.

**EXHIBIT**  
**B-2**  
 1 of 2

2510983

### STREET TREE PLANT LIST

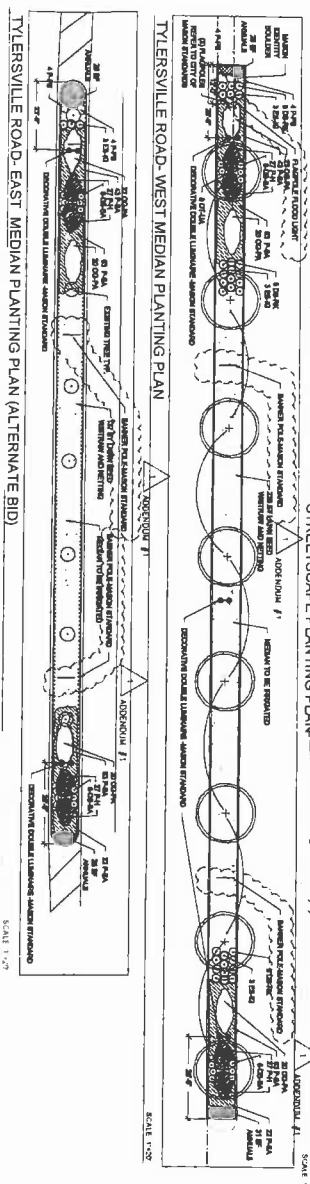
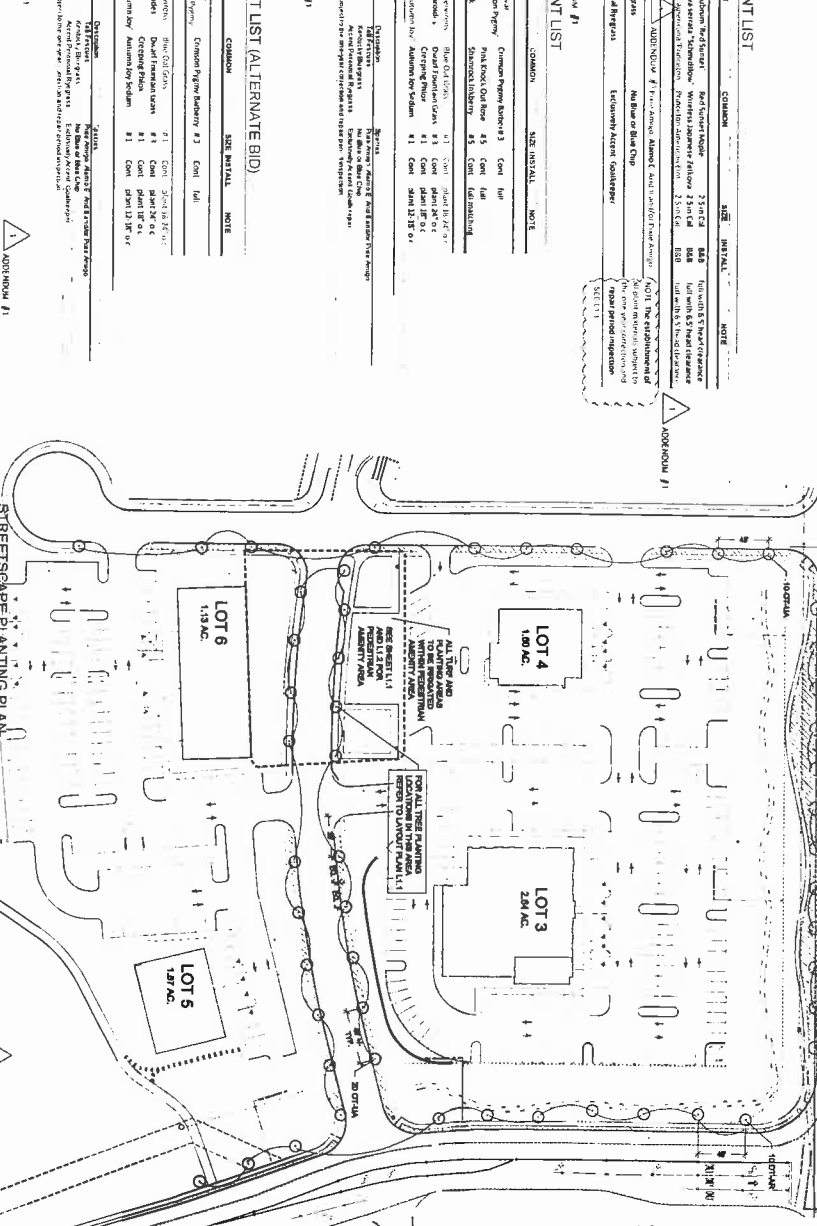
STREET	QTY	LATIN	COMMON	SIZE	INSTALL	NOTE
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing

### WEST MEDIAN PLANT LIST

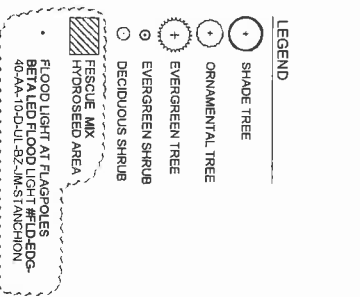
STREET	QTY	LATIN	COMMON	SIZE	INSTALL	NOTE
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing

### EAST MEDIAN PLANT LIST (ALTERNATE BID)

STREET	QTY	LATIN	COMMON	SIZE	INSTALL	NOTE
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing
01-24	24	Prunella lauro-coccinea	Prunella	3-5' Cal.	12	Plant in 2x4' spacing



- ### GENERAL NOTES
1. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR AND SHALL BE SUBJECT TO THE SUPERVISOR'S APPROVAL.
  2. ALL PLANTS SHALL BE OBTAINED FROM A REPUTABLE NURSERY AND SHALL BE WELL ESTABLISHED AND HEALTHY AT THE TIME OF INSTALLATION.
  3. ALL PLANTS SHALL BE PLANTED AT THE SPECIFIED LOCATIONS AND SHALL BE MAINTAINED THROUGHOUT THE TERM OF THE CONTRACT.
  4. ALL PLANTS SHALL BE WATERED REGULARLY THROUGHOUT THE TERM OF THE CONTRACT.
  5. ALL PLANTS SHALL BE PROTECTED FROM DAMAGE BY VEHICLES AND OTHER OBSTACLES.
  6. ALL PLANTS SHALL BE MAINTAINED THROUGHOUT THE TERM OF THE CONTRACT.
  7. ALL PLANTS SHALL BE REMOVED AND REPLACED AT THE CONTRACTOR'S EXPENSE IF THEY DIE OR BECOME DAMAGED.
  8. ALL PLANTS SHALL BE MAINTAINED THROUGHOUT THE TERM OF THE CONTRACT.
  9. ALL PLANTS SHALL BE MAINTAINED THROUGHOUT THE TERM OF THE CONTRACT.
  10. ALL PLANTS SHALL BE MAINTAINED THROUGHOUT THE TERM OF THE CONTRACT.

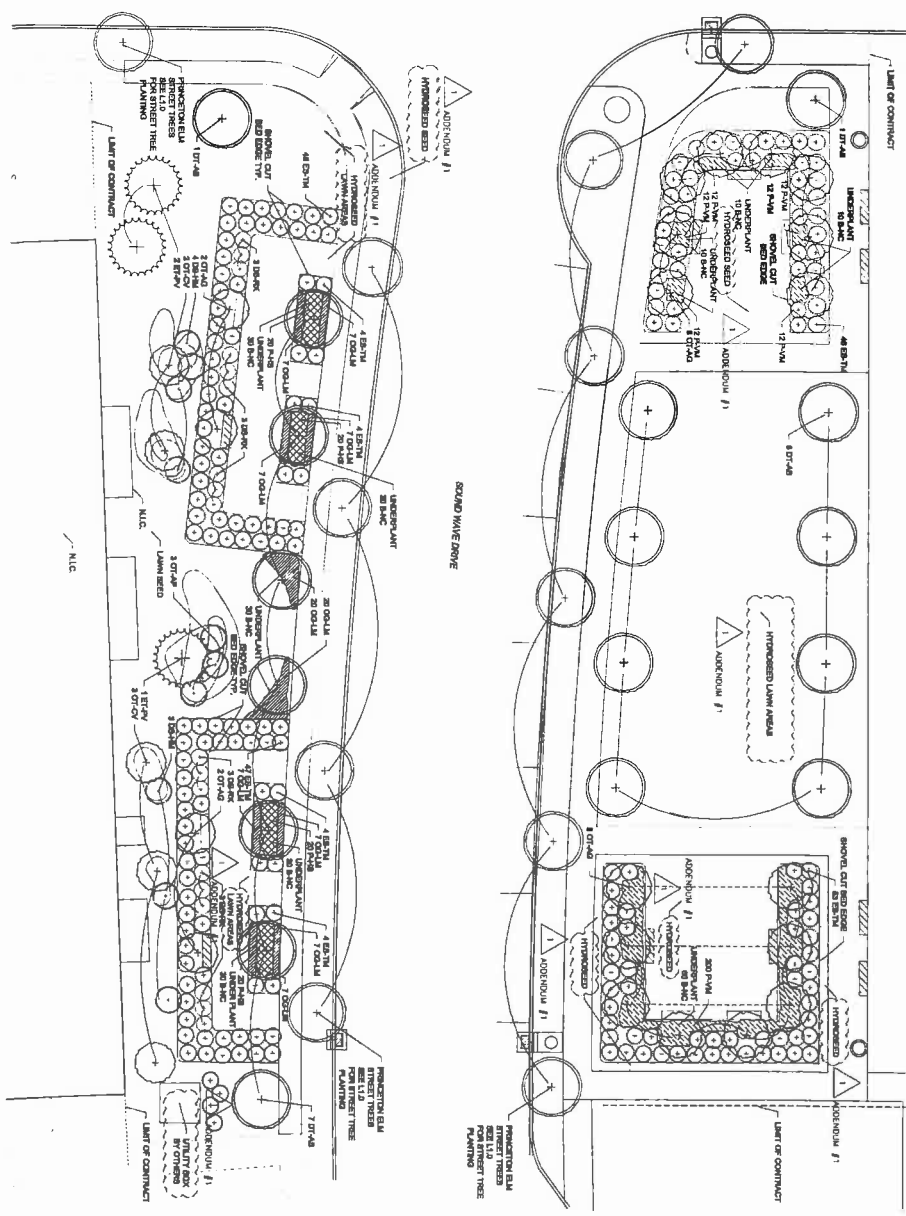


**bayer becker**  
 www.bayerbecker.com  
 3520 Tylersville Road, Suite 2  
 Mason, OH 45040 513.328.9500

**EVERYBODY'S FARM SECTION THREE-PUBLIC BID**  
 SECTION 6, TOWN 3, RANGE 2  
 CITY OF MASON  
 WARREN COUNTY, OHIO

**STREET TREE PLANTING PLAN**

Item	Description	Qty	Unit	Price	Total
1	Shade Tree				
2	Ornamental Tree				
3	Evergreen Tree				
4	Evergreen Shrub				
5	Deciduous Shrub				



**GENERAL NOTES**

1. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR.
2. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR.
3. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR.
4. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR.
5. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR.
6. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR.
7. ALL PLANTING SHALL BE DONE BY THE CONTRACTOR.

**LEGEND**

- SHADE TREE
- ORNAMENTAL TREE
- EVERGREEN TREE
- EVERGREEN SHRUB
- DECIDUOUS SHRUB
- LAWN SEED
- ▨ EVERGREEN GROUNDCOVER
- ▭ BENCH TO BE INSTALLED TYP.
- ▨ FUTURE BENCH LOCATION

**PLANT LIST**

PLANT	QTY	DATE	INSTALL	NOTE
01-01	1	1/11/11	01/11/11	PLANTING
01-02	1	1/11/11	01/11/11	PLANTING
01-03	1	1/11/11	01/11/11	PLANTING
01-04	1	1/11/11	01/11/11	PLANTING
01-05	1	1/11/11	01/11/11	PLANTING
01-06	1	1/11/11	01/11/11	PLANTING
01-07	1	1/11/11	01/11/11	PLANTING
01-08	1	1/11/11	01/11/11	PLANTING
01-09	1	1/11/11	01/11/11	PLANTING
01-10	1	1/11/11	01/11/11	PLANTING
01-11	1	1/11/11	01/11/11	PLANTING
01-12	1	1/11/11	01/11/11	PLANTING
01-13	1	1/11/11	01/11/11	PLANTING
01-14	1	1/11/11	01/11/11	PLANTING
01-15	1	1/11/11	01/11/11	PLANTING
01-16	1	1/11/11	01/11/11	PLANTING
01-17	1	1/11/11	01/11/11	PLANTING
01-18	1	1/11/11	01/11/11	PLANTING
01-19	1	1/11/11	01/11/11	PLANTING
01-20	1	1/11/11	01/11/11	PLANTING
01-21	1	1/11/11	01/11/11	PLANTING
01-22	1	1/11/11	01/11/11	PLANTING
01-23	1	1/11/11	01/11/11	PLANTING
01-24	1	1/11/11	01/11/11	PLANTING
01-25	1	1/11/11	01/11/11	PLANTING
01-26	1	1/11/11	01/11/11	PLANTING
01-27	1	1/11/11	01/11/11	PLANTING
01-28	1	1/11/11	01/11/11	PLANTING
01-29	1	1/11/11	01/11/11	PLANTING
01-30	1	1/11/11	01/11/11	PLANTING
01-31	1	1/11/11	01/11/11	PLANTING
01-32	1	1/11/11	01/11/11	PLANTING
01-33	1	1/11/11	01/11/11	PLANTING
01-34	1	1/11/11	01/11/11	PLANTING
01-35	1	1/11/11	01/11/11	PLANTING
01-36	1	1/11/11	01/11/11	PLANTING
01-37	1	1/11/11	01/11/11	PLANTING
01-38	1	1/11/11	01/11/11	PLANTING
01-39	1	1/11/11	01/11/11	PLANTING
01-40	1	1/11/11	01/11/11	PLANTING
01-41	1	1/11/11	01/11/11	PLANTING
01-42	1	1/11/11	01/11/11	PLANTING
01-43	1	1/11/11	01/11/11	PLANTING
01-44	1	1/11/11	01/11/11	PLANTING
01-45	1	1/11/11	01/11/11	PLANTING
01-46	1	1/11/11	01/11/11	PLANTING
01-47	1	1/11/11	01/11/11	PLANTING
01-48	1	1/11/11	01/11/11	PLANTING
01-49	1	1/11/11	01/11/11	PLANTING
01-50	1	1/11/11	01/11/11	PLANTING
01-51	1	1/11/11	01/11/11	PLANTING
01-52	1	1/11/11	01/11/11	PLANTING
01-53	1	1/11/11	01/11/11	PLANTING
01-54	1	1/11/11	01/11/11	PLANTING
01-55	1	1/11/11	01/11/11	PLANTING
01-56	1	1/11/11	01/11/11	PLANTING
01-57	1	1/11/11	01/11/11	PLANTING
01-58	1	1/11/11	01/11/11	PLANTING
01-59	1	1/11/11	01/11/11	PLANTING
01-60	1	1/11/11	01/11/11	PLANTING
01-61	1	1/11/11	01/11/11	PLANTING
01-62	1	1/11/11	01/11/11	PLANTING
01-63	1	1/11/11	01/11/11	PLANTING
01-64	1	1/11/11	01/11/11	PLANTING
01-65	1	1/11/11	01/11/11	PLANTING
01-66	1	1/11/11	01/11/11	PLANTING
01-67	1	1/11/11	01/11/11	PLANTING
01-68	1	1/11/11	01/11/11	PLANTING
01-69	1	1/11/11	01/11/11	PLANTING
01-70	1	1/11/11	01/11/11	PLANTING
01-71	1	1/11/11	01/11/11	PLANTING
01-72	1	1/11/11	01/11/11	PLANTING
01-73	1	1/11/11	01/11/11	PLANTING
01-74	1	1/11/11	01/11/11	PLANTING
01-75	1	1/11/11	01/11/11	PLANTING
01-76	1	1/11/11	01/11/11	PLANTING
01-77	1	1/11/11	01/11/11	PLANTING
01-78	1	1/11/11	01/11/11	PLANTING
01-79	1	1/11/11	01/11/11	PLANTING
01-80	1	1/11/11	01/11/11	PLANTING
01-81	1	1/11/11	01/11/11	PLANTING
01-82	1	1/11/11	01/11/11	PLANTING
01-83	1	1/11/11	01/11/11	PLANTING
01-84	1	1/11/11	01/11/11	PLANTING
01-85	1	1/11/11	01/11/11	PLANTING
01-86	1	1/11/11	01/11/11	PLANTING
01-87	1	1/11/11	01/11/11	PLANTING
01-88	1	1/11/11	01/11/11	PLANTING
01-89	1	1/11/11	01/11/11	PLANTING
01-90	1	1/11/11	01/11/11	PLANTING
01-91	1	1/11/11	01/11/11	PLANTING
01-92	1	1/11/11	01/11/11	PLANTING
01-93	1	1/11/11	01/11/11	PLANTING
01-94	1	1/11/11	01/11/11	PLANTING
01-95	1	1/11/11	01/11/11	PLANTING
01-96	1	1/11/11	01/11/11	PLANTING
01-97	1	1/11/11	01/11/11	PLANTING
01-98	1	1/11/11	01/11/11	PLANTING
01-99	1	1/11/11	01/11/11	PLANTING
01-100	1	1/11/11	01/11/11	PLANTING

**EVERYBODY'S FARM SECTION THREE-PUBLIC BID**  
 SECTION 5, TOWN 3, RANGE 2  
 CITY OF MASON  
 WARREN COUNTY, OHIO

**PEDESTRIAN AMENITY AREA PLANTING PLAN**

**bayer becker**

DATE: 08/30/11  
 DRAWING NO: 112  
 SHEET NO: 112 OF 112

112

**EXHIBIT "C"**

**LEGAL DESCRIPTION OF THE "SITE"**

Situated in the State of Ohio, County of Warren, City of Mason, Section 5, Town 3, Range 2, between the Miamis and being part of an original 137.504 acre tract as conveyed to Bunnell Hill Development Co., Inc. recorded in O.R. 5370, Page 510 of the Warren County Recorder's Office containing 10.0709 acres. The Plat of which is recorded in Volume 137, Page 81 of the Warren County Engineer's Records.



## EXHIBIT "D"

### CONSTRUCTION DUTIES AND GUIDELINES

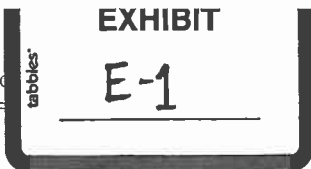
- City duties
  - Prepare bid documentation
  - Provide drawings
  - Review and recommend contractor for project from collected bids
  - Agree to pay prevailing wages, to the extent required by law, to the selected contractor
  - Set up and run the preconstruction meeting
  - Manage all construction companies on site and ensure that the complete product meets city standards and regulations
  - Pass invoices from contractor to City for payment
  - Prepare legal notice for bid process
  - Review and copy bid documents
  - Open and select the lowest and best bidder
  - Create and vote on ordinance that awards construction contract
  - Review and pay invoices from the contractor
  - Review and inspect final improvements
  
- Developer duties
  - Prepare plans for construction
  - Prepare landscaping plans
  - Provide interface with Owners and City
  - Participate in all preconstruction and construction meetings as required
  - Review and approve all plans and plan changes
  - Review and approve contractors and bids
  - Other actions as necessary

EXHIBIT “E”

**MINIMUM SERVICE PAYMENT CALCULATION**

Minimum Service Amount is Annual Debt Service **plus** annual School Compensation Amount (the amount equal to the additional amount of property tax payments derived from the Exempted Property that the School District would have received from the Exempted Property but for the TIF Exemption. Minimum Service Payment is Minimum Service Amount **minus** Statutory Service Payments and/or Mandatory Service Payments received by the City with respect to the Site and any capitalized interest funded by the Bonds and the rollback and homestead exemption payments received from the State with respect to the Site.

“Annual Debt Service” means principal and interest due on the Bonds during each fiscal year. See attached schedule E-1 for the principal maturity schedule.



BOND SOLUTION

City of Mason, Ohio  
 2011 TIF Analysis  
 Numbers Run As of October 18, 2011

Period Ending	Proposed Principal	Proposed Debt Service	Total Adj Debt Service	Revenue Constraints	Unused Revenues	Debt Serv Coverage
12/01/2012		105,600	105,600	89,836	-15,764	85.07227%
12/01/2013		105,600	105,600	89,836	-15,764	85.07227%
12/01/2014	25,000	130,600	130,600	124,074	-6,526	95.00302%
12/01/2015	80,000	184,100	184,100	175,480	-8,620	95.31791%
12/01/2016	90,000	189,300	189,300	180,745	-8,555	95.48055%
12/01/2017	115,000	208,900	208,900	198,213	-10,687	94.88408%
12/01/2018	120,000	207,000	207,000	198,213	-8,787	95.75500%
12/01/2019	130,000	209,800	209,800	201,606	-8,194	96.09422%
12/01/2020	140,000	212,000	212,000	201,606	-10,394	95.09701%
12/01/2021	150,000	213,600	213,600	207,654	-5,946	97.21622%
12/01/2022	160,000	214,600	214,600	207,654	-6,946	96.76321%
12/01/2023	170,000	215,000	215,000	207,654	-7,346	96.58318%
12/01/2024	55,000	89,800	89,800	87,672	-2,128	97.63082%
12/01/2025	60,000	91,500	91,500	87,672	-3,828	95.81692%
12/01/2026	65,000	92,900	92,900	90,303	-2,597	97.20414%
12/01/2027	70,000	94,000	94,000	90,303	-3,697	96.06665%
12/01/2028	75,000	94,800	94,800	90,303	-4,497	95.25596%
12/01/2029	80,000	95,300	95,300	90,303	-4,997	94.75619%
12/01/2030	85,000	95,500	95,500	90,303	-5,197	94.55775%
12/01/2031	90,000	95,400	95,400	93,012	-2,388	97.49657%
	1,760,000	2,945,300	2,945,300	2,802,440	-142,860	

**EXHIBIT "F-1"**

**TAX INCENTIVE AGREEMENT**

**THIS TAX INCENTIVE AGREEMENT (the "Agreement")**, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2011, among the MASON CITY SCHOOL DISTRICT, Warren County Ohio, a city school district and political subdivision of the State of Ohio (the "School District"), the CITY OF MASON, Warren County, Ohio, a political subdivision of the State of Ohio (the "City"), BUNNELL HILL DEVELOPMENT CO., INC., an Ohio corporation (the "Developer").

WITNESSETH THAT:

WHEREAS, Sections 5709.40 et seq. of the Ohio Revised Code authorize cities to grant tax increment financing real property tax exemptions for improvements declared to be for a public purpose, which exemptions exempt from taxation the increase in the true value of the parcel of property after the effective date of the resolution granting such exemption; and

WHEREAS, Section 5709.42 of the Ohio Revised Code further authorizes a city to require owners of improvements subject to a tax increment financing tax exemption to make semi-annual payments to the city in lieu of taxes ("Service Payments in Lieu of Taxes"), which payments are approximately equivalent to the amount of real property tax which would be payable on the increase in the true value of the parcel of property but for the exemption from taxation; and

WHEREAS, Section 5709.43 of the Ohio Revised Code further requires a city receiving payments in lieu of taxes to create a public improvement tax increment equivalent fund for deposit of the entire amount of such payments, to be used to pay the costs of public infrastructure improvements benefiting the parcels subject to the tax increment financing tax exemption and, if provided, to make payments to school districts impacted by exemption from taxation; and

WHEREAS, pursuant to a letter dated April 6, 2011, the City notified the School District of its intent to grant an exemption (the "TIF Exemption"), as authorized by Section 5709.40, Ohio Revised Code, for improvements to certain real property located within the boundaries of the City and the School District, which real property is described in Exhibit A attached hereto and made a part hereof (the "Exempted Property"), by using the Service Payments in Lieu of Taxes to pay for or finance the construction of public improvements that are necessary for the development of the Exempted Property (the "Public Improvements") in order to induce the Developer and any heirs, successors and assigns of a fee interest in all or any portion of the Exempted Property (the "Property Owners") to develop the Exempted Property; and

WHEREAS, the Board of Education of the School District on May 31, approved the TIF Exemption on the condition that the parties hereto enter into this Agreement; and

WHEREAS, the City has, pursuant to an ordinance of the City Council of the City adopted on June 13, 2011 (the "City Ordinance"), granted the TIF Exemption and authorized the execution of this Agreement; and

WHEREAS, Ohio Revised Code Section 5709.40 and 5709.82 permit the City Council of the City, the Board of Education of the School District, and the Developer to enter into this Agreement in order to compensate the School District for property taxes lost as a result of the TIF Exemption; and

WHEREAS, the Developer desires to encourage the School District and the City to cooperate in the granting of the Tax Incentives, and the City desires to make the Developer a party to this Agreement as a condition to the City's granting the Tax Incentives in order to insure that the implementation of the Tax Incentives, and the mechanism for compensating the School District which is described herein, will be undertaken with consistency;

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

**SECTION 1. Approval of the TIF Exemption; Compensation to School District While TIF Exemption in Effect.**

(a) As provided in the School District Resolution, the School District approves the TIF Exemption for up to one hundred percent (100%) of the increase in assessed value of the real property and further improvements to the Exempted Property for a period of up to thirty (30) years, commencing with the 2012 tax year and ending no later than December 31, 2041.

(b) During any year or any portion thereof, in which the School District would have received property tax payments derived from the Exempted Property, but for the City's authorization of the TIF Exemption, the City agrees to pay to the School District, solely from the Service Payments in Lieu of Taxes from the owners of the Exempted Property an amount equal to 65% of the Service Payments in Lieu of Taxes received by the City from the Exempted Property (the "TIF Compensation"), as determined by the Finance Director of the City and certified to the School District and the Developer so long as the TIF compensation over the entire life of the TIF Exemption does not exceed the amount of property taxes from the Exempted Property the School District would have received if the property were not exempted. Nothing in this Agreement shall be construed to pledge the full faith and credit of the City.

(c) In determining the amount of the Service Payments in Lieu of Taxes required by the City pursuant to Section 5709.42 of the Ohio Revised Code, it is expressly agreed and relied upon that the value of the Exempted Property which shall be exempt under Sections 5709.40 through 5709.43 of the Ohio Revised Code shall be the increase in value of the parcels from and after the date that the City Ordinance granting

the TIF Exemption was adopted by the City regardless of the date on which the exemption from real property taxation is certified to the Warren County Auditor by the Tax Commissioner of the State of Ohio.

**SECTION 2. Certification of TIF Compensation Amount.** By April 1 and September 1 of each year during which the TIF Exemption will result in the School District's receipt of less than one hundred percent (100%) of the amount of real property taxes due with respect to the Exempted Property, the City shall certify to the School District and to the Developer the amount of the TIF Compensation due to the School District and shall provide calculations to show how such amount was derived.

**SECTION 3. Payment of TIF Compensation.** Within thirty (30) days after the City receives Service Payments in Lieu of Taxes with respect to the Exempted Property and the final settlement statements from the County Auditor, the City shall pay to the School District, by bank or cashier's check or wire transfer the amount of the TIF Compensation.

**SECTION 4. Resolution of Disputes.** In the event the School District disputes the amount of the TIF Compensation as certified by the City, the School District shall certify, by May 1 and October 1, with respect to the first and second-half property tax settlements, the basis for the dispute and the amount that the School District claims is the correct amount of TIF Compensation to be paid to the School District. Within ten (10) days thereafter, the Treasurer of the School District and the City Finance Director or the City Manager shall meet to discuss and resolve the dispute. In the event the Treasurer of the School District and the City are unable to mutually agree on the amount of TIF Compensation, the parties shall next seek a third party mediator to settle the dispute and determine the amount of the TIF Compensation. The City shall then pay such amount within thirty (30) days thereafter; provided that nothing contained in this Section 4 shall limit either the School District's or the City's ability, after payment and receipt of such TIF Compensation amount, to seek recovery of amounts deemed overpaid or underpaid.

**SECTION 5. Late Payments.** Except for the case where a TIF Compensation payment is delayed pursuant to a dispute as provided in Section 4 hereof (so long as the dispute of the TIF Compensation payment amount is reasonable), any late TIF Compensation payments shall bear interest at the then current rate established under Sections 323.121(B)(a) 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.

**SECTION 6. Notices.** All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid addressed to the following addresses:

Mason City School District:

Mason City School District  
211 N. East Street  
Mason, Ohio 45040  
Attn: Treasurer

City of Mason, Ohio:

City of Mason, Ohio  
Municipal Building  
6000 Mason-Montgomery Road  
Mason, Ohio 45040  
Attn: Finance Director

Developer:

Bunnell Hill Development Co., Inc.  
[ADDRESS]

Attn:

**SECTION 7. Duration of Agreement; Amendment.** This Agreement shall become effective on the date that it is executed and delivered and shall remain in effect for such period as any Tax Exemptions pursuant to Section 5709.40 through 5709.43 of the Ohio Revised Code are in effect with respect to the Exempted Property, but in no event not later than December 31, 2041. This Agreement may be amended only by mutual agreement of the parties hereto. No amendment to this Agreement shall be effective unless it is contained in a written document approved through legal process and signed on behalf of all parties hereto by duly authorized representatives.

**SECTION 8. Waiver.** No waiver by the School District, the City or the Developer its heirs, successors and assigns of the performance of any terms or provision hereof shall constitute, or be construed as, a continuing waiver of performance of the same or any other term or provision hereof.

**SECTION 9. Merger; Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter contained herein and merges and supersedes all prior discussion, agreements, and undertakings of every kind of nature between the parties with respect to the subject matter of this Agreement.

**SECTION 10. Binding Nature.** The City shall cause this Agreement to be recorded in the Warren County, Ohio real estate records, and the Developer its heirs, successors and assigns and each subsequent Property Owner shall cause all instruments of conveyance of interests in the Exempted Property, or portions thereof, to subsequent successors, assigns or transferees (except leases of space in the Exempted Property and mortgages) to be made expressly subject to this Agreement. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The provisions of this Agreement, as they pertain to the Developer its heirs, successors and assigns or the Exempted Property, shall be covenants running with the land and shall be binding and enforceable by the School District against the Developer its heirs, successors and assigns, and all persons who or which shall be successors and assigns of the Developer its heirs, successors and assigns, transferees from the Developer its heirs, successors and assigns and the successors or assigns of such transferees from the Developer its heirs, successors and assigns and the successors or assigns of such transferees with respect to its interest in the Exempted Property and improvements thereto, or any parts thereof, or any interest therein.

**SECTION 11. Severability.** Should any portion of this Agreement be declared by a court of competent jurisdiction to be unconstitutional, invalid or otherwise unlawful, such decision shall not effect the entire agreement but only that part declared to be unconstitutional, invalid or illegal and this Agreement shall be construed in all respects as if any invalid portions were omitted.

**SECTION 12. Counterparts; Captions.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

IN WITNESS WHEREOF, the School District, the City, and the Developer, have caused this Agreement to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

**MASON CITY SCHOOL DISTRICT,  
WARREN COUNTY, OHIO**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF MASON, WARREN  
COUNTY, OHIO**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

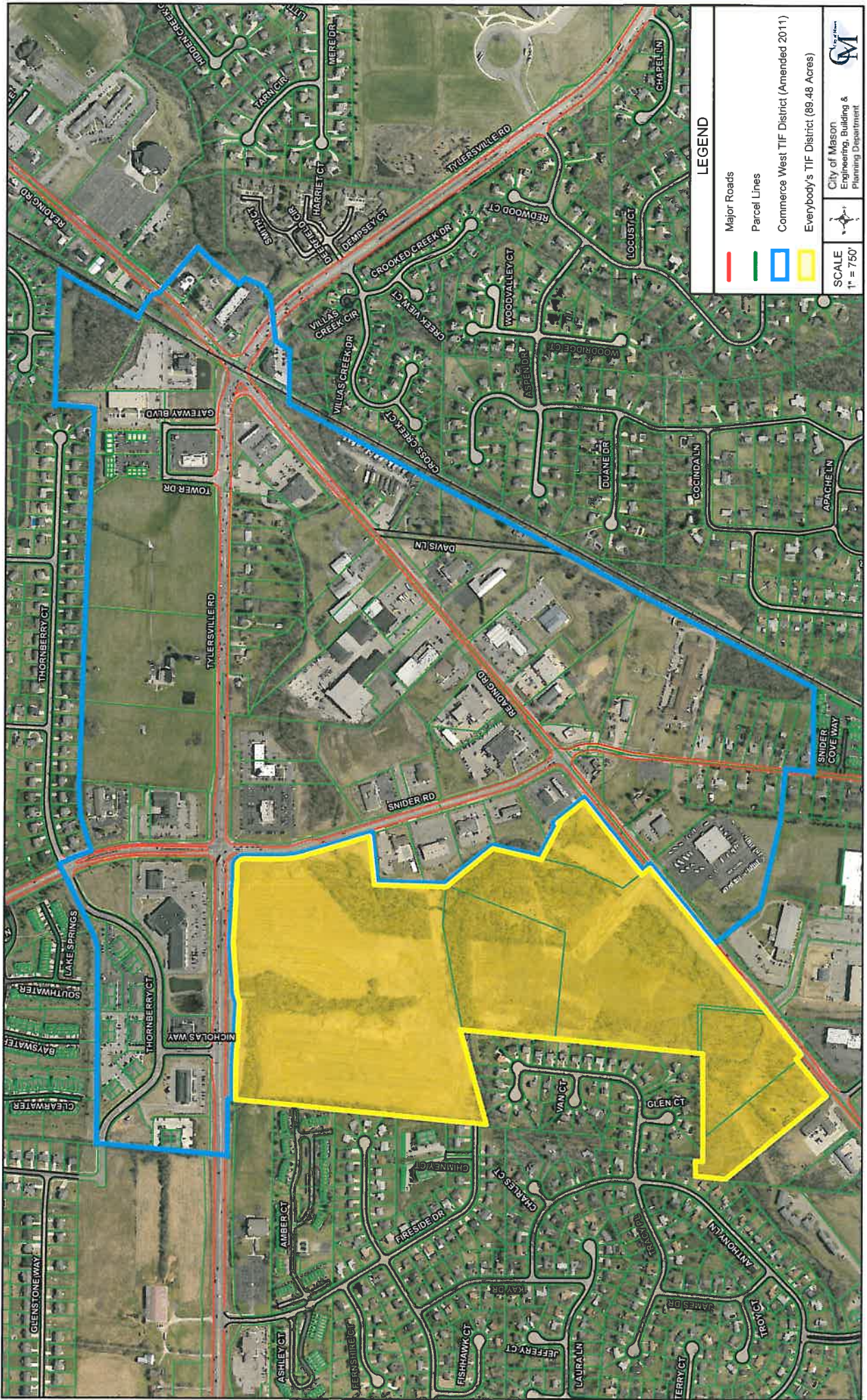
**BUNNELL HILL DEVELOPMENT CO.,  
INC.**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A - EVERYBODY'S TIF TAX INCENTIVE (SCHOOL) AGREEMENT (10/24/2011)**



**EXHIBIT "F-2"**  
**TAX INCENTIVE AGREEMENT**

**THIS TAX INCENTIVE AGREEMENT (the "Agreement")**, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2011, by and between the MASON CITY SCHOOL DISTRICT, Warren County Ohio, a city school district and political subdivision of the State of Ohio (the "School District"), and the CITY OF MASON, Warren County, Ohio, a political subdivision of the State of Ohio (the "City").

WITNESSETH THAT:

WHEREAS, Sections 5709.40 et seq. of the Ohio Revised Code authorize cities to grant tax increment financing real property tax exemptions for improvements declared to be for a public purpose, which exemptions exempt from taxation the increase in the true value of the parcel of property after the effective date of the resolution granting such exemption; and

WHEREAS, Section 5709.42 of the Ohio Revised Code further authorizes a city to require owners of improvements subject to a tax increment financing tax exemption to make semi-annual payments to the city in lieu of taxes ("Service Payments in Lieu of Taxes"), which payments are approximately equivalent to the amount of real property tax which would be payable on the increase in the true value of the parcel of property but for the exemption from taxation; and

WHEREAS, Section 5709.43 of the Ohio Revised Code further requires a city receiving payments in lieu of taxes to create a public improvement tax increment equivalent fund for deposit of the entire amount of such payments, to be used to pay the costs of public infrastructure improvements benefiting the parcels subject to the tax increment financing tax exemption and, if provided, to make payments to school districts impacted by exemption from taxation; and

WHEREAS, pursuant to a letter dated September 24, 2003, the City notified the School District of its intent to grant an exemption (the "TIF Exemption"), as authorized by Section 5709.40, Ohio Revised Code, for improvements to certain real property located within the boundaries of the City and the School District, which real property is described in Exhibit A attached hereto and made a part hereof (the "Exempted Property"), by using the Service Payments in Lieu of Taxes to pay for or finance the construction of public improvements that are necessary for the development of the Exempted Property (the "Public Improvements") in order to induce the property owners and any heirs, successors and assigns of a fee interest in all or any portion of the Exempted Property (the "Property Owners") to develop the Exempted Property; and

WHEREAS, the Board of Education of the School District passed a resolution on October 14, 2003 (the "School District Resolution") approving the TIF Exemption on the condition that the parties hereto enter into School Compensation Agreement or Agreements for the Exempted Property; and

WHEREAS, the City has, pursuant to an ordinance of the City Council of the City adopted on November 24, 2003 (the "City Ordinance"), granted the TIF Exemption; and

WHEREAS, Ohio Revised Code Section 5709.40 and 5709.82 permit the City Council of the City and the Board of Education of the School District, to enter into this Agreement in order to compensate the School District for property taxes lost as a result of the TIF Exemption; and

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

**SECTION 1. Approval of the TIF Exemption; Compensation to School District While TIF Exemption in Effect.**

(a) As provided in the School District Resolution, the School District approved the TIF Exemption for up to one hundred percent (100%) of the increase in assessed value of the real property and further improvements to the Exempted Property for a period of up to twenty (20) years, commencing with the 2003 tax year and ending no later than December 31, 2023.

(b) During any year or any portion thereof, in which the School District would have received property tax payments derived from the portion of the Exempted Property set forth in Exhibit B, attached hereto (the "Snider Road Property"), but for the City's authorization of the TIF Exemption, the City agrees to pay to the School District, solely from the Service Payments in Lieu of Taxes from the owners of the Snider Road Property, an amount equal to one hundred percent of the additional amount of property tax payments derived from the Snider Road Property that the School District would have received from the Snider Road Property but for the TIF Exemption (the "TIF Compensation"), as determined by the Treasurer of the School District (the "Treasurer") and certified to the City. Nothing in this Agreement shall be construed to pledge the full faith and credit of the City.

(c) In determining the amount of the Service Payments in Lieu of Taxes required by the City pursuant to Section 5709.42 of the Ohio Revised Code, it is expressly agreed and relied upon that the value of the Snider Road Property which shall be exempt under Sections 5709.40 through 5709.43 of the Ohio Revised Code shall be the increase in value of the parcels from and after the date that the City Ordinance granting the TIF Exemption was adopted by the City regardless of the date on which the exemption from real property taxation is certified to the Warren County Auditor by the Tax Commissioner of the State of Ohio.

**SECTION 2. Certification of TIF Compensation Amount.** By January 20 and July 20 of each year during which the TIF Exemption will result in the School District's receipt of less than one hundred percent (100%) of the amount of real property taxes due with respect to the Snider Road Property, the School District's Treasurer shall certify to the City the amount of the

TIF Compensation due to the School District and shall provide calculations to show how such amount was derived.

**SECTION 3. Payment of TIF Compensation.** Within thirty (30) days after the City receives Service Payments in Lieu of Taxes and the final settlement statements from the County Auditor with respect to the Exempted Property, the City shall pay to the School District, by bank or cashier's check or wire transfer the amount of the TIF Compensation. The City shall only be required to comply with the terms of this Section 3 after the School District has complied with the terms of Section 2 above.

**SECTION 4. Resolution of Disputes.** In the event the City disputes the amount of the TIF Compensation as certified by the Treasurer, the City shall certify, by February 1 and August 1, with respect to the first and second-half property tax settlements, the basis for the dispute and the amount that the City claims is the correct amount of TIF Compensation to be paid to the School District. Within ten (10) days thereafter, the Treasurer of the School District and the City Finance Director or the City Manager shall meet to discuss and resolve the dispute. In the event the Treasurer of the School District and the City are unable to mutually agree on the amount of TIF Compensation, the parties shall next seek a third party mediator to settle the dispute and determine the amount of the TIF Compensation. The City shall then pay such amount within thirty (30) days thereafter; provided that nothing contained in this Section 4 shall limit either the School District's or the City's ability, after payment and receipt of such TIF Compensation amount, to seek recovery of amounts deemed overpaid or underpaid.

**SECTION 5. Late Payments.** Except for the case where a TIF Compensation payment is delayed pursuant to a dispute as provided in Section 4 hereof (so long as the dispute of the TIF Compensation payment amount is reasonable), any late TIF Compensation payments shall bear interest at the then current rate established under Sections 323.121(B)(a) 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.

**SECTION 6. Notices.** All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid addressed to the following addresses:

Mason City School District:

Mason City School District  
211 N. East Street  
Mason, Ohio 45040  
Attn: Treasurer

City of Mason, Ohio:

City of Mason, Ohio  
Municipal Building  
6000 Mason-Montgomery Road  
Mason, Ohio 45040  
Attn: Finance Director

**SECTION 7. Duration of Agreement; Amendment.** This Agreement shall become effective on the date that it is executed and delivered and shall remain in effect for such period as any Tax Exemptions pursuant to Section 5709.40 through 5709.43 of the Ohio Revised Code are in effect with respect to the Snider Road Property, but in no event not later than December 31, 2023. This Agreement may be amended only by mutual agreement of the parties hereto. No amendment to this Agreement shall be effective unless it is contained in a written document approved through legal process and signed on behalf of all parties hereto by duly authorized representatives.

**SECTION 8. Waiver.** No waiver by the School District or the City its heirs, successors and assigns of the performance of any terms or provision hereof shall constitute, or be construed as, a continuing waiver of performance of the same or any other term or provision hereof.

**SECTION 9. Merger; Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter contained herein and merges and supersedes all prior discussion, agreements, and undertakings of every kind of nature between the parties with respect to the subject matter of this Agreement.

**SECTION 10. Binding Nature.** This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

**SECTION 11. Severability.** Should any portion of this Agreement be declared by a court of competent jurisdiction to be unconstitutional, invalid or otherwise unlawful, such decision shall not effect the entire agreement but only that part declared to be unconstitutional, invalid or illegal and this Agreement shall be construed in all respects as if any invalid portions were omitted.

**SECTION 12. Counterparts; Captions.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

IN WITNESS WHEREOF, the School District and the City, have caused this Agreement to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

**MASON CITY SCHOOL DISTRICT,  
WARREN COUNTY, OHIO**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

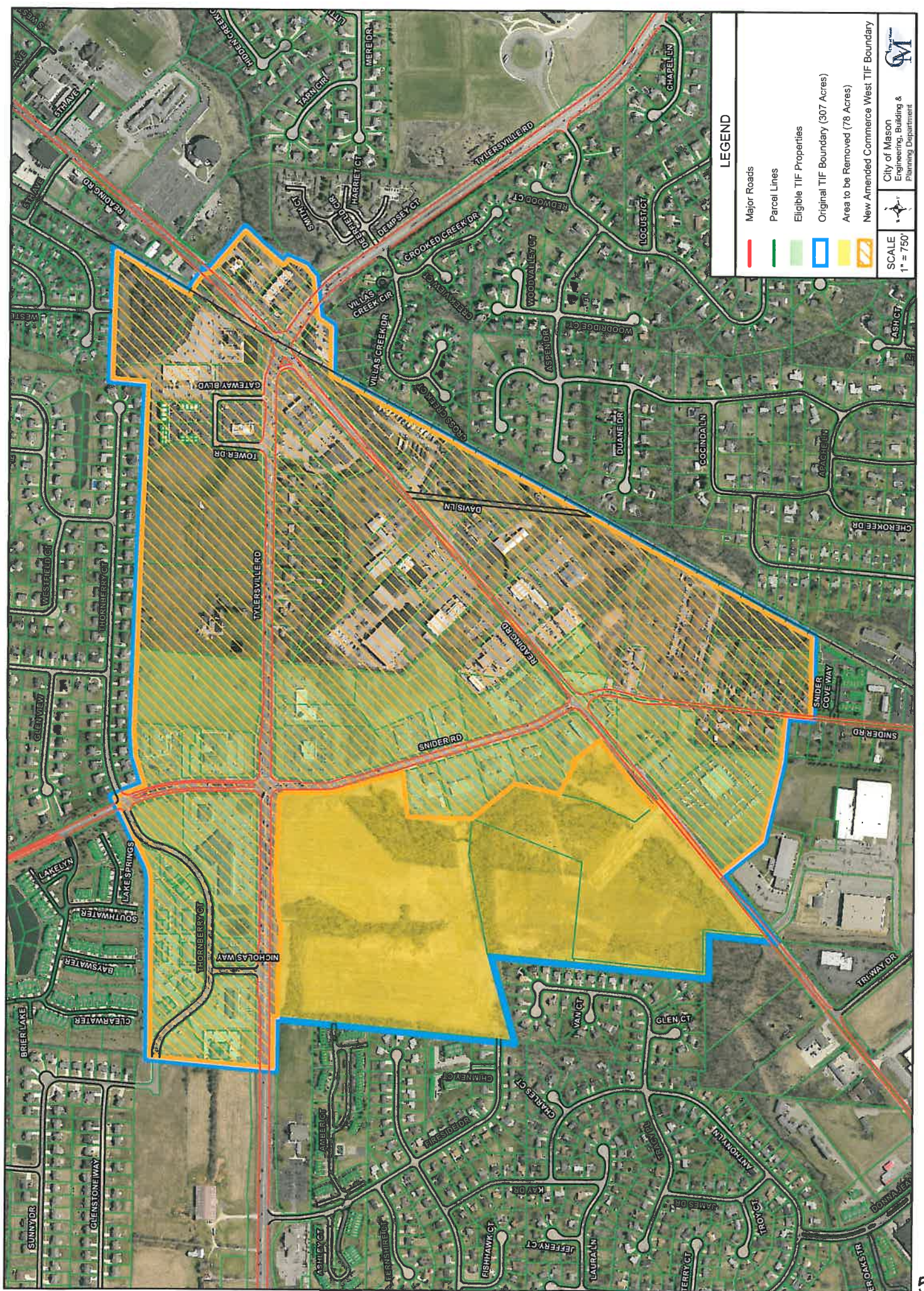
**CITY OF MASON, WARREN  
COUNTY, OHIO**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A - COMMERCE WEST TIF TAX INCENTIVE (SCHOOL) AGREEMENT - TYLERSVILLE ROAD & SNIDER ROAD AREAS**



**EXHIBIT G**

LEGAL DESCRIPTION OF ELIGIBLE EXEMPTED AREAS WITHIN COMMERCE WEST  
TIF AND LOCATED ALONG TYLERSVILLE ROAD AND SNIDER ROAD

186192v6



**EXHIBIT G - TYLERSVILLE ROAD & SNIDER ROAD ELIGIBLE TIF PROPERTIES**

