

DEVELOPER'S SERVICE AGREEMENT

Regarding

Route 4/Millikin Road Bridge Improvements
and
Fairfield Township TIF Zone

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PARTIES:

DPR Properties, Inc.
Fairfield Township Board of Township Trustees
Butler County Board of Commissioners
First National Bank of Southwestern Ohio

TRANSFER NOT NECESSARY

KAY ROGERS
BY 8-27-99 DEPT.
AUDITOR, BUTLER CO., OHIO

Prepared by:
Jack F. Grove
Attorney at Law
1251 Nilles Road, Suite 10
Fairfield, Ohio 45014
Telephone (513) 829-2900

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DEVELOPER'S SERVICE AGREEMENT

**Regarding
Route 4/Millikin Road Bridge Improvements
and
Fairfield Township TIF Zone**

Developer's Service Agreement is entered into by and among the parties specified herein
for good and valuable consideration as more fully set forth:

1. PARTIES. The parties to this agreement are:

DPR Properties, Inc., [DPR herein]
an Ohio corporation
c/o 9336 Dick Road
Harrison, Ohio 45030

Fairfield Township [Township herein]
Board of Township Trustees
Butler County, Ohio
6032 Morris Road
Hamilton, Ohio 45011

Butler County Board of Commissioners [County herein]
Derek L. Conklin
Butler County Administrator
Butler County Administrative Center
130 High Street, Sixth Floor
Hamilton, Ohio 45011

First National Bank of Southwestern Ohio [First Southwestern herein]
Brendan Burns, First Vice President
300 High Street
Hamilton, Ohio 45012

2. RECITALS.

A. Introduction. This agreement identifies the scope of public improvements,
method of financing *vis-a-vis* County obligations, contingent minimum service payments pending

private development within the TIF Zone, and generally the reimbursement formulas, and payment methodologies required for completed performance according to the tax increment financing plan. Integrated agreements and actions of public authorities are identified.

B. Overview. DPR, Creekside Golf, Ltd., and United Care Corporation are collectively the owners of the entirety of the real property within the TIF Zone, who consent to the Tax Increment Financing Plan and who have filed applications with the Butler County Auditor for real property tax exemption in order to implement the tax increment financing plan.

First Southwestern is the sole mortgagee of DPR's real property and has executed and caused to be recorded its subordination agreement in relation to the tax increment financing to be derived in lieu of taxes for DPR's real properties.

County shall acquire the rights-of-way and use of DPR's engineering and planning and shall issue interim notes (if any) and the bonds for financing project costs.

DPR agrees to make minimum service payments pending establishment of commercial uses within the TIF Zone. Pursuant to separate agreements the Butler County Transportation Improvement District has accepted construction management responsibility for the public improvements with the sole exception of the Millikin Road Bridge improvement for which the Butler County Engineer has accepted construction management responsibility.

DPR is the primary developer of a private project involving improvements to real estate intended for commercial use within the TIF Zone, which real estate is located in Fairfield Township, Butler County, Ohio at By-Pass 4 (north side) and Reigert Road. DPR has undertaken considerable responsibility to date for planning, consulting, and engineering various site improvements including the design of certain public improvements in proximity to the development.

DPR has undertaken its activities in cooperation with various political subdivisions including, without limitation, Ohio Department of Transportation [ODOT]; Ohio Department of Natural Resources [ODNR]; Ohio Environmental Protection Agency [OEPA]; Butler County Engineer, Fairfield Township Board of Township Trustees, Butler County Transportation Improvement District, Metroparks of Butler County, and as well adjacent property owners. DPR has devoted substantial resources at its cost in the overall planning process. The parties acknowledge that the planned public improvements including roadway improvements and utility extensions are intended to facilitate safety, welfare, and long range public planning objectives.

Township has declared certain intended improvements to be in the public interest and resolved in Resolution Number 98-95, a copy is attached as Exhibit A, to create a tax increment financing zone [the TIF Zone]. The creation of the TIF Zone is in cooperation with the Fairfield City School District (including the D. Russel Lee Joint Vocational School). Township has undertaken certain financial obligations pursuant to its agreement with the Fairfield City School District, a copy is attached as Exhibit B. Furthermore Township has agreed to financial participation in the cost of certain public improvements.

The parties deem it advantageous and in their respective interests and in the collective public interest to proceed with the planning and construction of intended public improvements although the real property within the TIF Zone does not have established end uses and it is not yet constructed, and anticipated tax increment financing revenues to be derived therefrom are not yet determined with certainty.

This Service Agreement is intended to assure financial performance, provide for the parties' financial obligations, and furthermore to provide for any deficiency in revenues to be derived within

the zone pending the completion of development, construction, and establishment of commercial usage within the planned TIF Zone.

C. Reimbursement to Developer. In order to fulfill long term planning objectives it is necessary for County to acquire rights-of-way from DPR for current and prospective highway improvements (e.g. extension of By-Pass 4 north of Route 4) and furthermore for the public authorities to utilize planning and engineering information made available by DPR which was obtained by DPR at its significant expense. The parties recognize the regional nature of the planning and improvements to be undertaken and acknowledge that compensation for the private rights and property to be supplied by DPR is appropriate and is constitutionally required. In lieu of a public taking *vis-a-vis* a condemnation proceeding the parties have undertaken a thorough investigation regarding the value of the property to be so acquired including expert appraisal analysis rendered by a third party consultant. Based upon such investigation County has agreed to compensate DPR for its property as more fully specified herein. County in its capacity of Issuer and Township in its related capacity as Participant have adopted their separate resolutions authorizing reimbursement in compliance with applicable treasury regulations. Copies of the County's and Township's resolutions are attached as Exhibit C and Exhibit D, respectively. The parties acknowledge that the compensation is fair and in accordance with the fair market value of the property (as to the real estate) and in conformity with DPR's actual, documented costs (as to engineering and planning information) and fees.

Furthermore, the parties acknowledge added advantages of finally determining costs with certainty, efficiency, the management of risk and reduced legal fees and litigation expenses which also constitute consideration in arranging the agreed compensation (including DPR's primary

responsibility for minimum service payments) thus enabling the joint opportunity among private and public sector interests to undertake the public improvements.

3. **DEFINITIONS.** As used in this Agreement, the following shall have the meanings set forth below:

A. **Exemption Year.** Any calendar year or portion of a calendar year in which an increase in the true value of a parcel of property after the effective date of the resolution granting the abatement would be taxable but for the tax increment financing tax abatement granted by the Township under R.C. 5709.73.

B. **Fund.** The township public improvement tax increment equivalent fund established by the Township pursuant to Resolution No. 98-95 into which Township is obligated to deposit all payments in lieu of taxes received with respect to the TIF Zone.

C. **Increase in Assessed Valuation.** The increase in the true value of parcels located in the TIF Zone determined effective September 4, 1998 [effective date of Township Resolution 98-95 Creating TIF Zone] on which an exemption from real property taxation is certified to the Butler County Auditor by the Tax Commissioner of the State of Ohio, determined on a parcel-by-parcel basis and not in the aggregate.

D. **Minimum Service Payment.** The amount paid by the Developer, which is the difference between: (1) the cost of (a) debt service and repayment of County's obligations, and (b) required payments to be distributed to the Fairfield City School District minus (2) funds to be derived from the tax increment equivalent fund; excluding however any construction cost associated with the Millikin Road Bridge Improvements which exceed the estimated cost of \$880,000.00. The **minimum service payment** is intended to assure financial performance required for the project

until TIF zone revenues are adequate to meet the entirety of obligations including payments required for distributions to the Fairfield City School District.

E. Obligations. Notes or bonds issued by County to finance project costs.

F. Owners. All of the owners of the real estate (real properties) within TIF Zone, currently being DPR, Creekside Golf, Ltd., and United Care Corporation, and their successors in title.

G. Project Costs. The total cost of the project including construction of the public improvements, finance related costs, property acquisition, reimbursements, and the like associated with the agreement according to the schedule attached as Exhibit E.

H. Public Improvements. Those improvements which are identified and designated in Fairfield Township Resolution 98-95 attached as Exhibit F.

I. Service Payments. Service payments shall mean payments in lieu of real property taxes remitted to the Butler County Treasurer by owners of parcels located within the TIF Zone pursuant to Tax Increment Financing Agreements made under Resolution No. 98-95 during the term of the TIF Exemption granted by Township. Service Payments shall be equal in amount to the real property taxes that would have been charged and payable against the improvements if they were not exempt from taxation pursuant to the exemptions.

J. TIF Exemption. The tax increment financing tax exemption granted by Township in Resolution No. 98-95 for improvements within the TIF Zone.

K. TIF Zone. Only those parcels of real property identified within Resolution No. 98-95 as being the subject of the tax increment financing tax abatement granted therein, whether in their original form or subdivided into separate parcels for future development.

Consistent with the terms of Resolution No. 98-95, the Township agrees that the Resolution cannot be amended to include additional real property within the definition of the TIF Zone.

4. CONSTRUCTION OF IMPROVEMENTS.

A. Route 4 and Millikin Road Bridge. County shall cause certain improvements described in Resolution Number 98-95 to be constructed with (a) TID providing construction administration for the Route 4 portion identified as Phase I and (b) Engineer providing construction administration for the Millikin Road Bridge improvements identified as Phase II. A schedule of the intended improvements and associated project costs is attached as Exhibit E. Separate Construction Management Agreements between County and TID are attached as Exhibit G. These public improvements are for public purposes as contemplated by said resolution. The failure of the public improvements to be completed according to plan or in a timely manner or to serve the intended public purpose shall not relieve DPR of its obligations to make minimum service payments or performance of other duties and covenants as required hereunder; provided however, this provision shall not constitute a limitation on DPR's remedies in the event that County or TID fail to complete the respective parts of the project according to plan and in a timely manner.

B. Extra Signalization. The cost of eventual signalization of the intersection at Indian Meadow Drive and relocated Reigert Road is not included in this project. When such signalization meets warrants and justification pursuant to ODOT criteria, Township and DPR and its successors and assigns shall jointly incur the cost of the signalization, including traffic study and signal head installation cost (at the current estimated costs of approximately \$60,000.00) according to the following formula:

Township

\$60,000.00

DPR

Any excess over \$60,000.00
with the associated costs

Township shall use its best efforts to obtain grant proceeds to cover its cost and the parties shall cooperate in meeting grant criteria and coordinating the work.

5. **SERVICE PAYMENTS.**

A. *Service Payment.* DPR shall commence service payments (in lieu of taxes) on the first date for payment of real property taxes after the calendar year with respect to which the public improvements would first have been assessed for real property taxes had a tax increment financing district not been created and allowed and shall continue to make service payments no later than the final date for payment of the real property tax equivalent in such year and each year thereafter until termination or expiration of this agreement. In the event that as of the date any service payment is due, the real property taxes on such portion of the improvements cannot be or have not been finally determined for the real property tax year preceding the due date, the amount of such taxes shall be determined based upon the Township's estimation to be computed from currently available information to be supplied by the County Auditor (even though such taxes may be subject to contest, later determination, or adjustment because of re-evaluation of the site and improvements) for such year. In the event that the sum of service payments so calculated and paid 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 proceeding such payments had an exemption not been applied for and allowed as aforesaid, DPR shall promptly pay or repay any deficiency or excess as appropriate to the Township; provided however, this provision

shall not be construed to require Township to repay to DPR any portion of the minimum service payment except as provided herein for reimbursement. Service payments in lieu of taxes shall coincide directly with the County's real property tax payment schedule currently collected in semi-annual payments becoming due in February and July or as may be changed according to law.

B. Minimum Service Payment. Notwithstanding paragraph A of this section DPR shall pay a minimum service payment which shall be in the amount set forth on Exhibit H, attached hereto. One-half (1/2) of the annual minimum service payment shall be due and payable on April 1 and October 1 of each year commencing after execution. If the amount of the service payment computed pursuant to paragraph A is less than the minimum service payment, after considering accumulated service payments available for debt service on the obligations and the required payment for distribution to the Fairfield City School District, DPR shall cause to be paid directly to Township an amount equal to the difference between the minimum service payment and the computed service payment. The required minimum service payment must be made regardless of whether the service payment becomes due. The obligation of DPR to make the minimum service payment will not be suspended or terminated for any cause, including without limitation, and by way of example, failure to complete the improvements, and 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 decisions or administrative rulings or administrative actions by or under the authority of the United States of America, the State of Ohio, or any political subdivision thereof, or failure of Township, TID, or the Butler County Engineer to perform and observe any agreement, whether expressed or implied, or duty, liability, or obligation arising out of or in any way connected with this agreement. In the

event that any service payment or minimum service payment is not paid when due the Township may charge and collect from DPR a late payment charge in an amount equivalent to the charges for late payment of real estate taxes, including penalty and interest, pursuant to Section 323.121 of the Ohio Revised Code as well as consequential damages suffered by Township according to its agreement with the Fairfield City School District and its Conduit Agreement with County. DPR shall not however be responsible for penalties and interest associated with the default of any other owner to make a service payment on a timely basis, which penalties and interest remain the responsibility of the affected owner.

C. Security for Minimum Service Payments. DPR shall secure performance of its minimum service payment obligations by providing, at its expense, a letter of credit in form acceptable to the counsel for Township and for County.

The letter of credit (the "Letter of Credit") shall be issued by a commercial bank, pledged to the payment of the entirety of the obligation and written in favor of Township and the County. The amount of the Letter of Credit may be reduced as principal of the obligations is paid down but said amount shall at all times be equal to the full principal amount of obligations then outstanding plus interest coverage.

DPR agrees that the Letter of Credit to be issued will contain provisions to the effect that DPR's bankruptcy, insolvency or receivership will not affect the right of the Township or County to draw on the Letter of Credit according to its terms in order to pay principal of and interest on the obligations.

D. Conditional Waiver of Letter of Credit. The parties acknowledge that the letter of credit is intended to provide security due to the undetermined nature and timing of intended

private improvements to occur within the TIF Zone and undetermined revenues from service fees in lieu of taxes to be derived therefrom. DPR's actual documented cost for obtaining the letter of credit shall be reimbursed as a project cost at closing, which cost is capitalized. Township, upon notice and with the advanced written consent of County, which consent shall not be unreasonably withheld, shall waive the requirement of the continuing letter of credit applicable to the entirety of the obligations; subject however to the following conditions:

1. DPR's or its successor's substantial completion of private development of its real estate which DPR reasonably projects to occur within five (5) years (sixty consecutive months) after execution of this agreement; and
2. The receipt of revenues from service fees in lieu of taxes equivalent to at least ninety percent (90%) of the entirety of the debt service on the obligations and the required payment for distribution to the Fairfield City School District.

Township may as a condition of waiver require DPR's substituted letter of credit or other form of security if deemed appropriate and necessary, in form acceptable to counsel for Township, securing any continuing minimum service payment obligation (which is reduced by reason of the collection of increased service payments in lieu of taxes derived from the improved real estate).

The purpose of this conditional waiver provision is to reduce the substantial cost associated with providing a letter of credit on the entirety of the obligations if such security is no longer cost justified based upon the completion of the above conditions intended to assure the reduction of continuing risk associated with any deficiency in revenues generated within the TIF Zone.

Notwithstanding non-occurrence of the above contingencies DPR may nevertheless apply to the Township for waiver, reduction, or modification of the continuing letter of credit.

Township, upon notice and with the advanced written consent of County, which consent shall not be unreasonably withheld, may waive, reduce, or otherwise modify specified provisions of the Letter of Credit according to its judgment and in its absolute discretion if (1) Township reasonably believes the revenues to be derived from the TIF Zone are adequate to meet the continuing financial obligation associated with repayment of the debt service of the obligation and payments required for distribution to the Fairfield City School District, and (2) the cost savings associated with the waiver, reduction, or modification justify such action.

E. Cap on Minimum Service Payment. The minimum service payment shall not include any amount which is attributable to the construction expense for Millikin Road which exceeds the estimated cost of \$880,000.00. Any shortfall in the DPR's minimum service payment allocable to such excess construction cost is the sole responsibility of Township. Township's contributive share shall be deemed payable on April 1 and October 1 of each year commencing after execution.

F. Reimbursement of Minimum Service Fee and Township Share. To the extent that revenues derived from the tax increment financing plan exceed the minimum required payment to cover debt service of the obligations and payments required for distribution to the Fairfield City School District, such excess shall be distributed on a *pro rata* basis to: (1) DPR to reimburse DPR for its actual documented minimum service payments; provided however, DPR shall not be entitled to participate in excess revenues after complete repayment of such collective minimum service payments, and (2) Township to reimburse Township for its contribution allocable to any shortfall in the minimum service payment attributable to construction cost for the Millikin Road Bridge Improvements (PHASE II) which exceeds the estimated construction cost. Repayment

shall include interest on the above amounts to accrue from the date of the payment until repayment occurs. The rate of interest shall be equal to the United States Treasury rate as announced by the Wall Street Journal effective the first day of business of the calendar year and which rate shall remain applicable through the remainder of the year. The interest rate shall be adjusted annually in accordance with this method. Repayment is conditioned upon the absence of a default by the qualifying party, i.e., DPR or Township.

6. **ADDITIONAL OBLIGATIONS.** In the event that DPR defaults in any payment required herein DPR shall pay in addition to the service payment such amount as is required to reimburse Township and County for any and all reasonably and actually incurred costs, expenses, and amounts (including reasonable attorney fees) required by Township and County to enforce the provisions of this agreement against DPR, specifically including Township's financial obligations pursuant to the agreement with the Fairfield City School District.

7. **DPR'S SUCCESSORS IN TITLE.** Township shall cause this agreement to be recorded in the real estate records of the Butler County Recorder. DPR's real estate is particularly described at Exhibit A [Township Resolution 98-95, Exhibit A appended thereto - Tract I (48.90 acres) and Tract II (13.60 acres), excluding Tract III (Walden Ponds)]. DPR shall cause the following legend to be contained in all instruments of conveyance of any interest in real property including improvements constructed thereupon from DPR to its subsequent grantees, transferees, successors, and assigns: "This property is conveyed subject to the terms and conditions contained in a Service Agreement dated _____, recorded with the Butler County Recorder in official records Volume____, Page _____. In the event that DPR transfers any portion of the real property pursuant to Section 16: (1) DPR shall provide Township and County with

written notice of its intent to transfer as least thirty (30) days (or such shorter period of time as may be consented to by Township in writing) prior to such transfer; and (2) the service payments (including the minimum service payment) required by Section 5 shall be allocated between the property conveyed [the transferred portion] and the property retained by DPR [the retained portion] as hereinafter provided. The allocation shall be based upon the relative values of the retained portion in the transferred portion as assessed from time to time on the records of the Butler County Auditor without any reference to any exemption under R.C. Section 5709.73. Prior to the date of such separate assessment appearing of record, the relative values of the retained portion and the transferred portion shall be determined by a qualified real estate appraiser mutually selected by the applicable owner and Township. The foregoing provisions as to the allocation of obligations for service payment purposes (including minimum service payments) shall supersede the provisions of any separate agreement DPR and DPR's transferees which may be inconsistent. The transferee from DPR with respect to any portion of the property shall be obligated to make the service payments (in lieu of taxes) which accrue for such portion of the real estate. DPR's duty to make service payments (in lieu of taxes) and minimum service payments hereunder shall be binding and are enforceable by Township and County against DPR or transferees from DPR with respect to its interest in the site and improvements or any parts thereof or any interest therein, but only with respect to its separate interest in the site and improvements or any parts thereof or any interest therein. The covenants set forth herein are deemed to run with the land.

8. ISSUANCE OF NOTES AND BONDS.

A. Notes (general obligations) or Bonds [collectively obligations] shall be issued by County under this Agreement at such times as are necessary to provide timely funding for the

construction of the public improvements. The obligations may be issued in one or more series. Any notes shall be for a term not to exceed one year. County shall issue notes as soon as practicable after the identification of the lowest and best bids for Phase I and Phase II together with computations of actual reimbursements to occur at closing. Upon the sooner of (a) five years (60 consecutive months after date of execution, or (b) the applicable bond market rate achieving six percent (6%) interest, or upon final determination of all project and financing costs and County's judgment that long term bond financing is appropriate, County shall issue bond funding for the entirety of the unpaid note obligations which exists at the time of issue. Any bonds shall finally mature not later than twenty (20) years from the date of adoption of the Resolution Number 98-95. The Bonds shall be of the Ohio standard issue form with call protection for ten(10) years. No series of Bonds shall have maturity in excess of twenty (20) years from the date of its issuance.

Not more than \$2,199,400 [Total of Phase I \$1,274,000 plus Phase II \$925,400 (per revised engineer's estimate)] in principal amount of obligations shall be issued under this agreement for the purpose of constructing and installing the improvements; provided however, that such amount shall be reduced to delete the cost of any improvements which are constructed at the expense of a person or entity other than the TID or County, and such amount shall be increased to include capitalized interest for the first five (5) years after issue, plus the costs incurred by the Township with respect to the project, including but not limited to economic development and planning, engineering, and legal costs, and costs incurred by County including cost of issuance (the amounts of which will be determined at the time of issuance of obligations), cost of procurement for the Letter of Credit required to be provided and reimbursement to DPR as provided herein for advancements, rights-of-way granted by DPR, and agreed soft development costs which collectively comprise the entire

project costs projected at \$3,315,000 illustrated by the following *pro forma* table:

**PROJECT COSTS INCLUDING REIMBURSEMENTS AND
PROJECTED FINANCING COSTS**

COST ITEM	DESCRIPTION	VARIABLE	\$
Phase I	State Route 4 Improvement	Estimate	1,184,000
Phase I	Signal at Creekside	Estimate	90,000
Phase II	Millikin Road Bridge	Estimate	925,400
Reimbursement	Land Right of Way	Actual	397,600
Reimbursement	Creekside Advances	Actual	176,468
Reimbursement	Soft Cost Recoupment	Estimate	224,592
Reimbursement	Township Development (not to exceed)		50,000
	INITIAL FUNDING = SUBTOTAL		3,0480,060
Capitalized Financing Costs	Interest through 01/01/05 ¹	Projected	884,126
	LOC Fee through 01/01/05 ¹	Projected	231,897
	Total Payment in Lieu of Taxes ^{1,2} -- projected reduction from anticipated service payments	Projected	-947,223
	NET PROCEEDS = SUBTOTAL		3,216,800
	Estimated 3 % Issuance ¹	Projected	96,500
	TOTAL PROJECTED ISSUE		3,313,300
		SAY	3,315,000

¹ Projected costs supplied by Seasongood & Mayer per Joseph P. Magdich, Partner, May 12, 1999 correspondence to Ron Porter, Assistant Administrator Fairfield Township with distribution to intended parties.

² Projected reduction from anticipated service payments in lieu of taxes to be collected prior to bond issue.

If, after the completion of the public improvements, the principal amount of the obligations originally issued exceed the actual costs of the public improvements (including all costs associated with the issuance thereof, including principal and interest thereon) (the excess obligations proceeds), the County shall direct the trustee or paying agent to redeem or call for payment that principal amount of obligations which together with accrued interest to the date of such redemption as shall be equal to the amount of the excess obligation proceeds. The trustee or paying agent shall apply the excess obligation proceeds to redeem obligations as provided therein. The trustee or paying agent shall, at its discretion, select the obligations to be redeemed hereunder by any method that the trustee deems appropriate in accordance with the terms of the obligations and the minimum service payment obligation payable hereunder shall automatically be adjusted appropriately to reflect the lower outstanding principal amount of the obligations; provided that in no event shall the amount of the minimum service payments be less than the amount required to make timely payments of principal of, and interest on, all obligations which remain outstanding together with required payments for distribution to the Fairfield City School District.

9. ***BINDING NATURE OF OBLIGATIONS; SECURITY FOR PAYMENT.*** The obligations to pay the service payments or minimum service payments shall be covenants running with the land and shall be enforceable by Township and County, against DPR and all successors and assigns of DPR, grantees from DPR, transferees from DPR, and their successors and assigns (including for example successors in chain of title) with respect to its interest in the site and improvements, or any parts thereof or any legal or equitable interest therein. This paragraph shall not be construed to permit any transfer of the improvements or any interest in the site by DPR,

except as otherwise permitted in this Agreement.

Any provision to this Agreement to the contrary notwithstanding, during the term of this Agreement, the rights of any mortgagee or any party holding a security agreement relating to the real property or the site improvements on any of the property within the TIF Zone or any portions thereof, and any renewals, extensions, modifications, extensions, or replacements thereof and any increases in secured indebtedness, shall be subject to and subordinate, at any particular time, to the lien of (a) the semi-annual service payment in lieu of taxes then due and payable (to the extent of the portion thereof allocable to the that portion of the improvements encumbered by the particular mortgage) plus (b) any past due service payments (to the extent of the portion thereof allocable to that portion of the improvements encumbered by the particular mortgage). Otherwise, the rights of the mortgagee or secured party whether presently existing or hereafter placed on any of the real property or portion thereof will be prior to the Service Agreement regardless of the respective recording dates of the Service Agreement and such mortgage or other security agreement affecting the real property.

The obligation to perform and observe the other agreements on DPR's part contained herein ("covenant obligations") shall be enforceable by Township and County against DPR, its successors and assigns.

Nothing in this Agreement shall constitute a pledge of the faith and credit of the Township, or County to any third party unless affirmatively stated pursuant to separate instruments and no holder of any obligations shall have the right to have taxes levied by the taxing authority of County or by General Assembly of the State of Ohio or any other political subdivision thereof for the payment of principal of, premium, if any, or interest on the bonds. Such obligations shall be a

general obligation of the County and shall be payable solely from the service payments and minimum service payments and other payments required under this Agreement and the Conduit Agreement between County and Township.

No covenant, obligation or agreement contained herein shall be deemed to be a covenant, obligation or agreement of any present or future officer, agent or employee of Township, County in his or her individual capacity; and no officer, agent or employee of Township or County shall be liable personally on this Agreement or on the obligations or subject to any personal liability or accountability by reason of execution of this Agreement or issuance of the obligations.

10. PAYMENT OF TAXES; CONTESTS.

A. So long as, and to the extent that, DPR owns the real property and improvements or any portion thereof, DPR, its successors, assigns, and transferees shall pay all tax assessments whether general or special and governmental charges of any kind whatsoever that may be lawfully assessed or levied against or with respect to the site or the improvements or any personal property or fixtures of DPR, its successors, assigns or transferees installed or brought therein or thereon (including without limiting the generality of the foregoing, and by way of example, any taxes levied against DPR, its successors, assigns, or transferees with respect to the receipts, income, or profits of DPR, its successors, assigns, or transferees from the site and improvements, which, if not paid may be made a lien on the site for the improvements) and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the site and improvements as any of the above obligations become due. Nothing in this paragraph shall be construed to relieve DPR, its successors, assigns or transferees of the duty to make minimum service payments required by this Agreement.

B. Anything in this Agreement to the contrary notwithstanding, and without limitation of the foregoing rights to contest taxes, assessments and other charges, DPR, its successors, assigns or transferees shall have the right to contest, from time to time in the manner provided by law, the assessed valuations, for real estate tax purposes, of the site and improvements, such contests may affect the amount of the service payments required to be made under this agreement; provided however, that no such contest until finally resolved shall affect DPR's obligation to make minimum service payments required by this Agreement.

C. Upon the conveyance of transfer of interests in the improvements and site, or portions thereof, including transfers to a purchaser at any foreclosure sale with respect to the site or the improvements, or any portion thereof, or any instrument of conveyance granted in lieu of foreclosure, the obligations of DPR under Section 11 are discharged, said obligations becoming solely the obligations of such transferees.

11. INSURANCE COVERAGE AND PROCEEDS.

A. DPR, its successors, and assigns shall provide and maintain insurance coverage on the private improvements to be made to the real estate or any replacements or substitutions thereof for any 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 DPR's mortgagee) in such amounts as would ordinarily be carried by a reasonably prudent owner and operator of a comparable property taking into consideration the nature of the improvements, their construction, location, use and occupancy, and risks associated therewith, all as determined by DPR. Notwithstanding the foregoing, if at any time DPR is unable to obtain such insurance on reasonable terms to the extent required by this

paragraph, either as to the amount of such insurance or as to the covered risks, it shall not constitute a breach of this Agreement if DPR carries insurance to the extent reasonably obtainable or has made other provisions which are satisfactory to County. DPR shall obtain insurance policies required by this section with one or more insurers which are financially responsible, qualified to write the insurance, and of recognized standing, and 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 without at least thirty (30) days prior written notice to Township and County and DPR and shall name Township and County as additional insureds, according to their interests pursuant to this Agreement.

B. Township and County may require DPR to furnish evidence or confirmation of insurance required under this section. The proceeds of any insurance under this section shall be applied to restore and replace the improvements on the real estate or to the extent such proceeds are not used for restoration or replacement to effect defeasance or redemption of the obligations, and any excess over the amounts required for such purposes shall be the property of DPR.

C. DPR shall require each person, firm or corporation or person acting on their behalf to whom it conveys improvements or any interest therein to obtain and maintain insurance coverages according to the requirements of this section for that portion of the premises which is conveyed or transferred.

12. CONDEMNATION PROCEEDS.

A. DPR agrees that in the event of any portion of the site or improvements is taken as a result of the exercise of eminent domain by any governmental entity or authority, possessing the right to exercise such power, the proceeds of any eminent domain award received

by DPR (including settlement proceeds) shall be used to effect the defeasance or redemption of the principal amount of obligations which bears the same ratio to the total principal amount of obligations outstanding immediately prior to the exercise of the eminent domain power as the fair market portion of the site and improvements so taken bears to the fair market value of the site and improvements immediately prior to the exercise of the eminent domain power; provided however, reimbursement to DPR as specified herein is exempt from this provision. In such event, the minimum service payments required to be paid by DPR shall be reduced in the same proportion; provided however, in no event shall the amount of the minimum service payments be less than the total amount required to make timely payments of principal and interest accruing on obligations which remain outstanding together with payments required for distribution to the Fairfield City School District. Any excess of such proceeds over the amount required for such defeasance or redemption shall be the property of DPR.

B. DPR shall require each person, firm, or corporation or person acting on their behalf to whom it convey improvements or any interest therein to use the proceeds of eminent domain award or settlement received by such person, firm or corporation in the manner specified by this section.

13. TAX EXEMPTION. Township, County, and DPR, and DPR's successors, assigns, and transferees shall refrain from any activities, including, but not limited to, failure to comply with the provisions of the Internal Revenue Code of 1986, as amended, and all regulations, ruling, 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. DPR consents to and covenants that it will take no action which would jeopardize County's ability to comply with all covenants made

by County in any and all documents relative to issuance of the bonds.

14. NOTICES. All notices pursuant to this contract shall be in writing and shall be delivered by United States certified mail, return receipt requested, or courier service with delivery receipt, directed to the parties as set forth below or at such other address as may be designated in writing:

TO: DPR: **DPR Properties, Inc.**
c/o 9336 Dick Road
Harrison, Ohio 45030

Township: **Fairfield Township**
Board of Township Trustees
Kate Earley, Administrator
Butler County, Ohio
6032 Morris Road
Hamilton, Ohio 45011

and **Jack F. Grove**
Law Director
1251 Nilles Road, Suite 10
Fairfield, Ohio 45014

County: **Butler County Board of Commissioners**
Derek L. Conklin
Butler County Administrator
Butler County Administrative Center
130 High Street, Sixth Floor
Hamilton, Ohio 45011

and **Gary L. Sheets**
Special Counsel to Commissioners
130 High Street
Hamilton, Ohio 45011

First Southwestern: **First National Bank of Southwestern Ohio**
Brendan Burns, First Vice President
300 High Street
Hamilton, Ohio 45012

and

John J. Reister, Esq.
Millikin & Fitton
Six South Second Street, 6th Floor
Post Office Box 598
Hamilton, Ohio 45012

15. **DEVELOPER'S COVENANTS AND REPRESENTATIONS.** DPR makes the following covenants and representations:

A. It is a corporation organized pursuant to the laws of the State of Ohio and is in good standing and qualified to do business and will remain so qualified so long as it is required to make support payments or minimum support payments pursuant to this agreement.

B. So long as this Agreement is in affect and DPR has a continuing duty to make service payment or minimum service payments DPR will maintain its corporate existence, will not dissolve (unless immediately reconstituted as a new corporation) or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it. DPR may however, without violating the foregoing restriction, consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it or sell or otherwise sell or transfer to an entity or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entity and thereafter dissolve; provided that if the surviving, resulting or transferee entity is other than DPR, such surviving, resulting or transferee shall assume in writing all of the obligations of DPR herein and in such event DPR shall be, and is hereby deemed to be released from all continuing liability under this Agreement and the bonds. If consolidation, merger or sale or other transfer is made as provided herein the provisions of this subsection shall continue in full force and effect and no further consolidation, merger or sale

or other transfer shall be made except in compliance with such provisions.

16. TRANSFER OF IMPROVEMENTS AND SITE. Subsequent to substantial completion of the public improvements, DPR shall not transfer the improvements or the real estate or any portion thereof to any entity which is then the subject of any proceeding under the bankruptcy laws of the United States or the laws of any state relating to the relief of debtors, but otherwise shall be subject to no limitations on transfer of the improvements or such interest of DPR in the site. Upon any transfer of improvements and the site permitted under this Section provided that DPR is not in default of any duty required pursuant to this Agreement, DPR shall be released from any further obligation under this Agreement upon written assumption by such transferee of all of DPR's obligations hereunder with respect to the portion of the site being so transferred. The instrument which shall be approved by Township and County, which approvals shall not be unreasonably withheld, by which DPR shall effect such transfer shall be accepted by the transferee with endorsement thereon, shall be in the form which would permit recording of the same in the public land records, and shall provide that in part consideration of said transfer the transferee assumes all of DPR's obligations under this Agreement, and shall be bound to the Township and County directly for full and complete performance of this Agreement as if said transferee had been original contracting party hereunder.

17. EXEMPTION APPLICATION. DPR shall prepare, execute, and file, in a timely manner, such applications, documents and other information with the appropriate officials of the State, County of Butler, Ohio, or any other public body as may be required to effect and maintain during the exemption period as defined in R.C. 5709.73, the exemption from real property taxation as contemplated by R.C. 5709.73-.75. DPR acknowledges that such applications, documents and

other information required to be filed prior to the date hereof, have been filed. Township and County shall cooperate in future preparation and filing by the successors in title, including executing such applications and documents as may be appropriate. DPR and its successors and assigns shall use due diligence and employ their best efforts to keep such exemption in force, not permitting the same to lapse or to be suspended or revoked for any reason within their control. Except as otherwise provided in Section 5B. In the event that subsequent to the allowance of such exemption, the exemption is revoked or suspended then DPR or its successors and assigns shall continue to make minimum service payments for so long as and to the extent that such revocation or suspension continues. Revocation or suspension of tax exempt status shall not excuse DPR's or any other Owner's duty of continuing performance.

18. DURATION OF AGREEMENT. This Agreement shall be effective upon execution by all parties and unless sooner terminated shall expire upon the earlier of: (a) September 5, 2018 or (b) the date following the date on which the final payment of principal and premium, if any, and interest on the bonds or any refunding issue thereof is made or deemed to be made to a trustee or paying agent for the benefit of the holder or holders thereof.

19. APPLICATION OF PAYMENTS. DPR's service payments in lieu of taxes shall be payable to the Butler County Treasurer on or before the final dates for payment of real property taxes. Upon collection of such service payments the treasurer shall account for an amount equal thereto to be applied to the Public Improvement Tax Increment Equivalent Fund established by Township. Upon the written designation of one or more banks as trustees under trust agreements or as paying agent in a banking agreement which may hereafter be authorized or executed in connection with the issuance of obligations, the service payments may, upon prior written consent

of the Butler County Auditor and Treasurer, be made by DPR on behalf of Owner, first directly to such trustee or paying agent in such amounts as may be required for the purpose of paying the principal of and premium, if any, and interest on such obligations, second to such trustee or paying agent or to County for application as provided in the trust or other agreement to be entered by County and a trustee or paying agent (to be selected at a later date) on the date of issuance of the obligations. Monies received by such trustee or paying agent shall be accepted and deposited into a separate and distinct trust account in the name of County applicable to the project and used for purposes of retirement of the obligations first as required by this Agreement and in the method and manner as may be specified by such trust or other banking agreement.

20. DEFAULTS. The occurrence of the following events constitute a default under this Agreement:

A. Failure of DPR, its successors, assigns or transferees to pay when due any service payment, minimum service payment, or any installment of either, including any applicable late payment charges; and

B. Failure by DPR, its successors, assigns or transferees to perform or observe any other duties or breach of any covenants pursuant to this Agreement, which failure shall continue for more than thirty (30) days following written notice of default or such failure cannot be reasonably cured within such thirty (30) day period, DPR fails to commence such cure within the thirty (30) day period and thereafter, in good faith and with due diligence, proceeds to complete such cure within a reasonable time.

Upon the occurrence and continuation of any event of default, Township or County (independently or collectively) shall be entitled to exercise any and all remedies available to compel

performance of DPR's, its successor's, assigns' or transferees' duties and to recover damages for nonperformance. Waiver by Township or County of any event of default shall not be deemed to extend to any subsequent or other event of default under this Agreement.

21. **REIMBURSEMENT.** Reimbursements required to be paid at closing are summarized at Section 8 in the table. Other reimbursements required by the agreement, e.g., DPR's minimum service payments and Township's contribution are subject to and conditioned upon favorable financial performance of the TIF Zone and shall be paid from any revenues which are in excess of the payments required for distribution to the Fairfield City School District and debt service for repayment of County's obligations.

22. **CLOSING.** Closing shall occur as soon as practicable after County's issuance of the obligations and County's receipt of funds to be derived therefrom. At closing County shall:

A. Provide advanced funding to TID and Engineer in order to enable commencement of construction of public improvements.

B. Compensate DPR as follows:

1. For the fair market value of the real property and right of way to be conveyed by DPR to County \$397,600;
2. For reimbursement of public development related costs - \$242,592 - estimated (actual document costs to be submitted in affidavit form with supporting documents);
3. For reimbursement of advancements - \$176,468.48 (actual documented costs to be submitted in affidavit form with supporting documents) for public improvements associated with improvements at Creekside Drive which occurred prior to execution (but after substantially completed negotiation) of the terms of this agreement; and

4. Actual documented cost for procurement of the Letters of Credit at closing.

C. Compensate Township for its advance costs for the project (see, Section 8).

23. **NONDISCRIMINATORY HIRING.** DPR, its successors, assigns and transferees shall not deny employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

24. **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 one Agreement. Captions have been provided for convenience of the reader and shall not affect the construction of this Agreement.

25. **ADDITIONAL DOCUMENTS; AMENDMENT.** The parties and their respective successors, assigns and transferees, agree to execute any further agreements, documents or instruments as may be reasonably necessary to effectuate the purpose and intent of this Agreement. To the extent permitted by this Agreement, and in compliance with all laws and resolutions controlling this Agreement, the parties and their respective successors, assigns and transferees, specify that any amendment must be in writing and signed by the applicable parties.

26. **SEVERABILITY CLAUSE.** The unenforceability of any term or covenant of this agreement shall not affect the enforceability of the remaining terms and covenants.

IN WITNESS WHEREOF, the parties intending to be legally bound, have caused this Agreement to be executed.

DPR Properties, Inc.,
an Ohio Corporation

By David Welsh
David Welsh
President

Jack F. Grove
John J. Hunter

Fairfield Township
Board of Township Trustees

By Kate Earley
Kate Earley
Township Administrator
Pursuant to authority of Township
Resolution 98-110 - Nov. 6, 1998,
attached as Exhibit I.

Rene M. Cox
Jack F. Grove

Approved as to form:

By Jack F. Grove
Jack F. Grove
Fairfield Township Law Director

This Agreement was approved by the Board of County Commissioners, Butler County, Ohio, pursuant to unanimous vote by Resolution Number 99-5-771 dated May 20th, 1999 attached as Exhibit J.

Butler County Commissioners

Gary L. Sheets

Courtney E. Combs
Courtney E. Combs, President

John J. Gurn

Charles R. Furmon
Charles R. Furmon

Michael A. Fox
Michael A. Fox

Reviewed:

By Gary L. Sheets
Gary L. Sheets
Special Counsel to Commissioners

First National Bank of Southwestern Ohio

John J. Gurn
John J. Gurn

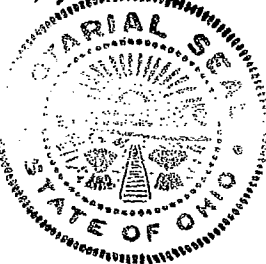
By Brendan Burns
Brendan Burns
First Vice President

STATE OF OHIO
COUNTY OF BUTLER, SS:

Before me, a Notary Public, in and for said County, personally appeared the above-named DPR Properties, Inc., an Ohio corporation, by David Welsh, its President, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said corporation, and the free act and deed of him personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at

Hamlet, Ohio, this 20th day of August, 1999.



JACK F. GROVE
Notary Public, State of Ohio
My Commission has no Expiration Date
Ohio Revised Code Section 147.03

Jack F. Grove
Notary Public

STATE OF OHIO
COUNTY OF BUTLER, SS:

Before me, a Notary Public, in and for said county, personally appeared the above-named Fairfield Township, County of Butler, State of Ohio, by its duly appointed Township Administrator, Kate Earley, by authority of Resolution 98-110, who acknowledged that she did sign the foregoing instrument and the same is the free act and deed of said Township and the free act and deed of her personally and as such duly appointed Township official.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at

Fairfield Twp., Ohio, this 20 day of May, 1999.



Final 5-1-99

JACK F. GROVE
Notary Public, State of Ohio
My Commission has no Expiration Date
Ohio Revised Code Section 147.03

Jack F. Grove
Notary Public

STATE OF OHIO
COUNTY OF BUTLER, SS:

Before me, a Notary Public, in and for said county, personally appeared the above-named County of Butler, State of Ohio, by its duly elected Board of County Commissioners by Courtney E. Combs, Charles R. Furmon, Michael A. Fox, who acknowledged that they did sign the foregoing instrument and the same is the free act and deed of said County and the free act and deed of each of them personally and as such duly appointed County officials.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at

Hamilton, Ohio, this 20th day of May, 1999.



JACK F. GROVE
Notary Public, State of Ohio
My Commission has no Expiration Date
Ohio Revised Code Section 147.03

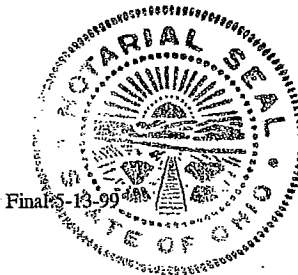
Jack F. Grove
Notary Public

STATE OF OHIO
COUNTY OF BUTLER, SS:

Before me, a Notary Public, in and for said County, personally appeared the above-named First National Bank of Southwestern Ohio, an Ohio corporation, by Brendan Burns, its First Vice President, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said corporation, and the free act and deed of him personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at

Hamilton, Ohio, this 20th day of August, 1999.



JACK F. GROVE
Notary Public, State of Ohio
My Commission has no Expiration Date
Ohio Revised Code Section 147.03

Jack F. Grove
Notary Public

This instrument prepared by:

Jack F. Grove
Attorney at Law
1251 Nilles Road, Suite 10
Fairfield, Ohio 45014
Telephone (513) 829-2900