

**FAIRFIELD TOWNSHIP
RESOLUTION NO. 18-151**

**RESOLUTION APPROVING FAIRFIELD TOWNSHIP AND DUKE REALTY OHIO
TAX INCREMENT FINANCING AGREEMENT.**

WHEREAS, Fairfield Township, the City of Fairfield and Duke Realty Ohio are partnering to create a Tax Increment Financing District and Joint Economic Development District Contract (the "Project") in order to create jobs, enhance economic development and provide necessary infrastructure for property set forth on Exhibit A to the attached Tax Increment Financing Agreement and for the benefit of the residents of Fairfield Township and the City of Fairfield; and

WHEREAS, the attached Tax Increment Financing Agreement between Fairfield Township and Duke Realty Ohio is a necessary part of the Project; and

NOW, THEREFORE, BE IT RESOLVED, by the Trustees of Fairfield Township, Butler County, Ohio, as follows:

SECTION 1: The Board hereby approves the execution of the Fairfield Township and Duke Realty Ohio Tax Increment Financing Agreement attached hereto as Exhibit 1 contingent upon all parties executing all documents necessary to create the Joint Economic Development District described in the first "whereas clause" above.

SECTION 2: This resolution is the subject of the general authority granted to the Board of Trustees through the Ohio Revised Code and not the specific authority granted to the Board of Trustees through the status as a Limited Home Rule Township.

SECTION 3: That it is hereby found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in meetings open to the public, in compliance with all legal requirements including §121.22 of the Ohio Revised Code.

SECTION 4: That the Board by a majority vote hereby dispenses with the requirement that this Resolution be read on two separate days and hereby authorizes the adoption of the Resolution upon its first reading.

SECTION 5: This resolution shall take effect at the earliest date allowed by law.

Effective: _____

Board of Trustees

Shannon Hartkemeyer: Shannon Hartkemeyer
Susan Berding: Susan Berding
Joe McAbee: Joe McAbee

Vote of Trustees

yes
yes
yes

AUTHENTICATION

This is to certify that this is a resolution which was duly passed, and filed with the Fairfield Township Fiscal Officer, this 9th day of Sept, 2018.

ATTEST:

Shelly Schultz
Shelly Schultz, Fairfield Township Fiscal Officer

APPROVED AS TO FORM:

L.E. Barbieri
Lawrence E. Barbieri, Township Law Director

**FAIRFIELD TOWNSHIP AND DUKE REALTY OHIO
TAX INCREMENT FINANCING AGREEMENT**

This Tax Increment Financing Agreement (this "Agreement") is made and entered into as of _____, 2018 by and between, FAIRFIELD TOWNSHIP, a township located in Butler County, Ohio duly organized and validly existing under the Constitution and laws of the State of Ohio, with offices at 6032 Morris Road, Fairfield Township, OH 45011 (the "Township") and DUKE REALTY OHIO, a general partnership, with offices at 600 East 96th Street, Suite 100, Indianapolis, IN 46240 ("the Company"). The Township and the Company may be referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Company, through itself or one or more of its Affiliates (as defined below), intends to construct, or cause to be constructed, a new, state-of-the-art industrial park in the Township anticipated to contain approximately One Million Seven Hundred Thousand square feet (1,700,000 ft²) to Two Million square feet (2,000,000 ft²) of warehouse, distribution center and/or light manufacturing buildings (the "Project") on all or a portion of the site consisting of approximately one hundred ninety-three (193) acres, situated on portions of Parcel Nos. A0300007000003, A0300007000013, A0300007000023, A0300007000028, A0300007000029 and A0300007000030 in Fairfield Township, Butler County, Ohio (the "Expanded Project Site"), a legal description of which is attached hereto as Exhibit A and incorporated herein by reference, and a depiction of which is attached hereto as Exhibit A-1 and incorporated herein by reference, with each parcel of real property within the Expanded Project Site referred to herein as a "Parcel," and collectively, the "Parcels" (whether as presently appearing on the County tax duplicate or as subdivided or combined and appearing on future tax duplicates);

WHEREAS, on or about January 18, 2018, the Company purchased certain property, included within the Expanded Project Site comprising approximately twenty-three (23) acres and located in the northern portion of the Expanded Project Site on Parcel No. A0300007000030 as identified in the Development Agreement and the exhibits thereto (the "Purchased Property") and plans to subdivide the Expanded Project Site to create a separate Parcel for each building;

WHEREAS, the Company, the Township and the City of Fairfield, Ohio entered into a Development Agreement dated _____, 2018 (the "Development Agreement") to in order to support the Project, the development of the Expanded Project Site and to create jobs and otherwise stimulate economic growth;

WHEREAS, in order to successfully develop the Parcels, it is necessary to undertake or to cause to be undertaken certain public infrastructure improvements as described in Exhibit B attached hereto (the "Public Infrastructure Improvements"), which the Township and Company agree will directly benefit the Parcels;

WHEREAS, the Township, by its Resolution No. ____ passed _____, 2018 (the "TIF Resolution"), has declared that one hundred percent (100%) of the increase in the assessed value of each Parcel subsequent to the effective date of the TIF Resolution (such increase hereinafter referred to as the "Improvement," as further defined in Section 5709.73 of the Ohio Revised Code and the TIF Resolution) is a public purpose and is exempt from taxation subject to a parcel-by-parcel "rolling" thirty (30) year, one hundred percent (100%), non-school TIF exemption (the "TIF Exemption"), for which the "rolling" build-out period shall be ten years, with the TIF Exemption for each Parcel commencing the earlier of (i) the first

year for which there is an increase in fair market value of at least Two Million and No/100 Dollars (\$2,000,000), or (ii) tax year 2028;

WHEREAS, the Township has determined that it is necessary and appropriate and in the best interest of the Township to provide for the owner of each Parcel (referred to herein individually as an "Owner" and collectively as the "Owners") to make annual service payments in lieu of taxes with respect to any Improvement allocable thereto (collectively for all Parcels, the "Service Payments") to the Butler County Treasurer (the "County Treasurer"), which Service Payments will be (i) distributed, in part, to the Fairfield City School District (the "Local School District") and Butler Tech, as the applicable Joint Vocational School District (the "JVSD," together with the Local School District, the "School Districts") in amounts equal to the real property taxes that the School Districts would have received if the Improvements had not been exempted from real property taxation pursuant to the TIF Resolution, (ii) used to fully reimburse the Company for costs of certain Public Infrastructure Improvements, plus interest thereon, as further specified in this Agreement, and (iii) used for such other purposes as may be authorized by law, all pursuant to and in accordance with Sections 5709.73, 5709.74 and 5709.75 of the Ohio Revised Code (collectively, the "TIF Statutes"), the TIF Resolution and this Agreement;

WHEREAS, the Township Board of Trustees through the TIF Resolution, or other resolution, approved the terms of this Agreement and authorized its execution on behalf of the Township; and

WHEREAS, the Township and the Company desire to enter into this Agreement on the terms and conditions hereinafter set forth to provide for the collection of and disbursement of the Service Payments and to facilitate the construction of the Public Infrastructure Improvements, which will directly benefit the Expanded Project Site.

NOW, THEREFORE, in consideration of the premises and covenants contained herein and to induce the Company to undertake the Public Infrastructure Improvements, the Company and the Township agree as follows:

Section 1. TIF Exemption and Agreements Related Thereto.

A. TIF Exemption. In connection with the undertaking of the Public Infrastructure Improvements, the Township, through the TIF Resolution, has granted, among other things, with respect to the Improvements, a parcel-by-parcel "rolling" thirty (30) year, one hundred percent (100%), non-school TIF exemption (the "TIF Exemption"), with the TIF Exemption for each Parcel commencing the earlier of (i) the first year for which there is an increase in fair market value of at least Two Million and No/100 Dollars (\$2,000,000), or (ii) tax year 2028.

B. Related Acts and Documents. The Township shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain the exemptions from real property taxation granted under the TIF Resolution and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 2. Obligation to Make Service Payments.

A. Service Payments. The Owner hereby agrees to make the Service Payments due during its period of ownership of each Parcel, all pursuant to and in accordance with the requirements of the TIF Statutes, the TIF Resolution, the provisions of Ohio law relating to real property tax collections, and any subsequent amendments or supplements thereto. Service Payments will be made semiannually to the County Treasurer (or to the County Treasurer's designated agent for collection of the Service Payments) on or before the final dates for payment of real property taxes for the Parcels, until expiration of the TIF Exemption. Any late payments will bear penalties and interest at the then current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code or any successor provisions thereto, as the same may be amended from time to time. Service Payments will be made in accordance with the requirements of the TIF Statutes and the TIF Resolution and, for each Parcel, will be in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel if it were not exempt from taxation pursuant to the TIF Exemption, including any penalties and interest. The Owner will not, under any circumstances, be required (i) for any tax year to pay both real property taxes and Service Payments with respect to any portion of the Improvement to a Parcel, whether pursuant to Section 5709.74 of the Ohio Revised Code or this Agreement, or (ii) to make Service Payments as to any portion of an Improvement that becomes subject to an exemption under a Community Reinvestment Area Agreement (a "CRA Exemption") or an Enterprise Zone Agreement (an "EZ Exemption") for any period that portion is subject to the applicable CRA Exemption or EZ Exemption. The Township and the Owner agree that the Fairfield Township / Duke Realty Public Improvement Tax Increment Equivalent Fund referred to in Section 3 of the TIF Resolution (the "TIF Fund") will receive all Service Payments made with respect to the Improvement to each Parcel that are payable to the Township.

B. Priority of Lien. The Owner acknowledges, for itself and any and all future Owners, that the provisions of Section 5709.91 of the Ohio Revised Code, which specify that the Service Payments for each Parcel will be treated in the same manner as taxes for all purposes of the lien described in Section 323.11 of the Ohio Revised Code, including, but not limited to, the priority of the lien and the collection of Service Payments, will apply to this Agreement and to the Parcels and any Improvements.

Section 3. Establishment of a TIF Fund by the Township; Distribution of Funds. The Township agrees that it shall establish the TIF Fund as a depository fund to be held in the custody of the Township for the sole purpose of receiving the Service Payments made from the Owners to the County Treasurer and payable to the Township. Upon distribution of the Service Payments to the Township (after compensation amounts have been paid to the School Districts as set forth in Section 5 of this Agreement or otherwise required by law), those Service Payments shall be deposited to the TIF Fund. Amounts on deposit in the TIF Fund shall be used to fully reimburse the Company for costs of the Public Infrastructure Improvements in the manner and amounts described and permitted in Section 6 herein.

Section 4. Exemption Applications, Maintenance and Notice. In accordance with Ohio Revised Code Sections 5715.27 and 5709.911, the Company or the Township, at the Company's request, shall file or cause to be filed an application prepared by the Company for an exemption from real property taxation (DTE Form 24 or its successor form) with the Butler County Auditor (the "County Auditor") for the Improvements. The Company and the Township agree to cooperate with each other for this purpose, and to cooperate with the County Auditor, the Ohio Department of Taxation and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Resolution and this Agreement.

Section 5. Payments to School Districts. As provided in the TIF Resolution or as otherwise required by the TIF Statutes, the County Treasurer shall distribute the semiannual Service Payments as follows: (i) to the Local School District, an amount equal to the amount that the Local School District would otherwise have received as real property tax payments for that semiannual payment derived from the Improvement to the Parcels located within the Local School District if the Improvement had not been exempt from taxation pursuant to the TIF Resolution (and, for the avoidance of doubt, not including any amount attributable to the portion of the Improvement exempt pursuant to a CRA Exemption or an EZ Exemption); (ii) to the JVSD, an amount equal to the amount that the JVSD would otherwise have received as real property tax payments for that semiannual payment derived from the Improvement to the Parcels located within the JVSD if the Improvement had not been exempt from taxation pursuant to the TIF Resolution (and, for the avoidance of doubt, not including any amount attributable to the portion of the Improvement exempt pursuant to a CRA Exemption or an EZ Exemption); and (iii) to the Township, all remaining amounts for further deposit into the TIF Fund.

Section 6. Reimbursements to Company from TIF Fund. The Township hereby agrees to pay to the Company, in accordance with the terms of this Agreement, the costs of the Public Infrastructure Improvements incurred by the Company and eligible for reimbursement as provided in this Agreement and the TIF Statutes (with the costs collectively referred to herein as the "Qualifying Costs"), plus interest on those Qualifying Costs at the annual rate of five percent (5%).

After the Local School District and JVSD receive their respective portions of the semiannual Service Payments as set forth in Section 5 of this Agreement, the Township shall disburse the remaining Service Payments in the TIF Fund in the following order:

- (i) If the County Treasurer does not distribute the Service Payments to the Local School District and JVSD in accordance with Section 5 of this Agreement, to the Local School District and JVSD their respective amounts due in accordance with Section 5 of this Agreement;
- (ii) To the Company, as provided for in Section II.1 of the Development Agreement, forty-nine percent (49%) of the Township TIF revenues shall be used to reimburse the Company for all Qualifying Costs plus an annual interest rate equal to five percent (5%) until the earlier of (i) twenty (20) years of reimbursement payments have been made to the Company for each parcel, or (ii) the Company has been fully reimbursed for Qualifying Costs, including any applicable interest. The Township shall reimburse the Company from the TIF Fund for the following Qualifying Costs, in order of priority: (i) costs associated with publicly dedicated infrastructure improvements, if any, and (ii) costs associated with all other Qualifying Costs.
- (iii) To the Township to be utilized at its discretion for any purpose permitted by applicable law.

Notwithstanding anything to the contrary in this Agreement, the Company and the Township agree that Qualifying Costs may only be paid or reimbursed to the extent Service Payments from the Expanded Project Site are available for such payments or reimbursements.

Section 7. Payments to the Company. The Township shall pay monies on deposit in the TIF Fund to the Company, in accordance with Section 6 of this Agreement, on the first business day following each May 31 and November 30 (each, a "Payment Date"). Payments for the portion of Qualifying Costs for any Public Infrastructure Improvements and any interest payable thereon will be made beginning with the first Payment Date following the satisfaction of the conditions of Section 8 of this Agreement. The Company shall deliver to the Township, at least thirty (30) days prior to each Payment Date, a statement showing the

total amount of Qualifying Costs and interest then due to the Company under this Agreement, along with a brief description of the basis and calculations for the same; provided, however, that failure by Company to deliver this statement shall not excuse the Township from its payment obligation, but shall only delay payment to the same extent delivery of the statement was delayed. All payments to the Company hereunder on each Payment Date must be made pursuant to written instructions provided by the Company. Any monies paid pursuant to this Agreement will be applied first to the payment of interest on the Qualifying Costs and second to the payment of the Qualifying Costs, so that all interest due shall be paid before the payment of any Qualifying Costs.

Interest on the unpaid portion of the Qualifying Costs will accrue from the date the Company provides to the Township with a Cost Certificate (as defined in Section 8) for those Qualifying Costs. Any interest on such Qualifying Costs that remains unpaid on the day following each Payment Date will itself accrue interest in the same manner as the Qualifying Costs.

Any expenditure pursuant to this Section 7 of monies deposited in the TIF Fund is subject to the expenditure restrictions and appropriation requirements of Ohio law.

Notwithstanding any other provision of this Agreement, the Township's payment obligations hereunder are limited to the monies in the TIF Fund and do not constitute an indebtedness of the Township, the State of Ohio, or any other political subdivision thereof, within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the Company does not have the right to have taxes or excises levied by the Township, the State of Ohio, or any other political subdivision thereof for the payment of the Qualifying Costs and accrued interest.

Section 8. Conditions Precedent to Commencement of Payments to the Company. The Township's obligation to make payments to the Company for Qualifying Costs under this Agreement, and the accrual of interest on those Qualifying Costs, as provided in this Agreement, commences when the Company has provided to the Township a Cost Certificate for those Qualifying Costs substantially in the form attached as Exhibit C (each, a "Cost Certificate"), which Cost Certificate is subject to approval by the Township's Fiscal Officer (the "Fiscal Officer") as properly payable under the TIF Resolution and this Agreement. The Fiscal Officer may require such evidence of the Qualifying Costs as is reasonably necessary for the Fiscal Officer to determine the nature of the Public Infrastructure Improvements and confirm payment of the Qualifying Costs by the Company or its designee.

The Fiscal Officer may approve a Cost Certificate in whole or in part or may disapprove a Cost Certificate in whole or in part. If the Fiscal Officer disapproves any Qualifying Costs in a Cost Certificate, the Fiscal Officer will provide, within thirty (30) days of receipt of the Cost Certificate, a written explanation of why those Qualifying Costs were not approved and provide the Company reasonable opportunity to correct any deficiencies.

The Company may request a written determination by the Fiscal Officer in advance of expenditures for any Public Infrastructure Improvements that, upon making those expenditures and documenting those expenditures to the satisfaction of the Fiscal Officer, those expenditures will be eligible for reimbursement as Qualifying Costs under the TIF Resolution and this Agreement. Any request made pursuant to this provision shall not be unreasonably denied by the Fiscal Officer, and the Fiscal Officer shall make a determination on each request within thirty (30) days of receiving that request. The Fiscal Officer shall not reject any portion of the Qualifying Costs identified on a Cost Certificate on the basis that those Qualifying

Costs are not reimbursable under the TIF Resolution and this Agreement if the Fiscal Officer has made a prior written determination that those Qualifying Costs are reimbursable pursuant to this provision.

The Township agrees that it will respond to all communications with the Company in a timely manner, and Township approvals under this Agreement shall not be unreasonably conditioned, withheld or delayed.

Section 9. Representations of the Company and the Township. The Company hereby represents that it has full power and authority to enter into this Agreement and carry out its terms. The Township hereby represents that the TIF Resolution was passed by the Township Board of Trustees on _____, 2018, and remains in full force and effect, that this Agreement is authorized by the TIF Resolution and that the Township has full power and authority to enter into this Agreement, to carry out its terms and to perform its obligations hereunder and thereunder. The Township further represents and warrants that it shall not take action, other than approval or support of a CRA Exemption or an EZ Exemption, which would result in a reduction in the period of the TIF Exemption, the percentage of the TIF Exemption, or the amount of Service Payments to be received and made available to pay the Qualifying Costs of the Public Infrastructure Improvements unless such action shall be permitted by law and not inconsistent with the Township's obligations under this Agreement.

Section 10. Provision of Information. The Company, as Owner, agrees for itself and each successive Owner to (i) cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council ("TIRC") to enable that TIRC to review and determine annually during the term of this Agreement the compliance of the Owners with the terms of this Agreement; and (ii) to cooperate in all reasonable ways with, and provide necessary and reasonable information to the Township to enable the Township to submit the status report required by Section 5709.73(I) of the Ohio Revised Code to the Director of the Ohio Development Services Agency on or before March 31 of each year.

Section 11. Prevailing Wage. The Company will comply, and the Township will require compliance by all contractors working under its direction, with all applicable requirements of Chapter 4115, including, without limitation, and when necessary, (i) obtaining the determination required by that Chapter 4115 of the prevailing rates of wages to be paid for all classes of work called for by the Public Infrastructure Improvements, (ii) obtaining the designation of a prevailing wage coordinator for the Public Infrastructure Improvements, and (iii) insuring that all subcontractors receive notification of changes in prevailing wage rates as required by that Chapter 4115.

Section 12. Notices. Any notice or other communication required or permitted to be given to a Party under this Agreement shall be in writing and shall be given by one of the following methods to such Party at the address set forth below: (i) by prepaid registered or certified U.S. mail, return receipt requested; (ii) by hand delivery in person; or (iii) by a nationally recognized overnight courier. Any such notice shall be deemed to have been given upon receipt or refusal of receipt. Any Party may change its address for notice by giving written notice thereof to the other Party, and unless and until such notice has been given, the notice address for each Party is as follows:

The Township:

Fairfield Township
6032 Morris Rd.

Fairfield Township, Ohio 45011

The Company:

Duke Realty Ohio
Attn. Cincinnati Market Attorney
600 East 96 Street, Suite 100
Indianapolis, IN 46240

With a copy to:

Scott J. Ziance
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215

Section 13. Successors; Assignment; Amendments; Township Consents. This Agreement will be binding upon the Parties hereto and their successors and assigns. Each Owner's obligations under this Agreement, including, without limitation, its obligation to make Service Payments with respect to each Parcel it owns, are absolute and unconditional covenants running with the land and are enforceable by the Township. Each Owner further agrees that all covenants herein, including, without limitation, its obligation to make Service Payments, whether or not these covenants are included by any Owner of any Parcel in any deed or instrument of conveyance to that Owner's successors and assigns, are binding upon each subsequent owner and are enforceable by the Township. Any future Owner of any Parcel, or any successors or assigns of such Owner, will be treated as an Owner for all purposes of this Agreement.

No Party shall assign this Agreement without the written consent of the other Party, except that, the Company may assign in whole or in part its rights and obligations under this Agreement without the written consent of the Township to one or more entities affiliated with the Company that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Company (each, an "Affiliate"). As used in the immediately preceding sentence, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a third party, whether through ownership of voting securities, partnership interests, by contract or otherwise. In the event of any such assignment, the Company shall provide notice to the Township no later than ten (10) days after the assignment. Notwithstanding anything herein to the contrary, and without the assignment of this Agreement, the Township acknowledges and agrees that the obligations of the Company hereunder may be performed by one or more of the Company's Affiliates, and the Company may cause one or more of its Affiliates to perform its obligations hereunder.

Section 14. Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of the Parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law. The obligations of the Township may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity. No such covenant, stipulation, obligation or agreement will be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of any of the Parties hereto in their individual capacity, and neither the members of the Township Board of Trustees nor any Township official executing this Agreement, nor any individual person executing this

Agreement on behalf of the Company, will be liable personally by reason of the covenants, stipulations, obligations or agreements of the Parties contained in this Agreement.

Section 15. Events of Default and Remedies.

A. Event of Default. Any one or more of the following constitutes an “Event of Default” under this Agreement:

- (i) Any Party fails to perform or observe any material obligation punctually and as due under this Agreement, provided that if a Force Majeure (as such term is defined below) event causes the failure, the Party may receive an additional period of time as is reasonably necessary to perform or observe the material obligation in light of the event if it notifies the others of the potential event and the extent of the delay promptly after becoming aware of the event;
- (ii) The Township or the Company makes a representation or warranty in this Agreement that is materially false or misleading at the time it is made;
- (iii) The Company files a petition for the appointment of a receiver or a trustee with respect to it or any of its property;
- (iv) The Company makes a general assignment for the benefit of creditors;
- (v) A court enters an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Company as debtor;
- (vi) The Company files an insolvency proceeding with respect to itself or any proceeding with respect to itself for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

As used in this Section, “Force Majeure” means any event or occurrence that is not within the reasonable control of a Party and prevents a Party performing an obligation hereunder, including without limitation, any act of God, act of a public enemy, war, riot, sabotage, blockage, embargo, failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority, labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of any Party), civil disturbance, terrorist act, power outage, fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority, any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over a Party, or over the Project.

B. General Right to Cure. In the event of any Event of Default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, the defaulting Party will, upon written notice from the other, proceed, as soon as reasonably possible, to cure or remedy such Event of Default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such Event of Default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party will upon written notice from the other commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach.

C. Remedies. If a defaulting Party fails to cure any Event of Default pursuant to paragraph (B) of this Section, a Party may institute such proceedings against the defaulting Party as may be necessary or desirable in its opinion to cure and remedy such default or breach. Such remedies include, but are not limited to: (i) instituting proceedings to compel specific performance by the defaulting Party, (ii) suspending or terminating the obligations of the non-defaulting Party with respect to the defaulting Party under this Agreement, provided the aggrieved Party must provide thirty (30) days' notice of any termination to the defaulting Party and provided further that the aggrieved Party must rescind the termination notice and not terminate the Agreement if the defaulting Party cures all Events of Default within a reasonable time thereafter, and (iii) any other rights and remedies available at law, in equity or otherwise to collect all amounts then becoming due or to enforce the performance of any obligation under this Agreement. The obligations of the Township may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity.

Section 16. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, said provision will be fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible that is and will be legal, valid and enforceable.

Section 17. Separate Counterparts; Captions. This Agreement may be executed by the Parties hereto in one or more counterparts or duplicate signature pages, each of which when so executed and delivered will be an original, with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

Section 18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters covered herein and supersedes prior agreements and understandings between the Parties.

Section 19. Governing Law and Choice of Forum. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Section 20. Additional Documents. The Township, the Company, 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 Agreement.

Section 21. Recordation. No later than fifteen (15) days following the execution of this Agreement by each of the Company and the Township, the Company will cause this Agreement to be recorded in the Butler County, Ohio real property records for each Parcel of the Property.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Township and the Company have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

FAIRFIELD TOWNSHIP

By: _____
Its: Trustee

By: _____
Its: Trustee

By: _____
Its: Trustee

By Resolution No. _____ dated _____, 2018

Approved as to Form:

Law Director, Fairfield Township

DUKE REALTY OHIO

By: _____
Name: Charles E. Podell
Its: Senior Vice President

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 2018, by _____, the _____ of Fairfield Township, a township located in the State of Ohio in Butler County, on behalf of the township.

Notary Public

STATE OF _____,

COUNTY OF _____, SS:

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 2018, by Charles E. Podell on behalf of Duke Realty Ohio, a general partnership.

Notary Public

FISCAL OFFICER'S CERTIFICATE

As Fiscal Officer for Fairfield Township, I hereby certify that the funds sufficient to meet the obligations of the Township under this Agreement (including specifically the funds required to meet the obligations of the Township in the year 2018) have been appropriated lawfully for that purpose, and are in the Treasury of the Township and/or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with O.R.C. §§ 5705.41 *et seq.*

Dated: _____, 2018

_____, Fiscal Officer
Fairfield Township, Butler County, Ohio

Exhibit A

Property Description for Expanded Project Site

See Attached Descriptions for Expanded Project Site on Parcel Numbers:

A0300007000003

A0300007000013

A0300007000023

A0300007000028

A0300007000029

A0300007000030



CINCINNATI
COLUMBUS
DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone 513.779.7851
fax 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
23.359 ACRES**

Situated in Section 17, Town 2, Range 2, BTM, Fairfield Township, Butler County, Ohio and being part of Lot 86 as conveyed to the Miller Farm Enterprises, LLC. in O.R. 7118 Pg. 1237 of the Butler County Ohio, Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at the southeast corner of Miller Run Section One as recorded in PE 2384 Pages A-C;

Thence S84°41'59"W, a distance of 201.32 feet;

Thence S05°18'01"E, a distance of 320.77 feet;

Thence S84°41'59"W, a distance of 380.82 feet to a point in the centerline of Seward Road;

Thence with said centerline, S04°57'24"W, a distance of 40.65 feet to the Real Point of Beginning of this description;

Thence N84°41'59"E, passing a 5/8" iron pin found at 30.49 feet, for a total distance of 1228.19 feet, to a 5/8" iron pin found in the west line of a 79.051 acre (deed) tract conveyed to Khosrow P. Mohammadi and Zahra Heidari in O.R. 8174 Pg. 1541;

Thence along said west line, S04°39'40"W a distance of 949.38 feet to a 5/8" iron pin set;

Thence along a new division line, N85°02'36"W, passing a 5/8" iron pin set in the east right of way line of Seward Road at a distance of 1183.46 feet, for a total distance of 1213.46 feet to a point in the centerline of Seward Road;

Thence along said centerline; N04°57'24"E a distance of 730.67 feet to the point of beginning.

Containing 23.359 acres, more or less and being subject to easements, restrictions and rights of way of record

Bearings are based on Miller's Run Section One as recorded in P.E. 2384 Pages A-C.

The above description is based on a field survey performed by the Kleingers Group under the direct supervision of Randy C. Wolfe, Ohio Professional Surveyor No. 8033.

Randy C. Wolfe
Ohio Professional Surveyor #8033

Date

INSPIRED PEOPLE ► CREATIVE DESIGN ► TRANSFORMING COMMUNITIES



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DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone 513.779.7851
fax 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
25.714 ACRES**

Situated in Section 17, Town 2, Range 2, BTM, Fairfield Township, Butler County, Ohio and being part of Lot 86 as conveyed to the Miller Farm Enterprises, LLC. in O.R. 7118 Pg. 1237 of the Butler County Ohio, Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at the southeast corner of Miller Run Section One as recorded in PE 2384 Pages A-C;

Thence S84°41'59"W, a distance of 201.32 feet;

Thence S05°18'01"E, a distance of 320.77 feet;

Thence S84°41'59"W, a distance of 380.82 feet to a point in the centerline of Seward Road;

Thence with said centerline, S04°57'24"W, a distance of 771.32 feet to the Real Point of Beginning of this description;

Thence S85°02'36"E, passing a 5/8" iron pin found at 30.00 feet, for a total distance of 1213.46 feet, to a 5/8" iron pin found in the west line of a 79.051 acre (deed) tract conveyed to Khosrow P. Mohammadi and Zahra Heidari in O.R. 8174 Pg. 1541;

Thence along said west line, S04°39'40"W a distance of 1120.22 feet to a concrete monument found in the north line of a tract of land conveyed to Norbert A Davis in O.R. 8175 Pg. 309;

Thence with said north line, N66°58'33"W, passing a 5/8" iron pin set in the east right of way line of Seward Road at a distance of 1222.48 feet, for a total distance of 1282.48 feet to a point in the centerline of Seward Road;

Thence along said centerline; N04°57'24"E a distance of 722.47 feet to the point of beginning.

Containing 25.714 acres, more or less and being subject to easements, restrictions and rights of way of record Bearings are based on Miller's Run Section One as recorded in P.E. 2384 Pages A-C.

The above description is based on a field survey performed by the Kleingers Group under the direct supervision of Randy C. Wolfe, Ohio Professional Surveyor No. 8033.

Randy C. Wolfe
Ohio Professional Surveyor #8033

Date

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COLUMBUS
DAYTON

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West Chester, OH 45069
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April 21, 2017

LEGAL DESCRIPTION 1.516 ACRES

Situated in Section 17, Town 2, Range 2; B.T.M., Fairfield Township, Butler County, Ohio being all of Lot 88 conveyed to Norbert A. Davis in O.R. 7005 Pg. 121 the boundary of which being more particularly described as follows:

Commencing at the northeast corner of Section 17;

Thence along the east line of Section 17, S04°47'11"W a distance of 2670.74 feet to a stone found;

Thence S04°49'21"W a distance of 1239.53 feet to a stone found;

Thence N47°04'44"W a distance of 764.44 feet to a 5/8" iron pin set;

Thence S31°09'38"W passing a 5/8" iron pin set at a distance of 530.48 feet, for a total distance of 595.48 feet;

Thence N46°43'56"W a distance of 2841.38 feet to a 1/2" iron pin found;

Thence N01°52'46"W a distance of 17.03 feet to a 5/8" iron pin set;

N21°51'41"W a distance of 285.00 feet to a mag nail set at the Point of Beginning;

Thence along the east line of Lot 7324, N21°51'41"W a distance of 200.00 feet to a mag nail set;

Thence along the lines of said lot 89 as conveyed to Norbert A. Davis in O.R. 8175 Page 309 the following five (5) courses:

1. N68°08'19"E a distance of 68.88 feet to a 5/8" iron pin set;
2. S69°55'26"E a distance of 415.83 feet to a 5/8" iron pin set;
3. S20°04'34"W a distance of 150.00 feet to a 5/8" iron pin set;

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4. N69°55'26"W a distance of 283.53 feet to a 5/8" iron pin set;
5. S68°08'19"W a distance of 67.05 feet to the Point of Beginning;

Containing 1.516 acres of land more or less, being subject to all easements and restrictions of record.

Bearings are based on the south line of Lot 86 being S66°58'33"E per S.R. 50-103 of the Butler County Engineers Record of Land Surveys.



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April 21, 2017

**LEGAL DESCRIPTION
2.817 ACRES**

Situated in Section 17, Town 2, Range 2, B.T.M., Fairfield Township, Butler County, Ohio being part of Lot 90 as conveyed to Norbert A. and Ruth M. Davis, Co-Trustees in O.R. 8858 Pg. 1706 the boundary of which being more particularly described as follows:

Commencing at the northeast corner of Section 17;

Thence along the east line of Section 17, S04°47'11"W a distance of 2670.74 feet to a stone found;

Thence along the west line of said 103.50 acre tract, S04°49'21"W a distance of 1239.53 feet to a stone found at the northeast corner of a 29.288 acre (deed) tract as conveyed to Erin and Michael Garber in O.R. 8858 pg. 1703;

Thence N47°04'44"W a distance of 764.44 feet to a 5/8" iron pin set at the northwest corner of a 29.288 acre tract conveyed to Erin and Michael Garber in O.R. 8858 Page 1703, said point being the Point of Beginning;

Thence along the west line of said 29.288 acre tract, S31°09'38"W passing a 5/8" iron pin set at a distance of 530.48 feet, for a total distance of 595.48 feet to a point in the north line of a 14.481 acre tract of land conveyed to Robert M. and Judith A. Burkett in O.R. 7066 Pg. 1434;

Thence along the north line of said 14.481 acre tract, N46°43'56"W a distance of 38.62 feet;

Thence along the east line of Lot 89 as conveyed to Norbert A. Davis in O.R. 8175 Pg. 309, N04°18'44"E passing a 5/8" iron pin set at a distance of 65.00 feet for a total distance of 745.75 feet to a 5/8" iron pin found;

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Thence continuing, S47°04'44"E a distance of 382.59 feet to the Point of Beginning;

Containing 2.817 acres of land more or less, being subject to all easements and restrictions of record.

Bearings are based on the south line of Lot 86 being S66°58'33"E per S.R. 50-103 of the Butler County Engineers Record of Land Surveys.



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LEGAL DESCRIPTION 27.114 ACRES

Situated in Section 17, Town 2, Range 2, B.T.M., Fairfield Township, Butler County, Ohio being part of Lot 87 and all of a 27.115 acre tract of land conveyed to Raymond W. and Dianne M. Miller in O.R. 8169 Pg. 1393 the boundary of which being more particularly described as follows:

Beginning at a 5/8" iron pin set at the southeast corner of a 79.051 acre tract of land conveyed to Khosrow P. Mohammadi and Zahra Heidari in O.R. 8174 Pg. 1541, said point being S04°47'11"W a distance of 1341.31 feet from the northeast corner of Section 17;

Thence along the east line of Section 17 and the west line of Lot 519 of the Villages of Providence, Section 3, as recorded in P.E. 3721 A-G, S04°47'11"W a distance of 820.10 feet to a 5/8" iron pin found at the northeast corner of a Lot 89 as conveyed to Norbert A. Davis in O.R. 8175 Pg. 309;

Thence along the north line of said Lot 89, N67°54'24"W a distance of 2269.44 feet to a concrete monument found at the southeast corner of Lot 86 as conveyed to Miller Farm Enterprises, LLC in O.R. 7118 Pg. 1237;

Thence along the east line of said Lot 86, N04°39'40"E a distance of 270.10 feet to a 5/8" iron pin set at the southeast corner of the aforesaid 79.051 acre tract;

Thence along the south line of said 79.051 acre tract, S81°54'34"E a distance of 2170.88 feet to the Point of Beginning;

Containing 27.114 acres of land more or less, being subject to all easements and restrictions of record.

Bearings are based on the south line of Lot 86 being S66°58'33"E per S.R. 50-103 of the Butler County Engineers Record of Land Surveys.



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April 21, 2017

LEGAL DESCRIPTION 112.753 ACRES

Situated in Section 17, Town 2, Range 2, B.T.M., Fairfield Township, Butler County, Ohio being all of Lot 89 as conveyed to Norbert A. Davis in O.R. 8175 Pg. 309 the boundary of which being more particularly described as follows:

Beginning at a 5/8" iron pin found at the southeast corner of a 27.115 acre (deed) tract of land conveyed to Raymond W. and Dianne M. Miller in O.R. 8169 Pg. 1393, said point being S04°47'11"W a distance of 2161.41 feet from the northeast corner of Section 17;

Thence along the east line of Section 17 and the west line of Lot 519 of the Villages of Providence, Section 3, as recorded in P.E. 3721 A-G, S04°47'11"W a distance of 509.33 feet to a stone found at the northwest corner of a 103.50 acre tract of land conveyed to EDZ Investments, LLC in O.R. 8345 Pg. 2150;

Thence along the west line of said 103.50 acre tract, S04°49'21"W a distance of 1239.53 feet to a stone found at the northeast corner of Lot 90 as conveyed to Erin and Michael Garber in O.R. 8858 pg. 1703;

Thence along the north line of said Lot 90, N47°04'44"W a distance of 1147.03 feet to a 5/8" iron pin set at the northwest corner of a 2.8149 acre tract of land conveyed to Norbert A. and Ruth M. Davis, Co-Trustees in O.R. 8858 Pg. 1706;

Thence along the west line of said 2.8149 acre S04°18'44"W passing a 5/8" iron pin set at a distance of 680.75 feet, for a total distance of 745.75 feet to a point in the north line of a 14.481 acre tract of land conveyed to Robert M. and Judith A. Burkett in O.R. 7066 Pg. 1434;

Thence along the north line of said 14.481 acre tract, N46°43'56"W a distance of 2802.76 feet to a 1/2" iron pin found in the east line of Lot 7324;

Thence along said east line, N01°52'46"W a distance of 17.03 feet to a 5/8" iron pin set;

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Thence continuing, N21°51'41"W a distance of 285.00 feet to a mag nail set at the southwest corner of Lot 88 as conveyed to Norbert A. and Ruthe M. Davis, Co-Trustee in O.R. 7005 Pg. 121;

Thence along the lines of said Lot 88, the following five (5) courses:

1. N68°08'19"E a distance of 67.05 feet to a 5/8" iron pin set;
2. S69°55'26"E a distance of 283.53 feet to a 5/8" iron pin set;
3. N20°04'34"E a distance of 150.00 feet to a 5/8" iron pin set;
4. N69°55'26"W a distance of 415.83 feet to a 5/8" iron pin set;
5. S68°08'19"W a distance of 68.88 feet to a mag nail set in the east line of the aforesaid Lot 7324;

Thence along said east line, N21°51'41"W a distance of 169.28 feet to a 5/8" iron pin set in the east line of Lot 7323 as conveyed to Miller Farm West, LLC in O.R. 7118 Pg. 1232;

Thence along said east line, N04°57'24"E a distance of 517.04 feet to the southwest corner of Lot 86 as conveyed to Miller Farm Enterprises, LLC in O.R. 7118 Pg. 1237;

Thence along the south line of said Lot 86, S66°58'33"E passing a 5/8" set at a distance of 50.00 feet, for a total distance of 1282.48 feet to a concrete monument found at the southwest corner of the aforesaid 27.115 acre tract;

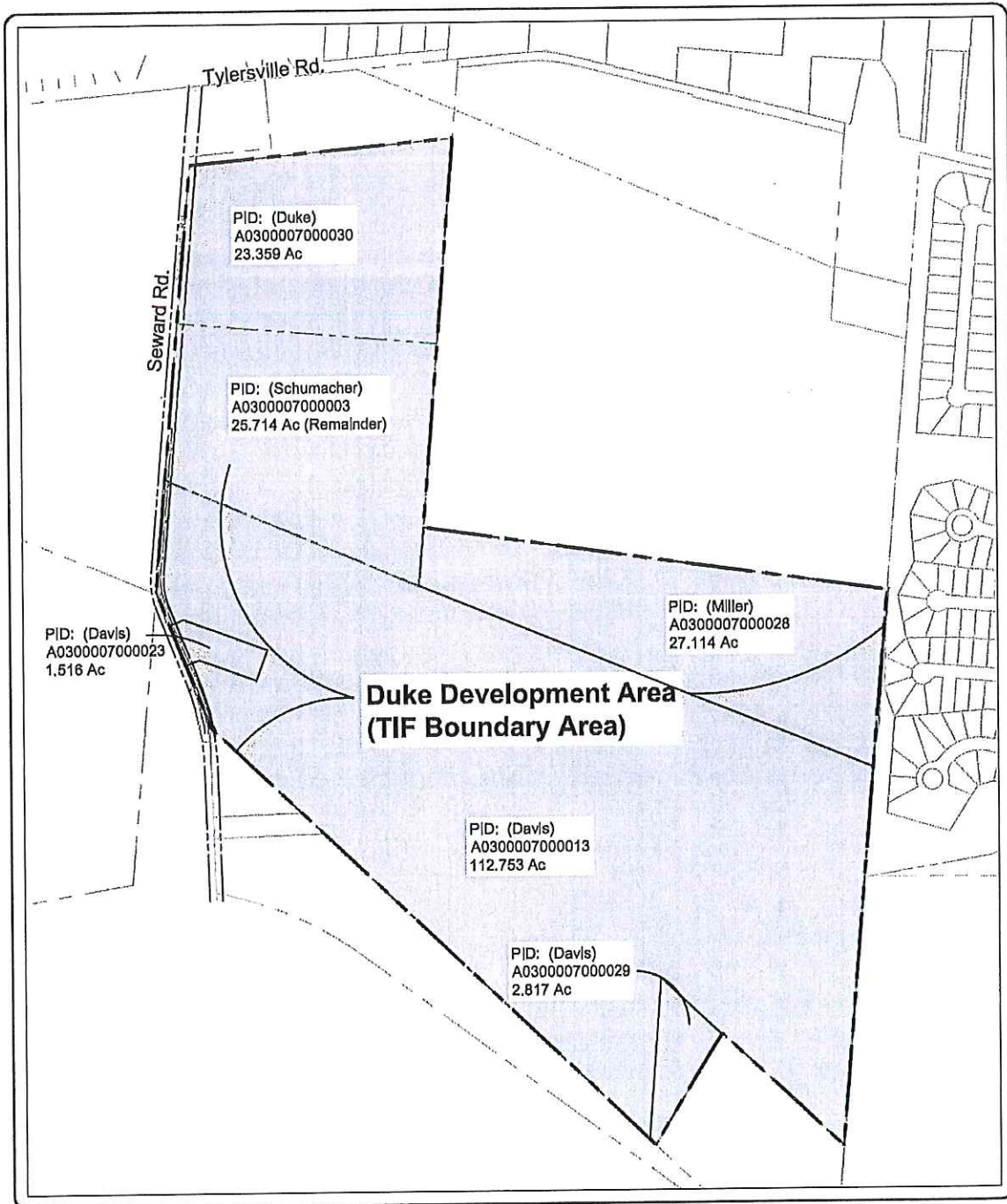
Thence along the south line of said 27.115 acre tract, S67°54'24"E a distance of 2269.44 feet to the Point of Beginning;

Containing 112.753 acres of land more or less, being subject to all easements and restrictions of record.

Bearings are based on the south line of Lot 86 being S66°58'33"E per S.R. 50-103 of the Butler County Engineers Record of Land Surveys.

Exhibit A-1

Property Map for Expanded Project Site



Scale:
Date:



EXHIBIT A-1
Duke Realty Development
Seward Rd.
Fairfield Twp. Ohio



Exhibit B

Description of Public Infrastructure Improvements

The Public Infrastructure Improvements may include, but are not limited to, the following:

(A) Acquisition of land; extension and construction of electric utility infrastructure necessary to provide electric service for the Project; extension and construction of water utility infrastructure necessary to provide water service for the Project; street lighting; sidewalks; acquisition of land for rights of way; construction of other roads and all related appurtenances; traffic signs and signals; engineering and other professional services secured in connection with the Public Infrastructure Improvements including legal, planning, citizen participation, environmental studies and remediation; streetscape and other improvements including, but not limited to, grading, draining, curbing, paving, resurfacing, constructing or reconstructing storm sewers, sanitary sewers, water mains, sidewalks, driveway approaches and aprons, public parking spaces and structures; electrical lighting; removal and placement of overhead utilities underground; installation of the desired conduit; environmental remediation; demolition; traffic control devices, including traffic lights, signs and other markings; installing public benches, seating areas and trash receptacles; planting trees, shrubbery and other landscaping materials, together with all other necessary and appropriate appurtenances; and

(B) New street and utility construction on the Expanded Project Site, including:

1. Right of way land cost for new public road dedication. Assumed sixty foot right of way width.
2. Design / Engineering for the road and associated utility improvement project. Design shall meet current Fairfield Township/Butler County standards and requirements.
3. Right of way width of new public road is anticipated to be 60' in width. If required, additional utility easements adjacent to right of way will be provided for private utilities (Gas, Electric, Phone, Etc.).
4. Grade road right of way area and provide storm drainage system (Curb inlets, catch basins and storm sewer).
5. Install heavy duty asphalt paving and stone base (per geotechnical engineer's requirements). Road width shall be one lane each direction with continuous middle turn lane. Curb and gutter section – Total width to face of curb shall be 36 feet?
6. Street lights, street trees, and a sidewalk or walking path will be installed on one side of the public road.
7. Public water line (12") will be installed within the street right of way along with appropriate valves, hydrants and appurtances.
8. Design / Engineering for FEMA flood plain fill permit and mass excavation design to raise site above floodplain, and to design a sanitary sewer main line extension from the existing sanitary trunk line along the southern property. Engineering and permitting is required to attain a Certified Letter of Map Revision (CLOMR) from FEMA and from Butler County for changes to the floodplain.
9. Mass excavation, dewatering, and earthwork associated with creation of compensatory flood and storm water ponds, construction of building pads, and flood routing for the development.
10. Installation of approximately 2,120 lineal feet of 8 inch public sanitary main line extension from the south through the project site with associated manholes and connections.
11. Any other reasonable road infrastructure improvements mutually agreed upon by the parties.

Exhibit C

Cost Certificate

The Company, through its authorized representative, hereby certifies that it has paid the total amount of \$ _____ as reflected in the attached list of expenditures and invoices.

DUKE REALTY OHIO

By: _____

Printed: _____

Title: _____

Date: _____

EXHIBIT D

DESCRIPTION OF ROAD IMPROVEMENTS

SCOPE OF WORK OFF-SITE ROAD IMPROVEMENTS (SEWARD RD. & TYLERSVILLE RD)

The scope of work below is for widening the existing Seward roadway from its current twenty to twenty two foot (20' – 22') width asphalt section to an improved standard, three, twelve foot lanes with two to four foot shoulders (forty to forty-four feet width total) conducive current commercial development standards, and to improve the performance of existing Tylersville and Seward Rd. intersection. The project begins at the Tylersville & Seward intersection and ends at the bridge culvert over Mill Creek. The entire length of project is approximately three thousand four hundred (3,400') lineal feet.

1. Design / Engineering for the road improvement project, including associated utility relocations and intersection improvements. Design shall meet current City of Fairfield standards and requirements as well as Ohio Department of Transportation applicable standards. Geotechnical study/borings and subgrade & pavement design are included.
2. Dedication of additional Right of Way. Assume additional ten foot of Right of Way dedication or roadway easement area to east side of the road centerline, or as required by the final design plans. Right of Way dedication required for turn lane on Tylersville Rd. shall be pursued by the City and any acquisition cost shall be included as part of the project cost. To the extent that right of way or easement needs extend beyond ten feet on the east side of Seward Rd. the Township will cooperatively endeavor to reasonably mitigate impact to parking and building setback requirements.
3. Regrade existing roadside ditches to allow for a single twelve foot wide lane in each direction, continuous center turn lane, and a two (2) to four foot (4') paved berm on each side.
4. Eliminate existing site line clearance issue by regrading a short section of five – ten foot hump / hill in the road (near the midpoint of the project site).
5. Increase horizontal curvature in Seward road at southern half of project to more closely match existing speed limits on the street. Anticipated curve radius to be approximately 1,910 feet.
6. Relocate (if necessary) any existing overhead electric/Phone/fiber optic lines and existing water line along edge of street and adjust any utilities, manholes or structures to meet new grades. Any relocation of the public water line, if needed, shall be included as part of the roadway improvement project. Other required public utilities relocation costs shall be at their own responsibility and expense.
7. Sawcut street pavement edges and widen asphalt and stone base section to provide a continuous thirty-six foot (36') wide street width plus berm. Pavement buildup to be determined by design, but typically 1-1/2" surface course of asphalt over 1-1/2" intermediate course of asphalt, over 6" base course asphalt, over 9" stone aggregate base. Subgrade and stabilization shall be determined by geotechnical engineer.
8. Repair and/or replace any failing portions of pavement, overlay with asphalt surface course, and restripe road the entire project length of project with thermoplastic pavement marking and raised pavement markers and signs – as needed.
9. Taper road from improved thirty six foot width to meet its existing condition at the existing Mill Creek culvert bridge.

10. Provide culvert crossings where required to facilitate existing floodplain/drainage patterns.
11. Provide intersection improvements identified in traffic study prepared by Kleinger's Associates dated March 26, 2018 and any addendums. Anticipated improvements are to install a three hundred and ninety foot (390') right turn lane onto Seward Rd from eastbound Tylersville Rd. Traffic signal improvements shall be as required by final design plans.