

ORDINANCE NO. 6837

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH SIMPLIFY REAL ESTATE, LLC AND MODA 4 DESIGN, LLC TO PROVIDE FOR MINIMUM SERVICE PAYMENTS IN LIEU OF TAXES RELATED TO THE DOWNTOWN SUTTMAN BUILDING TIF PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, Section 5709.40 et seq. of the Ohio Revised Code (the "TIF Authorizing Statutes") authorizes municipal corporations to participate in a financing technique commonly known as tax increment financing; and

WHEREAS, this City Council ("Council") of the City of Miamisburg, Ohio (the "City"), used the authority granted pursuant to the TIF Authorizing Statutes in connection with certain improvements in the City in order to meet the public health, safety, welfare and convenience needs of the area, including new development and traffic capacity; and

WHEREAS, this Council granted a property tax exemption for the parcels comprising the area where such improvements are to be located (the "Miamisburg Downtown TIF Site"); and

WHEREAS, this Council authorizes the expenditure of \$450,000 worth of public improvements at the site which will be repaid through service payments in lieu of taxes; and

WHEREAS, in order to recoup the City's investment in the project, including interest, it is necessary to establish a minimum service payment to be paid by the property owner regardless of the true assessed value of the building.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into an agreement with Simplify Real Estate and Moda 4 Design to provide for and establish a minimum service payment in lieu of taxes to be paid by the owner of the property. That agreement is attached as Exhibit "A".

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the public improvements related to the project must begin as soon as possible to allow the project to remain on schedule; therefore this measure shall be in force from and after its passage.

Passed: January 21, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

Exhibit A
Service Agreement

SERVICE AGREEMENT

This Service Agreement (the “Agreement”), made and entered into as of the ____ day of January, 2020, by and between the City of Miamisburg, Ohio (the “City”) acting through the Miamisburg City Council (the “Council”), a municipality organized and existing under the Constitution and the laws of the State of Ohio (the “State”) and SIMPLIFY REAL ESTATE, LLC, an Ohio limited liability company authorized to do business in the State of Ohio, and MODA 4 Design, LLC and Ohio limited liability company authorized to do business in the State of Ohio (collectively the “Company” and/or “Owner”).

W I T N E S S E T H:

WHEREAS, pursuant to Ohio Revised Code Section 5709.41, the City has, on January ____, 2019, adopted Ordinance No 6837 (the “Ordinance”) attached hereto as Exhibit “A”, declaring to be a public purpose the increase in the assessed value of parcels of real property located within the boundaries of the City (the “Suttman TIF Site”), that would first appear on the tax list and duplicate of real and public utility property after the effective date of the Ordinance (the “Improvements”), including the increase in assessed value attributable to certain commercial improvements, consisting of renovations to and redevelopment of certain existing commercial buildings in the City’s downtown, described in Exhibit “B” hereto

(collectively, the “Private Improvements”), and designating certain infrastructure improvements as public improvements, including those specific improvements, described in Exhibit “C” hereto consisting of site improvements, parking improvements, and building improvements necessary for urban redevelopment and in aid of industry, commerce, distribution, or research the (“Public Improvements”), that will benefit the Private Improvements to be made by the Company and other property owners; and

WHEREAS, the Company has entered into a Redevelopment Agreement for Main Street Properties with the City, dated February 21, 2019, (the “Development Agreement”) concerning the redevelopment of certain parcels of real property located within the boundaries of the City comprising the Suttman TIF Site and described in Exhibit “D” hereto (hereinafter the “Site”), which Site contains a total of approximately 0.2397 acres, which Site may be or will be re-developed by the construction and acquisition of the Public Improvements and construction of the Private Improvements; and

WHEREAS, pursuant to Section 5709.42, Ohio Revised Code (“O.R.C.”), upon declaring the Statutory Improvements to be a public purpose, the City may require the owner(s) to agree, for itself and for all future owners of all or a portion of the Site (the owners of all or any portion of the Site hereinafter referred to as the “Owners” and individually as an “Owner”), to pay annually to the City an amount equal to the amount of real property taxes that would have been paid on Statutory Improvements had an exemption with respect thereto not been applied for and allowed under Section 5709.41, O.R.C. (such amount being hereinafter referred to as the “Statutory Service Payments”); and

WHEREAS, it is acknowledged by the parties to this Agreement that one hundred percent of the Statutory Improvements are exempt from real property taxation for the period of time commencing January 1, 2021 and ending on December 31, 2050 or the date the Public Improvements have been paid for, whichever is sooner (the “TIF Exemption”), subject to a one hundred percent, twelve year community reinvestment area real property tax exemption (the “CRA Exemption”), which has priority over the TIF Exemption; and

WHEREAS, Company and the City acknowledge the need for and agree to abide by the terms of a certain agreement pursuant to Sections 5709.41 and 5709.82 O.R.C. by and between the City and the Board of Education of the Miamisburg City School District (the “School District”), which compensates the School District for a portion of the tax revenue that the School District would have received had the Improvements not been exempted from taxation (the “Tax Incentive Agreement”); and

WHEREAS, the Council has agreed that it will pay the cost of constructing the Public Improvements up to a maximum amount of \$450,000, excluding any other grant funds which may be provided by the City, and that the construction costs will be paid and advanced from existing City funds which are to be repaid from the “Service Payments” to be paid pursuant to this Service Agreement, which includes the Statutory Service Payments and the Minimum Service Payments, as defined in Section 3B hereof; and

WHEREAS, the City and the Company have agreed that pursuant to Section 5709.42 O.R.C., the obligation to make Statutory Service Payments hereunder will be borne by the Company and other current property Owners who own the Site and upon transfer of any portion

of the Site, Statutory Service Payments will be borne by the respective Owners based upon the value of the Statutory Improvements owned by each such Owner; and

WHEREAS, the City and the Company intend that the obligation to supplement, when necessary, the Statutory Service Payments in order to meet the schedule of Minimum Service Amounts hereunder shall be an obligation of the Company and shall not run with the land nor be borne by subsequent Owners; and

WHEREAS, the parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by Section 5709.42, O.R.C., and shall define the obligation of the Company and the Owners with respect to the Statutory Service Payments.

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

SECTION 1. Construction of Improvements. The Company hereby agrees to construct or cause the construction of the Private Improvements set forth on Exhibit B attached hereto. All Private Improvements constructed on the Site shall be developed and re-developed in accordance with applicable zoning requirements and building codes, and shall be used principally for commercial purposes.

SECTION 2. Construction and Acquisition of Public Improvements.

A. The City shall construct or cause to be constructed the Public Improvements. The Public Improvements, all of which consist of improvements to infrastructure or acquisition of interests in real property for the Public Improvements, as permitted by Section 5709.41 O.R.C.

and authorized by the Ordinance, which are necessary for the re-development of the Site and are for the benefit of the Company, the Owners, and the citizens of the City, shall be constructed by the Company on behalf of the City in accordance with all legal requirements for the construction of public improvements, including the public bidding of contracts and payment of prevailing wages, if required under Ohio law. The Company agrees to complete the Public Improvements in conformance with the plans and specifications as approved by the City (the "Plans"). The parties agree to work in close concert throughout the bidding and construction process to ensure compliance with applicable legal requirements including, without limitation, proper separate accounting for the Public Improvements and the Improvements and all permitting, inspection, and approval by the governing State and/or local agency for each improvement.

B. The Public Improvements shall be constructed in accordance with the City's and State and/or local agency requirements for construction of public improvements. Such Public Improvements shall be constructed after the receipt of competitive bids (with bid bonds, if applicable) solicited in accordance with the City's requirements under the Ohio Revised Code. Prior to awarding contracts at the conclusion of such bidding process, the Company shall obtain the approval of the City of the parties to whom it plans to award such contracts.

The Company shall be responsible for ensuring the provision through contractors or otherwise, of all traffic control devices, flaggers and police officers required to properly and safely maintain traffic, when applicable. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the "Ohio Manual of Uniform Traffic Control Devices for Construction and Maintenance Operation."

C. The City agrees to pay the budgeted amount of \$450,000 to construct the Public Improvements or the actual cost of construction of the Public Improvements, whichever is less. Such amount is hereinafter referred to as the "Construction Cost". In the event the cost of the Public Improvements exceed the Construction Cost the Company shall be responsible for and pay any costs exceeding such amount. The acquisition of any portion of the Site by the City or dedication of any portion of the Site to the City shall not make the City an "Owner" for purposes of this Agreement and the City shall not have any obligations hereunder as an Owner notwithstanding that the City may acquire a portion of the Site upon which the Public Improvements will be constructed. The City will pay the actual Project Costs incurred by the Owner as construction agent for the City in conformance with the Project Budget up to a maximum amount of \$450,000. In the event the cost of the Public Improvements exceed \$450,000 the Company shall be responsible for and pay any costs exceeding such amount. Payment by the City of the construction costs for the Public Improvements shall not relieve the Company of its responsibility for defects in material or workmanship.

D. After the execution of this Agreement, and without invalidating this Agreement, the Company and the City by written agreement (a "Change Order") may agree to changes in the Public Improvements and/or the Plans. Changes in the Public Improvements and/or the Plans shall be performed under applicable provisions of this Agreement and the construction contracts and the Ohio Revised Code.

Any Change Order shall be in the form of a written instrument signed by the City and the Company, stating their agreement upon (a) the change in the Public Improvements and/or the Plans, (b) any extension of the time for performance under this Agreement.

Regardless of any change order agreed to by the parties, the cost to the City shall not exceed the Construction Costs set forth in paragraph 2C.

E. Payment by the City to the Company for such Construction Costs shall be made within thirty (30) days after invoices evidencing the incurring of such costs by the Company (the "Project Invoices") are submitted to the City. The Owner may submit Project Invoices on a monthly basis during the construction and acquisition of the Public Improvements. The City may hold retainage from each Project Invoice in an amount not to exceed 10 percent (10%) of such invoice. All retainage shall be paid to the Company upon completion, approval of the Public Improvements by the City. Each payment of a Project Invoice hereunder constitutes a "Project Draw" for purposes of this Agreement.

The obligation of the City to reimburse the Company is expressly subject to the following conditions precedent, unless specifically waived in writing by the City:

(i) The Company shall have completed, in accordance with the Plans, the portion of the Public Improvements the Project Costs of which are the subject of the Project Invoice submitted for payment.

(ii) With each monthly submission of Project Invoices, the Company shall have provided conditional lien waivers (covering all work through the period covered by the current submission) and final lien waivers (covering all work up through the period covered by the prior submission), together with affidavits and other documents as may be reasonably necessary to evidence that the work on the Public Improvements through the effective date of the lien waivers have been completed without the possibility of any liens

being filed by contractors, subcontractors or materialmen providing work, services or materials for the Public Improvements.

(iii) With the final submission of Project Invoices, the Company shall have provided such lien waivers and affidavits and other documents as may be reasonably necessary to evidence that Public Improvements have been completed without the possibility of any liens being filed by contractors, subcontractors or materialmen providing work, services or materials for the Public Improvements.

(iv) The Company, in designing, constructing, completing, repairing, and maintaining the Public Improvements shall have complied with all requirements with which the City would have to comply regarding the construction of public improvements, under any applicable federal or state law, rule or resolution, including, but not limited to the public bidding of contracts, bonding provisions, and payment of prevailing wages, and including any private work that may be required. The City shall consult with and advise the Owner as to such requirements from time to time upon the Owner's requests.

(v) The Owner has obtained approval from the City before rendering any decision or taking any action pursuant to any section of the Ohio Revised Code regarding construction of public improvements which would require City approval if the contract to construct and acquire the Public Improvements had been let by the City (i.e. awarding the contract following submission of all bids).

F. The Parties acknowledge and agree that the construction of the Public Improvements is subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 and all wages paid to laborers and mechanics employed in the construction of the Public

Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for to construct the Public Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The Company shall require compliance by all contractors and shall require all contractors to require compliance by all subcontractors constructing the Public Improvements, with all applicable requirements of that Chapter 4115. The Company agrees that upon written request of the City, the Company shall promptly provide to the City written evidence that the Company and all subcontractors constructing the Public Improvements have complied in all respects with this provision.

G. The Company shall be required to and shall provide a commercially reasonable Builder's Risk insurance policy at replacement value for the Public Improvements during construction of such Public Improvements. The City shall be named an additional insured under the policy and the policy shall require the insurer to provide 30 days prior notice to the City if any changes are made to the policy including cancellation or removal of the City as an additional insured.

H. Upon completion and approval of the Public Improvements by the City and release of all retainages related thereto in accordance with this Section 2, the City shall deliver to the Company a summary of all Project Draws paid to the Company (the "Project Draw Summary") with such Project Draws totaled at the end of such summary (such total being hereinafter the "Final Project Costs").

I. The City shall only be obligated to spend Four Hundred Fifty Thousand dollars (\$450,000) for the Public Improvements as set forth in Exhibit B. Company and the City further

agree that the Public Improvements (as set forth on Exhibit B) will be constructed and completed in a timely manner after execution of this Agreement.

City's entire responsibility for costs of engineering, land acquisition, and construction, shall not exceed Four Hundred Fifty Thousand dollars (\$450,000) in the aggregate to all parties. The parties acknowledge that such sum, shall be the City's entire contribution to the Public Improvements, and no further amounts shall be due from the City without its additional consent.

Other than the Service Payments required pursuant to Section 5709.42 of the Ohio Revised Code or this Agreement, the City shall not cause any assessment against the real property of any Owner or their transferees for construction of the Public Improvements contemplated hereunder and contained in Exhibit B without the consent of the Owner.

SECTION 3. Obligation to Make Service Payments.

A. The Company and the City hereby acknowledge that one hundred percent (100%) of the Statutory Improvements will be exempt from real property taxation under Section 5709.41, O.R.C. (the "TIF Exemption"), subject to the pre-existing CRA Exemption; therefore, the Statutory Service Payments to be made under this Agreement, after expiration of the CRA Exemption, will equal that portion of the real property taxes that would have been payable in respect of the Statutory Improvements had the TIF Exemption not been granted. The Owners shall commence Statutory Service Payments on the first day when real property taxes are due in the first calendar year after the CRA Exemption expires or terminates and shall continue to make Statutory Service Payments on each date when real property taxes are otherwise due (currently, approximately January 15 and July 15 following each tax year and each such date during the term

of this Agreement hereinafter referred to as a “Payment Date”) thereafter until termination or expiration of the TIF Exemption.

Each Statutory Service Payment shall be in an amount equal to one-half ($\frac{1}{2}$) of the annual amount which would have been payable as real property taxes with respect to Statutory Improvements for the real property tax year next preceding the calendar year of payment had the TIF Exemption with respect to the Statutory Improvements not been applied for and allowed as aforesaid.

B. Notwithstanding paragraph A of this Section 3, there is hereby established the “Minimum Service Amount,” which shall be \$15,000 and which shall be an amount equal to one half of the amount that would equal annual debt service if bonds had been issued to finance the cost of the Public Improvements.

If and to the extent that on any Payment Date the Statutory Service Payments paid, is less than the Minimum Service Amount, the Owners shall pay or cause to be paid directly to the City an amount sufficient to make up the difference between the required Minimum Service Amount and the amount specified above (such difference herein referred to as the “Minimum Service Payment”). The required Minimum Service Payment must be made even in the event that the Statutory Service Payments, as described in paragraph A of this Section 3, never come due or are not paid. If applicable, the semi-annual Minimum Service Payment shall be due and payable ten (10) days after Owner’s receipt from the City of notice and invoice as to such semi-annual Minimum Service Payment.

C. In the event that any Statutory Service Payment, or any installment of either, is not paid when due, the Montgomery County Treasurer may impose and collect a late payment charge from the person or entity who or which is responsible therefor in the amount prescribed by statute.

Should any Owner of the Site fail to make any payment required hereunder, such Owner shall pay, in addition to the Service Payments such Owner was required to pay hereunder, such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) required by the City to enforce the provisions of this Agreement against such Owner or the real property owned by such Owner in the Site.

SECTION 4. Additional Obligations.

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

In the event that the Owner or any subsequent Owner transfers to a third party any portion (less than all) of the property owned by such Owner within the Site, then the Service Payments required by Section 4 shall be allocated between the property conveyed (the "Transferred Portion") and the property retained by the transferring Owner (the "Retained Portion"). Such allocation shall be based upon the relative values of the Statutory Improvements attributable to the Retained Portion and the Transferred Portion, as assessed from time to time on the records of the Montgomery County, Ohio Auditor. Prior to the date that such separate assessment appears of

record, the relative values of the Statutory Improvements attributable to the Retained Portion and the Transferred Portion shall be determined by a qualified real estate appraiser selected by the Owner making the transfer and approved by City, or by another method mutually agreed to by such Owner and City.

B. The obligation to perform and observe the agreements on the part of the Owner contained herein shall be binding and enforceable by the City, against the Owner with respect to (and only to) their respective interests in the Site and Private Improvements, or any parts thereof or any interest therein.

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

D. Notwithstanding anything to the contrary set forth in this Agreement, neither the Company, any of the Company's affiliates, or any Owner nor the City, or their heirs, successors, assigns or transferees shall take any action which may endanger the status of or cause the revocation or termination of the TIF Exemption.

SECTION 5. Financing of Public Improvements.

The City intends to finance the Public Improvements by advancing existing City funds in a maximum amount sufficient to produce project funds in an amount of \$450,000, to finance the cost of acquisition and construction of the Public Improvements (the "City Advance").

The City Advance shall be repayable from Service Payments in Lieu of Taxes received by the City pursuant to Ordinance No. _____ for the real property set forth on Exhibit D attached hereto, net of any school compensation payments owed to the Miamisburg City School District pursuant to Ordinance No. _____ and the Tax Incentive Agreement.

SECTION 6. Binding Nature of Obligations; Security for Payment. The obligations of the Owners to pay the Service Payments and to perform and observe the other agreements on their part contained herein shall be absolute and unconditional, and shall be covenants running with the land, and shall be binding and enforceable by the City, against the Owner (as the same exist from time to time) with respect to their respective interests in the Site and Private Improvements, or any parts thereof or any interest therein, subject to the provisions set forth in Section 4(A) of this Agreement with respect to the allocation of the Service Payments.

Except to the extent otherwise provided in this Agreement, the obligations of the Company and any Owner under this Agreement will not be terminated for any cause, including, without limiting the generality of the foregoing, but by way of example, failure to complete the Private Improvements; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Private Improvements; commercial frustration of purpose; any change in the constitution, tax or other laws or judicial decision or administrative rulings of or administrative action by or under authority of the United States of America, or of the State or any political

subdivision thereof; or any failure of the City to perform and observe any agreement whether express or implied, or any duty liability or obligation arising out of or connected to this Agreement; provided that in the event the TIF Exemption is not obtained, the Owner, including the Company, shall not be liable or responsible for the Statutory Service Payments, provided that nothing contained in this Section 6 shall relieve the Company from the obligation to make Minimum Service Payments.

Failure to use or to occupy the Private Improvements shall not relieve an Owner of its or their obligations to make Service Payments as required hereunder. The obligations of any person or entity that is or becomes an Owner hereunder shall apply during such period, and only during such period, that such person or entity owns real property or Private Improvements which are a part of or which are located on any portion of the Site, and only as to that portion of the Site owned by such Owners.

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

The Owners, its heirs, successors, assigns and transferees, agrees that it will make Minimum Service Payments, as required hereunder, whether or not construction of the Improvements is ever completed.

SECTION 7. Payment of Taxes; Contests. All Owners shall pay or cause to be paid, as the same become due, all taxes, assessments, whether general or special, and governmental charges

of any kind whatsoever that may at any time be lawfully assessed or levied against, or with respect to, the property of the Owner which is a part of the Site or the Private Improvements or any personal property or fixtures of the Owner installed or brought therein or thereon (including, without limiting the generality of the foregoing, but by way of example, any taxes levied against the Owner with respect to the Private Improvements, receipts, income or profits from the operations of the Owner at the Site and Private Improvements, which, if not paid, may become or be made a lien on all or a portion of the Site or the Private Improvements) and all utility and other charges incurred by the Owner in the operation, maintenance, use, occupancy and upkeep of that portion of the Site and the Private Improvements owned by the Owner, respectively; provided, however, that nothing herein is intended to prevent the Owner, at their respective expense and in good faith, from contesting any such taxes, assessments or other charges, and in the event of any such contest, the Owner may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the City shall notify the Owner that, in the opinion of independent counsel selected by the City and paid for by the Owner, by non-payment of such items, the interest of the Owner in the Private Improvements and the Site shall be materially endangered or subject to loss or forfeiture, in which event such items shall be paid by the Owner in a timely manner, but without prejudice to the rights of the Owner to contest the same. No special tax shall be imposed upon the Owner due to a sale of the Owner's property to another party. Nothing in this paragraph shall be construed to relieve the Owners of the duty to make Minimum Service Payments as required by this Agreement.

The Owners and its respective heirs, successors, assigns and transferees and the City hereby agree that notwithstanding any other provisions in the laws of the State of Ohio, the Statutory

Service Payments required pursuant to Section 5709.42 et seq of the Ohio Revised Code and hereunder will have the same lien rights and priority as all other real estate taxes. The Owner and its respective heirs, successors, assigns and transferees agree not to contest the lien rights or priority of the Service Payments with respect to the Site.

SECTION 8. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, designations, certificates, requests, consents, approvals or other communications required or permitted to be given under this Agreement shall be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the City at 10 N. First Street, Miamisburg, Ohio 45342, Attn: Finance Director; to the Company at 1800,000 Forsgate Court, Springboro, Ohio 45066, Attn: Eric Joo and _____, Attn: _____, and to any other owner at the tax mailing address for the property owned by such owner in the Site. The City and any Owner may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices, designations, certification, requests or other communications shall be sent.

SECTION 9. Representation and Warranties. Each Company represents and warrants to the City that the Company is a duly organized and existing Ohio limited liability company, is in good standing under the laws of the State of Ohio. Each Company represents and warrants that it (i) is in compliance with State of Ohio campaign laws contained in O.R.C. Chapter 3517, including, but not limited to, Division (1) of O.R.C. Section 3517.13; (ii) is in compliance and not in violation of any provision of O.R.C. Section 2921.42 that may be applicable to it; the (iii) has

reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, O.R.C. Sections 102.01 et seq., 2921.01, 2921.42 and 2921.43, each Company will take no action inconsistent with those laws, as may be amended or supplemented from time to time; (iv) is not aware of any finding for recovery having been issued against it by the Auditor of the State of Ohio which is “unresolved” under O.R.C. Section 9.24; (v) there are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Agreement or the construction of the Private Improvements or the Public Improvements, or if successful would materially impair its ability to perform its obligations under this Agreement or to construct the Private Improvements or the Public Improvements; and (vi) neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in it has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. Each acknowledges receipt of a current version of the Terrorist Exclusion List, and it shall provide to the City a fully completed and executed Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization, utilizing the current form provided by the Ohio Department of Public Safety.

SECTION 10. Exemption Application. The parties hereto acknowledge that an exemption application will be filed by the City with respect to the Site and the TIF Exemption is expected to be effective for the January 1, 2021 tax year. The City, the Company and all Owners shall continuously use due diligence and employ commercially reasonable efforts to keep the TIF

Exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within the Owner's control.

SECTION 11. Duration of Agreement. This Agreement shall become effective on the date that it is executed and delivered, and unless sooner terminated, shall expire on the earlier of: (i) December 31, 2051 or (ii) the day following the date on which the final payment of the City Advance is made.

Upon expiration or termination of this Agreement, the City will cause this Agreement to be cancelled of record.

This Agreement shall survive any foreclosures, bankruptcy, or lien enforcement proceedings.

SECTION 12. Application of Payment. Statutory Service Payments shall be made by Owners to the Montgomery County Treasurer on or before the respective dates required in this Agreement. Upon distribution of such Service Payments to the City, such Statutory Service Payments shall be deposited in the Miamisburg Downtown Urban Redevelopment Tax Increment Equivalent Fund established by the Ordinance.

Minimum Service Payments, if required, shall initially be made by the Owner to the Miamisburg Finance Director within ten (10) days of receiving notice from the City that a Minimum Service Payment is due. Upon receipt by the Finance Director of a Minimum Service Payment, such Minimum Service Payment shall be deposited in the Miamisburg Downtown Urban Redevelopment Tax Increment Equivalent Fund pursuant to Section 5709.43 of the Ohio Revised Code.

SECTION 13. Reporting Requirements.

On or before January 31 of each year during which the tax exemption granted pursuant to O.R.C. 5709.41 remains in effect, Company, the Owners and their respective heirs, successors, assigns and transferees shall provide a report under oath to the City regarding the progress of the Private Improvements. Such report shall include a summary of the Statutory Service Payments made in lieu of taxes and a quantitative summary of change in employment and private investment resulting from the project. In the event an Owner, including the Company while the Company is an Owner, or its heirs, successors, assigns and transferees rent or lease all or a portion of the Improvements to third parties; such Owner and its heirs, successors, assigns and transferees shall endeavor to obtain as a condition of such rental agreement or lease, a provision requiring such information from its renters or lessees or their sub-renters or sub-lessees. The parties hereto acknowledge that a failure to provide such information could result in a loss of the tax exemption under Section 5709.41 O.R.C. and would constitute a breach of this Agreement.

SECTION 14. Defaults and Remedies. The following shall be events of default of the Company, an Owner or the City under this Agreement:

- (1) the failure of any Owner to pay, when due, any Statutory Service Payment or any installment thereof, including any applicable late payment charges; or
- (2) the failure of the Company, or an Owners, to pay, when due and Minimum Service Payment, including and applicable late payment or charges; or
- (3) the failure of the Company, or an Owners, its heirs, successors, assigns or transferees, to provide the information required under Section 13 herein; which failure shall continue for more than thirty (30) days following written notice thereof by the City; provided that such thirty (30) day period may be

extended for a reasonable period of time necessary to cure such default provided such Owner is diligently pursuing such cure; or

- (4) the failure of the Company or any Owners to perform or observe any other covenant made by it in this Agreement, which failure shall continue for more than thirty (30) days following written notice thereof by the City; provided that such thirty (30) days period may be extended to cure a default that cannot be cured within thirty (30) days after written notice thereof provided the Company or Owner is diligently pursuing such cure.
- (5) the failure of the City to pay, when and as due, the Project Invoices; or
- (6) the failure of the City to perform or observe any other covenant made by it in this Agreement, which failure shall continue for more than thirty (30) days following written notice thereof by the Company, or any Owner, their respective heirs, successors, assigns or transferees; provided that such thirty (30) day period may be extended for a reasonable period of time necessary to cure a default that cannot be cured within thirty (30) days after written notice thereof provided City is diligently pursuing such cure.

Upon the occurrence and continuation of any event of default, a non-defaulting party shall be entitled to exercise any and all remedies available to it to compel performance of the defaulting party's obligations, or to recover damages for non- performance. Waiver of any event of default shall not be deemed to extend to any subsequent or other event of default under this Agreement.

SECTION 15. Indemnification by Company. The Company, its heirs, successors, assigns and transferees hereby indemnify Council and the City against all costs and expenses relating to the acquisition and construction of the Public Improvements (other than the City's obligation to pay the Construction Costs for the Public Improvements), and the ownership and operation of the Public Improvements, including any environmental claims.

In addition, the Company, its heirs, successors, assigns and transferees hereby indemnifies Council and the City for any claims for damages or injury to persons or property and will add the City as additional insureds in the Company's liability policy during the terms of this Agreement.

SECTION 16. Severability. In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

All illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

SECTION 17. Choice of Law. This Agreement shall be governed by the laws of the State of Ohio and shall be interpreted and enforced in accordance with the laws of that State without regard to the principles of conflicts of laws.

SECTION 18. Counterparts; Captions. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

SECTION 19. Additional Documents; Amendment. The City, the Company and all Owners, and their respective successors, assigns and transferees, agree to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Service Agreement. To the extent permitted by this Agreement, and in compliance with all laws and Ordinances controlling this Agreement, the City, the Company and all Owners, and their respective successors, assigns and transferees, agree that any amendment to this Agreement must be in writing and signed by all parties.

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

[Signatures to follow on next page]

Signature Page -1 to Service Agreement

APPROVED AS TO FORM:

CITY OF MIAMISBURG, OHIO

Law Director

By: _____
City Manager

Signature Page -2 to Service Agreement

COMPANY
Simplify Real Estate, LLC

By: _____

Name: _____

Its: _____

COMPANY
MODA 4 Design, LLC

By: _____

Name: _____

Its: _____

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of January, 2020 by _____, City Manager of the City of Miamisburg, a political subdivision of the State of Ohio, on behalf of the City.

Notary Public

My commission expires: _____

[NOTARY
SEAL]

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of January, 2020, by _____, managing member of Simplify Real Estate, LLC, an Ohio limited liability company, on behalf of the limited liability company.

Notary Public

My commission expires: _____

[NOTARY
SEAL]

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of January, 2020,
by _____, managing member of MODA 4 Design, LLC, an Ohio limited liability
company, on behalf of the limited liability company.

Notary Public

My commission expires: _____

[NOTARY
SEAL]

This document prepared by
Brenda Wehmer
Dinsmore & Shohl LLP
255 East 5th Street, Suite 1900
Cincinnati, Ohio 45202

EXHIBIT A
TIF ORDINANCE

EXHIBIT "B"

THE "PRIVATE IMPROVEMENTS"

The following building projects are the commercial "Private Improvements" covered by this Agreement:

<u>Improvements</u>	Approximate Square Footage (not a minimum <u>or a cap</u>)	Estimated Increased Value (not a minimum <u>or a cap</u>)
Renovation of Commercial Building		
Renovation of Commercial Building		

EXHIBIT "C"

THE "PUBLIC IMPROVEMENTS"

The following infrastructure improvements are the "Public Improvements" covered by this Agreement, designated by the City Council of Miamisburg, Ohio per Ordinance No. _____ on December ____, 2019: all as more specifically set forth below.

To be Provided.

EXHIBIT "D"

THE "SUTTMAN SITE"

Montgomery County Auditor's Parcel Nos.

K46-00327-0135

K46-00327-0080

K46-00327-0081

K46-00327-0082

K46-00327-0083

ORDINANCE NO. 6838

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE MIAMI VALLEY SMALL BUSINESS DEVELOPMENT CENTER REGARDING THE USE OF CITY OFFICE SPACE FOR THE PROVISION OF BUSINESS CONSULTING SERVICES, AND DECLARING AN EMERGENCY

WHEREAS, the Miami Valley Small Business Development Center (MVSBD) was established to provide business services to small businesses and entrepreneurs in the Miami Valley region; and

WHEREAS, MVSBD has changed their service delivery model to deploy specialists throughout the region rather than having them all located in their main office location; and

WHEREAS, a MVSBD outreach specialist has been holding office hours and providing consulting services to business on an informal basis on Friday in the Annex conference room; and

WHEREAS, the outreach specialist has provided a great service to area entrepreneurs included many Miamisburg based small businesses; and

WHEREAS, the MVSBD would like to enter into a formal Memorandum of Understanding with the city to expand their service hours in a formal office setting; and

WHEREAS, the proposed Memorandum of Understanding will outline the roles and responsibilities for each party.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a Memorandum of Understanding with the Miami Valley Small Business Development Center to allow an outreach specialist the ability to use office space in exchange for providing consulting services to area small businesses. The Memorandum of Understanding shall be in substantially the same form as the document attached hereto as "Exhibit A".

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the parties desire to allow the outreach specialist to begin work in a timely manner to coincide with other phases of the project currently under construction, therefore, this ordinance shall take effect and be in force from and after its passage.

Passed: January 21, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A

Memorandum of Understanding

Memorandum of Understanding between the City of Miamisburg and the Miami Valley Small Business Development Center for the Fiscal Year of January 1, 2020 through September 30, 2020.

Purpose: The city of Miamisburg (by way of its Economic and Community Development Departments) desires to grow small business within its municipal boundaries, while the Miami Valley Small Business Development Center wishes to cooperate with that goal as part of its overall mission. To this end, the parties agree to this non-binding MOU to facilitate a method of achieving mutually-beneficial goals.

Parties: The city of Miamisburg is represented by Chris Fine, Economic Development and Katie Frank, Community Development Departments (henceforth referred to as the "Miamisburg ECD Dept."), While the Miami Valley Small Business Development Center (henceforth referred to as the "SBDC") is represented by Director Kim Woodbury, CBA and advisor Mark Lankford, CBA.

Requirements of the Parties:

The Miamisburg ECD Departments:

The Miamisburg ECD Departments agree to provide the SBDC access to a secure (lockable) office for a minimum of one (consistent) day during the business week, in which to meet with clients and resources in a confidential setting. The office will have a desk, chair, place to store a minimal amount of files in a secure fashion and have WiFi Internet access. There is no requirement for a land line phone, as the SBDC advisor uses his cell phone for business purposes. The current day of service is Friday, and that is expected to continue. Please note the secure nature of the office is per Federal SBA funding guidelines.

The rent value for 12 months (prorated if necessary) for said office will be considered "in-kind" program contribution to the SBDC, thus justifying the advisor's time away from the host facility.

The Miamisburg ECD Departments will work with the SBDC, referring/recommending new and existing business clients where warranted. The Miamisburg ECD Departments will involve the assigned SBDC advisor in applicable strategy meetings, and keep the SBDC advisor up to date on business location availabilities and new businesses in the city.

The Miamisburg ECD Departments will provide input on desired training seminars it would like to see scheduled at the Linden Ave Library facility, and will meet with the assigned SBDC advisor at least quarterly to insure goals and metrics for both parties are being achieved. These quarterly meetings do not necessarily have to be scheduled on the day of advisor service.

The Miami Valley SBDC:

The SBDC will schedule a certified small business advisor (CBA) at the aforementioned provided office one business day a week (less vacation, holidays or other special events). The advisor will

attend the Miamisburg H7 networking meeting from 8:30 am to 9:30 am, then will be expected to be available or scheduled at the provided office. In the very unlikely event the Miamisburg H7 chapter should close, the advisor would begin his services at the office at 8:00 am. The advisor should have a minimum of two advising sessions per day, barring other duties or remote site visits. Preferences and scheduling priorities will be given to Miamisburg clients (or potential clients) during the designated day of service (currently Fridays).

The SBDC advisor will maintain membership in the H7 networking organization and the Miamisburg Merchants Association (MMA) during the course of the MOU, and will be expected to participate in both organizations' meetings and activities. The current assigned advisor is also a member of the MMA economic restructuring committee and the Miamisburg H7 chapter "alpha" content planning team, and it would be expected he retain those duties during the MOU.

The SBDC advisor will work with the Miamisburg ECD Departments to fill business space vacancies with qualified businesses, and to promote Miamisburg as a great location for existing businesses considering expansion or relocation.

The SBDC (with client permission) will keep the Miamisburg ECD Departments updated on the progress of referred clients. The advisor's Google calendar will be made available to the Miamisburg ECD Departments (with full scheduling permission level). Both parties will work together so that metrics and goals for each are understood and achieved.

Term: This non-binding MOU will apply from January 1, 2020 (retroactively) until September 30, 2020. It may be terminated by either party, with or without cause or notice. However, as long as both parties see mutual benefit, it is expected to continue through the full term. Renewal may be accomplished by a signed addendum prior (or on) 9/30/20.

Kim Woodbury, Director MVSBCD

Date

Keith Johnson, City Manager
City of Miamisburg

Date

ORDINANCE NO. 6839

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE MONTGOMERY COUNTY ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE) PROGRAM FOR THE PROJECT AND TO AUTHORIZE THE EXECUTION OF PROJECT AGREEMENTS BETWEEN THE CITY OF MIAMISBURG AND TECHNICOTE, AND DECLARING AN EMERGENCY.

WHEREAS, the Board of Commissioner's for Montgomery County Ohio created the Economic Development/Government Equity (ED/GE) grant program to foster economic development within Montgomery County; and

WHEREAS, the City has been awarded \$33,000 in ED/GE grant funding for the Technicote Expansion project; and

WHEREAS, Council is required to take official action to accept such grant funding; and

WHEREAS, the ED/GE program requirements require an agreement between the City of Miamisburg and the recipient business and/or building owner for the use of the grant funds.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The Council of the City of Miamisburg hereby accepts grant funds from Montgomery County in the amount of \$33,000 from the fall 2019 ED/GE program for the project described in "Exhibit A". The City Manager is hereby authorized to execute the ED/GE Project Agreements required to facilitate the receipt of said grant funds.

Section 2.

The Council of the City of Miamisburg, Ohio hereby appropriates, and the Finance Director is hereby authorized to pay, from Account No. 110.125.57401, Fifty-Eight Thousand Dollars (\$58,000), for costs related to this Economic Development/ Government Equity grant project. The Finance Director shall make such payment only upon receipt of appropriate documentation.

Section 3.

The City Manager is hereby authorized to execute the Agreements Regarding ED/GE Funds between the City and Technicote. This agreement is attached hereto as "Exhibit B".

Section 4.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that it is in the best interest of the City that the above mentioned company be able to begin their projects to retain and/or add jobs in the City at the earliest possible time; therefore this measure shall take effect and be in force from and after its passage.

Passed: January 21, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

“EXHIBIT A”

ED/GE Grant Project and Agreements

Company	Project Description	ED/GE Funds Awarded	City Matching Funds
Technicote	Roof replacement for entire facility and the purchase and upgrade of manufacturing equipment	\$33,000	\$25,000

“EXHIBIT B”

Agreements Regarding ED/GE Funds

AGREEMENT REGARDING ED/GE FUNDS

THIS AGREEMENT is made and entered into by and between the City of Miamisburg (the "Member Jurisdiction"), Montgomery County, Ohio and Technicote, Inc., an Ohio Corporation (the "Business").

WHEREAS, on January 21, 2020, by Ordinance No. 6839, the Montgomery County Board of County Commissioners (the "County") awarded the Member Jurisdiction, an amount not to exceed \$33,000, or 5.8% of total project costs, from the Primary Economic Development Fund, to provide funding support for a project known as The TECHNICOTE Project (the "ED/GE grant"); and

WHEREAS, under Agreement between the County and the Member Jurisdiction, the Member Jurisdiction is responsible for administering the ED/GE grant; and

WHEREAS, the Business hereby acknowledges that all Member Jurisdictions awarded ED/GE grants are required to enter into a written development agreement with the Parties receiving the grant funds that memorializes the Parties' understanding of the seventy-five percent (75%) and twenty-five percent (25%) nature of the award, and sets forth the grant monitoring and reporting obligations of the Business and Member Jurisdiction; and

WHEREAS, as part of TECHNICOTE Project, the Business is guaranteeing certain job retention and a capital investment of \$565,000 related to the building upgrades and the purchase of machinery and equipment.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. **PROJECT**. The project calls for the replacement of the facility's roof and the purchase of machinery and equipment in Miamisburg. ED/GE funds will be used to offset the roof costs. The foregoing is referred to herein as the "Project". Over the next 3 years, the Business expects to retain 60 jobs in Montgomery County by 2022.

2. **GRANT AMOUNT**. The Member Jurisdiction agrees to provide the ED/GE grant funds made available to the Member Jurisdiction by the County for this Project pursuant to both the terms and conditions of the ED/GE contract between the Member Jurisdiction and the County and this Agreement. The amount of the ED/GE Grant is \$33,000 or 5.8% of the total project cost. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is made pursuant to that program. The parties further acknowledge that they have been informed and fully understand that ED/GE grants are given to Member Jurisdictions as follows: following execution of this Agreement, (1) seventy-five percent (75%) of the grant amount will be reimbursed to the Member Jurisdiction on an invoice basis; (2) twenty-five percent (25%) of the grant amount will be reimbursed to the Member Jurisdiction, in either one lump sum or in increments, as the County sees fit, over a three year period commencing with the Business' provision of adequate proof to both the Member Jurisdiction and the County

that it has created and actually hired and/or filled a minimum of thirty-three percent (33%) of the total number of jobs pledged herein.

3. **GRANT PAYMENT.** The Member Jurisdiction shall distribute the Grant, if at all, only after receiving such funds from the County and only after the completion of the following conditions, which shall be verified by the Member Jurisdiction in advance of Grant distribution: The Company shall supply the Member Jurisdiction with written evidence of the amount of monies expended by the Business in the furtherance of the Project, containing a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment. The County, through its Office of Economic Development, has the authority to meet with any contractor, person or business entity employed by the Business to determine that the ED/GE funds are being expended for Project purposes.

4. **ED/GE FUNDS ACKNOWLEDGEMENT.** The Parties agree that the ED/GE grant is expended by the County in its sole discretion, and that the County's financial assistance is voluntarily and that the Parties have no legal or equitable claim to any of the ED/GE funds.

5. **MEMBER JURISDICTION MATCHING FUNDS.** The Member Jurisdiction agrees to provide matching funds toward the Project as outlined in the ED/GE contract between the Member Jurisdiction and the County. These matching funds may be disbursed to the Company before the first seventy-five percent (75%) of ED/GE funds have been dispersed for the project as outlined in Section 2 above. The Company agrees to use these matching funds only for the purpose(s) as outlined in the ED/GE contract between the Member Jurisdiction and the County or as outlined in any separate agreement between the Member Jurisdiction and Company as applicable.

6. **JOB RETENTION/CREATION.** The Business agrees to retain 60 existing jobs in Miamisburg by 2022.

7. **LOCATION IDENTIFICATION.** The Business agrees to make a good-faith effort in all its business communications to identify that the Company's facility is located in the Member Jurisdiction, Montgomery County, Ohio. Communication may include signage, promotional literature, stationery and licensed vehicles.

8. **TAXES CURRENT.** The Business agrees to pay all respective applicable real and tangible personal property taxes and all municipal earnings tax amounts, including payroll withholding owed, in a timely manner.

9. **COMPLIANCE WITH ED/GE PROGRAM AND INDEMNIFICATION.** The Business agrees to use any grant money received from the ED/GE program only for the purpose(s) provided in this Agreement, which have been determined to serve valid public purpose under the ED/GE Program. The Business agree(s) to indemnify, defend and save harmless the Member Jurisdiction, its officials, agents and employees, from and against all suits, claims demands or actions, damages, liabilities, judgments, losses, costs and reasonable attorney fees arising out of or flowing from its failure to use the funds for the stated purpose. Further if any of the ED/GE funds are used for any purpose other than that of the Project, the Business agrees that it will repay the County the amount improperly expended and will do so within seven (7) calendar days of written notice delivered to it by the Member Jurisdiction that such an improper expenditure has

occurred. Said notice shall state the amount which the Member Jurisdiction believes to have been improperly expended.

10. **INFORMATION WARRANTED.** The Parties affirmatively covenant(s) that it/they has/have made no false statements to the Member Jurisdiction in the process of obtaining approval of the ED/GE funds. If any representative of the Parties knowingly made false statements to the Member Jurisdiction to obtain or maintain the incentive provided by this Agreement, it is mutually agreed that such false statements shall be legally attributed to the representative's principal for purposes of this Agreement.

11. **AUDIT.** The Business acknowledge(s) that it is receiving public funds, and that documentation of the use of such funds may be subject to audit by the County Auditor or the State Auditor or their representatives. The Business agree(s) to allow either the County or its representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the books/financial records concerning the receipt and expenditure of the economic development funding received pursuant to the Agreement. The Business also agree(s) to notify persons or business entities with which it does business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

12. **RECORD RETENTION.** The Business agree(s) that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Building Owner, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Business must notify the Member Jurisdiction, in writing, of its intent to destroy said records. The Member Jurisdiction reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Business in writing, otherwise, the Member Jurisdiction will issue to the Business a written Certificate of Records Disposal. It is mutually understood and agreed that no records in the Building Owners' possession will be destroyed until the Business has received a Certificate of Records Disposal.

13. **NO DISCRIMINATION.** The Parties agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Parties will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Parties agree not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything related to this Agreement, or in reference to any contractors or subcontractors.

14. **TRANSFER.** This Agreement is not transferable or assignable without the express, written approval of the Member Jurisdiction.

15. **AMENDMENT.** This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties. This Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties hereto. This Agreement may only be voided or amended by written mutual consent.

16. **SEVERABILITY.** If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. **GOVERNING LAW.** This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of the State of Ohio.

18. **SIGNATURES.** Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

MEMBER JURISDICTION:
City of Miamisburg

BUSINESS:
Technicote, Inc.

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

ORDINANCE NO. 6840

AN ORDINANCE TO AUTHORIZE THE CITY OF MIAMISBURG TO ENTER INTO AN AGREEMENT WITH THE MIAMI VALLEY REGIONAL CRIME LABORATORY FOR 2020 SERVICES FOR THE POLICE DEPARTMENT AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into an agreement with the Miami Valley Regional Crime Laboratory for 2020 services for the Police Department at a cost not to exceed \$72,496.

Section 2.

This ordinance is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare, and for the further reason that this agreement is needed at the earliest possible date so that evidence can continue to be processed in criminal cases; therefore, this measure shall take effect and be in force from and after its passage.

Passed: February 4, 2020

Attested: _____

Kim Combs
Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6841

AN ORDINANCE AUTHORIZING THE CITY OF MIAMISBURG, OHIO TO ENTER INTO A LEASE AGREEMENT AND A MAINTENANCE AGREEMENT BY AND BETWEEN ENTERPRISE FM TRUST AND THE CITY OF MIAMISBURG, OHIO, TO LEASE VEHICLES FOR THE CITY OF MIAMISBURG AND AUTHORIZING OTHER DOCUMENTS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg, Ohio (the "City") desires to lease vehicles for the purpose of providing certain services in the City (the "Property"); and

WHEREAS, the leasing of the Property will be in the best interest of the City; and

WHEREAS, Enterprise FM Trust, a Delaware statutory trust ("Enterprise") has agreed to lease the Property to the City; and

WHEREAS, the City has agreed to lease the Property from Enterprise; and

WHEREAS, the City and Enterprise intend to enter into a Lease Agreement, (the "Lease Agreement") as a means to finance the leasing of the Property; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

SECTION 1. That for the purpose of providing vehicles for the City and the services rendered thereby, this Council hereby determines that it shall lease, under the Lease Agreement, the Property from Enterprise.

SECTION 2. That the Lease Agreement includes a statement to the effect that the City's obligations thereunder, are not general obligations, debt or bonded indebtedness of the City or of the State or any political subdivision thereof, and Enterprise has no right, to have excises or taxes levied by the City or the State or any political subdivision thereof, for the payment of rental payments thereunder and that the right of such payment is limited to the rentals and other revenues pledged for such purpose under the Lease Agreement, including the Payment Schedule, which is hereby authorized, and such statement is true and correct as it applies to the Lease Agreement.

SECTION 3. That the City is authorized to lease the Property through Enterprise.

SECTION 4. That, for the purpose of leasing the Property and payment of costs associated therewith, this Council hereby authorizes and directs the City Manager and the Finance Director of the City, to execute, on behalf of the City, the Lease Agreement, the applicable Payment Schedules, any exhibits thereto, substantially in the form presented to the Council and on file with the Clerk of this Council and the agreements, covenants and promises therein made on behalf of the City shall be conclusively binding on the City and in full force and effect from and after the execution of the Lease Agreement.

SECTION 5. That this Council hereby authorizes and directs the City Manager and the Finance Director of the City, or either of them, to execute and deliver such documents and certificates and to do all the acts and things required of it by the provisions of the Lease Agreement to the end that full and complete performance of all of the terms, covenants and provisions of the Lease Agreement shall be effected.

SECTION 6. That this Council hereby authorizes and directs the City Manager of the City, to execute on behalf of the City a Maintenance Agreement, by and between Enterprise FM Trust and the City, substantially in the form presented to the Council and on file with the Clerk of Council and the agreements, covenants and promises therein made on behalf of the City shall be conclusively binding on the City and in full force and effect from and after the execution of the Maintenance Agreement.

SECTION 7. That the Lease Agreement, and other documents and certificates authorized by this ordinance shall be subject to such changes, insertions and omissions, and approval of any changes, insertions and omissions shall be conclusively evidenced by the execution of said documents by the City Manager and the Finance Director of the City, or any one of them.

SECTION 8. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were taken in an open meeting of this Council, and that all deliberations of this Council, and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22, Ohio Revised Code, and the rules of this Council adopted in accordance therewith.

SECTION 9. That this ordinance is hereby declared to be an emergency measure for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City for the reason that the immediate issuance of said lease obligation is required for the orderly and timely leasing of the Property referred to herein including obtaining a favorable rate of interest; therefore, this Ordinance shall take effect and be in force from and after its passage.

Passed: March 3, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

CERTIFICATE

The undersigned hereby certifies that the foregoing is a true and correct copy of Ordinance No. 6841.

Kim Combs
Clerk of Council

ORDINANCE NO. 6842

AN ORDINANCE AUTHORIZING THE CITY OF MIAMISBURG, OHIO TO ENTER INTO A LEASE PURCHASE AGREEMENT AND AN INDIVIDUAL PAYMENT SCHEDULE BY AND BETWEEN U.S. BANCORP GOVERNMENT LEASING AND FINANCE, INC. AND THE CITY OF MIAMISBURG, OHIO AND AN ESCROW AGREEMENT BY AND BETWEEN U.S. BANK NATIONAL ASSOCIATION, THE CITY OF MIAMISBURG AND U.S. BANCORP GOVERNMENT LEASING AND FINANCING INC., TO FINANCE THE PURCHASE OF FOUR MOWERS, AND A TRANSIT VAN FOR THE CITY OF MIAMISBURG AND AUTHORIZING OTHER DOCUMENTS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg, Ohio (the "City") desires to finance the purchase of four mowers, and a transit van for the purpose of providing certain services in the City (the "Property"); and

WHEREAS, the financing and leasing of the Property will be in the best interest of the City; and

WHEREAS, U.S. Bancorp Government Leasing and Finance, Inc., a division of U.S. Bank National Association ("U.S. Bank") has agreed to purchase and/or finance the Property and to lease the Property to the City; and

WHEREAS, the City has agreed to lease the Property from U.S. Bank; and

WHEREAS, the City and U.S. Bank have agreed to enter into a Master Tax-Exempt Lease-Purchase Agreement and Individual Payment Schedule 1 (collectively the "Agreement") as a means to finance the acquisition of the Property; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

SECTION 1. That for the purpose of providing four mowers and a transit van for the City and the services rendered thereby, this Council hereby determines that it shall lease, under the Agreement, the Property from U.S. Bank.

SECTION 2. That the Agreement, hereby authorized, includes a statement to the effect that the City's obligations thereunder, are not general obligations, debt or bonded indebtedness of the City or of the State or any political subdivision thereof, and U.S. Bank has no right, to have excises or taxes levied by the City or the State or any political subdivision thereof, for the payment of rental payments thereunder and that the right of such payment is limited to the rentals and other revenues pledged for such purpose under the Agreement, including Individual Payment Schedule 1, which is hereby authorized, and such statement is true and correct as it applies to the Agreement.

SECTION 3. That the City is authorized to lease the Property through U.S. Bank.

SECTION 4. That, for the purpose of providing the Property to the City and payment of costs of issuance, this Council hereby authorizes and directs the City Manager and the Finance Director of the City, to execute, on behalf of the City, the Agreement and any Exhibits thereto and the Individual Payment Schedule 1 and any exhibits thereto, in a total principal amount of \$207,811.26 at an interest rate of one and eight hundred eighty-one thousandths percent (1.881%) per annum, pursuant to the Agreement, substantially in the form presented to the Council and on file with the Clerk of this Council and the agreements, covenants and promises therein made on behalf of the City shall be conclusively binding on the City and in full force and effect from and after the execution of the Agreement and Individual Payment Schedule 1.

SECTION 5. That this Council hereby authorizes and directs the City Manager and the Finance Director of the City, to execute, on behalf of the City an Escrow Agreement and any exhibits thereto, substantially in the form presented to the Council and on file with the Clerk of Council and the agreements, covenants and promises therein made on behalf of the City shall be conclusively binding on the City and in full force and effect from and after the execution of the Escrow Agreement.

SECTION 6. That this Council hereby authorizes and directs the City Manager and the Finance Director of the City, or either of them, to execute and deliver all documents and certificates and to do all the acts and things required of it by the provisions of the Agreement to the end that full and complete performance of all of the terms, covenants and provisions of the Agreement shall be effected.

SECTION 7. That the Agreement, and other documents and certificates authorized by this ordinance shall be subject to such changes, insertions and omissions, and approval of any changes, insertions and omissions shall be conclusively evidenced by the execution of said documents by the City Manager and the Finance Director of the City, or any one of them.

SECTION 8. That this Council hereby covenants that it will take such actions in such manner and to such extent, if any, as may be necessary to cause the interest component of rental payments under the Agreement to be and remain excludable from gross income for federal income tax purposes. This Council will also submit the appropriate statements or filings to the Internal Revenue Service containing the information required by the Internal Revenue Code, including IRS Form 8038G.

SECTION 9. That, the obligations under the Individual Payment Schedule 1 are hereby designated "qualified tax-exempt obligations" for the purpose set forth in Section 265 of the Internal Revenue Code. The City does not anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations during the calendar year 2020.

SECTION 10. There has been appropriated, from funds currently on deposit in the Capital Improvement Fund of the City, the sum of \$43,125.55 to pay the cost of lease payments due or coming due under the Lease for the initial term ending December 31, 2020, and hereby appropriates, from unappropriated funds currently on deposit in the Capital Improvement Fund, the sum of \$2,000 to pay cost and expenses associated with the Property and the Lease.

SECTION 11. This Council hereby approves the issuance of the obligations for the financing of the Property.

SECTION 12. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were taken in an open meeting of this Council, and that all deliberations of this Council, and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22, Ohio Revised Code, and the rules of this Council adopted in accordance therewith.

SECTION 13. That this ordinance is hereby declared to be an emergency measure for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City for the reason that the immediate issuance of said lease obligation is required for the orderly and timely financing of the Property referred to herein including obtaining a favorable rate of interest; therefore, this Ordinance shall take effect and be in force from and after its passage.

Passed: March 3, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle L. Collins, Mayor

CERTIFICATE

The undersigned hereby certifies that the foregoing is a true and correct copy of Ordinance No. 6842.

Kim Combs
Clerk of Council

ORDINANCE NO. 6843

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROJECT AGREEMENT WITH MIAMI TOWNSHIP FOR JOINT PARTICIPATION IN THE 2020 ASPHALT PAVING PROGRAM AND DECLARING AN EMERGENCY.

WHEREAS, Miamisburg conducts competitive bidding for an annual asphalt paving program, and Miami Township would like to enter into an arrangement whereby Miamisburg would include certain designated Miami Township roadways in their 2020 asphalt paving program; and

WHEREAS, Ohio Revised Code § 5535.08 (C)(1) authorizes the Parties to enter into such an agreement, and

WHEREAS, it is the desire of both the City and the Township that this resurfacing program be undertaken in a coordinated manner to reduce over-all construction costs; and

WHEREAS, the City shall be designated as the lead agency to solicit bids for this resurfacing work in accordance with approved plans and specifications, and said solicitation to be made in accordance with applicable law; and

WHEREAS, the Township shall reimburse the City for actual construction costs for work completed within Township boundaries based on contract unit prices, as-built quantities, and construction changes approved by the Township; and

WHEREAS, the Township and City jointly desire to enter into a certain agreement for the roadway resurfacing, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into an agreement, attached herein as Exhibit "A", with Miami Township for joint participation in the City's 2020 Asphalt Paving Program.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to remain on schedule for the summer road maintenance season, therefore, this measure shall take effect and be in force from and after its passage.

Passed: March 3, 2020

Attested: Kim Combs

Kim Combs, Clerk of Council

Approved: Michelle L. Collins

Michelle L. Collins, Mayor

ORDINANCE NO. 6844

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE SINCLAIR COMMUNITY COLLEGE, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into an agreement with the Sinclair Community College, which agreement is attached hereto as Exhibit "A", or in the format substantially similar to attached Exhibit A with such changes that are not inconsistent with the intent of the Agreement and this Ordinance and not adverse or detrimental to the City.

Section 2.

This measure is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare, and for the further reason that this agreement is needed to ensure an understanding of responsibilities for usage by Sinclair Community College, this measure shall take effect and be in force from and after its passage.

Passed: March 3, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6845

AN ORDINANCE TO AMEND AND SUPPLEMENT VARIOUS CHAPTERS OF THE PLANNING AND ZONING CODE OF THE CITY OF MIAMISBURG TO ALLOW FOR INCIDENTAL UPDATES TO BE MADE MORE EASILY TO THE PLANNING AND ZONING CODE, UPDATE BUFFERYARD AND SETBACK REQUIREMENTS, UPDATE CERTAIN PROVISIONS FOR ACCESSORY STRUCTURES AND FENCES, UPDATE LANDSCAPING REQUIREMENTS, UPDATE PARKING REQUIREMENTS, AND UPDATE SIGN STANDARDS.

WHEREAS, Numerous updates have been made to the Planning and Zoning Code over the last several years; and

WHEREAS, Certain sections of the Planning and Zoning Code require updates in order to better clarify standards and improve upon the existing code; and

WHEREAS, These amendments will further the City's goal of encouraging orderly and high-quality development; and

WHEREAS, The Planning Commission has recommended that the Planning and Zoning Code be amended and supplemented to provide necessary updated regulations for various sections of the Code, including standards relating to bufferyards, accessory structures, fences, landscaping, parking, and signs; and

WHEREAS, City Council, after consideration of the Planning Commission's recommendation, has determined it to be in the best interest of the City of Miamisburg to provide for such regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

Section 1238.02 – Initiation of Amendments – of these Codified Ordinances, which reads as follows:

1238.02 INITIATION OF AMENDMENTS.

Amendments of this Zoning Code may be initiated in one of the following ways:

- (a) By adoption of a motion by the Planning Commission;
- (b) By adoption of a resolution or motion by Council;
- (c) By the filing of an application by at least one owner or agent of property within the area proposed to be changed or affected by said amendment.

(Ord. 2712. Passed 8-1-78.)

Shall be amended to read as follows:

1238.02 INITIATION OF AMENDMENTS.

Amendments of this Zoning Code may be initiated in one of the following ways:

- (a) By adoption of a motion by the Planning Commission;
- (b) By adoption of a resolution or motion by Council;
- (c) By the filing of an application by at least one owner or agent of property within the area proposed to be changed or affected by said amendment.
- (d) Incidental Planning and Zoning Code Amendments. Incidental amendments to the Zoning Code text may be made by the City Planner or his/her designee without the adoption of a motion by the Planning Commission or City Council provided all of the following criteria are met:
 - (1) The incidental amendment(s) do not change, nullify, modify, or alter the explicit or intended meaning of the text;
 - (2) The incidental amendment(s) are limited to the correction or removal of misspelled words, duplicative words, misplaced or misused punctuation marks, excessive spacing between lines of text, excessive spacing between individual words, incorrect indentation of lines of text, pagination errors, incorrect section or table references, or errors in the sequencing of subsection letters, numbers, or symbols; and
 - (3) The incidental amendment(s) shall be reviewed and approved by the Law Director.

Section 2.

Section 1240.01 – Establishment of Districts – of these Codified Ordinances, which reads as follows:

1240.01 ESTABLISHMENT OF DISTRICTS.

For the purpose of promoting the public health, safety, morals, convenience, comfort, prosperity and general welfare of the City, the following districts are hereby established:

- R-1 Residential District
- R-2 Residential District
- R-3 Residential District
- R-4 Residential District
- OR-1 Office-Residential District
- OS-1 Office-Service District
- NB-1 Neighborhood Business District
- HS-1 Highway Service District
- GB-1 General Business District

CBD-1 Central Business District
CSD-1 Central Service District
RO-1 Research-Office Light Industrial District
I-1 Light Industrial District
1-2 General Industrial District
A Agriculture District
AR Agricultural Residential District
PR Planned Residential Development District
PMH Planned Manufactured and Mobile Home Residential District
PO Planned Office District
PC Planned Commercial District
PI Planned Industrial District
FH Flood Hazard District
AO Austin Center Overlay District

Shall be amended to read as follows:

1240.01 ESTABLISHMENT OF DISTRICTS.

For the purpose of promoting the public health, safety, morals, convenience, comfort, prosperity and general welfare of the City, the following districts are hereby established:

R-1 Residential District
R-2 Residential District
R-3 Residential District
R-4 Residential District
OR-1 Office-Residential District
OS-1 Office-Service District
NB-1 Neighborhood Business District
HS-1 Highway Service District
GB-1 General Business District
CBD-1 Central Business District
CSD-1 Central Service District
RO-1 Research-Office Light Industrial District
I-1 Light Industrial District
1-2 General Industrial District
MB-1 Mound Business District
A Agriculture District
AR Agricultural Residential District
PR Planned Residential Development District
PMH Planned Manufactured and Mobile Home Residential District
PO Planned Office District
PC Planned Commercial District
PI Planned Industrial District
SDD Special Development District
FH Flood Hazard District
AO Austin Center Overlay District

WF Wellfield Protection Overlay

Section 3.

Section 1256.04(d) of Miamisburg's Codified Ordinances, which reads as follows:

- (d) There shall be no minimum side or rear yard width, except when the yard is adjacent to a residential district or use. In such cases, the rear and/or side yard shall not be less than one-fourth of the sum of the height and depth of the structure, but in any event not less than twenty-five (25) feet. In all such cases, a landscaped buffer at least twenty-five (25) feet wide shall be created along the length of the property for screening and buffering purposes. This bufferyard shall contain a sight-proof landscape screening of Group A and C (minimum 70% Group C trees) trees and compact evergreen hedge. An opaque fence of adequate height, as adjudged by the Planning Commission, may be substituted or required in place of such hedge plantings (but not the Group A or C trees) if approved or required by the Planning Commission.

Shall be amended to read as follows:

- (d) There shall be no minimum side or rear yard width, except when the yard is adjacent to a residential district or use. In such cases, the rear and/or side yard shall not be less than one-fourth of the sum of the height and depth of the structure, but in any event not less than twenty-five (25) feet. In all such cases, a landscaped buffer at least twenty-five (25) feet wide shall be created along the length of the property for screening and buffering purposes. This bufferyard shall contain a sight-proof landscape screening of Group A and C (minimum 70% Group C trees) trees and compact evergreen hedge. An opaque fence of adequate height, as adjudged by the Planning Commission, may be substituted or required in place of such hedge plantings (but not the Group A or C trees) if approved or required by the Planning Commission. If a use is to be serviced from the side or rear, a yard shall be provided not less than forty (40) feet deep.

Section 4.

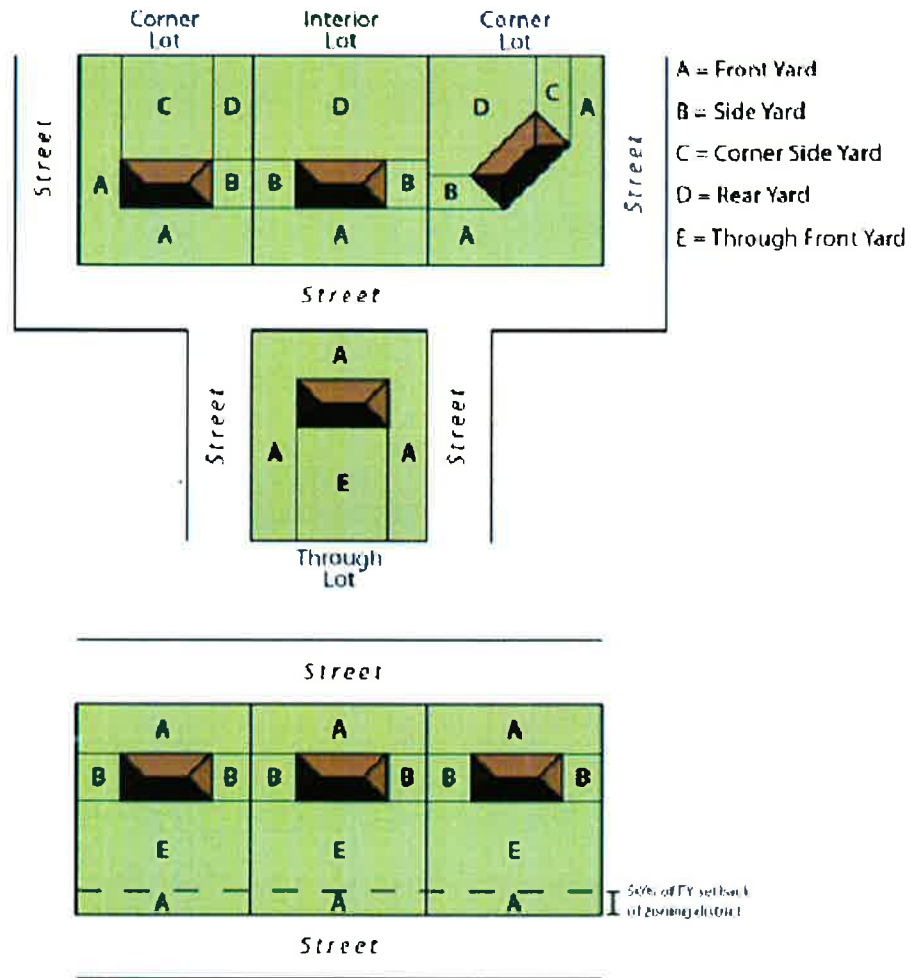
Section 1289.04 – Fence Regulations – of these Codified Ordinances, which reads as follows:

1289.04 FENCE REGULATIONS.

- (a) Definitions. For the purpose of this section the following terms shall have the definitions as described below.

- (1) "Fence" means either a perimeter fence or an accent fence.
- (2) "Accent Fence" means structures erected other than on lot lines or in close proximity to lot lines which have solely an ornamental purpose, and which do not serve the purpose of enclosing or partially enclosing.
- (3) "Perimeter Fence" means any structure composed of wood, iron, steel, stone, brick, hedge or other material, including shrubbery, located on a lot line or within six feet of lot lines and erected in such a manner and position as to enclose or partially enclose any premises or part of any premises or separating premises from adjoining premises. Trellises or other structures supporting or for the purpose of supporting vines, flowers and other vegetation when erected in such a position as to enclose any premises or part of any premises shall be included within the definition of the word fence.
- (4) "Fence Height" means the distance from the base of a fence to the top of the tallest point of a support post or pier measured from the grade immediately adjacent to the fence. The height of a fence does not include customary decorative elements such as post caps, finials, and similar items so long as these items are eight inches or less in height.
- (5) "Front Yard" means the area of a lot located between the wall of a structure and the public right-of-way running the entire length of the lot along such public right-of-way.
- (6) "Rear Yard" means the area of a lot not defined as a front, side, through front or corner side yard.
- (7) "Side Yard" means the area of a lot located between the wall of a structure facing a public right-of-way and the wall of the structure opposite that wall and extending from the edge of the structure to the property line.
- (8) "Corner Side Yard" means the side yard as described above of a property on a corner lot where the side yard is adjacent to the frontage of the lot with the longest length. The Zoning Inspector may designate either side yard of a corner lot as the "corner side yard" in cases where the "corner side yard" is not functionally the rear yard of the property.
- (9) "Through Front Yard" means the front yard as described above of a residentially zoned or used property on a through lot where the functional rear yard of the property fronts a public street. The "through front yard" is located a distance equal to 50% of the required front yard setback from the front property line. Through Front Yards are only present on through lots with no rear yard, as described above.
- (10) "Yard Types Illustration." The following graphic is intended to illustrate the different yard types as defined above.

FIGURE 1289.04-1 YARD TYPES ILLUSTRATION



- (b) Classification of Fences. The following shall be the classification of fences and walls for this chapter:
- (1) Class 1: Masonry walls. Free standing structures made of brick, stone, block or similar masonry materials meant to enclose or accent an area. For the purposes of this section, a masonry wall does not include a retaining wall or any wall of a building.
 - (2) Class 2: Ornamental iron, wood/vinyl pickets, wood split rail or similar style of fence (more than 50% open).
 - (3) Class 3: Chain link or similar woven wire, excluding chicken wire (more than 50% open).
 - (4) Class 4: Wood or other materials (less than 50% open).
 - (5) Class 5: Barbed wire or similar security fencing.
 - (6) Class 6: Hedges.

FIGURE 1289.04-2 FENCE CLASSIFICATION EXAMPLES GRAPHIC



- (c) Permit Required. A fence permit is required to erect, move or replace an existing perimeter fence or repair 25% or more of an existing perimeter fence. No perimeter fence or wall shall be erected unless a permit for such purpose shall have been issued by the Zoning Inspector. An application for such a permit shall be made in writing on a form approved by the Zoning Inspector and shall be accompanied by the following:
- (1) A site plan showing the actual shape and dimensions of the lot on which such fence is to be constructed; showing the exact location, height, and length of the proposed perimeter fence, and showing the location of all structures located on the lot.
 - (2) A drawing or specification sheet showing the design, and construction materials of the proposed fence or wall.
 - (3) A fence permit fee in the amount specified in Chapter 214 of the Administration Code.
- (d) Placement of Fences.
- (1) Perimeter fences are permitted to be constructed on property lines and if not on the property line, a minimum setback of two feet from the property line or other greater required distance to allow for maintenance of the fence and yard area falling outside the fenced area shall be provided. It shall be the duty of each property owner to determine property lines and to ascertain that the fence thus constructed does not deviate from the plans as approved by the Zoning Inspector and the fence does not encroach on another lot or parcel of land. The issuance of the permit by the City shall not be construed as to mean the City has determined the fence is not encroaching on another lot, nor shall it relieve the property owner of the

duty imposed on him or her to determine the location of property lines.

- (2) Fences may be located within easement areas, provided proper permission has been granted from the utility provider for which the easement has been dedicated.

(e) Location of Fences.

- (1) Fences within any Residential (R-1, R-2, R-3, R-4), Office Residential (OR-1), or Office Service (OS-1) Zoning District shall conform to the following requirements:

- A. Section 1289.04(f) applies to all fences.
- B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height.
- C. Side yard. Class 1, 2, 3 and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches with the exception of Class 1 fences which are limited to 32 inches in height.
- D. Corner side yard. Class 1, 2, 3, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of six feet with the exception of Class 1 fences which are limited to 32 inches in height.
 1. No perimeter fence shall be installed further forward than the front wall of the structure on the corner side yard. Accent fences may be installed between the structure and the right-of-way on a corner side provided any such fence in accordance with section B. above.
 2. Landscaping is required for any Class 4 fence or any fence taller than 48 inches that is facing a public right-of-way. The landscaping shall be planted within six feet of the fence and be located on the right-of-way side of the fence. The landscaping shall consist of at least one shrub, tree or similar plant material every four feet on center running the entire length of the portion of fencing that faces the public right-of-way. The plant materials shall be of a variety that, at maturity, has a height of not less than 48 inches and a spread of not less than 24 inches. The plant material shall be at least two feet tall at the time of planting. The intent of the landscaping is to obscure or soften the view of the fence from the right-of-way.
 3. When the corner side yard abuts a residentially zoned or used property no perimeter fence

greater than 48 inches in height can be erected further forward than the abutting property's front yard or the front setback line if the abutting property is undeveloped.

- E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet. Any fence located adjacent to an alley shall maintain a three foot setback from the property line adjacent to such alley.
 - F. Through front yard. Class 2 and 6 perimeter and accent fences are permitted with a maximum height of 60 inches. When located in a through front yard, Class 2 fences are permitted to be as low as 25% open. Class 1 fences are permitted only as accent fences and are limited to 36 inches in height.
 - 1. No perimeter fence in a through front yard is permitted to be erected further forward than the abutting property's front yard if the abutting property is developed or the front setback line if the abutting property is undeveloped.
 - 2. For any fence in a through front yard exceeding 48 inches in height, landscaping is required to be planted on the side of the fence facing the public right-of-way that meets or exceeds the standards of Section 1289.04(e)(1)D.2.
- (2) Fences within any Agricultural (A) or Agricultural Residential (AR) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted on lots less than two acres in size. For lots greater than two acres in size, a split rail style perimeter fence may be installed provided it is no taller than 54 inches. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height.
 - C. Side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - D. Corner side yard. Class 1, 2, 3, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of six feet with the exception of Class 1 fences which are limited to 36 inches in height.
 - 1. On a lot less than two acres in size, landscaping is required for any Class 4 fence or any fence taller than 48 inches that is facing a public right-of-way. The landscaping shall be planted within six feet of the fence and be located on the right-of-way side of the fence. The landscaping shall consist of at least one shrub, tree or similar plant material every four feet on center

running the entire length of the portion of fencing that faces the public right-of-way. The plant materials shall be of a variety that, at maturity, has a height of not less than 48 inches and a spread of not less than 24 inches. The plant material shall be at least two feet tall at the time of planting. The intent of the landscaping is to obscure or soften the view of the fence from the right-of-way.

2. On a lot when the corner side yard abuts a residentially zoned or used property no perimeter fence greater than 48 inches in height can be erected further forward than the abutting properties front yard, or the front setback line if the abutting property is undeveloped.
- E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet. Any fence located adjacent to an alley shall maintain a three-foot setback from the property line adjacent to such alley.
- (3) Fences within any Commercial (CSD-1, NB-1, GB-1, or HS-1) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height. The Planning Commission may allow Class 1 and 2 perimeter fencing along the edges of parking lots in areas with high pedestrian activity and along the perimeter of outdoor eating areas.
 - C. Side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - D. Corner side yard. Class 1, 2, 3, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet.
- (4) Fences within the Downtown Commercial (CBD-1) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height. The Planning Commission may allow Class 1 and 2 perimeter fencing along the edges of parking lots in areas with high pedestrian activity and along the perimeter of outdoor eating areas.
 - C. Side yard. Class 1, 2, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches. Class 2 aluminum/wrought-iron style fences are permitted to be up to six feet in height when located between buildings in

Historic Downtown Miamisburg and meant to secure narrow private alleyways.

- D. Corner side yard. Class 1, 2, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - E. Rear yard. Class 1, 2, 4, and 6 fences are permitted with a maximum height of six feet.
- (5) Fences in any Industrial (RO-1, I-1, I-2) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height.
 - C. Side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - D. Corner side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet. Class 5 fences are permitted and shall be no taller than eight feet with any barbed wire, razor wire, or similar elements being at least six feet above ground level.
- (f) Intersection Visibility. On corner lots no fence or wall shall be erected, placed, or maintained within the triangular yard space formed by the intersecting street centerlines and a line joining points on such street centerlines 50 feet from the point of intersection of the street centerlines unless reviewed and approved by the City Engineer.
- (g) Swimming Pool Fences. Permanent fencing and gated enclosures are required for all pools in the City. Fence design shall not produce a ladder effect on the outside of the fence facing away from the pool that could aid in unauthorized climbing. Pool fences must include at least one gated exit with a minimum width of 36 inches wide. This exit must open outward and be self-closing and self-latching. Where the self-latching device is a minimum of 54 inches above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. The minimum height of pool fences shall be four feet. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.
- (h) Fences Associated with Play Areas. Chain link, wire or similar fencing up to 12 feet in height may be allowed around part or all of tennis courts (public or private) or on public parks and playgrounds.
- (i) Height of Fences Atop Retaining Walls. A combination fence and retaining wall may be erected. The retaining wall portion may be erected up to the level of the higher finished grade. The fence portion

must be of the class and height permitted within the applicable district. These measurements shall be made at the point of the finished grade.

- (j) Temporary Fencing. The Planning Commission shall have the ability to waive the requirements for fencing as outlined in this section to accommodate temporary fencing needed during active construction activities taking place on the lot in which the temporary fencing is being requested.
- (k) Fences Required by the Planning Commission or the Board of Zoning Appeals. The Planning Commission or the Board of Zoning Appeals may, when acting within their review procedures, exempt a fence or wall from the provisions of this chapter when it is determined that the health, safety, or general welfare would be best served by such an exemption.

In situations where an application is filed with the Board of Zoning Appeals for a variance to allow for a fence in a front yard, the Board can consider the neighborhood context, the age of the structure, or the historic significance of the property to determine if a variance can be granted.

- (l) General Requirements for All Fences.
 - (1) All permitted fences shall be uniformly constructed in a workmanlike manner of any commonly used fence or wall materials, such as: masonry, wood, chain link, wrought iron, vinyl or aluminum.
 - (2) All fences shall be constructed with the smooth, finished side of the fence facing outward toward the neighboring property and all vertical or horizontal support posts facing inside the property.
 - (3) The bottom of all fences shall be kept six inches above drainage swales or watercourses.
 - (4) Fences that are painted or stained shall be painted or stained one continuous color and shall be maintained free to peeling or flaking paint.
 - (5) If a new fence is being constructed in the same location as an existing fence, the existing fence shall be removed in its entirety. This provision is meant to prevent a situation where a double fence row exists on an individual property.
 - (6) No fence shall be erected where it prevents or unreasonably obstructs the use of adjacent property, nor shall a fence be erected where it would obstruct or prevent the continued safe use of an existing driveway or other means of access to adjacent property. In enforcing this provision, the Zoning Inspector may require a fence to be set back a minimum distance of not more than two feet from a driveway or property

line in order to provide for the safe passage of pedestrians, bicyclists or vehicular traffic or other safety related concerns.

- (7) All Class 1 fences where permitted by this section shall be subject to site plan review by the Planning Commission as outlined in Chapter 1294.
 - (8) Any Class 2 fence shall be permitted to have wire mesh installed on the interior side of the fence for a height of up to 36 inches. Such wire mesh, or similar material shall have openings at least one square inch in size, shall be factory coated with vinyl or a similar material and shall be a dark color such as black, green, or brown.
 - (9) All Class 3 fences shall be factory coated with vinyl or a similar material and shall be a dark color such as black, green, or brown. Uncoated or raw exposed metal is prohibited.
 - (10) Prohibited materials: The following materials shall not be used for any fence or wall:
 - A. Cast-off, secondhand, or other items not originally intended to be used for constructing or maintaining a fence;
 - B. Corrugated and galvanized steel or metal sheets;
 - C. Plywood, pallets, particle board, paper, visqueen plastic, plastic tarp, or similar material;
 - D. Wire farm-style fencing outside of A and AR Districts; and
 - E. Any other material deemed inappropriate by the Development Department.
- (m) Maintenance Requirements.
- (1) All fences shall be constructed and maintained straight, plumb, structurally sound and of an even height along its length, except such deviations as required by grade. Such fences shall not be allowed to become or remain in a condition of disrepair including noticeable leaning or missing sections, broken supports or nonuniform height.
 - (2) Missing boards, pickets or posts shall be replaced with material of the same type, color and quality.
 - (3) Vegetation adjacent to the fence must be maintained cut and trimmed as appropriate. Any grounds between such fences and property lines shall be maintained at all times and kept free from growing or noxious vegetation.
 - (4) Any landscaping required by this section shall be maintained in good, healthy condition at all times. Any dead, dying, or diseased plant material shall be replaced within three months of its removal.

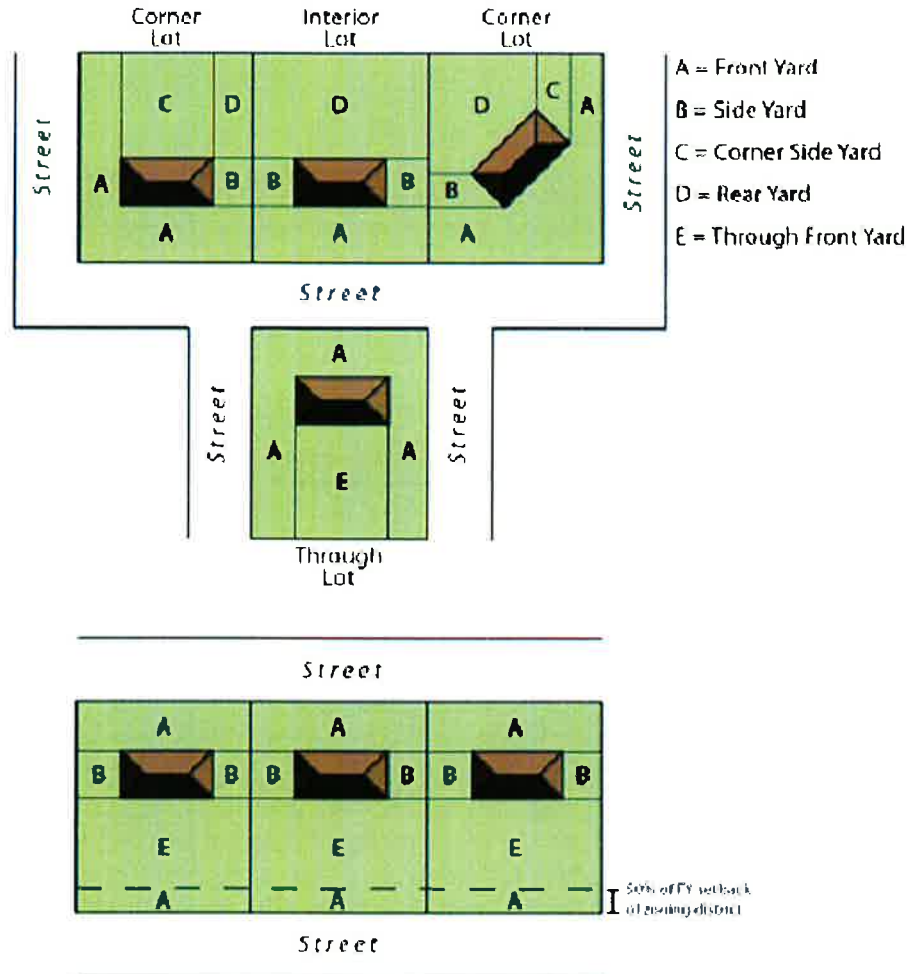
Shall be amended to read as follows:

1289.04 FENCE REGULATIONS.

- (a) Definitions. For the purpose of this section the following terms shall have the definitions as described below.
- (1) "Fence" means either a perimeter fence or an accent fence.
 - (2) "Accent Fence" means structures erected other than on lot lines or in close proximity to lot lines which have solely an ornamental purpose, and which do not serve the purpose of enclosing or partially enclosing.
 - (3) "Perimeter Fence" means any structure composed of wood, iron, steel, stone, brick, hedge or other material, including shrubbery, erected in such a manner and position as to enclose or partially enclose any premises or part of any premises or separating premises from adjoining premises. Trellises or other structures supporting or for the purpose of supporting vines, flowers and other vegetation when erected in such a position as to enclose any premises or part of any premises shall be included within the definition of the word fence.
 - (4) "Fence Height" means the distance from the base of a fence to the top of the tallest point of a support post or pier measured from the grade immediately adjacent to the fence. The height of a fence does not include customary decorative elements such as post caps, finials, and similar items so long as these items are eight inches or less in height.
 - (5) "Front Yard" means the area of a lot located between the wall of a structure and the public right-of-way running the entire length of the lot along such public right-of-way.
 - (6) "Rear Yard" means the area of a lot not defined as a front, side, through front, or corner side yard.
 - (7) "Side Yard" means the area of a lot located between the wall of a structure facing a public right-of-way and the wall of the structure opposite that wall and extending from the edge of the structure to the property line.
 - (8) "Corner Side Yard" means the side yard as described above of a property on a corner lot where the side yard is adjacent to the frontage of the lot with the longest length. The Zoning Inspector may designate either side yard of a corner lot as the "corner side yard" in cases where the "corner side yard" is not functionally the rear yard of the property.
 - (9) "Through Front Yard" means the front yard as described above of a residentially zoned or used property on a through lot where the functional rear yard of the property fronts a public street. The "through front yard" is located a distance equal to 50% of the required front yard setback from the front property line. Through Front Yards are only present on through lots with no rear yard, as described above.

- (10) "Yard Types Illustration." The following graphic is intended to illustrate the different yard types as defined above.

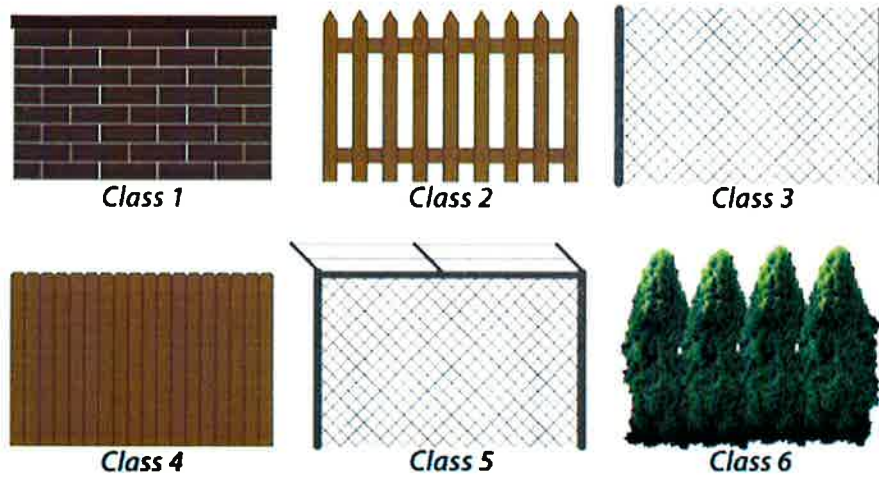
FIGURE 1289.04-1 YARD TYPES ILLUSTRATION



- (b) Classification of Fences. The following shall be the classification of fences and walls for this chapter:
- (1) Class 1: Masonry walls. Free standing structures made of brick, stone, block or similar masonry materials meant to enclose or accent an area. For the purposes of this section, a masonry wall does not include a retaining wall or any wall of a building.
 - (2) Class 2: Ornamental iron, wood/vinyl pickets, wood split rail or similar style of fence (more than 50% open).
 - (3) Class 3: Chain link or similar woven wire, excluding chicken wire (more than 50% open).
 - (4) Class 4: Wood or other materials (less than 50% open).
 - (5) Class 5: Barbed wire or similar security fencing.

(6) Class 6: Hedges.

FIGURE 1289.04-2 FENCE CLASSIFICATION EXAMPLES GRAPHIC



- (c) Permit Required. A fence permit is required to erect, move or replace an existing perimeter fence or repair 25% or more of an existing perimeter fence. No perimeter fence or wall shall be erected unless a permit for such purpose shall have been issued by the Development Department. A signed application for such a permit shall be made in writing on a form approved by the Development Department and shall be accompanied by the following:
- (1) A site plan showing the actual shape and dimensions of the lot on which such fence is to be constructed; showing the exact location, height, and length of the proposed perimeter fence, and showing the location of all structures located on the lot.
 - (2) A drawing or specification sheet showing the design, and construction materials of the proposed fence or wall.
 - (3) A fence permit fee in the amount specified in Chapter 214 of the Administration Code.
- (d) Placement of Fences.
- (1) Perimeter fences are permitted to be constructed on property lines and if not on the property line, a minimum setback of two feet from the property line or other greater required distance to allow for maintenance of the fence and yard area falling outside the fenced area shall be provided. This standard is meant to ensure that a minimum gap of two feet is provided between parallel-running fences on adjoining properties for the purpose of allowing the maintenance of the land between the two fences. It shall be the duty of each property owner to determine property lines and to ascertain that the fence thus

constructed does not deviate from the plans as approved by the Development Department and the fence does not encroach on another lot or parcel of land. The issuance of the permit by the City shall not be construed as to mean the City has determined the fence is not encroaching on another lot, nor shall it relieve the property owner of the duty imposed on him or her to determine the location of property lines.

- (2) Fences may be located within easement areas, provided proper permission has been granted from the utility provider for which the easement has been dedicated.

(e) Location of Fences.

- (1) Fences within any Residential (R-1, R-2, R-3, R-4), Office Residential (OR-1), or Office Service (OS-1) Zoning District shall conform to the following requirements:

- A. Section 1289.04(f) applies to all fences.

- B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height.

- C. Side yard. Class 1, 2, 3 and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches with the exception of Class 1 fences which are limited to 32 inches in height.

- D. Corner side yard. Class 1, 2, 3, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of six feet with the exception of Class 1 fences which are limited to 32 inches in height.

1. No perimeter fence shall be installed further forward than the front wall of the structure on the corner side yard. Accent fences may be installed between the structure and the right-of-way on a corner side provided any such fence in accordance with section B. above.

2. Landscaping is required for any Class 4 fence or any fence taller than 48 inches that is facing a public right-of-way. The landscaping shall be planted within six feet of the fence and be located on the right-of-way side of the fence. The landscaping shall consist of at least one shrub, tree or similar plant material every four feet on center running the entire length of the portion of fencing that faces the public right-of-way. The plant materials shall be of a variety that, at maturity, has a height of not less than 48 inches and a spread of not less than 24 inches. The plant material shall be at least two feet tall

at the time of planting. The intent of the landscaping is to obscure or soften the view of the fence from the right-of-way.

3. When the corner side yard abuts a residentially zoned or used property no perimeter fence greater than 48 inches in height can be erected further forward than the abutting property's front yard or the front setback line if the abutting property is undeveloped.
 - E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet. Any fence located adjacent to an alley shall maintain a three foot setback from the property line adjacent to such alley.
 - F. Through front yard. Class 2 and 6 perimeter and accent fences are permitted with a maximum height of 60 inches. When located in a through front yard, Class 2 fences are permitted to be as low as 25% open. Class 1 fences are permitted only as accent fences and are limited to 36 inches in height.
 1. No perimeter fence in a through front yard is permitted to be erected further forward than the abutting property's front yard if the abutting property is developed or the front setback line if the abutting property is undeveloped.
 2. For any fence in a through front yard exceeding 48 inches in height, landscaping is required to be planted on the side of the fence facing the public right-of-way that meets or exceeds the standards of Section 1289.04(e)(1)D.2.
- (2) Fences within any Agricultural (A) or Agricultural Residential (AR) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted on lots less than two acres in size. For lots greater than two acres in size, a split rail style perimeter fence may be installed provided it is no taller than 54 inches. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height.
 - C. Side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - D. Corner side yard. Class 1, 2, 3, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of six feet with the exception of Class 1 fences which are limited to 36 inches in height.
 1. On a lot less than two acres in size, landscaping is required for any Class 4 fence or any fence taller than

48 inches that is facing a public right-of-way. The landscaping shall be planted within six feet of the fence and be located on the right-of-way side of the fence. The landscaping shall consist of at least one shrub, tree or similar plant material every four feet on center running the entire length of the portion of fencing that faces the public right-of-way. The plant materials shall be of a variety that, at maturity, has a height of not less than 48 inches and a spread of not less than 24 inches. The plant material shall be at least two feet tall at the time of planting. The intent of the landscaping is to obscure or soften the view of the fence from the right-of-way.

2. On a lot when the corner side yard abuts a residentially zoned or used property no perimeter fence greater than 48 inches in height can be erected further forward than the abutting properties front yard, or the front setback line if the abutting property is undeveloped.
 - E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet. Any fence located adjacent to an alley shall maintain a three-foot setback from the property line adjacent to such alley.
- (3) Fences within any Commercial (CSD-1, NB-1, GB-1, or HS-1) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height. The Planning Commission may allow Class 1 and 2 perimeter fencing along the edges of parking lots in areas with high pedestrian activity and along the perimeter of outdoor eating areas.
 - C. Side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - D. Corner side yard. Class 1, 2, 3, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet.
- (4) Fences within the Downtown Commercial (CBD-1) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height. The Planning Commission may allow Class 1 and 2 perimeter fencing along the edges of

parking lots in areas with high pedestrian activity and along the perimeter of outdoor eating areas.

- C. Side yard. Class 1, 2, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - D. Corner side yard. Class 1, 2, 4, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - E. Rear yard. Class 1, 2, 4, and 6 fences are permitted with a maximum height of six feet.
- (5) Fences in any Industrial (RO-1, I-1, I-2) Zoning District shall conform to the following requirements:
- A. Section 1289.04(f) applies to all fences.
 - B. Front yard. No perimeter fence is permitted. Class 1 and 2 fences are permitted as accent fences provided they are no taller than 42 inches in height.
 - C. Side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - D. Corner side yard. Class 1, 2, 3, and 6 perimeter fences and accent fences are permitted with a maximum height of 48 inches.
 - E. Rear yard. Class 1, 2, 3, 4, and 6 fences are permitted with a maximum height of six feet. Class 5 fences are permitted and shall be no taller than eight feet with any barbed wire, razor wire, or similar elements being at least six feet above ground level.
- (f) Intersection Visibility. On corner lots no fence or wall shall be erected, placed, or maintained within the triangular yard space formed by the intersecting street centerlines and a line joining points on such street centerlines 50 feet from the point of intersection of the street centerlines unless reviewed and approved by the City Engineer.
- (g) Swimming Pool Fences. Permanent fencing and gated enclosures are required for all pools in the City. Fence design shall not produce a ladder effect on the outside of the fence facing away from the pool that could aid in unauthorized climbing. Pool fences must include at least one gated exit with a minimum width of 36 inches wide. This exit must open outward and be self-closing and self-latching. Where the self-latching device is less than 54 inches above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Access gates shall be equipped to accommodate a locking device. The minimum height of pool fences shall be four feet in height above the finished grade on the side of the barrier away from the pool. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

- (h) Fences Associated with Play Areas. Chain link, wire or similar fencing up to 12 feet in height may be allowed around part or all of tennis courts (public or private) or on public parks and playgrounds.
- (i) Height of Fences Atop Retaining Walls. A combination fence and retaining wall may be erected. The retaining wall portion may be erected up to the level of the higher finished grade. The fence portion must be of the class and height permitted within the applicable district. These measurements shall be made at the point of the finished grade.
- (j) Temporary Fencing. The Planning Commission shall have the ability to waive the requirements for fencing as outlined in this section to accommodate temporary fencing needed during active construction activities taking place on the lot in which the temporary fencing is being requested.
- (k) Fences Required by the Planning Commission or the Board of Zoning Appeals. The Planning Commission or the Board of Zoning Appeals may, when acting within their review procedures, exempt a fence or wall from the provisions of this chapter when it is determined that the health, safety, or general welfare would be best served by such an exemption.

In situations where an application is filed with the Board of Zoning Appeals for a variance to allow for a fence in a front yard, the Board can consider the neighborhood context, the age of the structure, or the historic significance of the property to determine if a variance can be granted.

- (l) General Requirements for all Fences.
 - (1) All permitted fences shall be uniformly constructed in a workmanlike manner of any commonly used fence or wall materials, such as: masonry, wood, chain link, wrought iron, vinyl or aluminum.
 - (2) All fences shall be constructed with the smooth, finished side of the fence facing outward toward the neighboring property and all vertical or horizontal support posts facing inside the property.
 - (3) The bottom of all fences shall be kept six inches above drainage swales or watercourses.
 - (4) Fences that are painted or stained shall be painted or stained one continuous color and shall be maintained free to peeling or flaking paint.
 - (5) If a new fence is being constructed in the same location as an existing fence, the existing fence shall be removed in its entirety. This provision is meant to prevent a situation where a double fence row exists on an individual property.
 - (6) No fence shall be erected where it prevents or unreasonably obstructs the use of adjacent property, nor shall a fence be

erected where it would obstruct or prevent the continued safe use of an existing driveway or other means of access to adjacent property. In enforcing this provision, the Zoning Inspector may require a fence to be set back a minimum distance of not more than two feet from a driveway or property line in order to provide for the safe passage of pedestrians, bicyclists or vehicular traffic or other safety related concerns.

- (7) All Class 1 fences where permitted by this section shall be subject to site plan review by the Planning Commission as outlined in Chapter 1294.
 - (8) Any Class 2 fence shall be permitted to have wire mesh installed on the interior side of the fence for a height of up to 36 inches. Such wire mesh, or similar material shall have openings at least one square inch in size, shall be factory coated with vinyl or a similar material and shall be a dark color such as black, green, or brown.
 - (9) All Class 3 fences shall be factory coated with vinyl or a similar material and shall be a dark color such as black, green, or brown. Uncoated or raw exposed metal is prohibited.
 - (10) Prohibited materials: The following materials shall not be used for any fence or wall:
 - A. Cast-off, secondhand, or other items not originally intended to be used for constructing or maintaining a fence;
 - B. Corrugated and galvanized steel or metal sheets;
 - C. Plywood, pallets, particle board, paper, visqueen plastic, plastic tarp, or similar material;
 - D. Wire farm-style fencing outside of A and AR Districts; and
 - E. Any other material deemed inappropriate by the Development Department.
- (m) Maintenance Requirements.
- (1) All fences shall be constructed and maintained straight, plumb, structurally sound and of an even height along its length, except such deviations as required by grade. Such fences shall not be allowed to become or remain in a condition of disrepair including noticeable leaning or missing sections, broken supports or nonuniform height.
 - (2) Missing boards, pickets or posts shall be replaced with material of the same type, color and quality.
 - (3) Vegetation adjacent to the fence must be maintained cut and trimmed as appropriate. Any grounds between such fences and property lines shall be maintained at all times and kept free from growing or noxious vegetation.
 - (4) Any landscaping required by this section shall be maintained in good, healthy condition at all times. Any dead, dying, or

diseased plant material shall be replaced within three months of its removal.

Section 5.

Section 1289.05(c) – Hot Tubs - of these Codified Ordinances, which reads as follows:

- (c) Hot Tubs. All hot tubs shall be completely covered when not in use. In the event a proposed hot tub has more than 150 square feet of area on the water surface when filled to capacity, all regulations for swimming pools shall apply.

Shall be amended to read as follows:

- (c) Hot Tubs and Spas. All hot tubs and spas shall be completely covered when not in use with a safety cover that complies with ASTM F 1346. In the event a proposed hot tub has more than 150 square feet of area on the water surface when filled to capacity, all fencing regulations for swimming pools shall apply.

Section 6.

Section 1289.07(b) – Accessory Buildings in Residential Districts - which reads as follows:

- (b) Accessory Buildings in Residential Districts. In addition to the general requirements set forth in subsection (a) hereof, all accessory buildings shall be subject to the following requirements:
 - (1) Location. No accessory building shall be permitted in any yard other than the rear yard. However, on a corner lot an accessory building may be erected to the rear of the principal building in a corner side yard, provided that all other setbacks are met. In addition, accessory structures measuring no larger than 144 square feet may be constructed in a through front yard provided that such structures are adequately screened with topography and/or vegetation and placed far enough from the street, in the opinion of the Zoning Inspector, so as to not diminish the character of the street. Such accessory structures shall be architecturally compatible with the principal structure.
 - (2) Setbacks. A five foot setback shall be observed from all property lines, except when the structure is a garage, in which case a ten foot setback shall be observed from the rear lot line.

- (3) Separation. The minimum distance between any accessory and principal building shall be ten feet.
- (4) Size. No more than 20% of the required rear yard shall be occupied by accessory structures.
- (5) Height. Accessory buildings shall not exceed 15 feet in height.

Shall be amended to read as follows:

- (b) Accessory Buildings in Residential Districts. In addition to the general requirements set forth in subsection (a) hereof, all accessory buildings shall be subject to the following requirements:
 - (1) Location. No accessory building shall be permitted in any yard other than the rear yard. However, on a corner lot, an accessory building may be erected to the rear of the principal building in a corner side yard, provided that all other setback requirements are met. In addition, accessory structures measuring no larger than 144 square feet may be constructed in a through front yard provided that such structures are adequately screened with topography and/or vegetation and placed far enough from the street, in the opinion of the Zoning Inspector, so as to not diminish the character of the street. Such accessory structures shall be architecturally compatible with the principal structure.
 - (2) Setbacks. A five (5) foot setback shall be observed from all property lines, except when the structure is a garage that abuts an alley, in which case a ten (10) foot setback shall be observed from the lot lines toward which the vehicular door(s) face.
 - (3) Separation. The minimum distance between any accessory and principal building shall be ten (10) feet.
 - (4) Size. No more than 20% of the required rear yard shall be occupied by accessory structures.
 - (5) Height. Accessory buildings shall not exceed fifteen (15) feet in height.

Section 7.

Section 1290.01 – Purpose and Intent – which reads as follows:

1290.01 PURPOSE AND INTENT.

The landscaping standards contained in this chapter, as well as those found elsewhere in this Code are designed to accomplish the following goals:

- (a) Protect the health, safety and general welfare of the public;
- (b) Enhance property values;
- (c) Improve the appearance of the community through the preservation of natural resources, trees and native plants;

- (d) Maintain the ecological balance of the area;
- (e) Screen unsightly equipment or materials from the view of persons on public streets or abutting properties and buffering from uncomplimentary land uses;
- (f) Promote water conservation through rain water capture, treatment, and storage, and efficient landscape and irrigation design; and
- (g) Promote and protect the health, safety and welfare of the public by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life.

Shall be amended to read as follows:

1290.01 PURPOSE AND INTENT.

The landscaping standards contained in this chapter, as well as those found elsewhere in this Code are designed to accomplish the following goals:

- (a) Protect the health, safety and general welfare of the public;
- (b) Enhance property values;
- (c) Improve the appearance of the community through the preservation of natural resources, trees and native plants;
- (d) Maintain the ecological balance of the area;
- (e) Screen unsightly equipment or materials from the view of persons on public streets or abutting properties and buffering from uncomplimentary land uses;
- (f) Promote water conservation through rain water capture, treatment, and storage, and efficient landscape and irrigation design;
- (g) Promote and protect the health, safety and welfare of the public by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life;
- (h) Reduce soil erosion and increase infiltration in permeable land areas essential to stormwater management and aquifer recharge;
- (i) Reduce the negative environmental effects of development while protecting and enhancing the value of developed properties in the surrounding area;
- (j) Encourage preservation of existing trees and other significant vegetation; and
- (k) Reduce the “heat-island” effect of impervious surfaces, such as parking lots, by cooling and shading the surface area, and breaking up large expanses of pavement.

Section 8.

Section 1290.03 – Spacing – Which reads as follows:

1290.03 PLANT MATERIAL SPACING.

- (a) Plant materials shall not be placed closer than four feet from any property line unless located within a tree lawn or tree grate in the public right-of-way and planted with the approval of the City of Miamisburg.
- (b) Where plant materials are planted in two or more rows, plantings shall be staggered.
- (c) Plant materials shall be planted according to the following schedule (note: these are average spacing requirements. Drive openings, utilities and other factors may result in larger or smaller spaces between trees):
 - (1) Group A trees: Forty feet on center if streetscape trees. Such trees with narrow mature crowns spreads (20 to 25 feet), should be planted thirty feet on-center.
 - (2) Group B trees: Thirty feet on center if streetscape trees. Such trees with narrow mature crowns spreads (15 to 20 feet), should be planted twenty-five feet on-center.
 - (3) Group C trees: Varies based upon the intent of the trees. Group C trees planted with the intention of growing into a hedge shall be planted in accordance with the plant material requirements. Those planted as general landscaping trees may be spread around the site in an aesthetically pleasing and functional manner and approved at the discretion of the Planning Commission.
 - (4) Others: Other plant varieties, such as shrubs, narrow evergreen shrubs and trees (hedge plantings), shall be planted in accordance with best practices in order to allow such plantings to grow into any required sight-proof hedges or screening facilities.

Shall be amended to read as follows:

1290.03 PLANT MATERIAL SPACING.

- (a) Plant materials within bufferyards shall not be planted closer than four (4) feet from any property line.
- (b) Where plant materials are planted in two or more rows, plantings shall be staggered.
- (c) Plant materials shall be planted according to the following schedule (note: these are average spacing requirements. Drive openings, utilities and other factors may result in larger or smaller spaces between trees):
 - (1) Group A trees: Forty feet on center if streetscape trees. Such trees with narrow mature crowns spreads (20 to 25 feet), should be planted thirty feet on-center.
 - (2) Group B trees: Thirty feet on center if streetscape trees. Such trees with narrow mature crowns spreads (15 to 20 feet), should be planted twenty-five feet on-center.

- (3) Group C trees: Varies based upon the intent of the trees. Group C trees planted with the intention of growing into a hedge shall be planted in accordance with the plant material requirements. Those planted as general landscaping trees may be spread around the site in an aesthetically pleasing and functional manner and approved at the discretion of the Planning Commission.
- (4) Others: Other plant varieties, such as shrubs, narrow evergreen shrubs and trees (hedge plantings), shall be planted in accordance with best practices in order to allow such plantings to grow into any required sight-proof hedges or screening facilities.

Section 9.

Section 1290.07 – Bufferyards – which reads as follows:

1290.07 BUFFERYARDS.

(a) Location of Bufferyards:

- (1) Bufferyards required throughout this Code shall be provided along the side or rear lot lines of abutting uses or properties.
- (2) Bufferyards shall be located solely upon private property and shall not extend into the public right-of-way.

(b) Bufferyards required:

- (1) Bufferyard requirements are listed in each individual zoning district (Chapters 1242 through 1286) and further supplemented for certain uses by the standards of Chapter 1296 – Site Design Standards – of this Code.

(c) Bufferyard Design:

- (1) The applicant shall either plant new vegetation or preserve existing trees or plants within the required buffer provided that existing trees or plants meet the requirements of this Code.
- (2) Trees and other plants required in a bufferyard shall be spaced throughout and planted within the bufferyard to achieve the functional screening from adjoining property. The Planning Commission shall review all bufferyard plans, including the proposed tree types and spacing in order to verify that the plans meet the bufferyard requirements contained in this Code. All bufferyard areas shall be established with grass, groundcover or mulch.
- (3) Fences that are required or optional as a replacement for an evergreen hedge when approved or required by the Planning Commission shall be placed and designed appropriately so as to not diminish the character of the surrounding area. Slatted

chain-link or similar woven wire fences are not permitted as bufferyard screening fences in any zoning district.

- (4) Plant Spacing. Where trees or shrubs are required within bufferyard areas, the spacing shall depend upon the proposed planting types. The plants shall be spaced in such a way that the mature crown spreads will grow into a continuous screen (i.e. deciduous trees with mature crown spreads of 30 feet should be planted 30 feet OC. Evergreen trees with mature spreads of 15 feet should be planted 15 feet OC).
- (5) Species. The species shall be drought and salt tolerant. A mixture of tree species shall be provided in any case where more than five (5) bufferyard trees (Group A, B or C) are required. Hedge plantings may be of the same species.

Shall be amended to read as follows:

1290.07 BUFFERYARDS.

(a) Location of Bufferyards:

- (1) Bufferyards required throughout this Code shall be provided along the side or rear lot lines of abutting uses or properties.
- (2) Bufferyards shall be located solely upon private property and shall not extend into the public right-of-way.

(b) Bufferyards required:

- (1) Bufferyard requirements are listed in each individual zoning district (Chapters 1242 through 1286) and further supplemented for certain uses by the standards of Chapter 1296 – Site Design Standards – of this Code.

(c) Bufferyard Design:

- (1) The applicant shall either plant new vegetation or preserve existing trees or plants within the required buffer provided that existing trees or plants meet the requirements of this Code.
- (2) Trees and other plants required in a bufferyard shall be spaced throughout and planted within the bufferyard to achieve the functional screening from adjoining property. The Planning Commission shall review all bufferyard plans, including the proposed tree types and spacing in order to verify that the plans meet the bufferyard requirements contained in this Code. All bufferyard areas shall be established with grass, groundcover or mulch.
- (3) Fences that are required or optional as a replacement for an evergreen hedge when approved or required by the Planning Commission shall be placed and designed appropriately so as to not diminish the character of the surrounding area. Slatted

chain-link or similar woven wire fences are not permitted as bufferyard screening fences in any zoning district.

- (4) Species. The proposed plant species shall be drought and salt tolerant.

Section 10.

Section 1290.08 – Specifications for Plant Materials – which reads as follows:

1290.08 SPECIFICATIONS FOR PLANT MATERIALS.

- (a) No artificial plant materials shall be used to satisfy the requirements of this chapter.
- (b) Each tree or shrub shall be planted at least 30 inches from the edge of any paved surface.
- (c) For suggested plant materials, refer to the preferred plant list table in Section 1253.07(l) of these Codified Ordinances.
- (d) Prohibited Plant Materials. In order to prevent the spread of disease and reduce the possibility of damage to infrastructure and buildings, the following trees are prohibited from new plantings:
 - (1) Apple, *Malus punila*
 - (2) Bradford Pear, *Pyrus calleryana* “Bradford”
 - (3) Box Elder, *Acer negundo*
 - (4) Cottonwood, Aspen
 - (5) Siberian Elm, *Ulmus Pumila*
 - (6) Moline American Elm, *Ulmus Americana* “Moline”
 - (7) Ginkgo – Female, *Ginko biloba*
 - (8) Willow, *Salix* Species
 - (9) Honeysuckle
 - (10) Osage Orange, Hedge Apple, *Maclura ponifera*
 - (11) Poplar, *Populus* species
 - (12) Russian Olive
 - (13) Silver Maple, *Acer saccharinum*
 - (14) Tree-of-Heaven, *Ailanthus altissima*
 - (15) Ash

Shall be amended to read as follows:

1290.08 SPECIFICATIONS FOR PLANT MATERIALS.

- (a) No artificial plant materials shall be used to satisfy the requirements of this chapter.
- (b) Each tree or shrub shall be planted at least 30 inches from the edge of any paved surface where vehicles overhang.
- (c) The use of native plants and shrubs is encouraged.
- (d) For suggested plant materials, refer to the preferred plant list table in Section 1253.07(l) of these Codified Ordinances.

- (e) Plant diversity requirements. Landscaping plans shall provide a variety of tree and shrub species throughout the site in the form of streetscape trees, parking lot trees, bufferyard trees, and general site trees. All landscaping and screening plans shall meet the plant diversity requirements of the table below:

Table 1290.08-1 Plant Diversity Requirements

Plant Diversity Requirements		
Minimum Number of required or proposed trees*	Minimum Number of tree species required*	Maximum Percentage of any one species*
0-5	1	100%
6-15	2	50%
16-30	3	40%
31-50	5	30%
51+	6	20%

*Hedge plantings of tree-like shrubs, such as arborvitaes, may be of the same species and do not have to meet the plant diversity requirements of this table.

- (f) **Prohibited Plant Materials.** In order to prevent the spread of disease and reduce the possibility of damage to infrastructure and buildings, the following trees are prohibited from new plantings:
- (1) Apple, *Malus punila*
 - (2) Bradford Pear, *Pyrus calleryana* "Bradford"
 - (3) Box Elder, *Acer negundo*
 - (4) Cottonwood, Aspen
 - (5) Siberian Elm, *Ulmus Pumila*
 - (6) Moline American Elm, *Ulmus Americana* "Moline"
 - (7) Ginkgo – Female, *Ginko biloba*
 - (8) Willow, *Salix* Species
 - (9) Honeysuckle
 - (10) Osage Orange, Hedge Apple, *Maclura ponifera*
 - (11) Poplar, *Populus* species
 - (12) Russian Olive
 - (13) Silver Maple, *Acer saccharinum*
 - (14) Tree-of-Heaven, *Ailanthus altissima*
 - (15) Ash
 - (16) *Lythrum virgatum*, european wand loosestrife
 - (17) *Pyrus calleryana*, callery pear
 - (18) Any plant material declared invasive by the Ohio Department of Agriculture

Section 11.

Section 1292.03(e)(2) – Required yards; parking in front yards – which reads as follows:

- (2) Required yards; parking in front yards.
- A. Off-street parking spaces, open to the sky, may be located in any yard if the parking facility is located within a commercial district or an industrial district, except that when a required nonresidential parking lot or parking area is situated on a parcel which adjoins a residential district or a residential use, abutting directly or across a roadway, the respective side or rear yard setback shall be a minimum of 30 feet, of which the 15 feet nearest the respective property line is developed as a green belt.
 - B. Within all zoning districts, it shall be unlawful to use any non-hard surfaced portion of the front yard for parking of any motor vehicles.
 - C. In any residential district or on any residentially used property, no trailer, boat, camper, motor home, travel trailer, recreational vehicle, or like or similar item may be parked between the principal structure and any public or private right-of-way.
 - D. In any residential district or on any residentially used property, not more than two motor vehicles, trailers, boats, campers, motor homes, travel trailers, recreational vehicles or like or similar items may be located in either the side or rear yard, provided that such vehicle is located not less than three feet from any property line, right-of-way, or easement. However, more than two operable and licensed motor vehicles are permitted in any yard if such parking is located on a hard surfaced driveway.
 - E. No vehicle or recreation vehicle may be used for living, sleeping, or housekeeping purposes while located in any zoning district unless such use is specifically permitted in the zoning district in which the parking or activity occurs.
 - F. In any nonresidential district, no trailer, boat, camper, motor home, travel trailer, recreational vehicle or like or similar item may be located between the principal building and any public or private street right-of-way.
 - G. Parking facilities in any nonresidential district shall be located outside of all required yards in the zoning district in which the property is located.

Shall be amended to read as follows:

- (2) Required yards; parking in front yards.
 - A. Off-street parking spaces, open to the sky, may be located in any yard if the parking facility is located within a commercial district or an industrial district, except that when a required nonresidential parking lot or parking area is situated on a parcel which adjoins a residential district or a residential use, abutting directly or across a roadway, the respective side or rear yard setback shall be a minimum of 30 feet. A greenbelt, as defined in Chapter 1230 of this Code, shall also be provided within this 30-foot setback.
 - B. Within all zoning districts, it shall be unlawful to use any non-hard surfaced portion of the front yard for parking of any motor vehicles.
 - C. In any residential district or on any residentially used property, no trailer, boat, camper, motor home, travel trailer, recreational vehicle, or like or similar item may be parked between the principal structure and any public or private right-of-way.
 - D. In any residential district or on any residentially used property, not more than two motor vehicles, trailers, boats, campers, motor homes, travel trailers, recreational vehicles or like or similar items may be located in either the side or rear yard, provided that such vehicle is located not less than three feet from any property line, right-of-way, or easement. However, more than two operable and licensed motor vehicles are permitted in any yard if such parking is located on a hard surfaced driveway.
 - E. No vehicle or recreation vehicle may be used for living, sleeping, or housekeeping purposes while located in any zoning district unless such use is specifically permitted in the zoning district in which the parking or activity occurs.
 - F. In any nonresidential district, no trailer, boat, camper, motor home, travel trailer, recreational vehicle or like or similar item may be located between the principal building and any public or private street right-of-way.
 - G. Separation from Rights-of-Way. Except in Districts zoned exclusively for single and two-family residential uses and properties used exclusively for single and two-family residential uses, all off-street parking facilities located within a front yard shall be separated from public sidewalks or the existing right-of-way line (whichever is closest) by a pervious area landscaped per the provisions of this Code that measures at least eight (8) feet in width. A full depth minimum

six-inch tall barrier curb (ODOT Type 6) shall be provided on the parking lot side of the required landscaping area. In zoning districts where front yard setbacks for structures are not required, this standard may be modified or waived by the Planning Commission during the site plan or Special Use review process, but all frontage landscaping and screening standards remain applicable.

Section 12.

Section 1292.03(e)(6) – Wheel stops – which reads as follows:

- (6) Wheel stops. All parking lots shall be provided with wheel stops or bumper guards so located as to prevent any vehicle from projecting over the lot or setback lines.

Shall be amended to read as follows:

- (6) Curbing and wheel stops. Where deemed appropriate by the Planning Commission, the perimeters of parking lots, landscape islands, access drives and other locations shall be improved with full-depth concrete curbs (ODOT Type 6) or provided with wheel stops (wheel stops are only appropriate at the ends of parking spaces, not along the perimeter of access aisles or on the perimeter of landscaping areas). Example conditions where such curbing or wheel stop provisions may be required include, but are not limited to, the following:
- A. To prevent encroachment of a vehicle into any traffic aisle, pedestrian walkway or sidewalk;
 - B. The parking area abuts a wall, fence, or any other structure;
 - C. A severe grade change or embankment at the edge of a parking area;
 - D. A landscaping area lacks protection from potential vehicle encroachment or storm water runoff; or
 - E. To prevent any vehicle from projecting over the lot or setback lines.

Section 13.

Section 1293.08(g) – Sign Location with Respect to Frontages – which reads as follows:

- (g) Sign Location with Respect to Frontages. Sign area permitted by the virtue of a premise having lot frontage or building frontage shall be located only along that frontage which generated the permitted sign area. Up to fifty percent of excess sign area for building signs may

be placed on any building frontage provided that said sign will not be viewed primarily from residential property and provided that such sign(s) transferred to an alternative building wall not exceed a total size seventy-five square feet in sign area.

Shall be amended to read as follows:

- (g) Sign Location with Respect to Frontages. Sign area permitted by the virtue of a premise having lot frontage or building frontage shall be located only along that frontage which generated the permitted sign area. Excess sign area for building signs not utilized on a building frontage wall may be placed on any non-frontage wall provided that said sign will not be viewed primarily from residential property and provided that such sign(s) transferred to an alternative building wall not exceed a total size seventy-five (75) square feet in sign area.

Section 14.

Section 1293.09(h) – Temporary Signs – Which reads as follows:

- (h) Temporary Signs.
- (1) Location. Temporary signs may be permitted on any property within the City of Miamisburg but shall not be permitted within any public right-of-way.
 - (2) Setback. Temporary signs shall be located outside of the public right-of-way and shall not impact sight-distance for drivers or pedestrians in the public right-of-way.
 - (3) Size. The allowable size of temporary signs varies based on the zoning district, the use of the subject property and where they are placed.
 - (4) Height. The allowable height of temporary signs varies based on the zoning district, the use of the property and where they are placed.
 - (5) Illumination. Temporary signs shall not be illuminated by either internal or external sources.
 - (6) Temporary signs shall be securely fastened or attached to an approved stationary structure or ground in such a manner as to prevent swinging or other significantly noticeable movement.
 - (7) Any temporary sign violating the requirements of this or any other section is declared a public nuisance and the Development and/or Building Inspection Departments are authorized to remove the same or cause it to be removed.
 - (8) Temporary signs shall not be posted on any traffic control device, utility pole, railroad sign or signal.
 - (9) Temporary signs shall not have changeable copy.

- (10) Temporary signs shall be permitted as specified in this Section, including the Temporary Sign Standards Table below.
- (11) Public issue signs. Public issue signs are allowed in all zoning districts in the City consistent with the following additional provisions:
 - A. Public issue signs shall not be posted on any traffic control device, utility pole, railroad sign or signal or on City-owned property.
 - B. Any public issue sign placed in the public right-of-way shall be set back not less than fifteen feet from the curb or fifteen feet from the edge of pavement on streets that have no curb. Any public issue sign violating the requirements of this section is declared a public nuisance and the Development Department is authorized to remove the same or cause it to be removed.
 - C. No public issue signs shall be placed in a median.
 - D. Any candidate for public office or any public issue or levy campaign committee wishing to display public issue signs in the public right-of-way shall obtain a permit by posting a deposit of fifty dollars (\$50.00) in cash, money order, or cashier's check or certified check with the Development and/or Building Inspection Departments. The deposit will be refunded to the candidate or committee within ten days after the election.

Shall be amended to read as follows:

- (h) Temporary Signs.
 - (1) Location. Temporary signs may be permitted on any property within the City of Miamisburg but shall not be permitted within any public right-of-way.
 - (2) Setback. Temporary signs shall be located outside of the public right-of-way and shall not impact sight-distance for drivers or pedestrians.
 - (3) Size. The allowable size of temporary signs varies based on the zoning district, the use of the subject property and where they are placed. Table 1293.09-1 provides for maximum sizes for temporary signs.
 - (4) Height. The allowable height of temporary signs varies based on the zoning district, the use of the property and where they are placed. Table 1293.09-1 provides for maximum heights for temporary signs.

- (5) Illumination. Temporary signs shall not be illuminated by either internal or external sources.
- (6) Temporary signs shall be securely fastened or attached to an approved stationary structure or ground in such a manner as to prevent swinging or other significantly noticeable movement.
- (7) Any temporary sign violating the requirements of this or any other section is declared a public nuisance and the Development and/or Building Inspection Departments are authorized to remove the same or cause it to be removed.
- (8) Temporary signs shall not be posted on any traffic control device, utility pole, railroad sign or signal.
- (9) Temporary signs shall not have changeable copy.
- (10) Temporary signs shall be permitted as specified in this Section, including the Temporary Sign Standards Table below.
- (11) Public issue signs. Public issue signs are allowed in all zoning districts in the City consistent with the following provisions:
 - A. Public issue signs shall not be posted on any traffic control device, utility pole, railroad sign or signal or on City-owned property.
 - B. Any public issue sign placed in the public right-of-way shall be set back not less than fifteen (15) feet from the curb or fifteen (15) feet from the edge of pavement on streets that have no curb.
 - C. No public issue signs shall be placed in a median.
 - D. Public issue signs shall be permitted in the right-of-way for a period not more than thirty (30) days before and ten (10) days after a general, regular, special, or primary election. Any candidate for public office or any public issue or levy campaign committee wishing to display public issue signs in the public right-of-way shall obtain a permit by posting a deposit of fifty dollars (\$50.00) with the Development and/or Building Inspection Departments. The deposit will be refunded to the candidate or committee if all public issue signs are removed within ten (10) days after the election.
 - F. Any public issue sign violating the requirements of this section is declared a public nuisance and the Development Department is authorized to remove the same or cause it to be removed.

Section 15.

Section 1293.11(b) – Signs located near the primary vehicular access point(s) of single and/or two-family residential developments (entranceway signs) – Which reads as follows:

(b) Signs Located near the Primary Vehicular Access Point(s) of Single And/or Two Family Residential Developments (Entranceway Signs).

(1) Residential subdivisions which contain at least fifteen separate platted, recorded parcels meant for residential development, one sign located near the primary vehicular entrance(s), other than those authorized in other sections hereof, shall be permitted, subject to the following standards:

- A. Location. Such sign shall be located near the primary vehicular entrance to said residential development and outside of the public right-of-way located and oriented in a way that does not impact the sight-distance of drivers or pedestrians in the public right-of-way. Such signs shall be setback a minimum of five feet from the public right-of-way.
- B. Area. The gross area in square feet of the additional sign(s) shall be no more than fifty (24) square feet per sign face.
- C. Number. One such sign shall be permitted; however, the two faces of the sign may be split into two separate signs and situated on both sides of the main entrance to the residential development.
- D. Height. No such sign shall exceed six feet in height.
- E. Illumination. Such signs shall be illuminated by a concealed, external light source. No such sign shall be internally illuminated.
- F. Landscaping. A landscaping area equal to the sign area shall be provided around the sign base. The landscape area shall include living plants aesthetically located and maintained.
- G. Building materials. Such signs shall be built with durable materials such as brick, stone, wood, wrought iron fence or earthen mound and not non-durable materials such as cardboard, paper or cloth.

Shall be amended to read as follows:

(b) Signs Located near the Primary Vehicular Access Point(s) of Single And/or Two Family Residential Developments (Entranceway Signs).

(1) Residential subdivisions which contain at least fifteen separate platted, recorded parcels meant for residential

development, one sign located near the primary vehicular entrance(s), other than those authorized in other sections hereof, shall be permitted, subject to the following standards:

- A. Location. Such sign shall be located near the primary vehicular entrance to said residential development and outside of the public right-of-way located and oriented in a way that does not impact the sight-distance of drivers or pedestrians in the public right-of-way. Such signs shall be setback a minimum of five feet from the public right-of-way.
- B. Area. The gross area in square feet of the additional sign(s) shall be no more than twenty-four (24) square feet per sign face.
- C. Number. One such sign shall be permitted; however, the two faces of the sign may be split into two separate signs and situated on both sides of the main entrance to the residential development.
- D. Height. No such sign shall exceed six feet in height.
- E. Illumination. Such signs shall be illuminated by a concealed, external light source. No such sign shall be internally illuminated.
- F. Landscaping. A landscaping area equal to the sign area shall be provided around the sign base. The landscape area shall include living plants aesthetically located and maintained.
- G. Building materials. Such signs shall be built with durable materials such as brick, stone, wood, wrought iron fence or earthen mound and not non-durable materials such as cardboard, paper or cloth.

Section 16.

Section 1296.28 – Automobile fueling, recharging stations – of these codified ordinances is hereby repealed.

Section 17.

Section 1296.28 – Automobile Fueling, Recharging Stations – of these codified ordinances is hereby enacted as follows:

1296.28 AUTOMOBILE FUELING, RECHARGING STATIONS.

Automobile fueling and/or recharging stations are permitted in certain zoning districts subject to the following standards and conditions:

- (a) The minimum lot size shall be 20,000 square feet.
- (b) When permitted in the subject zoning district, Automobile service station (not repair garage) uses are permitted as an additional

principal use on lots with a minimum lot area of 30,000 square feet and said activities must comply fully with Section 1296.19 - Automobile Service Stations and Repair Garages – of this Code.


- (c) The minimum lot width shall be 100 feet.
- (d) The use of the site shall be restricted to those functions relating to the fueling and/or recharging of automobiles and any accessory convenience store uses. For automobile service stations or repair garages, refer to Section 1296.19 of this Chapter. If the proposed use is to include automobile fueling and/or recharging plus automobile service or repair uses (when permitted in the applicable zoning district), the minimum lot area must be 30,000 square feet and the use must meet all the standards of this Section as well as Section 1296.19 of this Chapter.
- (e) Outdoor activities on the site shall be restricted to the following:
 - (1) The display of merchandise in the form of small supplies at the pump island of lubricating oils, additives, antifreeze, windshield wiper blades and similar items.
 - (2) The placement of vending machines if located within or immediately adjacent to the perimeter of the principal building. All other merchandise shall be located completely within the enclosed service station building.
 - (3) Accessory car washing within an enclosed building provided that said facilities are in full compliance with Section 1296.13 - Vehicle Wash Establishments.
- (f) All principal structures and pump islands shall be setback at least fifty (50) feet from any residentially zoned or used property.
- (g) Landscaping, Screening and Buffering.
 - (1) Where the proposed use abuts a residentially-zoned or used property, a landscaped buffer at least 25 feet wide shall be created along the entire length of the property for screening and buffering purposes. This bufferyard shall contain a solid fence or masonry wall at least six (6) feet in height and a dense planting of Group A and C trees (minimum 70% Group C).
 - (2) Where the proposed use abuts and office or service district or use, a landscaped buffer at least ten (10) feet wide shall be created along the entire length of the lot for screening and buffering purposes. This buffer shall contain a dense planting of Group A and C trees (minimum 70% Group C trees).
 - (3) The use of slatted chain-link fences is prohibited.
- (h) Lighting.
 - (1) No lighting shall constitute a nuisance or in any way impair the safe movement of traffic on any street or right-of-way, and no lighting shall shine or directly illuminate adjacent properties.

- (2) Light sources shall meet the requirements of Section 1291.07 of this Code.
- (3) All non-decorative lighting shall be fully cut-off fixtures that do not emit light rays above the horizontal plane, as certified by a photometric test report.
- (4) Light bands around rooflines and/or windows or light sources within buildings and structures intended to project outwards shall incorporate automatic dimming technology that dims the light source as the ambient light levels decrease.
- (i) Such establishments shall provide litter receptacles of an appropriate number and location to adequately handle the volume and frequency of trash generated by customers.
- (h) Ingress and egress drives shall not be more than 40 feet as measured at the property line.
- (k) No more than one curb opening shall be permitted for every 100 feet of frontage (or major fraction thereof) along any street, with a maximum of two per frontage.
- (l) Driveways opening on traffic lanes leading to the intersection at which the business is situated shall be located as to provide not less than 40 feet spacing between the intersection formed by the adjacent street right-of-way lines and the nearest side of such driveway. Driveways opening on traffic lanes leading away from the intersection shall be located so as to provide no less than 20 feet spacing between the intersection formed by the adjacent street right-of-way lines and the nearest side of such driveways, measured along the right-of-way line.

Section 18.

This measure shall take effect and be in full force from and after the earliest period allowed by law.

Passed: July 21, 2020 Attested: 
Kim Combs, Clerk of Council

Approved: 
Michelle L. Collins, Mayor

ORDINANCE NO. 6846

AN ORDINANCE APPROVING A MAJOR CHANGE TO THE COURSEVIEW AT PIPESTONE PLANNED RESIDENTIAL (PR) DEVELOPMENT LOCATED ON CITY LOTS, PARCEL IDS K46 01422 0009, K46 01422 0023, K46 01422 0024, K46 01422 0025 AND K46 01422 0026 AND TO APPROVE THE COMPANION PRELIMINARY DEVELOPMENT PLAN FOR THE ABERDEEN PLANNED RESIDENTIAL SUBDIVISION.

WHEREAS, the agent of the owner of city lots, parcel IDs K46 01422 0009, K46 01422 0023, K46 01422 0024, K46 01422 0025 and K46 01422 0026 has filed an application with the City of Miamisburg Development Department to approve a major change to the Courseview at PipeStone Planned Residential (PR) Subdivision, which was originally approved by City Council with Ordinance 6801; and

WHEREAS, The City of Miamisburg Planning Commission has reviewed the requested major plan change in accordance with the provisions set forth in the City Charter and the Planning and Zoning Code; and

WHEREAS, The City of Miamisburg Planning Commission has found the proposed preliminary development plan to be consistent with the requirements and standards of the Planning and Zoning Code; and

WHEREAS, The City of Miamisburg Planning Commission has found that the proposed preliminary development plan is in conformance with the City of Miamisburg Comprehensive Plan; and

WHEREAS, City Council has reviewed the Planning Commission's recommendation on this matter.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The major change to the "Courseview at PipeStone" Preliminary Development Plan, originally approved as a part of Ordinance 6801, for the area of the City located on City Lots, Parcel IDs K46 01422 0009, K46 01422 0023, K46 01422 0024, K46 01422 0025 and K46 01422 0026, such parcels shown on "Exhibit A", attached hereto and made a part thereof, is hereby approved.

Section 2.

The Preliminary Development Plan, which constitutes the major change to the "Courseview at PipeStone" Planned Residential Development, for the "Aberdeen" Subdivision, as shown in "Exhibit B", attached hereto and made a part thereof, is hereby approved. The preliminary development plan shall be subject to the standards and conditions included in the Preliminary Development Plan Report, as listed in Section 4 below and incorporated herein.

Section 3.

The name of the Planned Residential Development known as "Courseview at PipeStone" is hereby amended to be "Aberdeen".


Section 4.

The Preliminary Development Plan Report for the Aberdeen Subdivision, shown in "Exhibit C" attached to this Ordinance and incorporated herein, is hereby approved.

Section 5.

This measure shall take effect and be in full force from and after the earliest period allowed by law.

Passed: July 21, 2020 Attested: 
Kim Combs, Clerk of Council

Approved: 
Michelle L. Collins, Mayor



Ordinance #6846

Exhibit A

Location Map for the Aberdeen Subdivision



Subject Lots

MIAMISBURG

Miami Springs Road
Miami Springs Rd

Medler Road

Pipstone Dr
Combray Ct
Fairwood Ct

TWHP



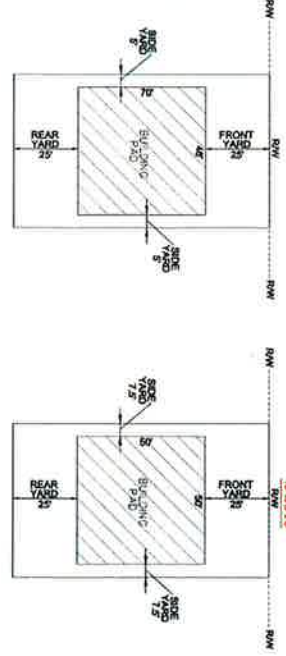
Ordinance #6846

Exhibit B

Preliminary Site Plan for the Aberdeen Subdivision

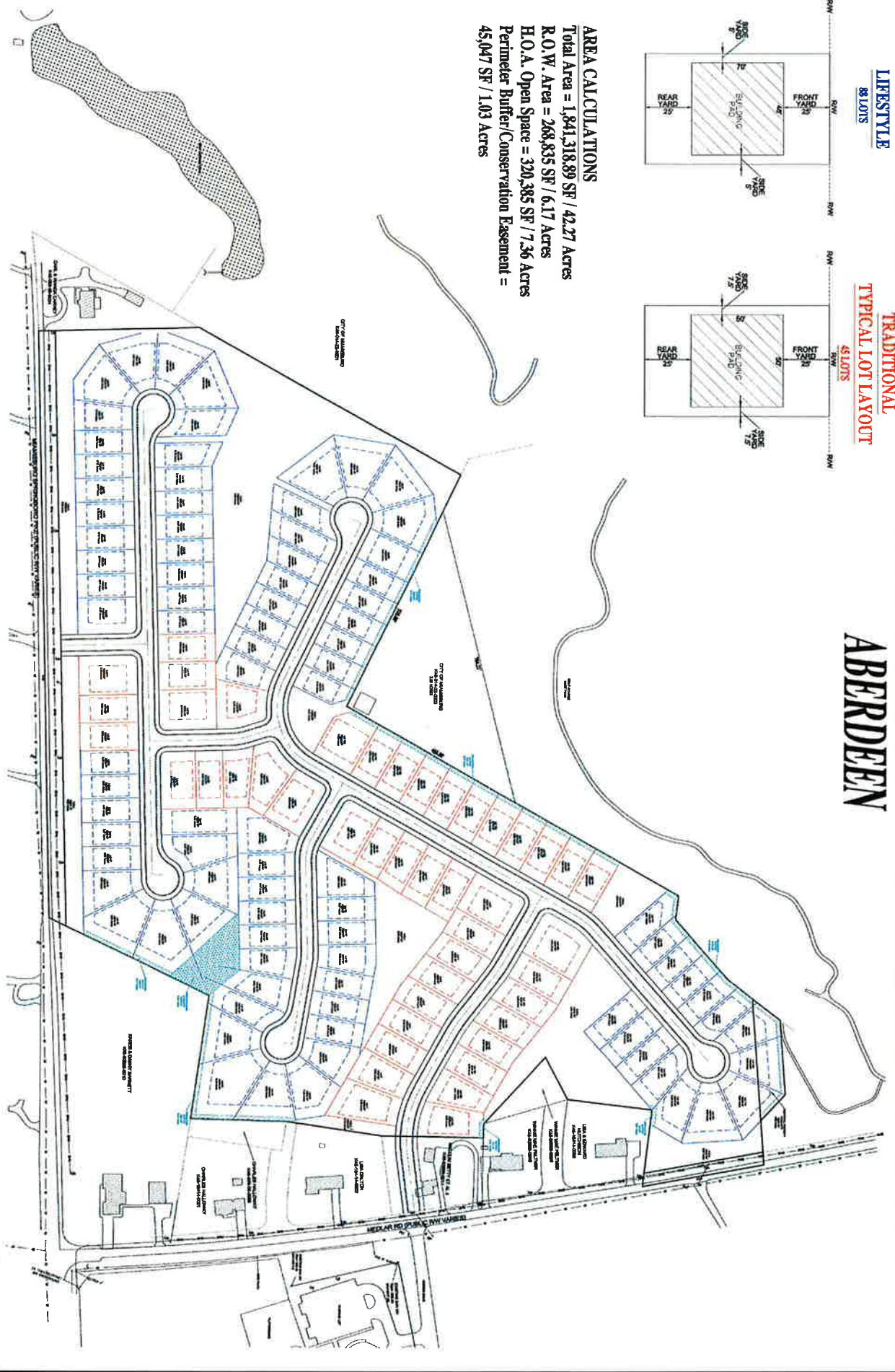
LIFESTYLE
88 LOTS

TRADITIONAL
TYPICAL LOT LAYOUT
45 LOTS



AREA CALCULATIONS
Total Area = 1,841,318.89 SF / 42.27 Acres
R.O.W. Area = 268,835 SF / 6.17 Acres
H.O.A. Open Space = 320,385 SF / 7.36 Acres
Perimeter Buffer/Conservation Easement = 45,047 SF / 1.03 Acres

ABERDEEN



2 WORKING DAYS BEFORE YOU DIG
UTILITIES PROTECTION SERVICE

<p>SL engineers</p>	<p>ABERDEEN MEDLAR RD & MAMMERSBURG SPYINGBORO PIKE CITY OF MAMMERSBURG, MCKTOWNEY CO, OHIO</p> <p>LEESMAN ENGINEERING & ASSOC. ENGINEERING, SURVEYING, PLANNING 2720 TOPIC HILLS, CINCINNATI, OHIO 45248 513/417-0420</p>	<p>NOT FOR CONSTRUCTION</p>	<p>NO. DESCRIPTION</p>		BY	DATE
			<p>REVISIONS AND/OR ISSUES</p>			
<p>DRAWING TITLE</p> <p>PRELIMINARY LAYOUT</p>	<p>DATE</p> <p>2-13-20</p> <p>SCALE</p>	<p>PROJECT NO.</p> <p>ABERDEEN</p> <p>DATE</p> <p>2-13-20</p> <p>SCALE</p>	<p>C1</p>			



Ordinance #6846

Exhibit C

Preliminary Development Plan Report

**Planned Residential District
Development Guidelines Report
Aberdeen
9547 Miamisburg Springboro**

SECTION 1 – PURPOSE

The purpose of this PUD is to allow the developer to work with the City of Miamisburg to design a neighborhood-focused development that will include both Lifestyle (empty nester-targeted patio homes) and Traditional (family-targeted homes) dwellings. The development will include a significant amount of preserved open space and HOA-maintained areas for the enjoyment of the residents.

SECTION 2 – PERMITTED USES

- (a) The following principal uses are permitted in the Aberdeen PR Development:
- (1) Single-family dwellings.
- (b) The following accessory uses are permitted in the Aberdeen PR Development:
- (1) Garages, storage sheds, and other accessory structures compliant with the standards of Chapter 1289 of the Miamisburg Planning and Zoning Code for the exclusive use of residents for the Aberdeen Planned Unit Development.

SECTION 3 – AREA

The Aberdeen PR Development consists of +/- 42.59 acres of land with the following breakdowns:

- 42.59 acres of single-family developed area (neighborhood lots)

SECTION 4 – DENSITY

The Aberdeen PR Development may contain up to 133 residential units spread over 42.59 acres, which results in a residential unit density of 3.12 units per acre.

Note: There are two cul-de-sacs of “flex” lots in this development, which may convert from Lifestyle to Traditional lots in the future. Should this occur, the total lot count may drop below 133 down to an estimated low count of 127 for an overall density of 3 units per acre.

SECTION 5 – DEVELOPMENT STANDARDS

A. **Site Design:**

The proposed site design will include up to 133 residential lots spread over +/-42.59 acres. The development will include a mixture of Lifestyle (between 47 and 88 lots) and Traditional (between 45 and 80 lots) homes and will incorporate approximately 7.67 acres of commonly-owned open space and approximately ~0.9 acres of buffer/tree conservation easements along the perimeter of the development. The main access points are on Medlar Road and Miamisburg Springboro Pike.

The estimated build-out time for this development is 4-5 years.

Refer to Exhibit 1 – Preliminary Site Plan – attached to this Planned Residential Development document and incorporated herein, for the preliminary site plan for the development. Also refer to Exhibit 2 – Preliminary Flex Lot Site Plan – attached to this Planned Residential Development document and incorporated herein, for a site plan

depicting where and how the lot count would change should some of the Lifestyle lots convert to Traditional lots.

B. Lot Requirements. The lot requirements for the Aberdeen PR Development are as follows:

- (1) Minimum lot area (Traditional): 8,450 square feet
- (2) Minimum lot area (Lifestyle): 7,280 square feet
- (3) Minimum lot frontage (Traditional): 65 feet
- (4) Minimum lot frontage (Lifestyle): 56 feet

C. Yard Requirements. The following yard requirements shall apply to all principal structures built in the Aberdeen development

Yard	Minimum Yard Depth
Traditional	
Front	25 feet*
Side	7.5 feet (minimum of 15 feet separation between principal structures)**
Rear	25 feet**
Lifestyle	
Front	25 feet*
Side	5 feet (minimum of 10 feet separation between principal structures)**
Rear	25 feet**

*Open (on three sides) and unconditioned portions of structures, such as front porches, are permitted to extend within 20' of the front property line provided such features are architecturally consistent with the house.

**The setback requirement increases to 35 feet on the lots that directly abut the perimeter of the development. Within this 35-foot setback, the 10 feet nearest the adjoining property line are designated as a buffer/tree conservation easement, which are further regulated in the "Common Open Space" section below. The remaining 25 feet may be used as standard yard area.

D. Structural Requirements:

Structure requirements for the Aberdeen PUD are as follows:

- (1) Maximum building height: 35 feet.
- (2) Minimum GFA (single-story**): 1,400 square feet*
- (3) Minimum GFA (two-story): 1,500 square feet*

*Measurements are exclusive of basements and garages.

**All Lifestyle single-story plans have an optional loft.

E. Building Material Requirements:

Housing units within the Aberdeen subdivision shall be composed of quality architectural materials including brick, stone, wood, fiber cement board, or vinyl siding. Vinyl siding is permitted only on limited areas (see Sections a and b below) and as trim material where appropriate. Where vinyl siding is utilized, such siding shall meet the following minimum specifications:

- (1) Siding styles permitted: Clapboard, beaded, shake, board and batten, others (case-by-case review).

- (2) Prohibited siding styles: Dutchlap.
- (3) Minimum gauge (thickness): 0.044"
- (4) Minimum projection: 5/8"
- (5) Other requirements: Reinforced and full rollover nail hem, VSI certified.
- (6) Insulation is strongly encouraged for both added rigidity and energy efficiency benefits.

- a. Lifestyle Homes Building Materials. The exterior materials on the façades (front, corner-front, sides and rear) of each Lifestyle house within the Lifestyle portions of the development, excluding doors and windows, to be brick, stone/faux stone, fiber cement board, Dryvit, or some other non-vinyl material reviewed and approved by Miamisburg City Staff on a case-by-case basis, except for cantilevered projections such as bay windows, gables, areas not directly supported by foundation, and areas over roof lines which may be an approved architectural vinyl shake or board and batten as described above, fiber cement board, or some other non-vinyl material reviewed and approved on a case-by-case basis. Trim, soffits, fascia, gutter boards, and shutters to be vinyl, aluminum or some other approved material.

No front or corner-front façade in the Lifestyle portion of the development shall be entirely fiber cement board – at a minimum, each home shall incorporate a stone or brick water table across the front and corner-front facades with fiber cement or some other approved non-vinyl façade material above the water table. On corner lots the side elevation fronting on a street shall copy the front façade materials.

- b. Traditional Homes Building Materials. The exterior materials on the facades (front, corner-front, side, and rear) for each Traditional house within the Traditional portions of the development, excluding doors and windows, to be brick, stone/faux stone, Dryvit, fiber cement, an approved vinyl product as described above, or some other non-vinyl material reviewed and approved by Miamisburg City Staff on a case-by-case basis.

The front facade of each Traditional house, excluding doors and windows, to be brick, stone/faux stone, or Dryvit, except for cantilevered projections such as bay windows, gables, areas not directly supported by foundation, and areas over roof lines which may be an approved vinyl product as described in above, or fiber cement board. Trim, soffits, fascia, gutter boards, shutters to be vinyl or aluminum. The other three elevations, excluding corner-fronts and those areas described below in Section (1), may be comprised of approved vinyl product as described above.

Each front elevation comprised mostly of siding (i.e. an elevation containing a water table and fiber cement siding above) shall incorporate a stone or brick water table across, at a minimum, the front and corner-front facades. The other three (3) sides, excluding corner-fronts, may be approved vinyl product as described above.

For corner lots, the exterior materials and design of the one side elevation that directly faces a street shall match the materials and design of the front façade. This standard is also applicable to the single-story homes in the Traditional portion of the development.

1. Homes backing onto Miamisburg-Springboro, and Pipestone golf course, and those homes in the “Flex Lot” areas shown on Exhibit 2, should these homes convert from Lifestyle to Traditional, shall include, on the rear and side façades, any of the approved materials from Section (E) except for vinyl.

See Exhibit 3 – Preliminary Building Elevations – attached to this Planned Residential Development Document and incorporated herein, for examples of the proposed building elevations and floorplans.

F. Landscaping Requirements:

(1) Lot Landscaping:

Each lot in both the Traditional and Lifestyle portions of the development will include the full sodding of the front and side yards and 10’ out from the back wall of the house in the rear yard. The remainder of each lot will be seeded. Each lot will also include a shrub treatment as shown in Exhibit 4, plus a yard tree and a street tree (Group A). Lifestyle lots are required to have one street tree only (Group A). Each corner Traditional lot will include two yard trees and two street trees (Group A). Each corner Lifestyle lot will include two street trees (Group A). Street tree planting locations may vary due to driveway locations. City staff will work with the builder to coordinate locations in field if conflicts occur.

The lots that directly abut the perimeter of the development, including along Medlar and Miamisburg-Springboro, will be treated with bufferyard screening as described in Section (i) below.

See Exhibit 4 – Preliminary Lot Landscaping Packages – attached to this Planned Residential Development document and incorporated herein, for example interior lot landscaping plans.

(i) Open Space and Bufferyards:

Of the +/-42.59 acres being developed, ~7.36 acres (17.4%) will be reserved as common open space areas for use by the residents and visitors of the development. Further, ~0.9 acres (2.1%) are designated as tree/buffer conservation areas along the perimeter of the development, which will be located on private property.

Landscape buffer yards are being installed along Miamisburg-Springboro Road and Medlar Road and along the boundaries of the site that directly abut developed land per the attached landscaping plan, labeled Exhibit 5 – Preliminary Landscaping and Buffering Plan – attached to this Planned Residential Development Document and incorporated herein. Conditions recommended in the staff report for RZ-04-19 (Ordinance #6846) relating to the buffering and landscaping along the perimeter must be met by the final development plan.

Owners of the lots containing these buffering easements will be permitted to install fences, and small sheds (less than 200 sq. ft. in size) within these buffering easements, provided the level of screening required by the landscaping and buffering plan is not diminished and any removed vegetation is replaced with an equivalent level of screening.

See Exhibit 5 – Preliminary Open Space and Buffering Plan – attached to this Planned

Residential Development document and incorporated herein, for the preliminary open space and perimeter buffering plan for the site.

- (j) Parking Requirements. Each home will have space for a minimum of four off street parking spaces consisting of a two-car garage and at least two driveway spaces. Street parking will be permitted as regulated by the City of Miamisburg on residential streets. Each dwelling is required to provide at least two (2) off-street parking spaces.
- (k) Signs. The "RPUD" will have two ground mounted signs adjacent to the site entrance off Miamisburg Springboro Rd., and two signs off Medlar Rd. The signs will contain a maximum of 24 square feet of sign area and be a maximum height of 7 feet. The sign will be constructed on a concrete foundation with applied stone veneer or brick and fencing consistent with building accents. The sign will be illuminated from a concealed, external source. It will be located in a landscape bed equal to or larger than the area of the signage. Final design will be submitted to City for approval. Temporary signs of 32 sq. ft each and 10' in height will be allowed to market the community. Once all the lots in the subdivision are sold to a third party these signs will be removed.
- (l) Other Requirements.
 - (1) Fences. Chain-link fences and similar woven-wire fences are prohibited. Refer to Chapter 1289 of the Miamisburg Planning and Zoning Code for other applicable fence requirements.
 - (2) Other Standards. Any standards not specifically regulated herein shall be subject to the Codified Ordinances of the City of Miamisburg and any other applicable guiding documents.
- (m) Site Lighting:

The site will have traditional street lights or solar powered street lights to be approved during the Final Development Plan.
- (n) Utilities:
 - (1) Underground. All Utilities to serve the Aberdeen site will be located underground.
 - (2) Domestic Water and Sanitary Sewer. Water Service and Sanitary Sewer infrastructure will be designed in accordance with applicable public works and engineering standards.
 - (3) Storm Water. Storm water management will be designed in accordance with the City's standards and Montgomery County standards.
- (p) Mail Delivery:

The location of all cluster box units (CBUs) for combined postal delivery shall be as approved by the United States Postal Service and found acceptable by the City of Miamisburg.

Exhibits to Design Guidelines Document:

Exhibit 1 – Preliminary Site Plan

Exhibit 2 – Preliminary Flex Lot Plan

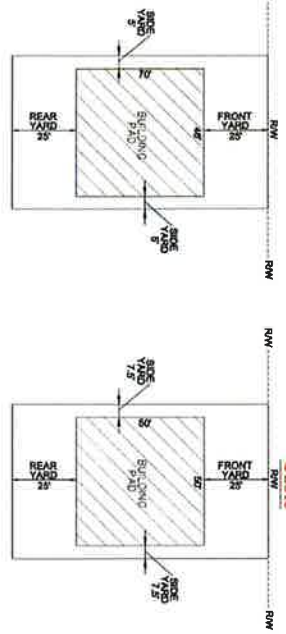
Exhibit 3 – Preliminary Building Elevation Examples

Exhibit 4 – Preliminary Lot Landscaping Packages

Exhibit 5 – Preliminary Open Space and Buffering Plan

LIFESTYLE
80 LOTS

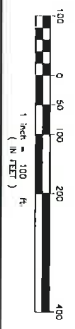
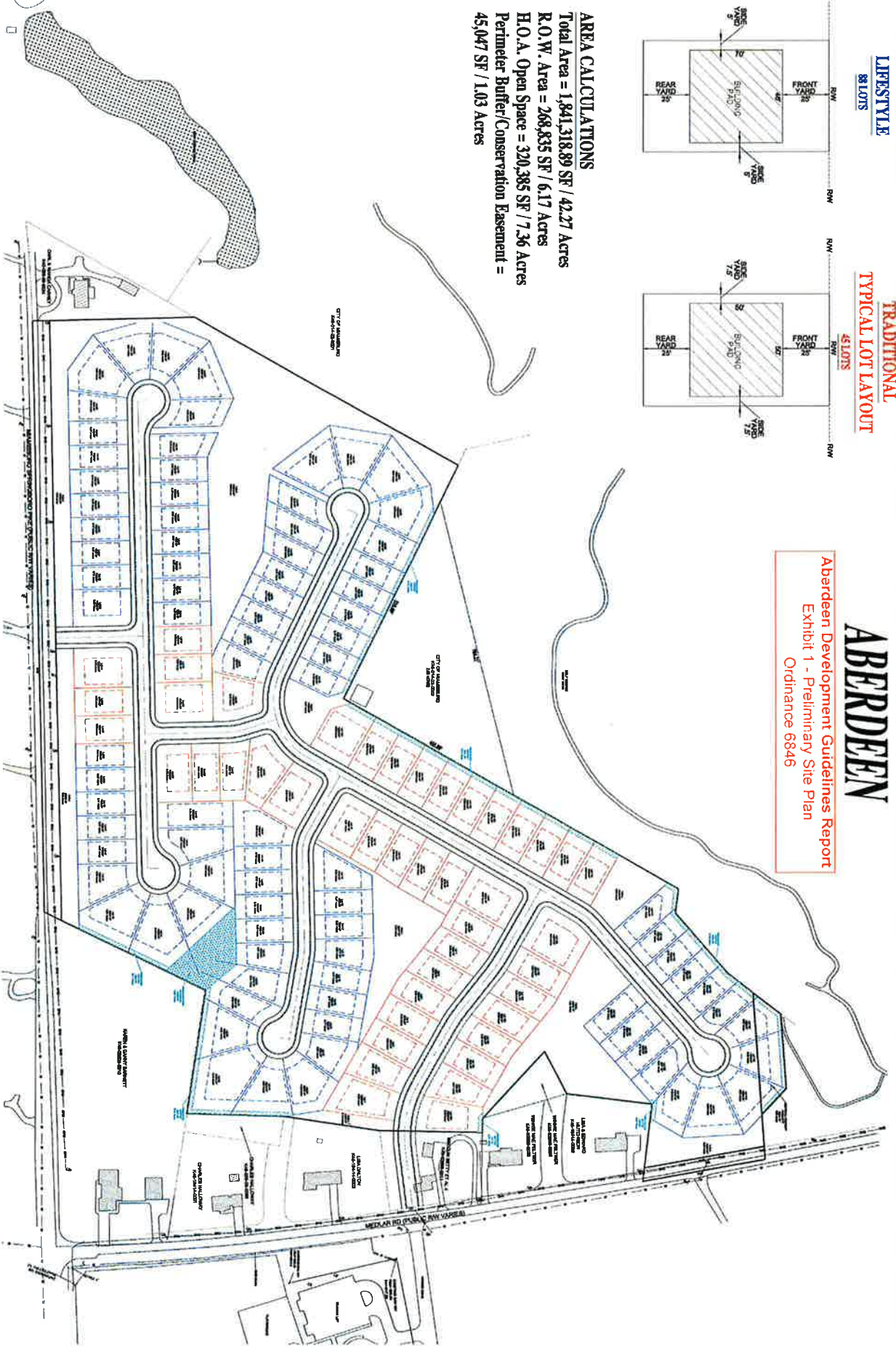
TRADITIONAL
TYPICAL LOT LAYOUT



AREA CALCULATIONS
 Total Area = 1,941,318.89 SF / 42.27 Acres
 R.O.W. Area = 268,835 SF / 6.17 Acres
 H.O.A. Open Space = 320,385 SF / 7.36 Acres
 Perimeter Buffer/Conservation Easement = 45,047 SF / 1.03 Acres

ABERDEEN

Aberdeen Development Guidelines Report
 Exhibit 1 - Preliminary Site Plan
 Ordinance 6846



2. REMOVE DMS BEFORE YOU DIG
 UTILITIES PROTECTION SERVICE

<p>NOT FOR CONSTRUCTION</p>	<p>NO. REVISIONS AND/OR ISSUES</p>	<p>DATE</p>
	<p>DATE</p>	<p>DATE</p>
<p>LEESMAN ENGINEERING & ASSOC. ENGINEERING, SURVEYING, PLANNING 2720 TOPIC HILLS, CINCINNATI, OHIO 45248 513/417-0420</p>	<p>ABERDEEN MEDLAR RD & MARIETTA SPRINGBORO PIKE CITY OF MARIETTA, MONTGOMERY CO., OHIO</p>	<p>SJL engineers</p>
<p>DRAWING TITLE</p>	<p>PRELIMINARY LAYOUT</p>	<p>C1</p>

NO.	REVISIONS AND/OR ISSUES

**NOT FOR
CONSTRUCTION**

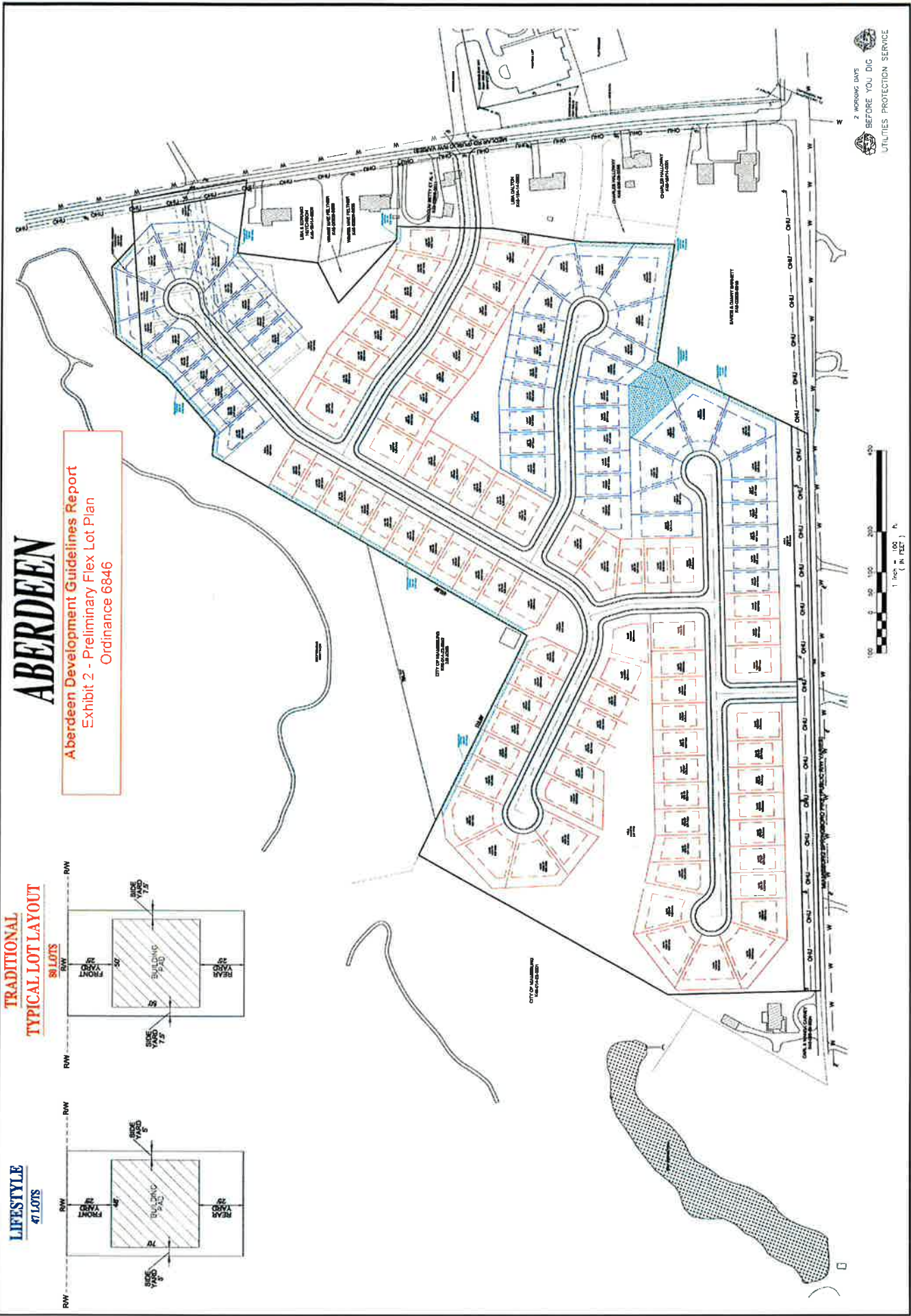
ABERDEEN
LEESMAN ENGINEERING & ASSOC.
 ENGINEERING, SURVEYING, PLANNING
 2720 TOPIC HILL, CINCINNATI, OHIO 45248 513-477-0420
 CITY OF MAHARING SPRINGBORO PDE

engineers
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DRAWING TITLE
**PRELIMINARY
 LAYOUT**

DATE	SCALE
2-13-20	AS SHOWN

C1



FISCHER HOMES



Aberdeen Development Guidelines Report
Exhibit 3 - Preliminary Building Elevation Examples
Ordinance 6846

AVERY

Designer Collection

welcome home.

Approximately 2535 sq ft and Up



MODERN FARMHOUSE

designed by



COASTAL COTTAGE

designed by



CAMBRIDGE COTTAGE
(WITH OPTIONAL BRICK)

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WESTERN CRAFTSMAN

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BLAIR

Designer Collection

welcome home.

Approximately 3029 sq ft and Up



CAMBRIDGE COTTAGE



AMERICAN CLASSIC
(WITH OPTIONAL PORCH & BRICK)



WESTERN CRAFTSMAN



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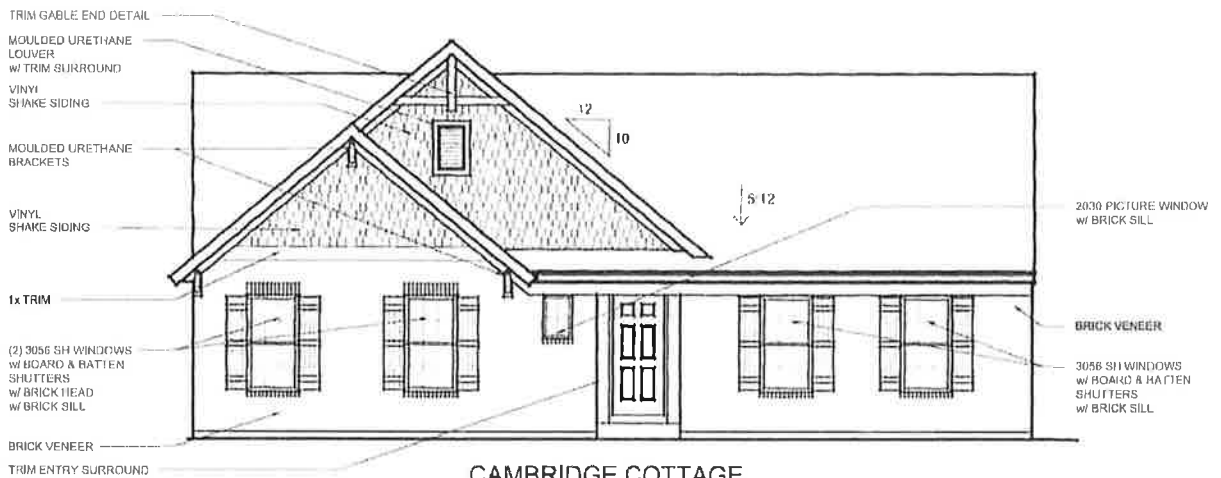
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CALVIN

48-195
DESIGNER COLLECTION



CAMBRIDGE COTTAGE
w/ OPT. SIDE ENTRY GARAGE



CAMBRIDGE COTTAGE
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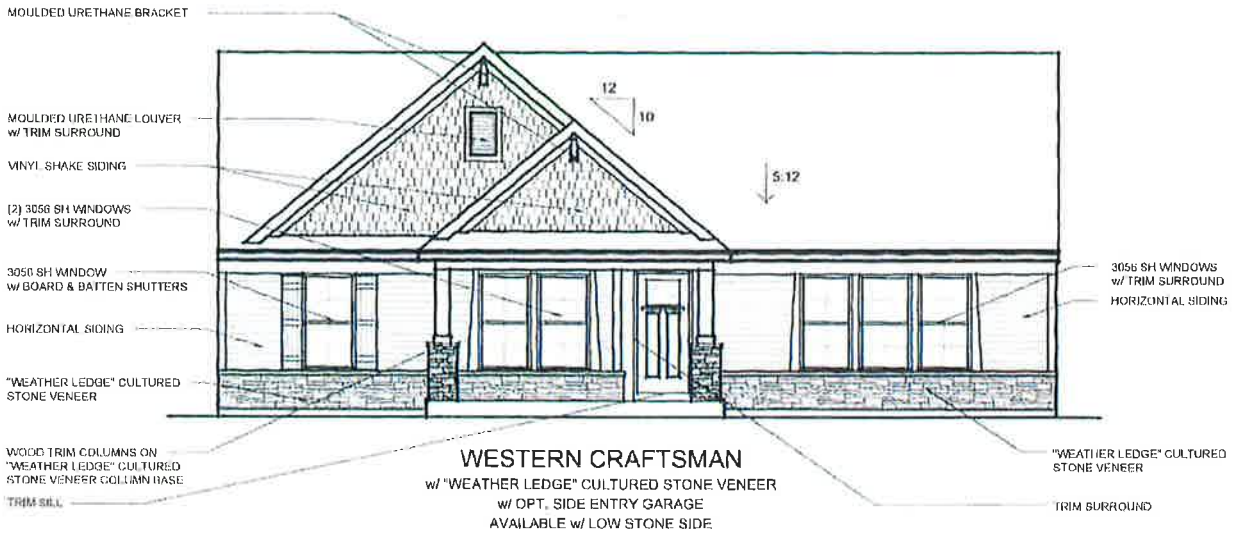


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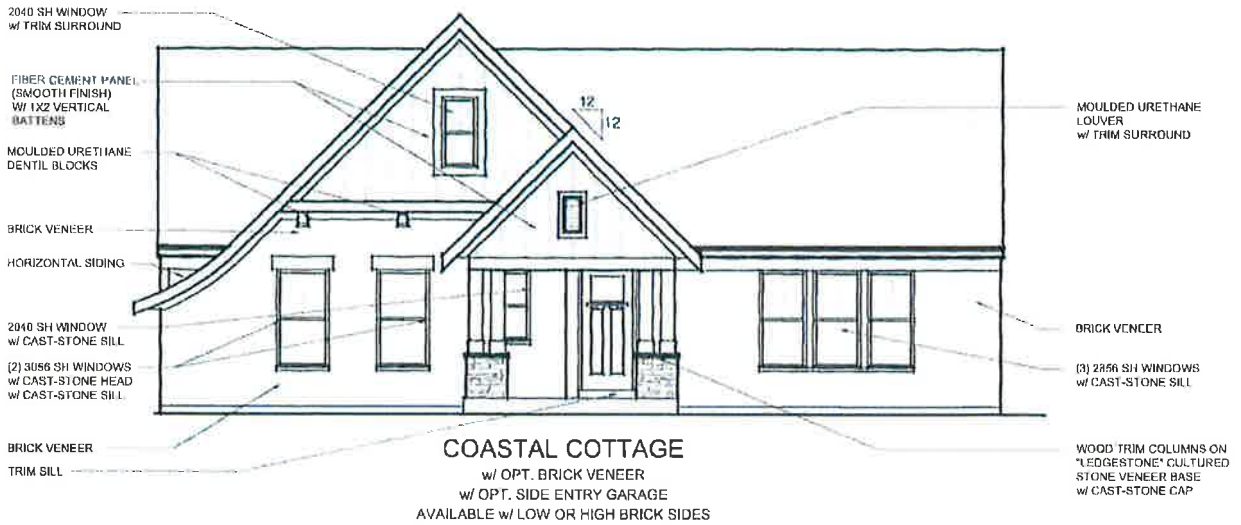
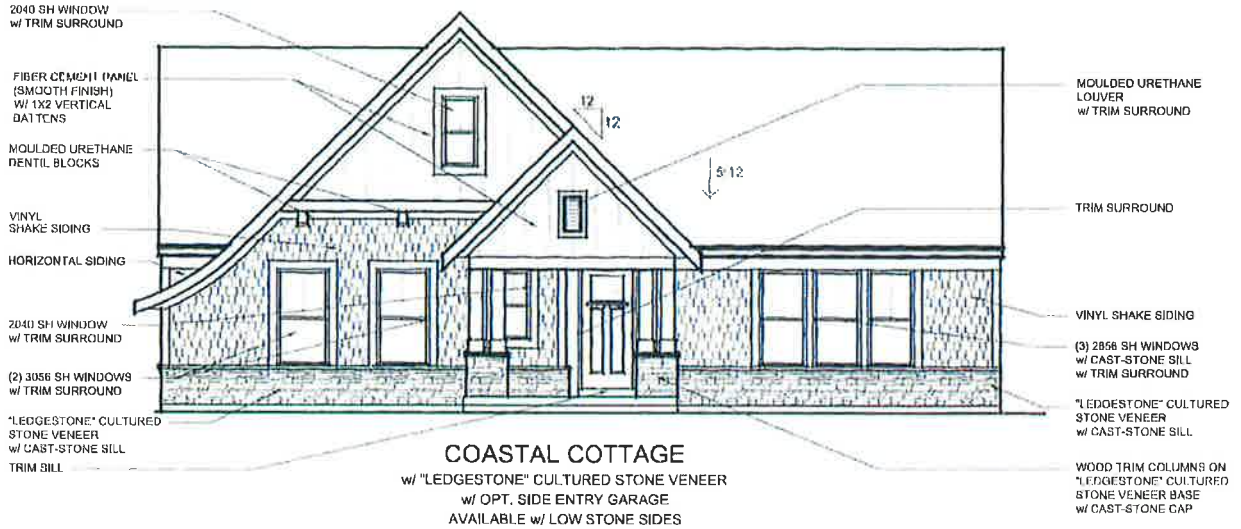


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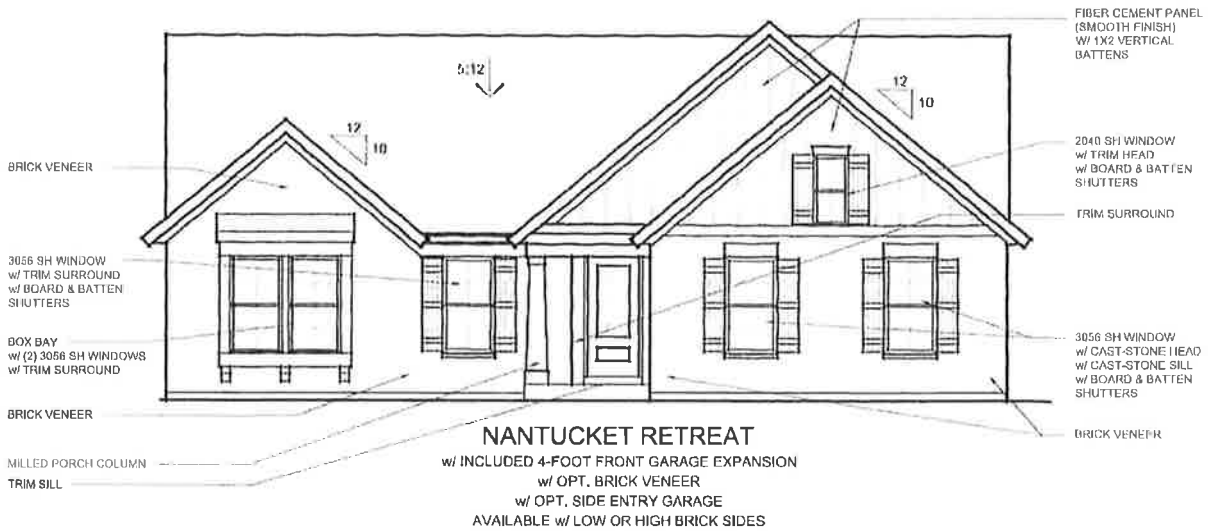
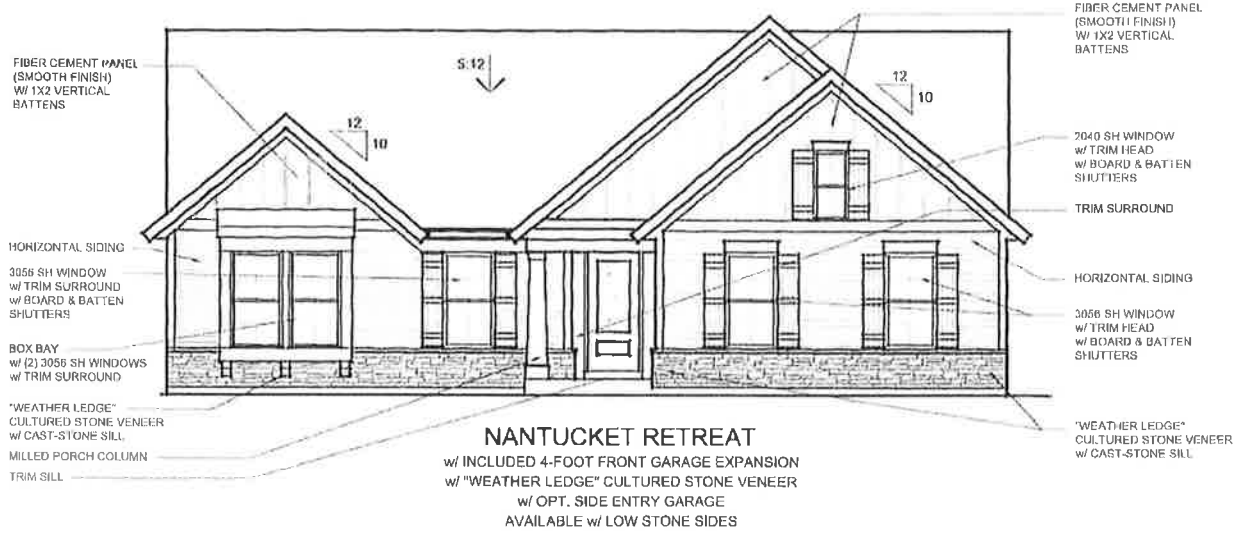
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CHARLES

Exquisite Interiors



COASTAL CLASSIC
(WITH SIDE ENTRY GARAGE)

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PACIFIC CRAFTSMAN

designed by 



MODERN FARMHOUSE
(WITH OPTIONAL BRICK)

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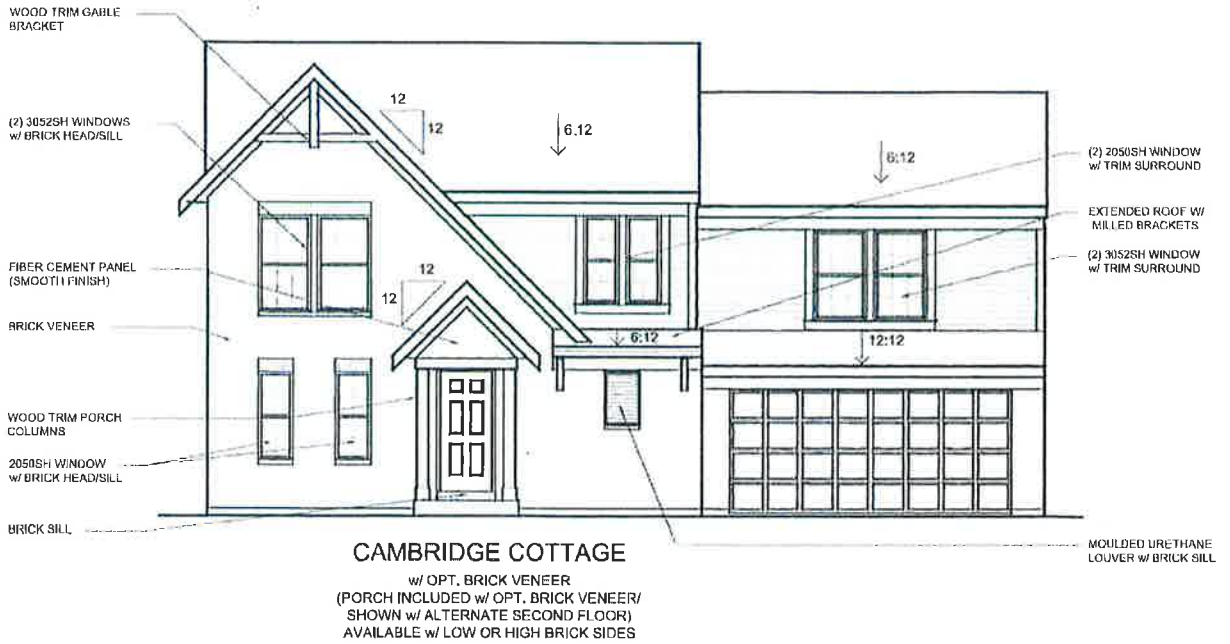
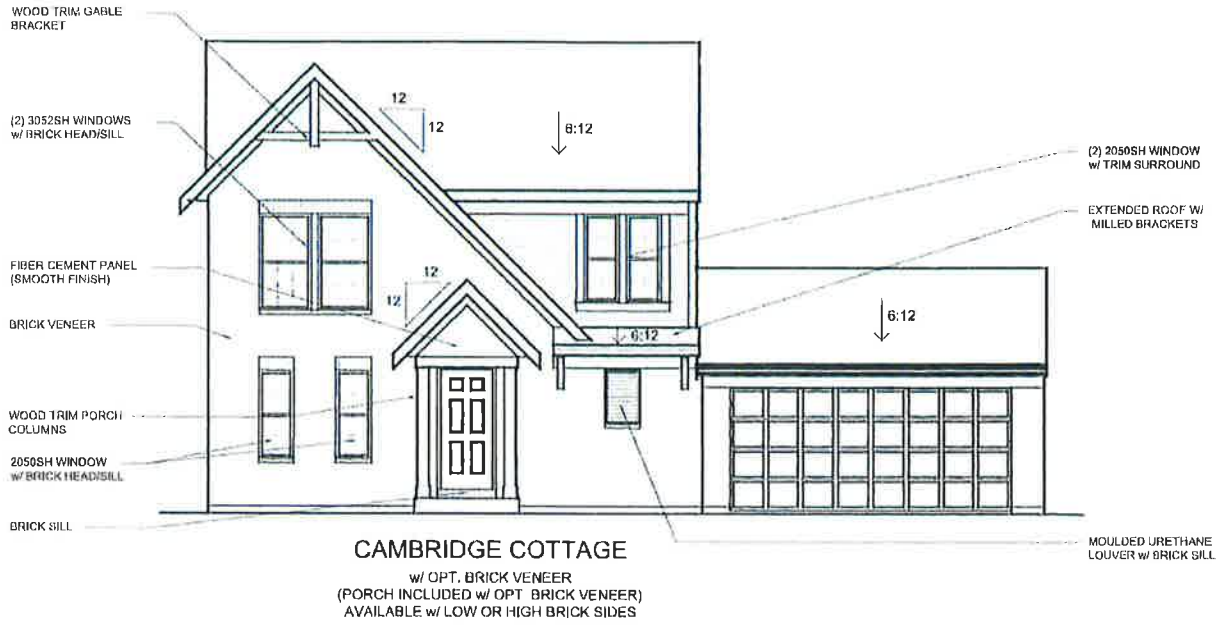
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DELANEY

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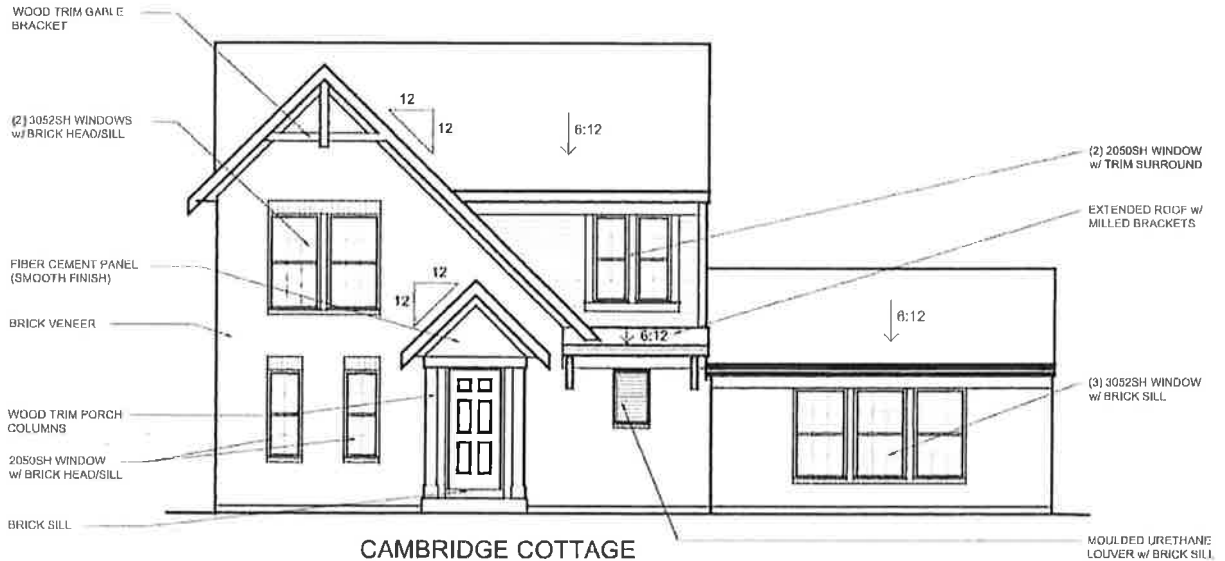


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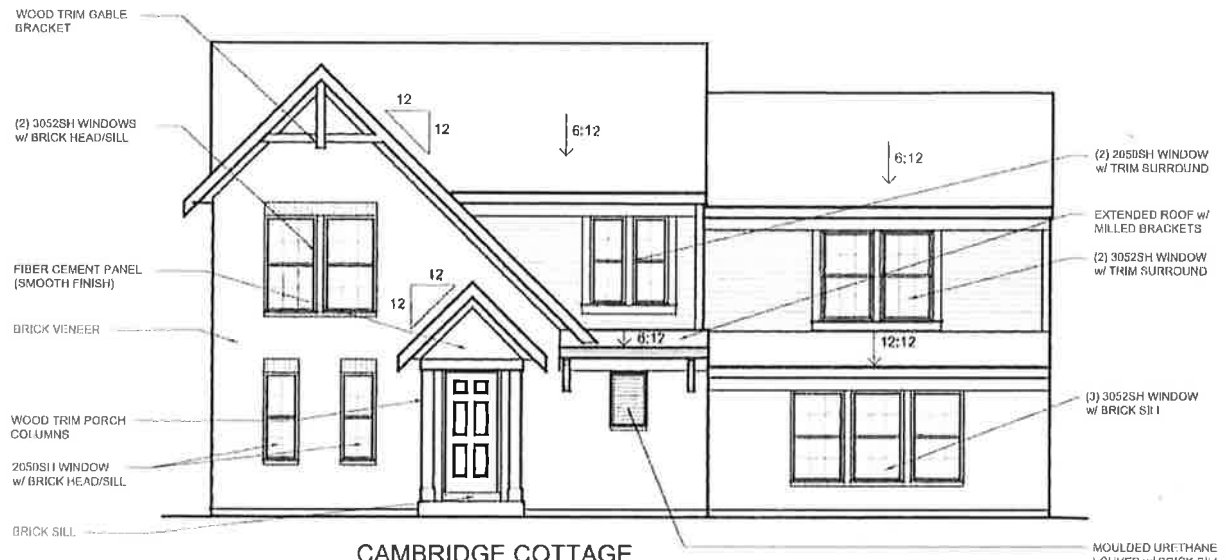
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w/ OPT. BRICK VENEER
(PORCH INCLUDED w/ OPT. BRICK VENEER/
SHOWN w/ OPT. SIDE ENTRY GARAGE)
AVAILABLE w/ LOW OR HIGH BRICK SIDES



CAMBRIDGE COTTAGE
w/ OPT. BRICK VENEER
(PORCH INCLUDED w/ OPT. BRICK VENEER/
SHOWN w/ ALTERNATE SECOND FLOOR
& OPT. SIDE ENTRY GARAGE)
AVAILABLE w/ LOW OR HIGH BRICK SIDES

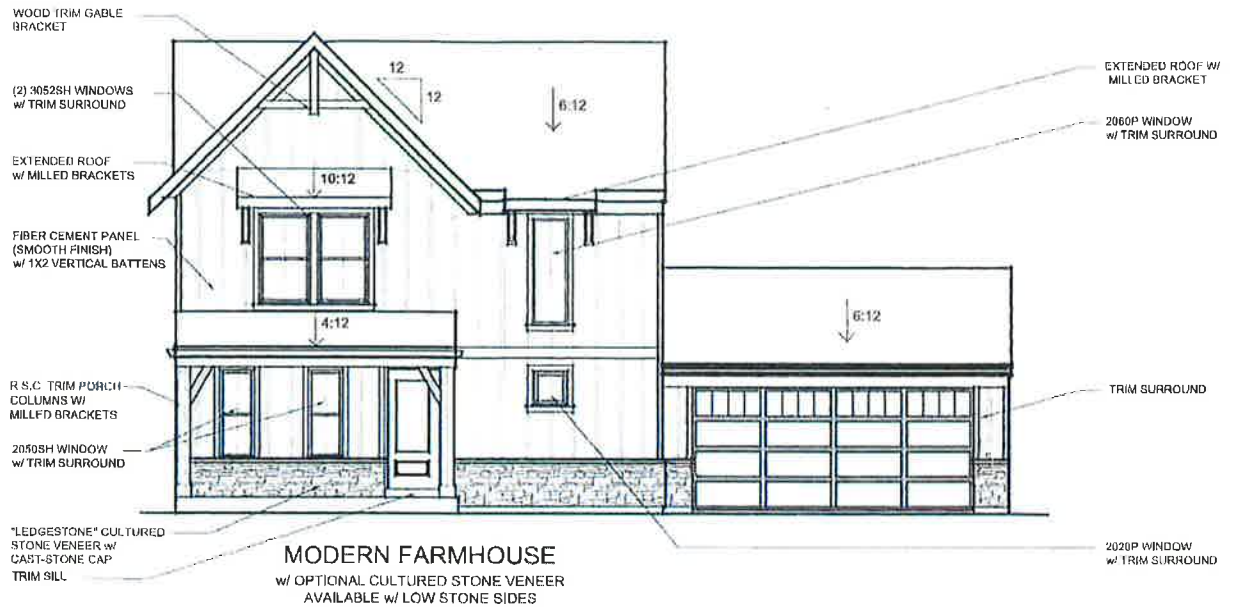


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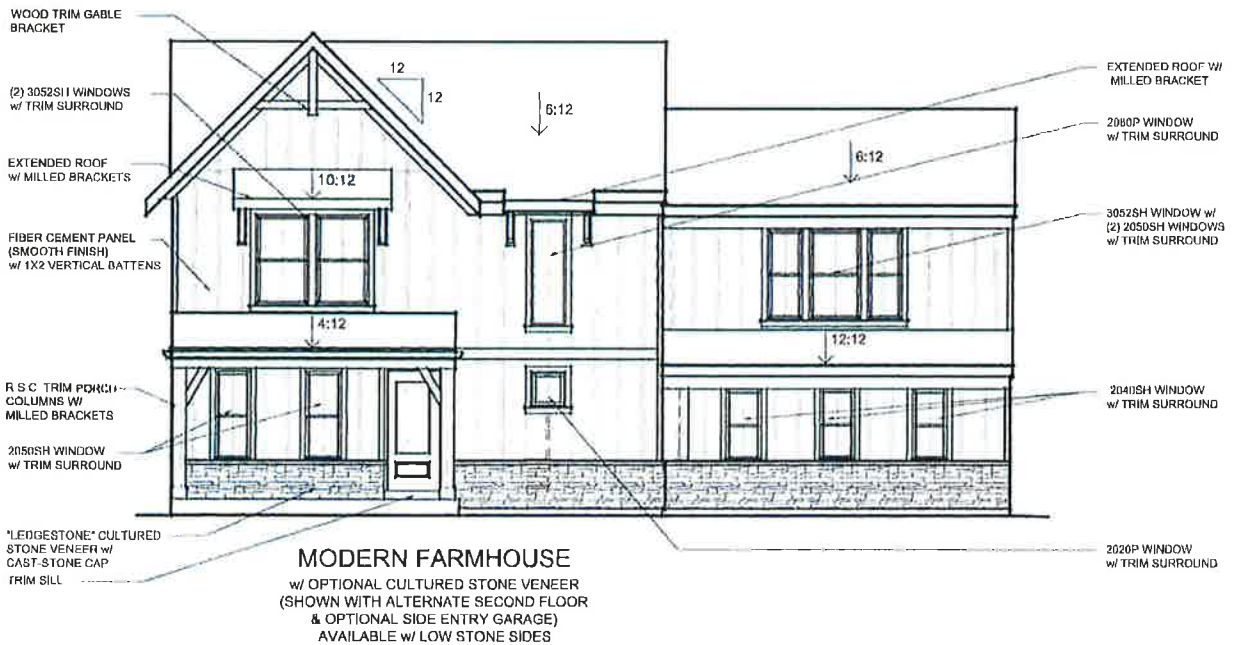
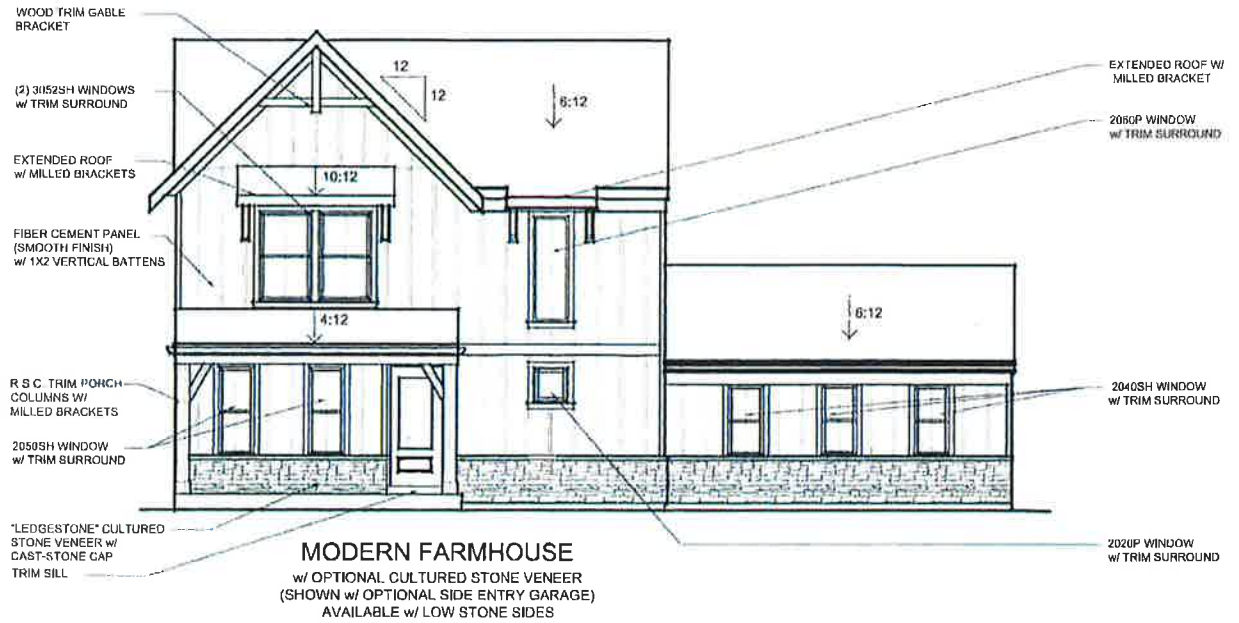


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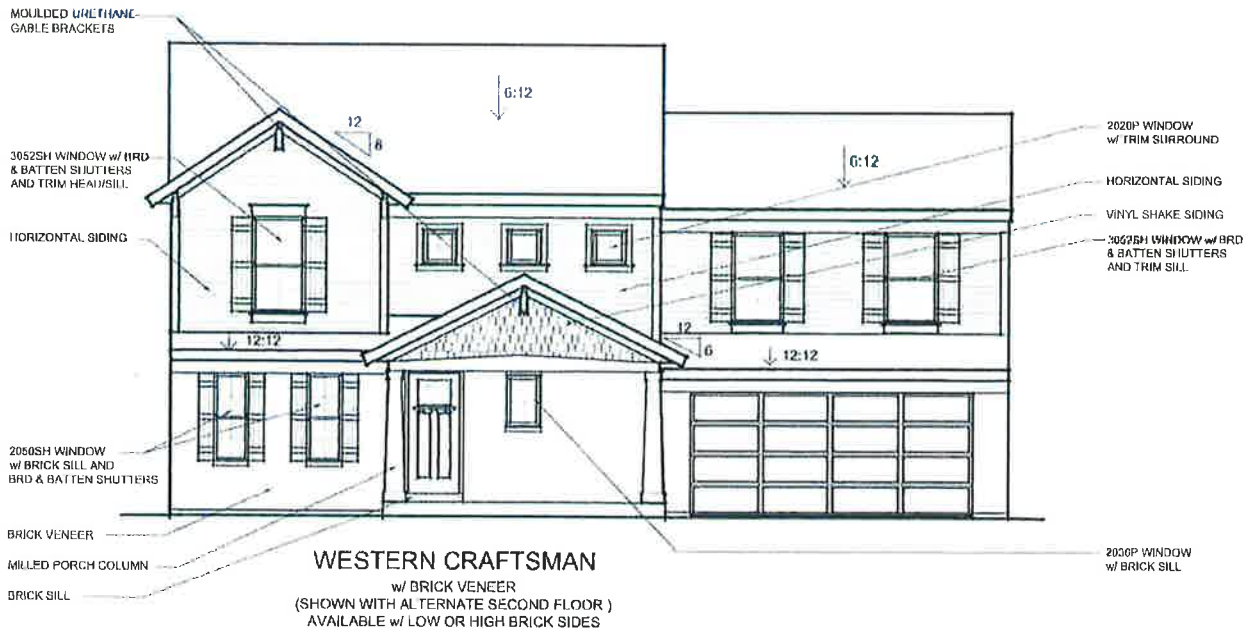
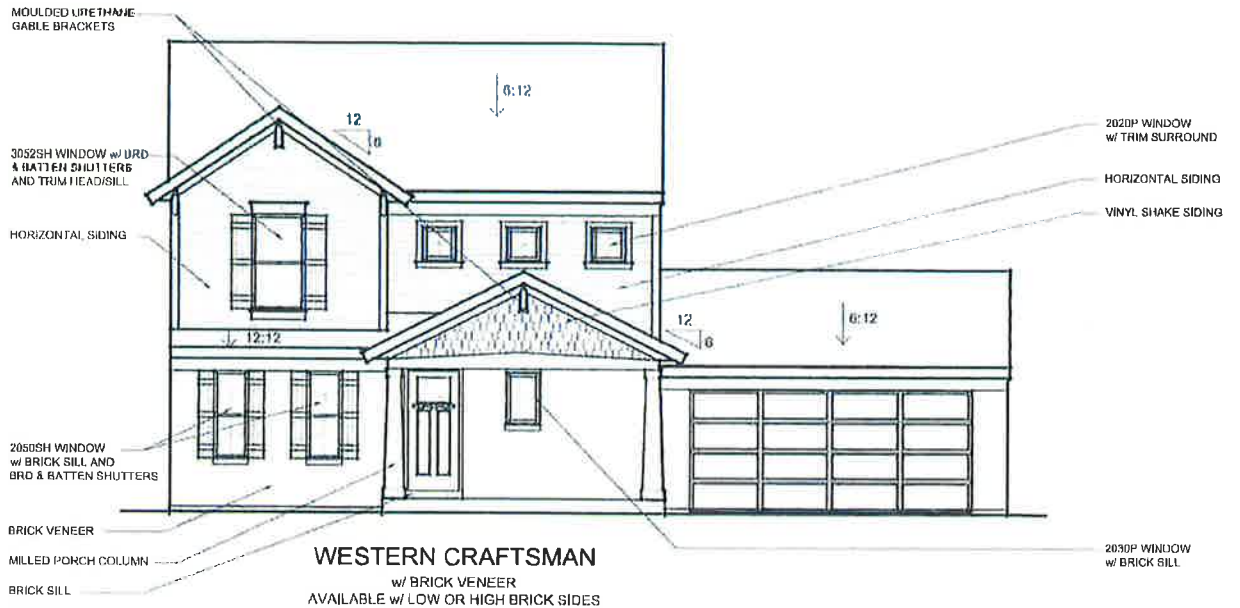


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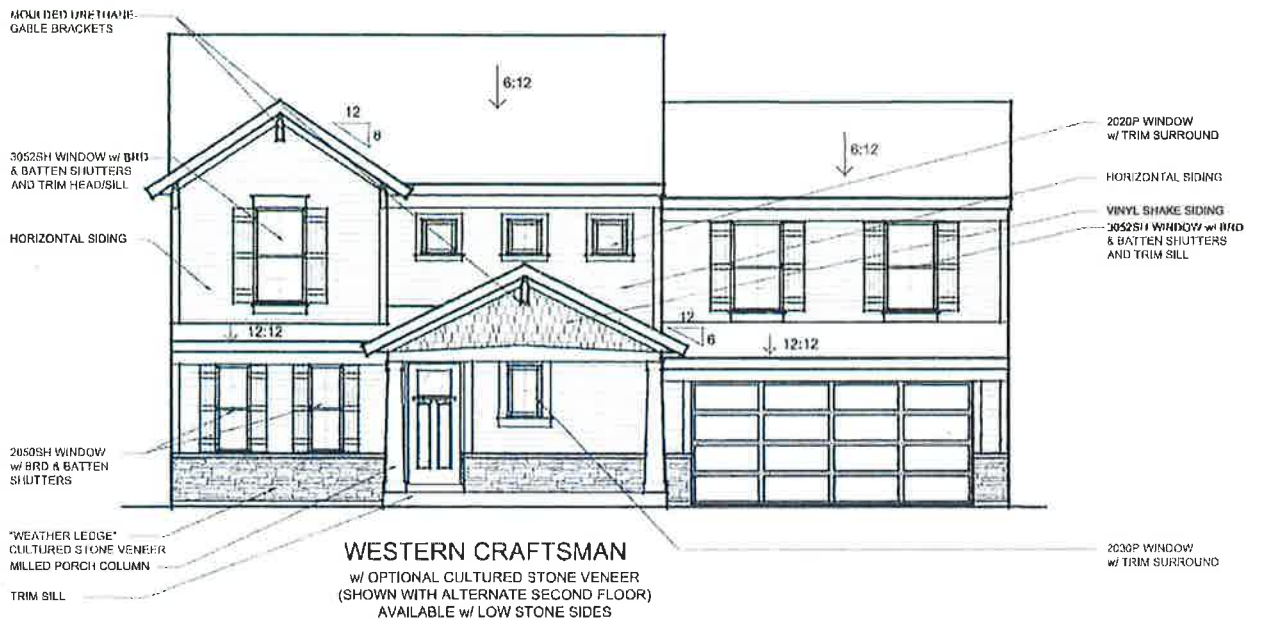
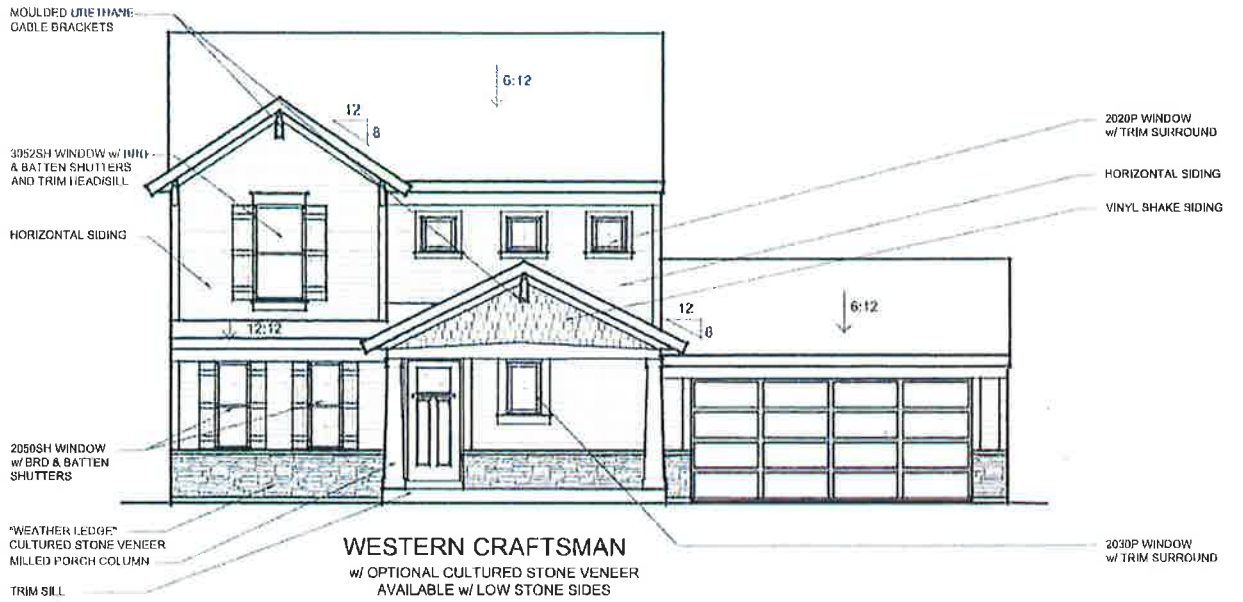


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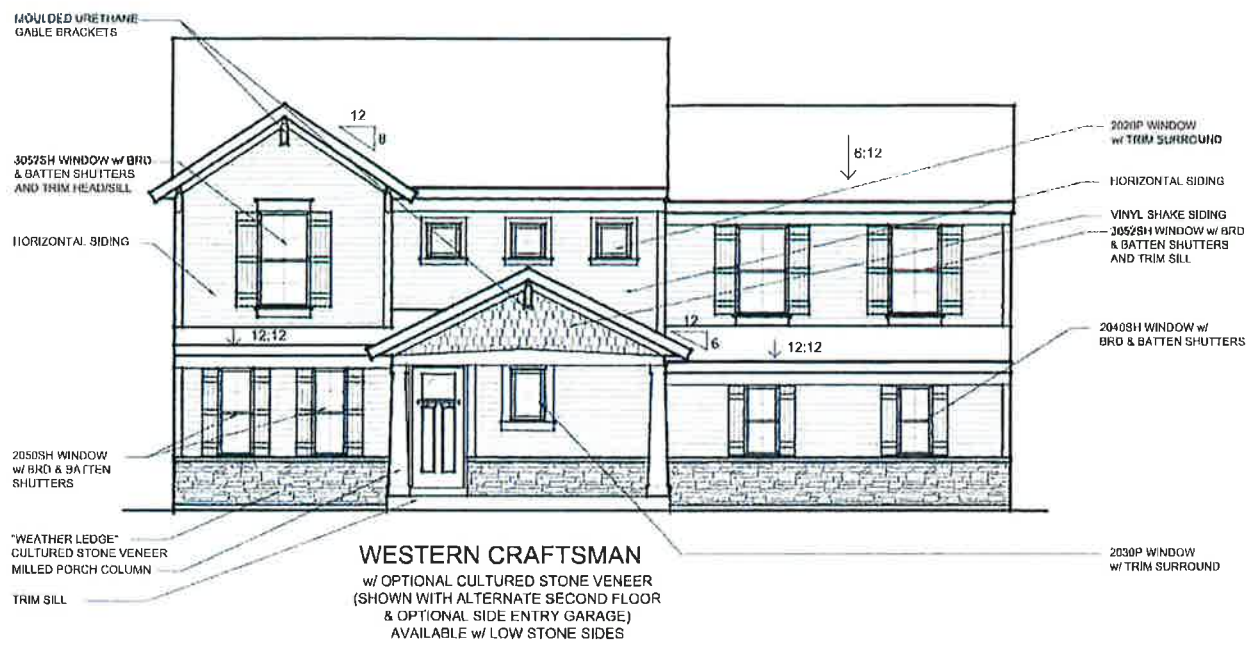
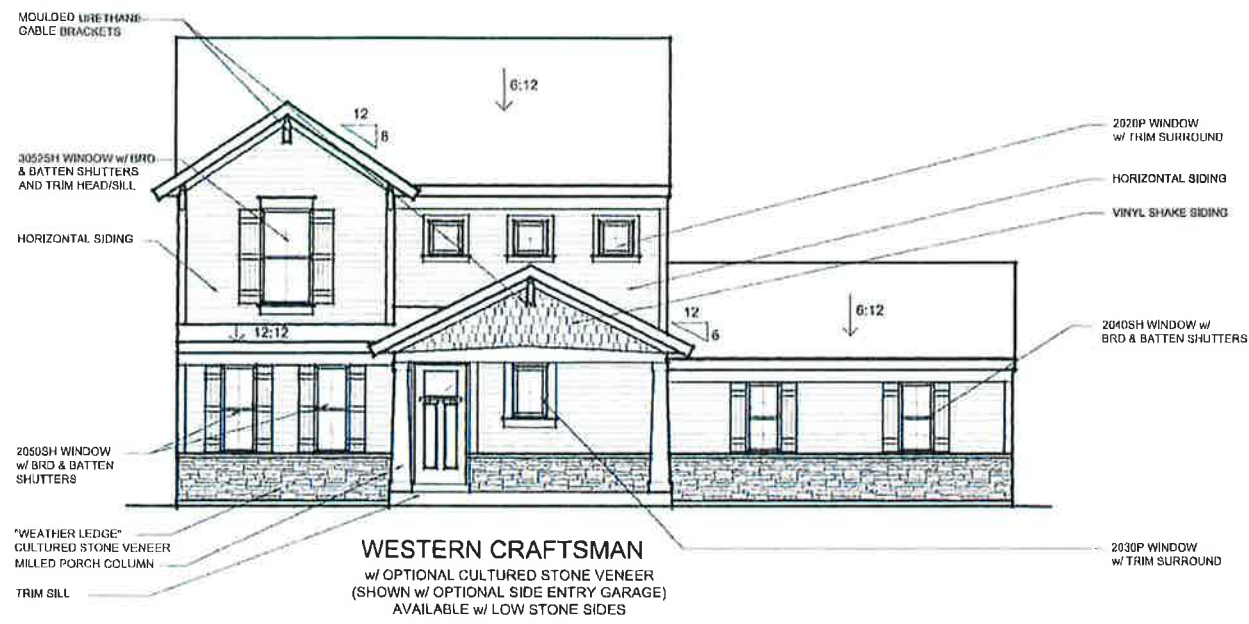


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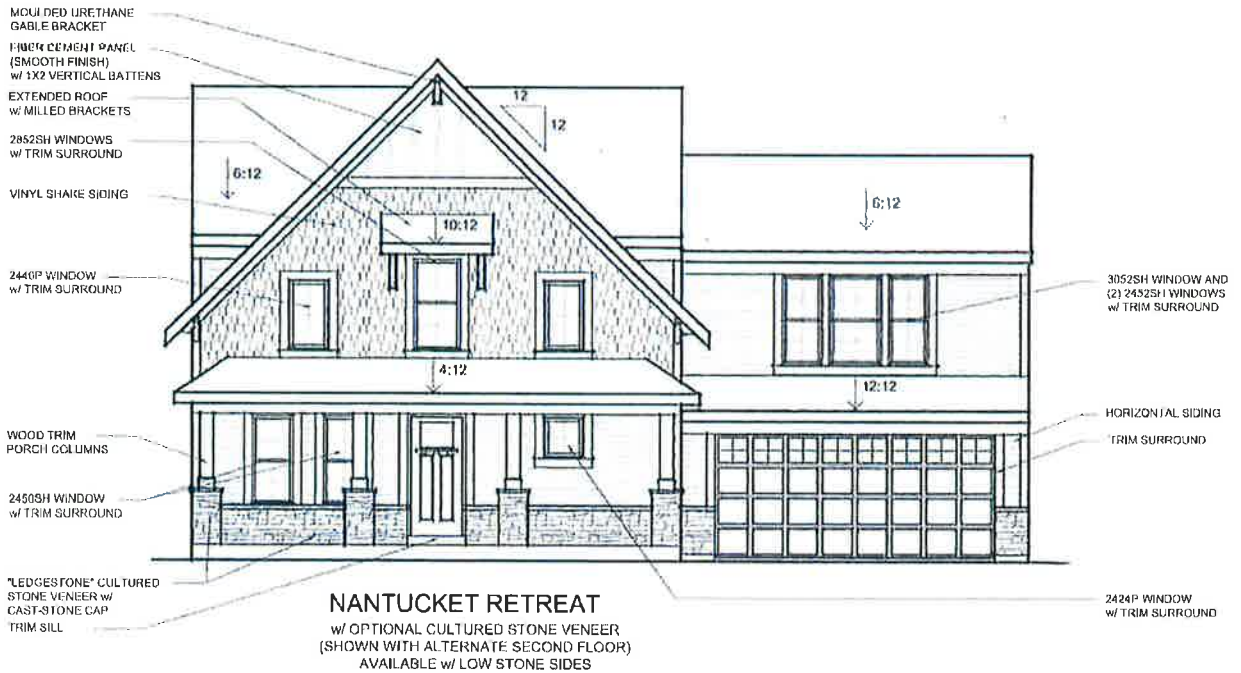
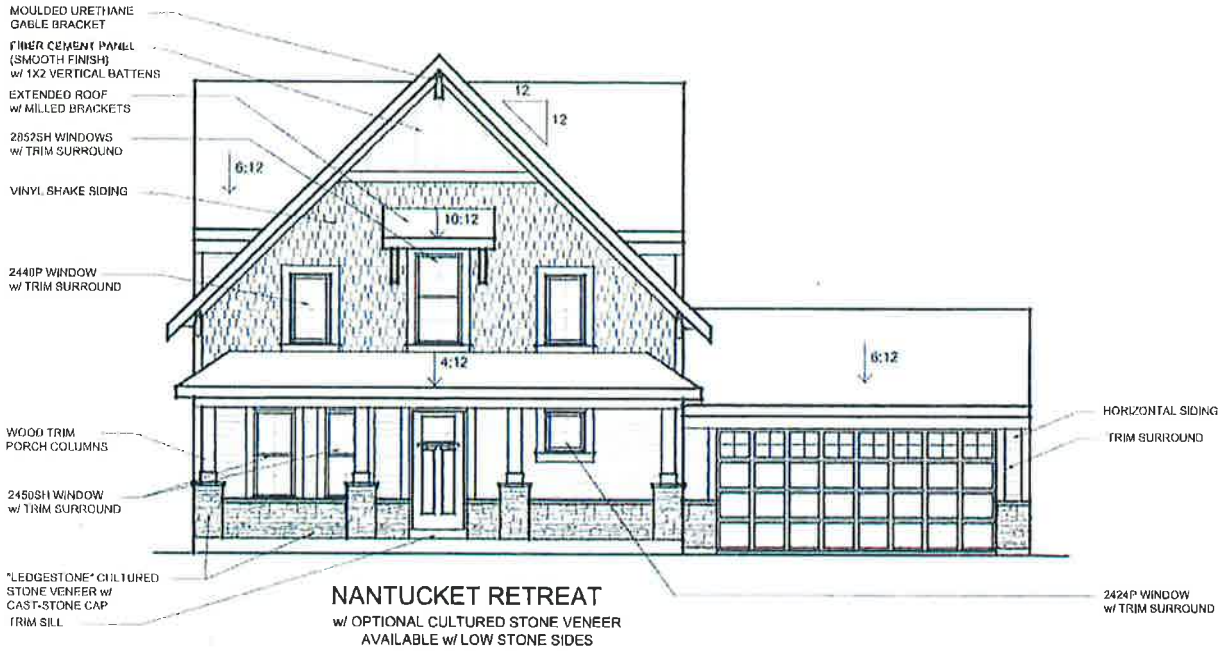


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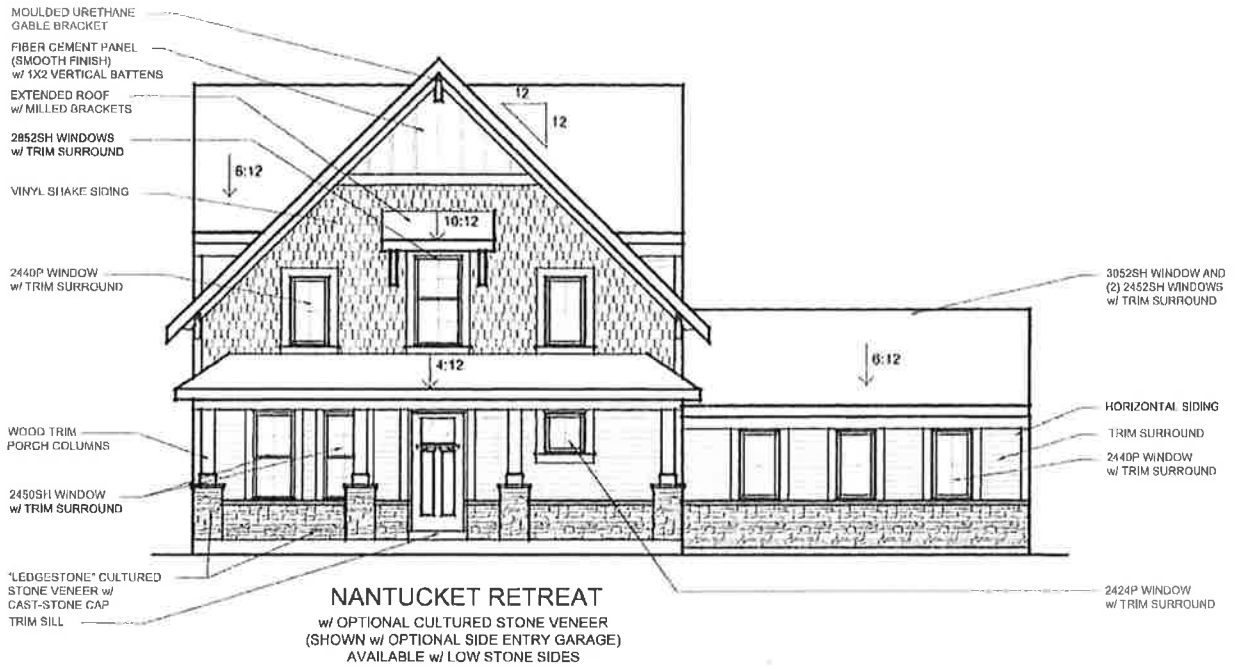


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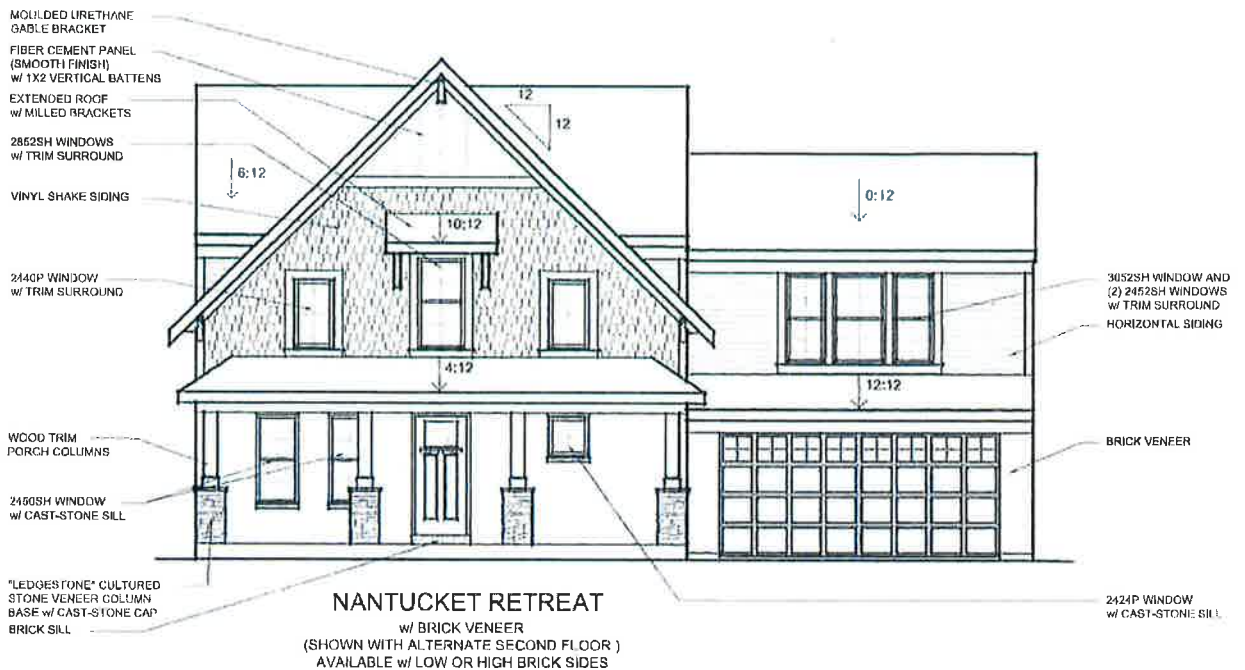
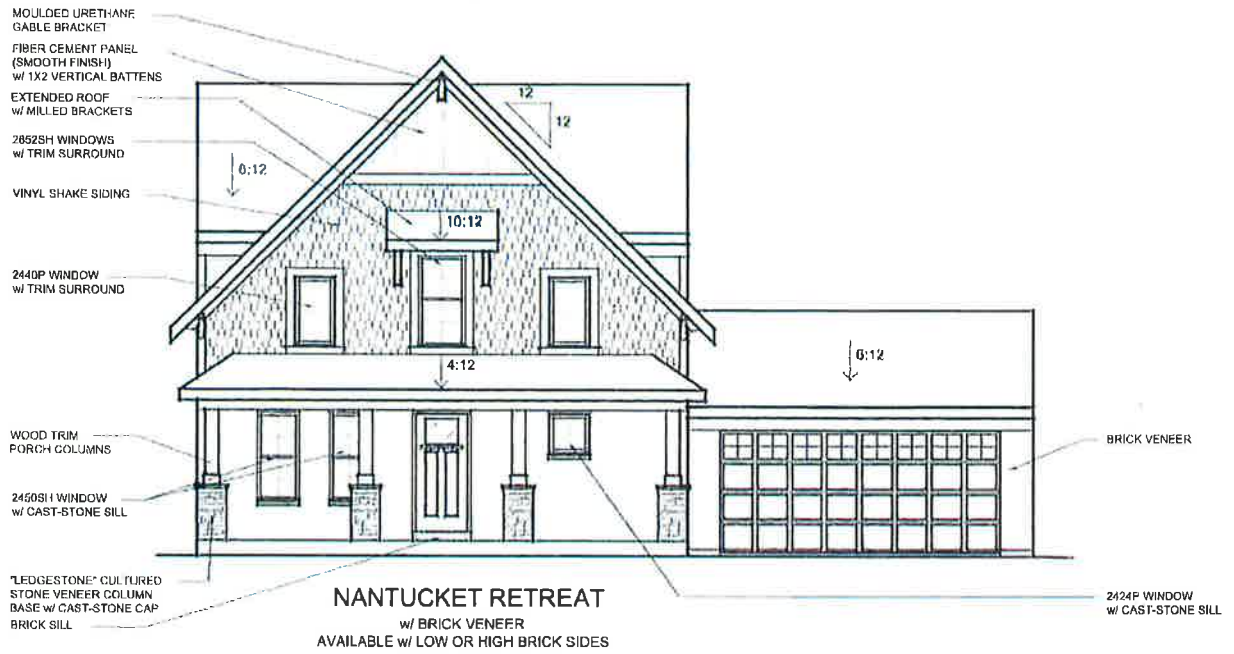


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DELANEY

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FOSTER

Designer Collection

welcome home.

Approximately 2954 sq ft and Up



BELLA VISTA
(WITH OPTIONAL BRICK & DORMERS)

designed by *FH*



AMERICAN CLASSIC

designed by *FH*



ENGLISH ELEGANCE

designed by *FH*



PACIFIC CRAFTSMAN

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



GRANDIN

Designer Collection

welcome home.

Approximately 2711 sq ft and Up



PACIFIC CRAFTSMAN

(WITH OPTIONAL STONE VENEER & OPTIONAL THREE-CAR INTEGRATED FRONT ENTRY GARAGE)

designed by *Fh*



COASTAL CLASSIC

(WITH OPTIONAL STONE VENEER & OPTIONAL SIDE ENTRY GARAGE)

designed by *Fh*



NANTUCKET RETREAT

(WITH OPTIONAL BRICK VENEER)

designed by *Fh*



WESTERN CRAFTSMAN

(WITH OPTIONAL THREE-CAR INTEGRATED FRONT ENTRY GARAGE)

designed by *Fh*

Images & Options Available at fischerhomes.com

Our Plans Include You

FISCHER HOMES



KEATON

Designer Collection

welcome home.

Approximately 2108 sq ft and Up



AMERICAN FARMHOUSE
(WITH SIDE ENTRY GARAGE)

designed by *FH*



WESTERN CRAFTSMAN

designed by *FH*



MODERN FARMHOUSE
(WITH OPTIONAL BRICK)

designed by *FH*



AMERICAN CLASSIC

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



MAGNOLIA


Designer Collection

welcome home.

Approximately 1621 sq ft and Up



WESTERN CRAFTSMAN

designed by 




MODERN FARMHOUSE
(WITH OPTIONAL BRICK)

designed by 




AMERICAN CLASSIC
(WITH OPTIONAL BRICK)

designed by 



CAMBRIDGE COTTAGE

designed by 

Images & Options Available at fischerhomes.com

Our Plans Include You



MERCER

Designer Collection

welcome home.

Approximately 1985 sq ft and Up



COASTAL CLASSIC

designed by 



AMERICAN CLASSIC
(WITH OPTIONAL BRICK)

designed by 



WESTERN CRAFTSMAN
(WITH OPTIONAL STONE)

designed by 

Images & Options Available at fischerhomes.com

Our Plans Include You

FISCHER HOMES
FH

MILES

Designer Collection

welcome home.

Approximately 2437 sq ft and Up



MODERN FARMHOUSE
(WITH SIDE ENTRY GARAGE & OPTIONAL BRICK)

designed by *FH*



COASTAL CLASSIC

designed by *FH*



NANTUCKET RETREAT

designed by *FH*



CAMBRIDGE COTTAGE
(WITH OPTIONAL BRICK)

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



QUINN

Designer Collection

welcome home.

Approximately 2644 sq ft and Up



WESTERN CRAFTSMAN

(WITH OPTIONAL STONE VENEER, OPTIONAL THREE-CAR INTEGRATED FRONT ENTRY GARAGE)

designed by



ENGLISH ELEGANCE

(WITH OPTIONAL SIDE ENTRY GARAGE)

designed by



AMERICAN CLASSIC

designed by



COASTAL CLASSIC

(WITH OPTIONAL STONE VENEER & OPTIONAL THREE-CAR INTEGRATED FRONT ENTRY GARAGE)

designed by

Images & Options Available at fischerhomes.com

Our Plans Include You



REDFIELD

Designer Collection

welcome home.

Approximately 2932 sq ft and Up



STRATFORD TUDOR

designed by



BUCKS COUNTY RETREAT

designed by



HYDE PARK COTTAGE

designed by



CAMBRIDGE COTTAGE

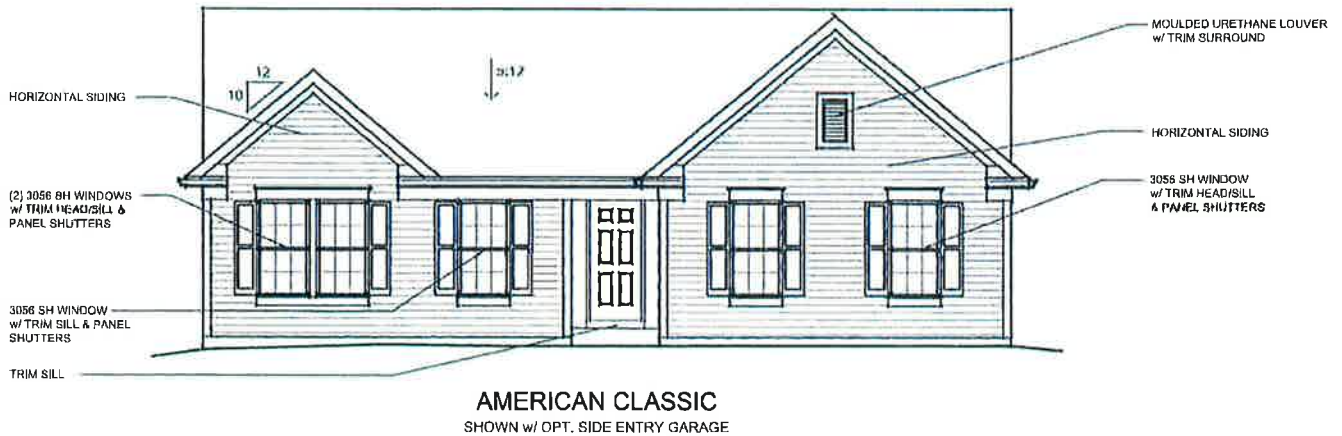
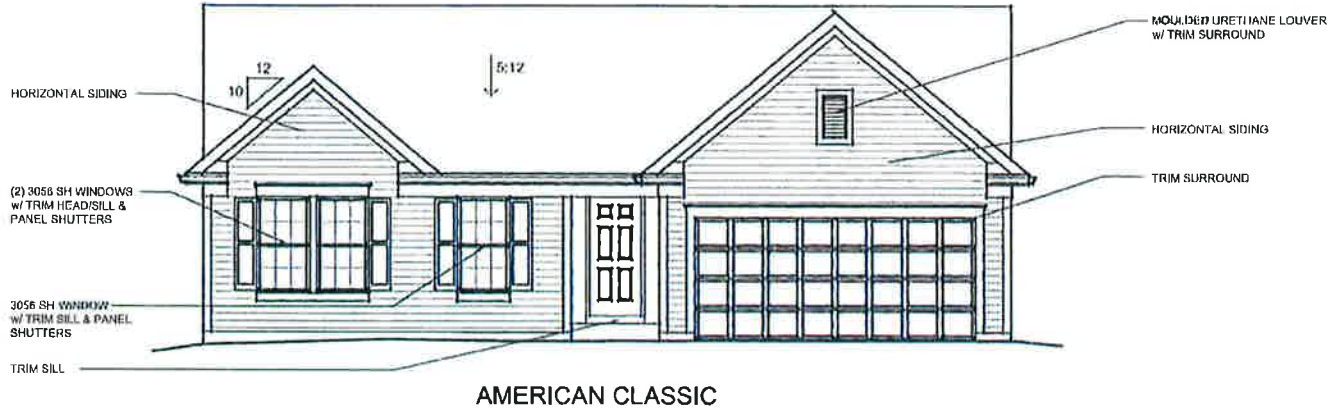
designed by

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Our Plans Include You

SPRINGFIELD

46-176
DESIGNER COLLECTION

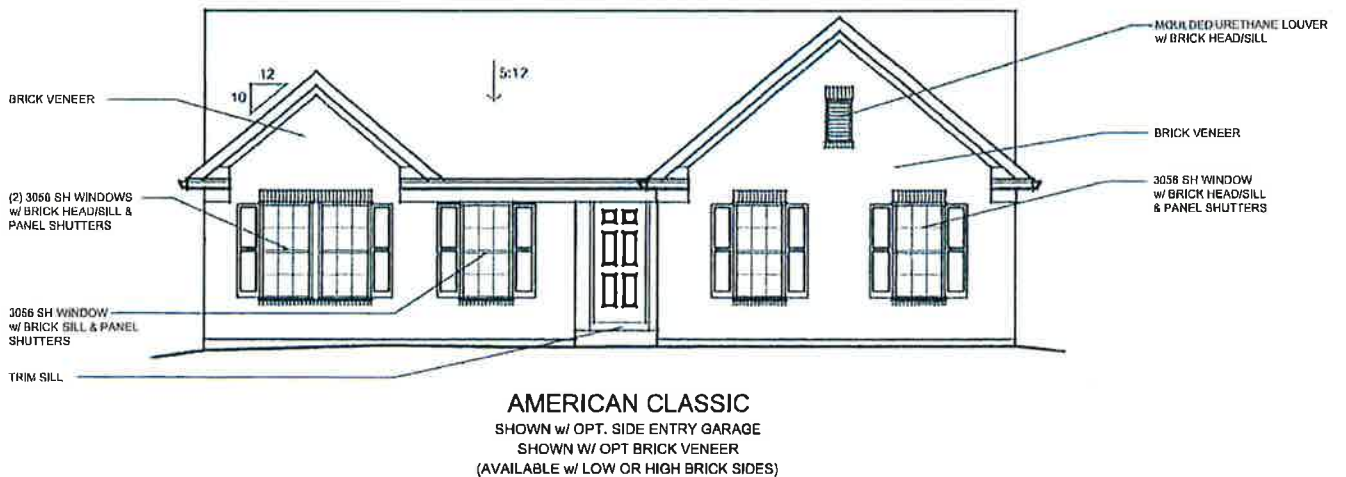
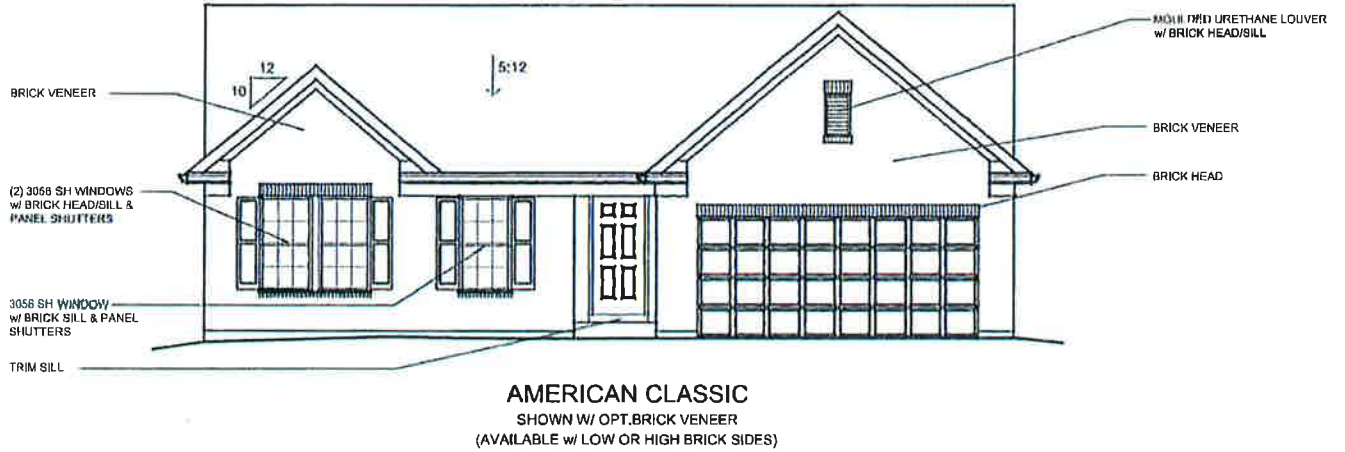


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SP-2.1
2.15.2019

SPRINGFIELD

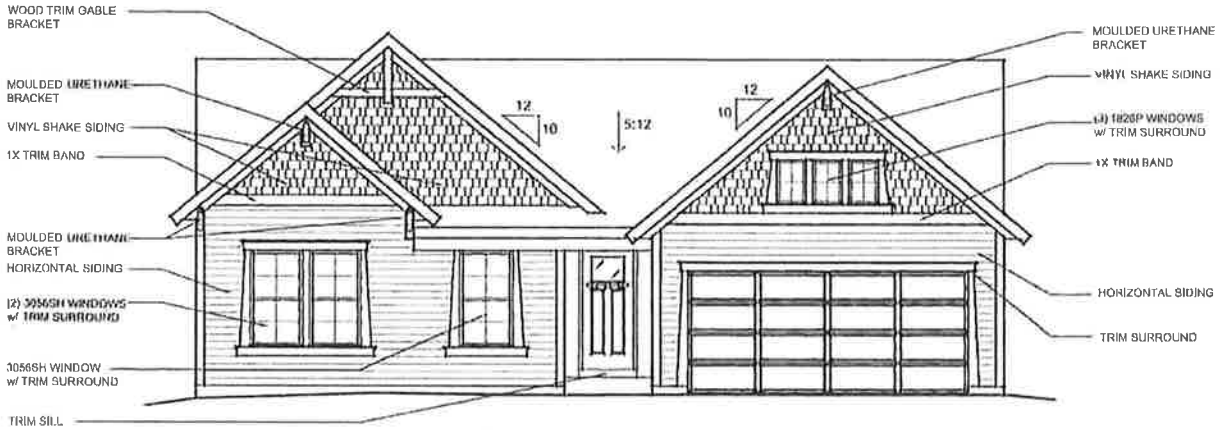
46-176
DESIGNER COLLECTION



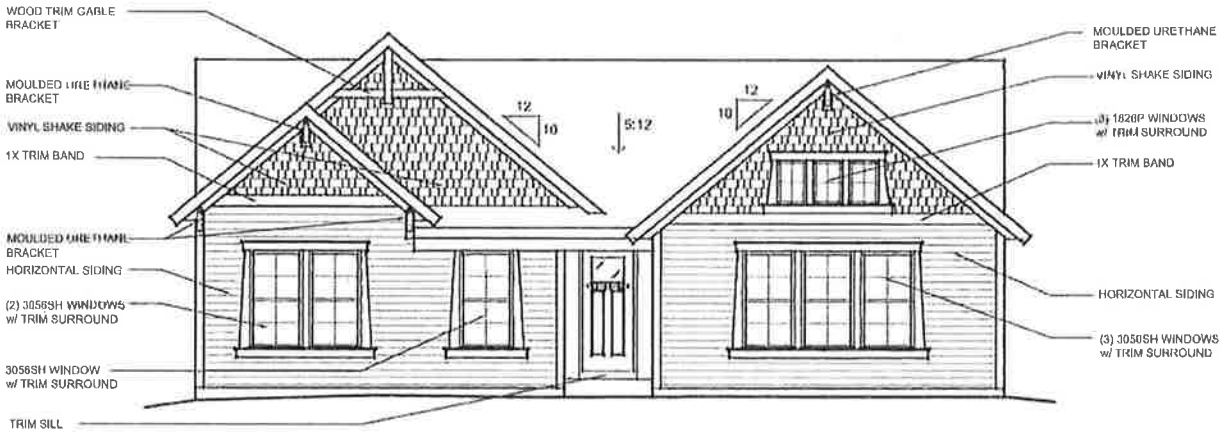
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SPRINGFIELD

46-176
DESIGNER COLLECTION



WESTERN CRAFTSMAN



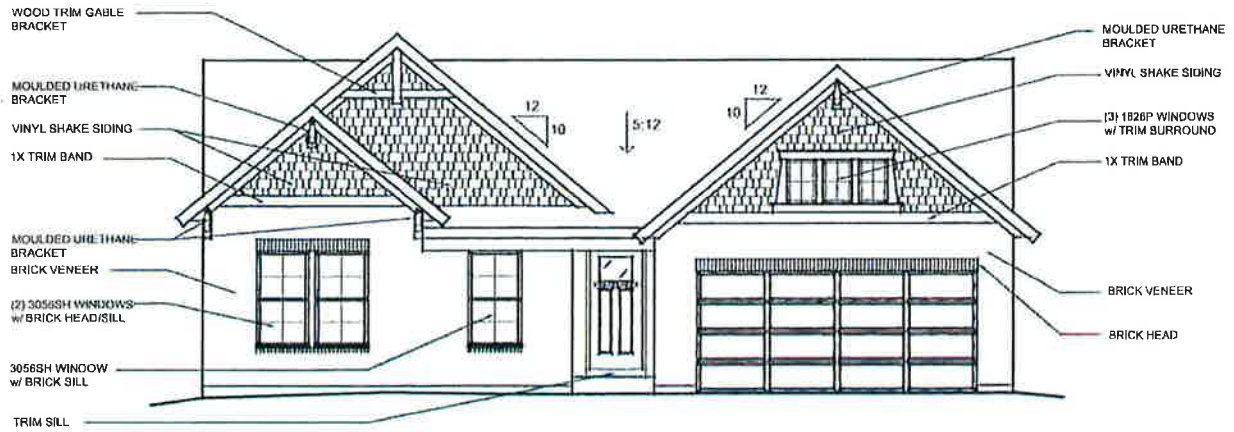
WESTERN CRAFTSMAN
SHOWN w/ OPT. SIDE ENTRY GARAGE



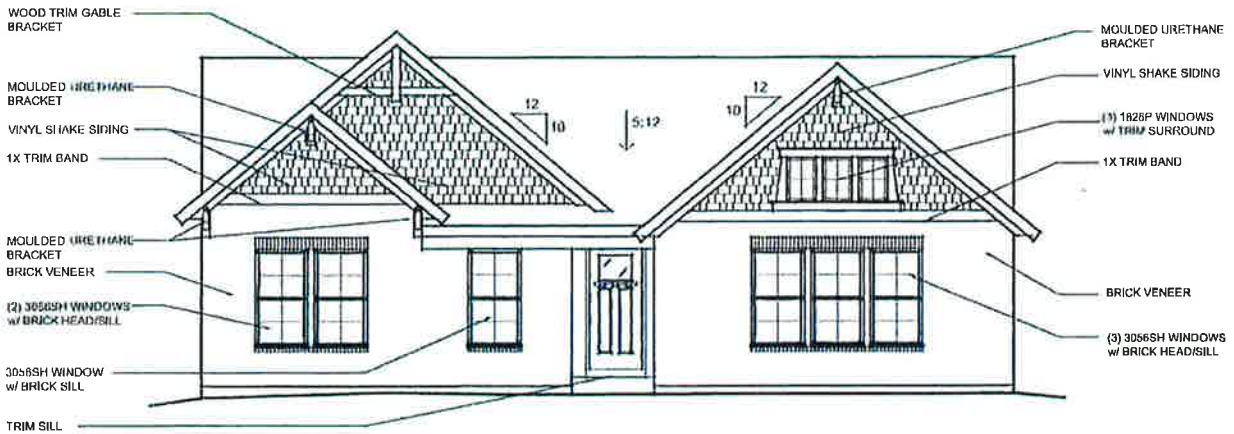
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SPRINGFIELD

46-176
DESIGNER COLLECTION



WESTERN CRAFTSMAN
SHOWN w/ OPT BRICK VENEER
(AVAILABLE w/ LOW OR HIGH BRICK SIDES)



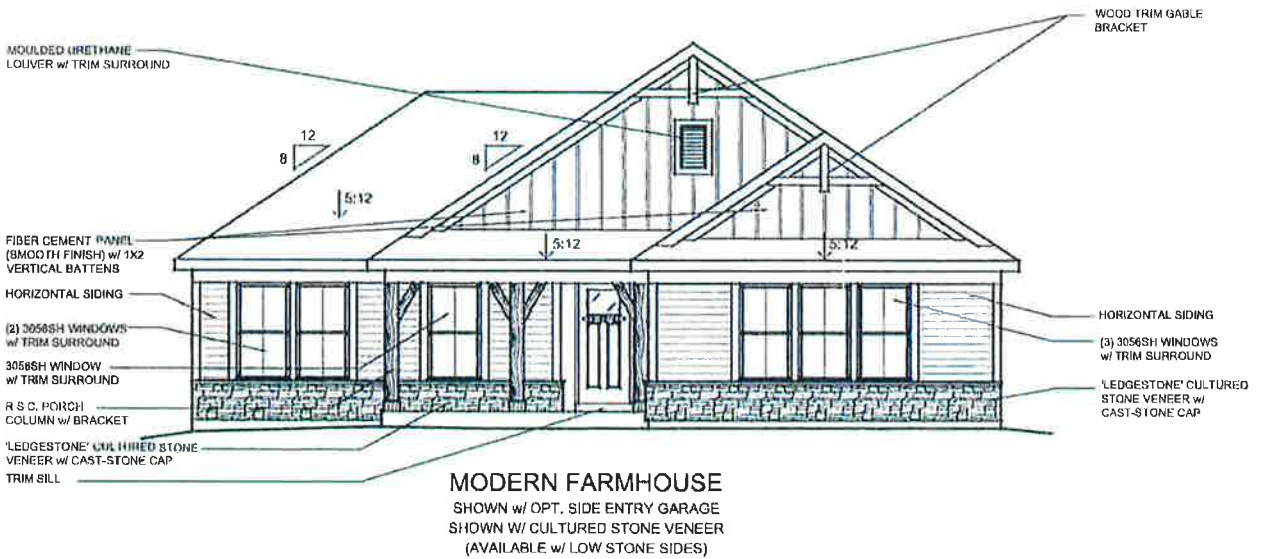
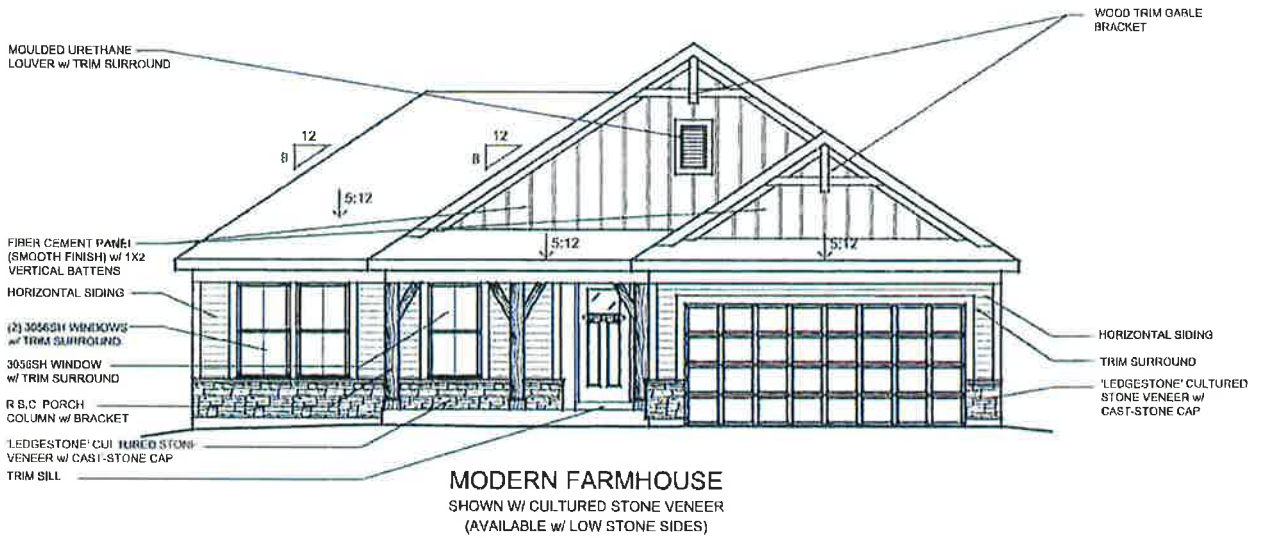
WESTERN CRAFTSMAN
SHOWN w/ OPT. SIDE ENTRY GARAGE
SHOWN w/ OPT BRICK VENEER
(AVAILABLE w/ LOW OR HIGH BRICK SIDES)



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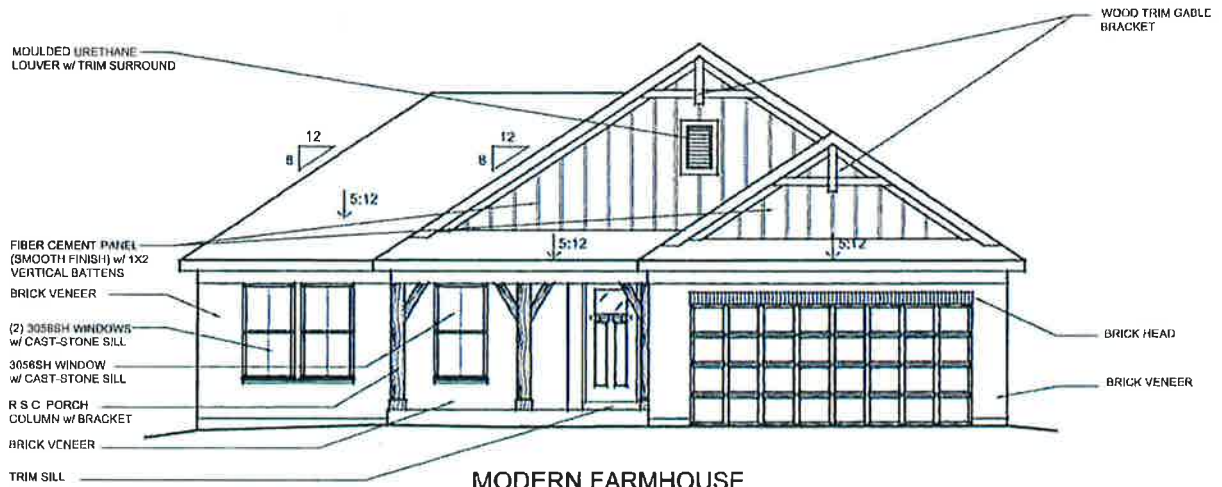
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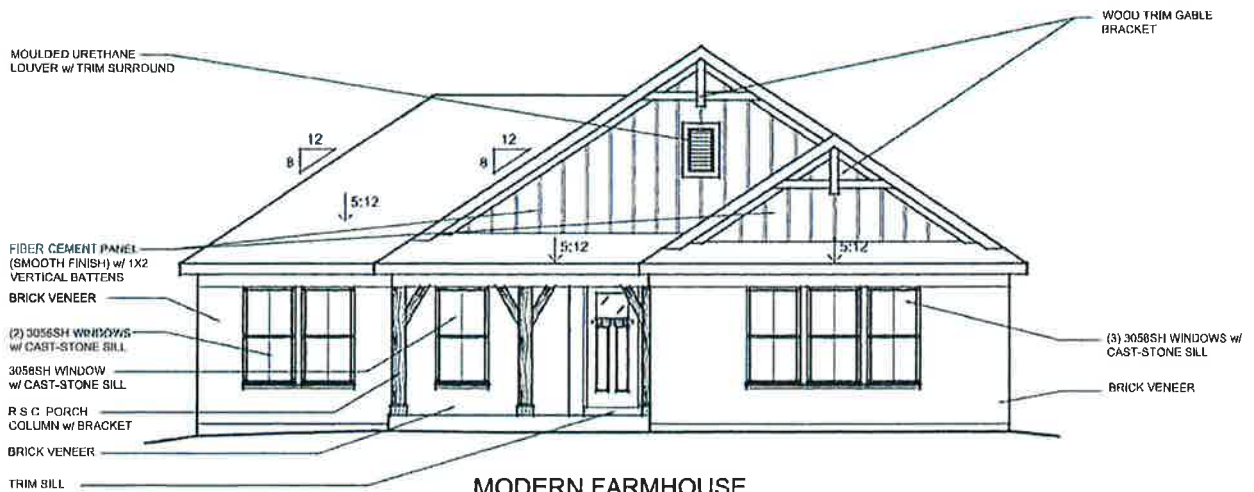
SPRINGFIELD

46-176
DESIGNER COLLECTION



MODERN FARMHOUSE

SHOWN W/ OPT. BRICK VENEER
(AVAILABLE w/ LOW OR HIGH BRICK SIDES)



MODERN FARMHOUSE

SHOWN w/ OPT. SIDE ENTRY GARAGE
SHOWN W/ OPT. BRICK VENEER
(AVAILABLE w/ LOW OR HIGH BRICK SIDES)

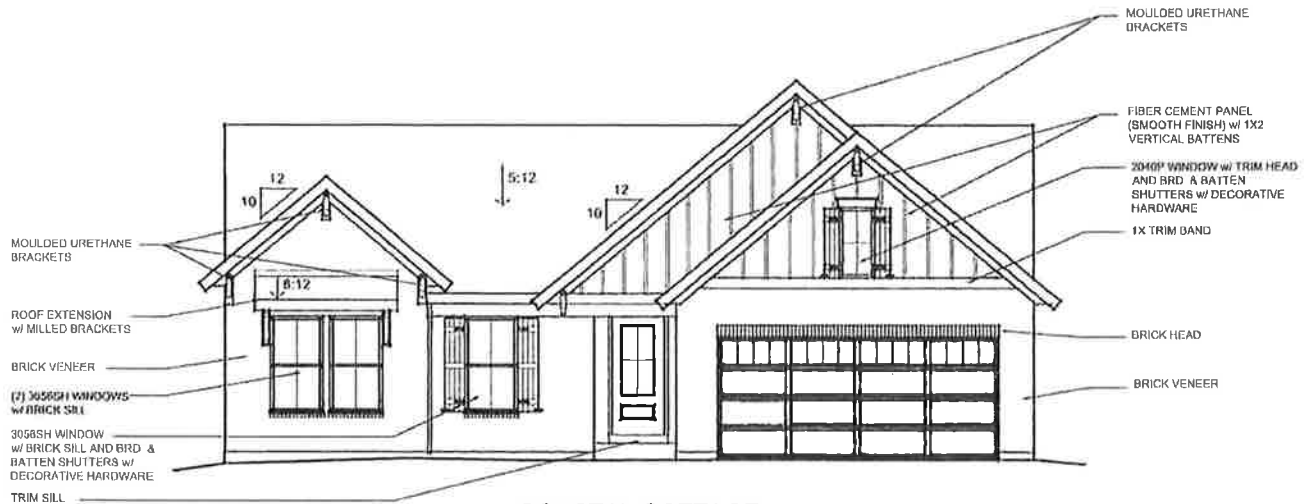


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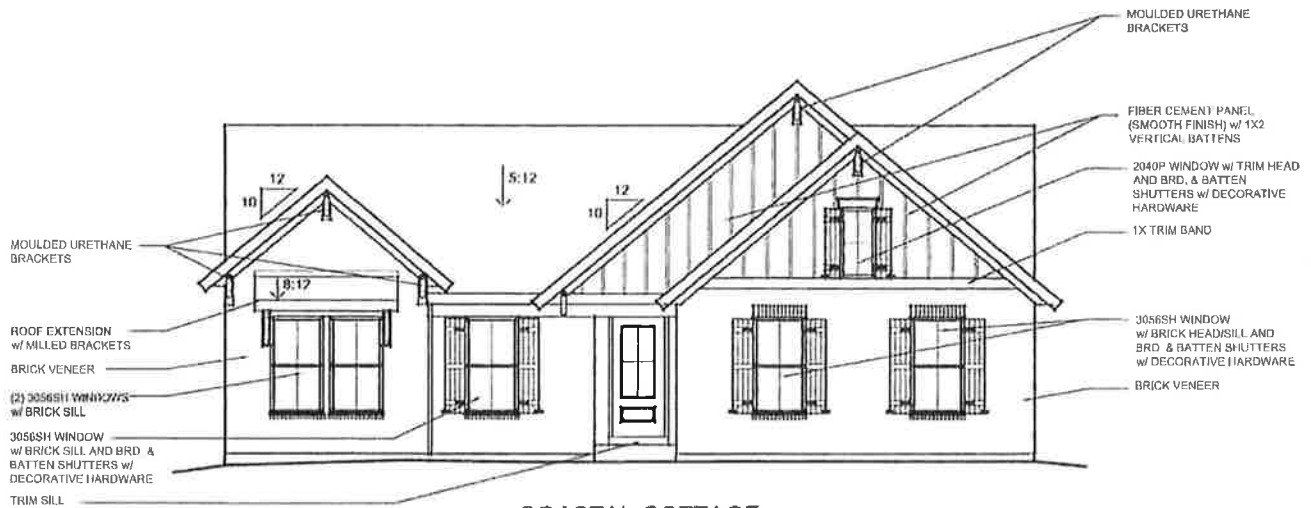
SP-2.6
2 15 2019

SPRINGFIELD

46-176
DESIGNER COLLECTION



COASTAL COTTAGE
W/ BRICK VENEER
(AVAILABLE w/ LOW OR HIGH BRICK SIDES)



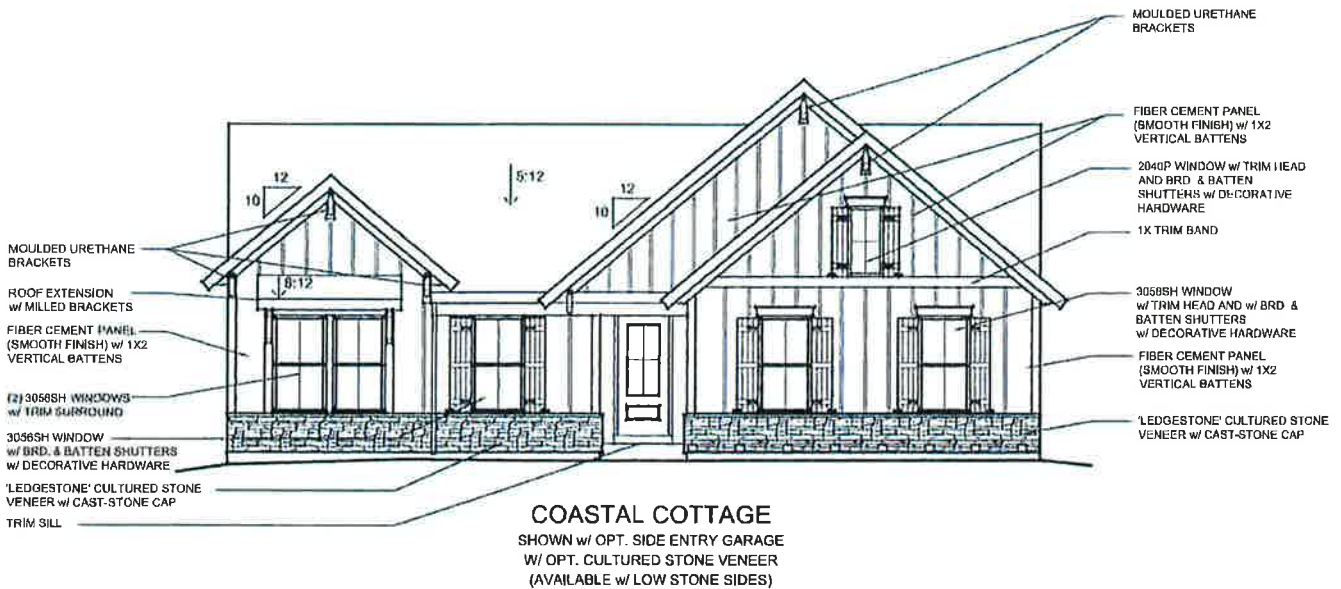
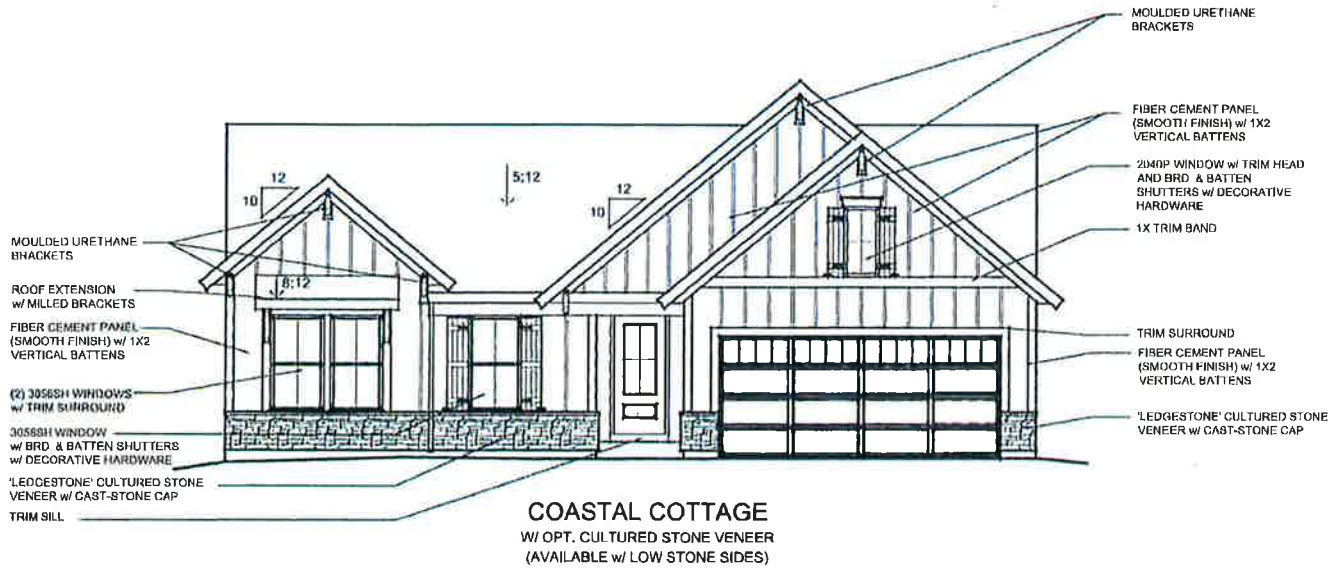
COASTAL COTTAGE
SHOWN w/ OPT. SIDE ENTRY GARAGE
W/ BRICK VENEER
(AVAILABLE w/ LOW OR HIGH BRICK SIDES)



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SPRINGFIELD

46-176 DESIGNER COLLECTION



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SP-2.8
2.15.2019



WYATT

Designer Collection

welcome home.

Approximately 2731 sq ft and Up



MODERN FARMHOUSE
(WITH SIDE ENTRY GARAGE AND OPTIONAL STONE)

designed by *FH*



AMERICAN CLASSIC

designed by *FH*



NANTUCKET RETREAT

designed by *FH*



CAMBRIDGE COTTAGE
(WITH OPTIONAL BRICK)

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



AMELIA

Patio Home Collection

welcome home.

Approximately 1683 sq ft and Up



AMERICAN CLASSIC
(WITH OPTIONAL STONE)

designed by: *FH*



COASTAL COTTAGE
(WITH OPTIONAL STONE)

designed by: *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



EDENTON

Patio Home Collection

welcome home.

Approximately 1501 sq ft and Up



AMERICAN CLASSIC
(WITH OPTIONAL STONE)

designed by *FH*



COASTAL COTTAGE
(WITH OPTIONAL STONE)

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



KIAWAH

Patio Home Collection

welcome home.

Approximately 1720 sq ft and Up



AMERICAN CLASSIC
(WITH OPTIONAL STONE)

designed by *FH*



COASTAL COTTAGE
(WITH OPTIONAL STONE)

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



MAXWELL

Patio Home Collection

welcome home.

Approximately 1856 sq ft and Up



AMERICAN CLASSIC
(WITH OPTIONAL STONE)

designed by *FH*



COASTAL COTTAGE
(WITH OPTIONAL BRICK)

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



WILMINGTON

Patio Home Collection

welcome home.

Approximately 1725 sq ft and Up



AMERICAN CLASSIC
(WITH OPTIONAL BRICK)

designed by *FH*



COASTAL COTTAGE
(WITH OPTIONAL STONE)

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You



WINTHROP

Patio Home Collection

welcome home.

Approximately 1966 sq ft and Up



AMERICAN CLASSIC
(WITH OPTIONAL STONE)

designed by *FH*



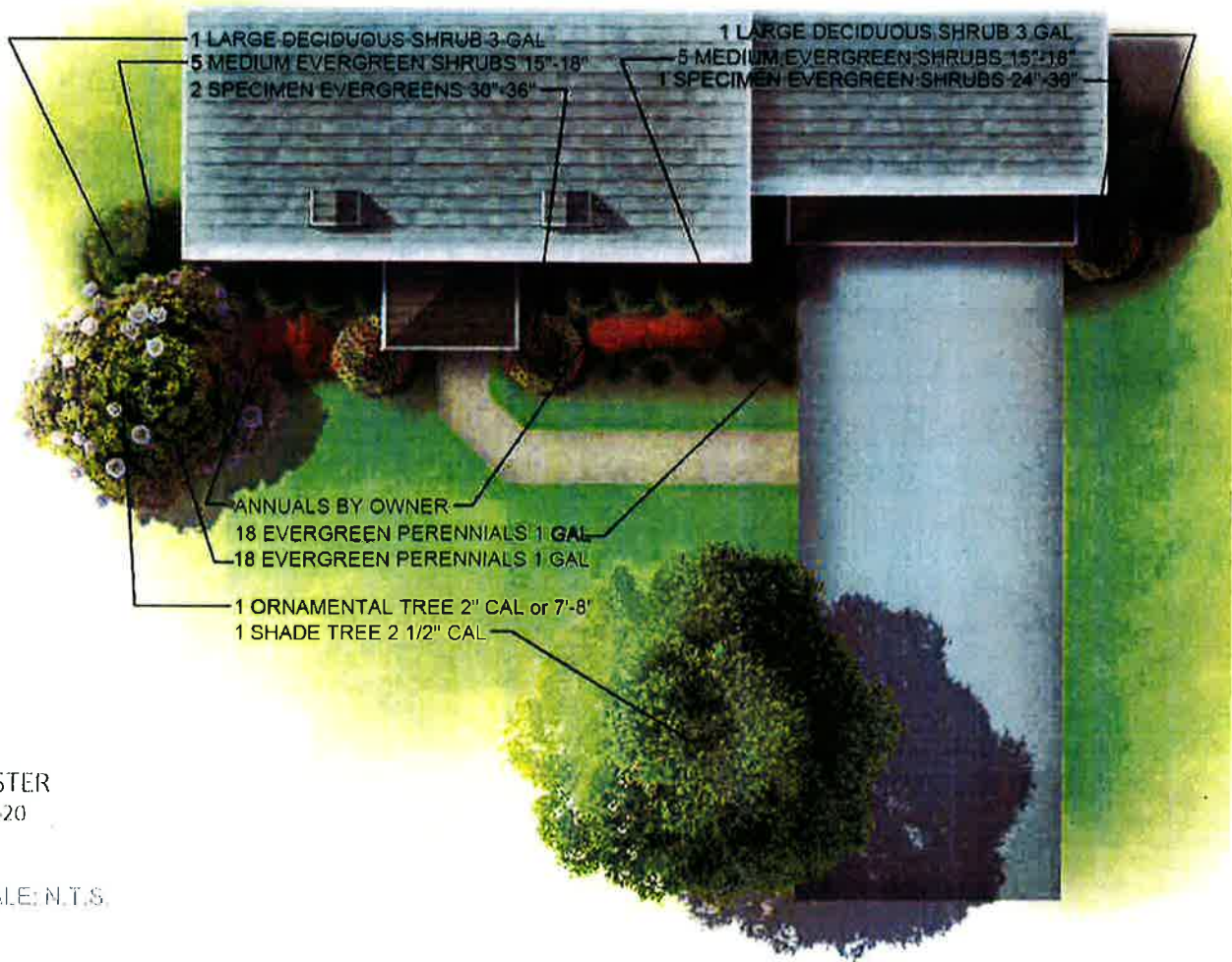
COASTAL COTTAGE
(WITH OPTIONAL BRICK)

designed by *FH*

Images & Options Available at fischerhomes.com

Our Plans Include You

Aberdeen Development Guidelines Report
 Exhibit 4 - Preliminary Lot Landscaping Package Examples
 Ordinance 6846



FOSTER
48-420

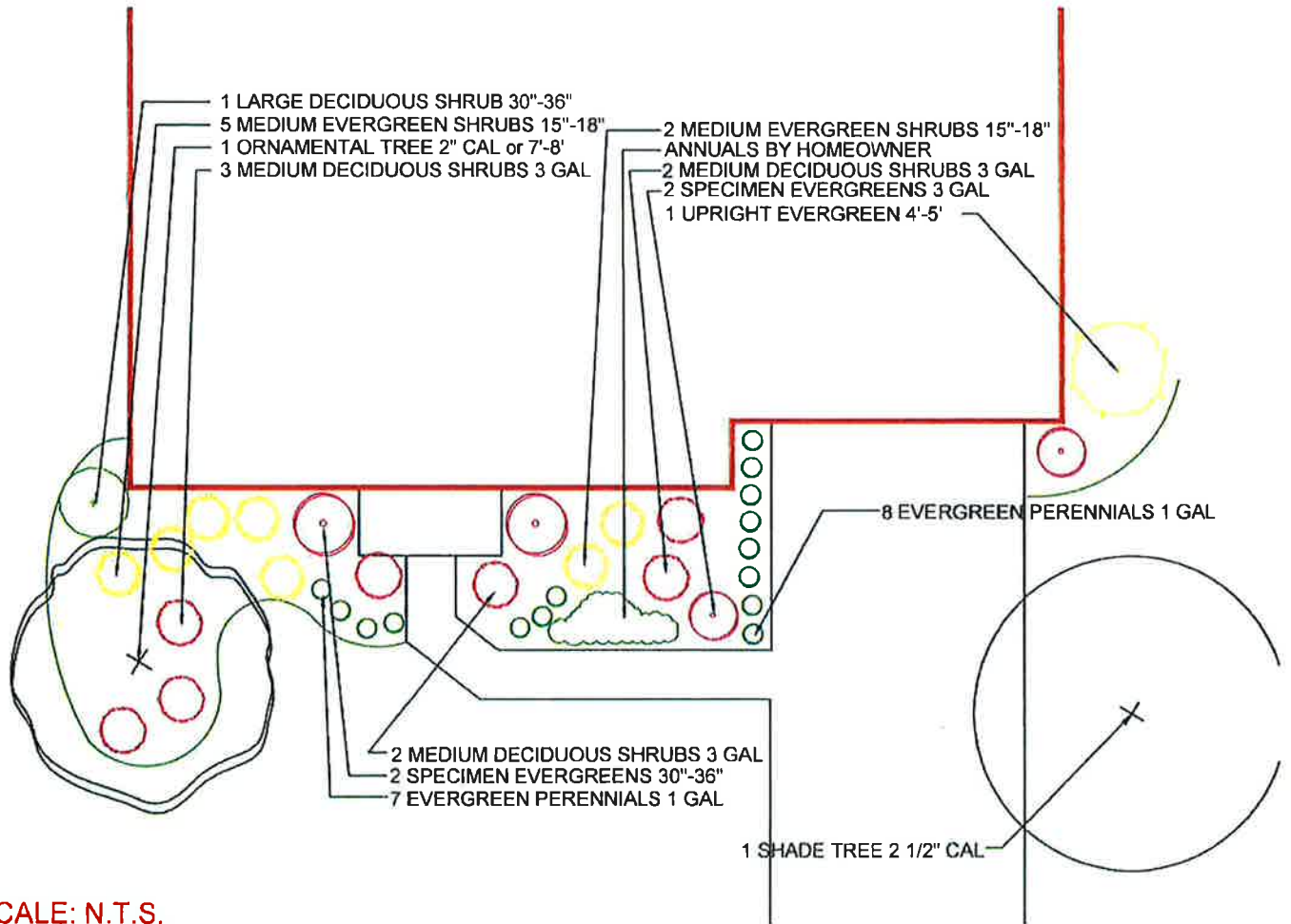
SCALE: N.T.S.

BAKER

56-300



(EXAMPLE OF AN ACCEPTABLE LANDSCAPE PACKAGE)



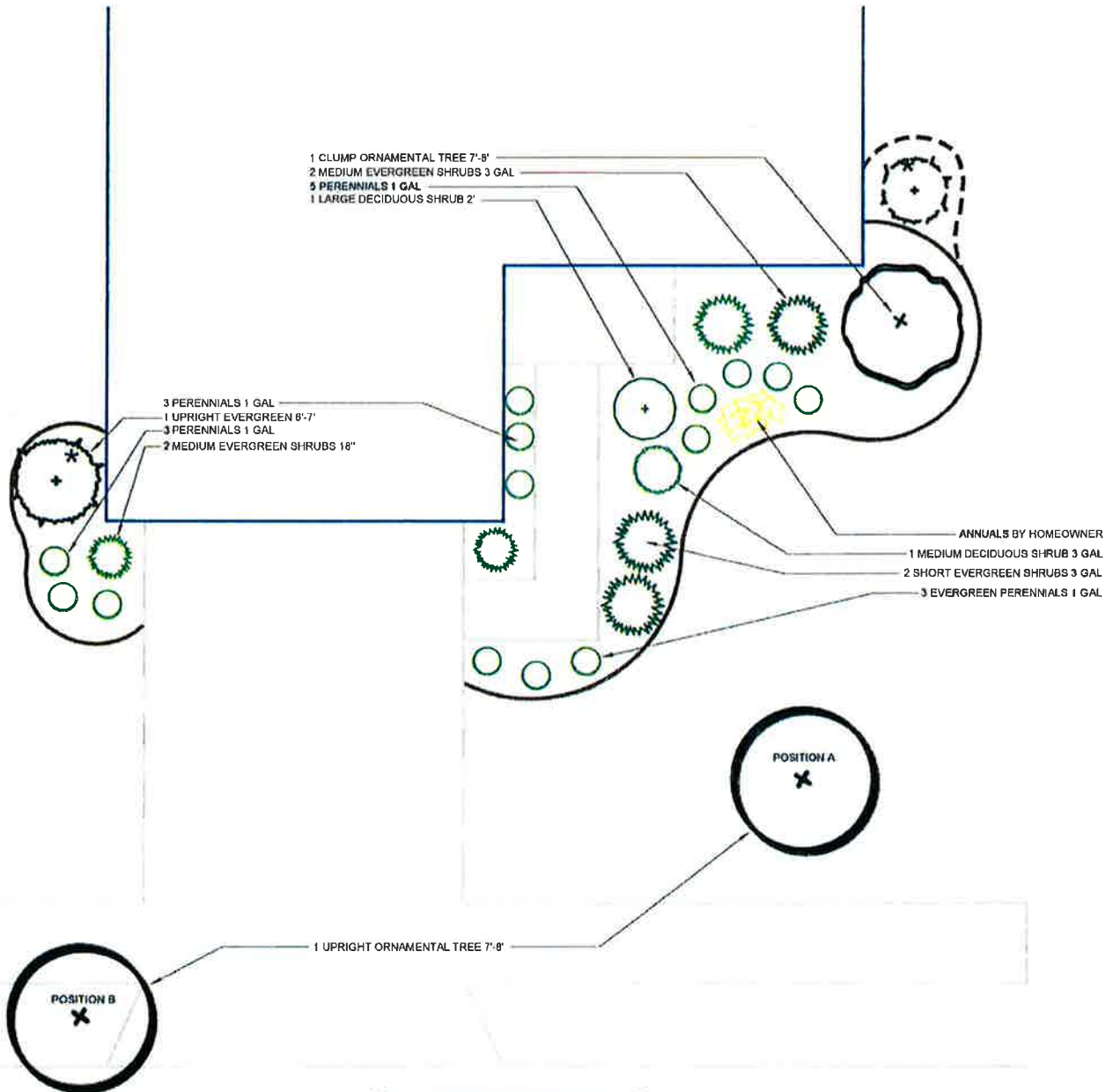
SCALE: N.T.S.



This plan is typical design, changes may need to occur per homesite conditions such as but not exclusive of: changes in grade, easements, utility locations, sun orientation, plant availability, soil conditions, and drainage conditions. These conditions will need to be determined in the field by the landscape professional. © 2009 Fischer Homes Inc. All Rights Reserved.

*
 NOTE: IF SITE NEXT DOOR IS THE SHORT SIDE OF A J-DRIVE, MOVE 6" EVERGREEN FROM GARAGE SIDE OF HOUSE TO LONG SIDE OF LANDSCAPE

WILMINGTON
 38-170
 PACKAGE "PATIO I"



NOTE: POSITION 'A' LOCATED ON ALL EVEN NUMBERED LOTS AND POSITION 'B' ON ALL ODD NUMBERED LOTS

SCALE: N.T.S.

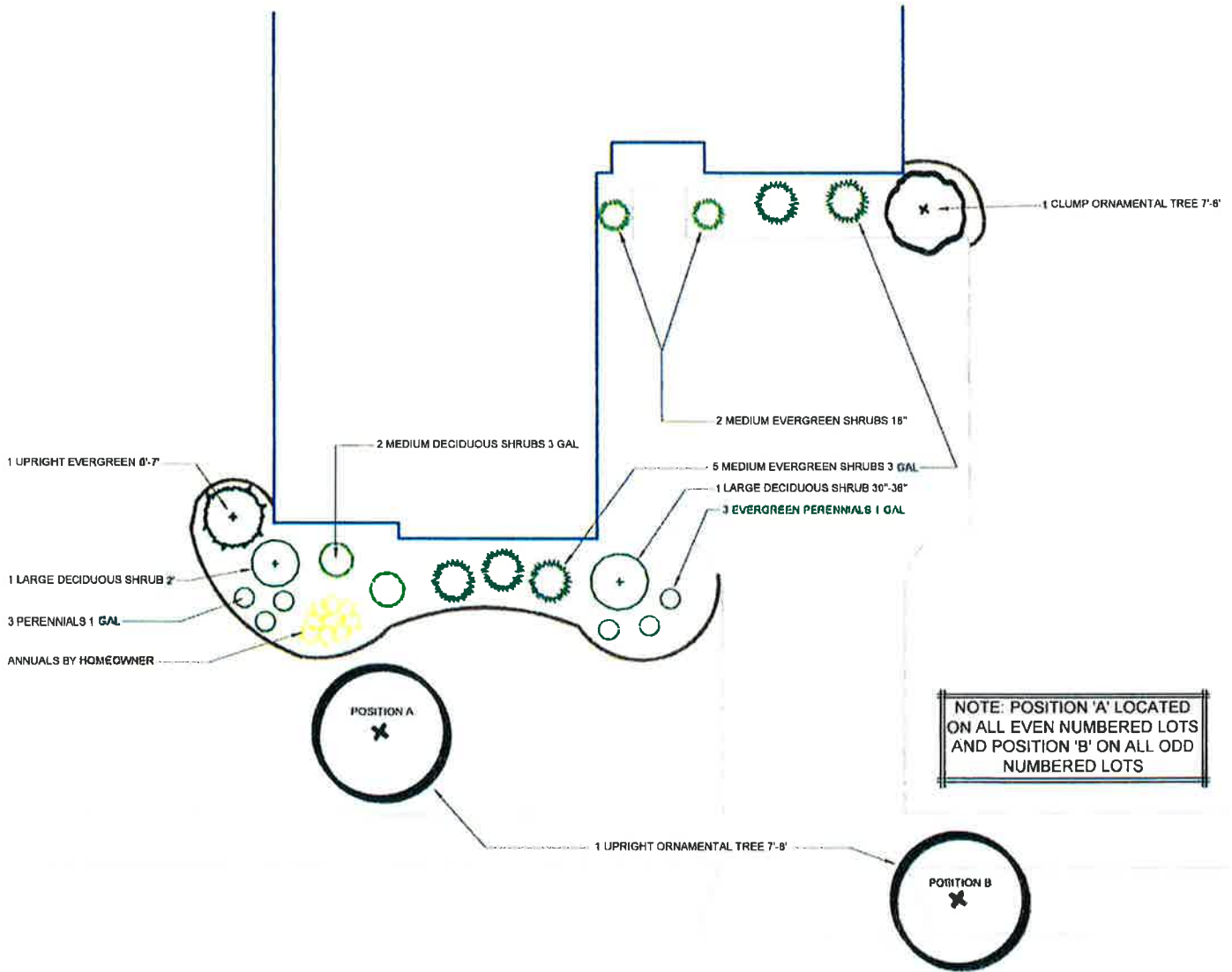


This plan is typical design, changes may need to occur per homesite conditions such as but not exclusive of: changes in grade, casements, utility locations, sun orientation, plant availability, soil conditions, and drainage conditions. These conditions will need to be determined in the field by the landscape professional. ADDITIONAL SHADE TREES MAY BE REQUIRED
 REFER TO COMMUNITY ORDINANCES.

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UPDATED BY: DA
 9.11.2017

MAXWELL
42-180
PACKAGE "PATIO I"



NOTE: POSITION 'A' LOCATED ON ALL EVEN NUMBERED LOTS AND POSITION 'B' ON ALL ODD NUMBERED LOTS

SCALE: N.T.S.



This plan is typical design, changes may need to occur per homesite conditions such as but not exclusive of: changes in grade, easements, utility locations, sun orientation, plant availability, soil conditions, and drainage conditions. These conditions will need to be determined in the field by the landscape professional. ADDITIONAL SHADE TREES MAY BE REQUIRED
REFER TO COMMUNITY ORDINANCES
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UPDATED BY: DA
9.11.2017

ABERDEEN

Aberdeen Development Guidelines Report
 Exhibit 5 - Preliminary Open Space and Buffering Plan
 Ordinance 5845

NO. REVISION	DATE	REVISIONS AND/OR ISSUES

NOT FOR CONSTRUCTION

ABERDEEN
 MR. EARL RD & MIAMI SPRING RD
 CITY OF MIAMI SPRING, MONTGOMERY CO., OHIO
LEESMAN ENGINEERING & ASSOC.
 ENGINEERING, SURVEYING, PLANNING
 2720 TOPIC HILLS, CINCINNATI, OHIO 45248 613/417-0420

7/5
 Engineers

DRAWING TITLE
 PRELIMINARY LANDSCAPING
 ABERDEEN 2-13-20
 SHEET NO. 15-1

L1



ORDINANCE NO. 6847

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2020 ASPHALT PAVING PROGRAM AND DECLARING AN EMERGENCY.

WHEREAS, the City has advertised and received bids for the 2020 Asphalt Paving Program in accordance with law; and

WHEREAS, the City and Miami Township have entered into a Project Agreement For Joint Participation in the 2020 Asphalt Paving Program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by John R. Jurgensen Company in the amount of One Million, Eighty One Thousand, Seven Hundred Sixty Three Dollars and Twenty Seven Cents (\$1,081,763.27) for the 2020 Asphalt Paving Program pursuant to the bid forms submitted March 5, 2020, is hereby determined to be the lowest and best bid after bidding conducted according to law and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with John R. Jurgensen Company, in accordance with the terms contained in the bid specifications dated March 5, 2020.

Section 3.

The sum of \$530,000 is hereby set aside and appropriated in Capital Improvement Fund, account number 380.990.54605.

Section 4.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed as soon as possible to remain on schedule for the summer road maintenance season, therefore, this measure shall be in force from and after its passage.

Passed: March 17, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6848

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2020 SIDEWALK, CURB AND GUTTER PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the City has advertised and received bids for the 2020 Sidewalk, Curb & Gutter Program in accordance with law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by WG Stang, LLC in the amount of Two Hundred Ninety Nine and Five Hundred Eighty Three Dollars (\$299,583) for the 2020 Sidewalk, Curb and Gutter Program pursuant to the bid forms submitted, March 12, 2020 is hereby determined to be the lowest and best bid after bidding conducted according to law and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with WG Stang LLC for the 2020 Sidewalk, Curb and Gutter Program in accordance with the terms contained in the bid specifications dated March 12, 2020.

Section 3.

The sum of \$80,000 is hereby set aside and appropriated in the Capital Improvement Fund, account number 380.990.54606.

Section 4.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to remain on schedule; therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 21, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

2020 SIDEWALK, CURB & GUTTER PROGRAM
 City of Miamisburg, OH 45342
 Prepared by City Engineer

BID TABULATION

BID OPENING DATE: March 12, 2020

BIDDER'S NAME	BIDDER'S NAME	BIDDER'S NAME	BIDDER'S NAME
City of Miamisburg Engineer's Estimate \$260,000	W.G. Stang LLC Hamilton, OH \$299,583.00	R.A. Miller Construction Company Inc. Hamilton, OH \$302,403.45	
BIDDER'S NAME	BIDDER'S NAME	BIDDER'S NAME	BIDDER'S NAME

ORDINANCE NO. 6849

AN ORDINANCE AUTHORIZING THE TRANSFER OF A MOWER TO THE HILLGROVE UNION CEMETERY AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to a request from the Hillgrove Union Cemetery (the "Cemetery"), the City of Miamisburg, Ohio (the "City") purchased on March 15, 2017 a Toro 5000 60" ZTR mower (the "mower") for use in maintaining the cemetery; and

WHEREAS, the cemetery has made payments to the City in the full amount of the cost of mower;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

SECTION 1. That Council hereby approves and authorizes the transfer of the mower to the Cemetery.

SECTION 2. That the City Manager and the Finance Director are each hereby authorized and directed to take any action necessary including executing any required documents to effectuate such transfer.

SECTION 3. That the Parks and Recreation Director is hereby directed to deliver the mower to the Cemetery.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 5. This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this transfer of equipment is needed at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 21, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6850

AN ORDINANCE AUTHORIZING THE TRANSFER OF A FIRE TRUCK TO THE MIAMI VALLEY FIRE DISTRICT AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg, Ohio ("the City") entered into an agreement with Miami Township, Montgomery County, Ohio (the "Township") and the Miami Valley Fire District (the "Fire District") to provide fire services within the City and the Township (the "Agreement"); and

WHEREAS, the Agreement requires the City transfer certain fire equipment, including vehicles, to the Fire District; and

WHEREAS, the City has made all lease and financing payments for the Rosenbauer Aerial Fire Truck (the "fire truck") and has clear title to such truck;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

SECTION 1. That pursuant to the terms of the Agreement, Council hereby approves and authorizes the transfer of the fire truck to the Fire District.

SECTION 2. That the City Manager and the Finance Director are each hereby authorized and directed to take any action necessary including executing any required title certificates or other document, to effectuate such transfer.

SECTION 3. That Fire Chief is hereby authorized and directed to deliver the fire truck to the Fire District.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 5. This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this transfer of equipment is needed at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 21, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6851

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$8,020,000 OF VARIOUS PURPOSE BOND ANTICIPATION NOTES, 2020 RENEWAL, BY THE CITY OF MIAMISBURG, OHIO, IN ANTICIPATION OF THE ISSUANCE OF BONDS, AND DECLARING AN EMERGENCY.

WHEREAS, notes presently outstanding in the amount of \$8,120,000 are about to mature and should be renewed in a reduced principal amount; and

WHEREAS, the fiscal officer of the City has estimated the life or period of usefulness of the improvements as at least five (5) years, and certified the maximum maturity of the bonds to be issued to finance the same as twenty-two (22) years, and of notes issued in anticipation thereof as twelve (12) years;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

SECTION 1. That it is hereby declared necessary to issue bonds of the City of Miamisburg, County of Montgomery, Ohio, in the principal amount of not to exceed \$8,020,000 bearing interest estimated at five per centum (5%) per annum and maturing over a period of twenty-two (22) years, for the purpose of refinancing notes originally issued for the purposes of (i) providing funds to pay part of the cost of constructing a new road in the City (Motoman) (\$1,600,000); (ii) providing funds to construct a new road, including road construction and related storm water improvements and related costs (United Grinding) (\$4,700,000); (iii) providing funds to acquire storm water easements and related costs (\$1,500,000); (iv) providing funds to construct a new road including road construction and related storm water, irrigation and lighting improvements (\$220,000); and (v) paying costs of issuance of the bonds.

SECTION 2. That it is hereby determined that notes (hereinafter called the "Notes") in the principal amount of not to exceed \$8,020,000 shall be issued in anticipation of the issuance of said bonds.

SECTION 3. That the Notes shall be dated their date of issuance, shall bear interest at a rate not to exceed four percent (4%) per annum, payable at maturity, shall mature not later than one year from the date of issuance, and shall be of the denomination or denominations as may be requested by the purchaser or purchasers thereof all as determined by the Finance Director or the City Manager without further action by this Council, except that the denominations shall be \$100,000 or any integral multiple of \$5,000 in excess of \$100,000. The terms of such Notes, which shall be in compliance with Chapter 133 of the Ohio Revised Code, shall be set forth in a certificate of award, (the "Certificate of Award") which is hereby authorized and which shall be executed by the Finance Director or the City Manager without further action by this council.

SECTION 4. That said Notes shall be executed by the City's Mayor and Finance Director and may but shall not be required to bear the seal of the corporation. The Notes shall be designated "Various Purpose Limited Tax General Obligation Bond Anticipation Notes, 2020 Renewal," and shall be payable at a bank or trust company designated by the Finance Director or City Manager

and the purchaser, and shall express upon their face the purpose for which they are issued and that they are issued in pursuance of this Ordinance.

SECTION 5. That the Notes shall be sold to RBC Capital Markets, LLC (the "Underwriter") as set forth in the agreement between the City and the Underwriter (the "Note Purchase Agreement") which is hereby authorized. The proceeds from the sale of said Notes, except the premium and accrued interest, if any, shall be used for the purpose aforesaid and for no other purpose; and any premium and accrued interest received from the sale shall be transferred to the Note Retirement Fund to be applied to payment of cost of issuance of the Notes and the principal and interest on the Bonds in the manner provided by law.

The City Manager or the Finance Director are hereby authorized to conduct such sale of the bonds and to execute and deliver, without further action of the Council, the Certificate of Award and the Note Purchase Agreement setting forth the final terms of the Note. The signature of said officer on the Note Purchase Agreement shall be conclusive evidence that the terms of the Notes are acceptable to the City.

The City Manager or the Finance Director is hereby directed to report to this Council as soon after the sale and award of such notes as is reasonably feasible, the interest rate for such notes.

SECTION 6. That said Notes shall be the full general obligations of this City and the full faith, credit and revenue of this City are hereby pledged for the prompt payment of the same. The par value received from the sale of bonds anticipated by said notes, and any excess funds resulting from the issue of said notes, shall, to the extent necessary, be used only to pay costs of issuance of the Note or for the retirement of said Notes at maturity, together with interest thereon and is hereby pledged for such purpose.

SECTION 7. That during the period while the Notes run there shall be levied upon all of the taxable property in the City, within applicable limitations, in addition to all other taxes, a direct tax annually, not less than that which would have been levied if bonds had been issued without the prior issue of the Notes; said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof.

The funds derived from said tax levy hereby required shall be placed in a separate and distinct fund and, together with interest collected on the same, shall be irrevocably pledged for the payment of the principal and interest of the Notes, or the bonds in anticipation of which they are issued, when and as the same fall due; provided, however, to the extent other City revenues are available for such purpose said tax shall not be levied therefor.

SECTION 8. That this Council, for and on behalf of the City, hereby covenants that it will restrict the use of the Notes hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed

thereunder. The Finance Director or any other officer having responsibility with respect to the issuance of said Notes is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of said Notes for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

These Notes are hereby designated "tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code. The City does not anticipate issuing more than \$10,000,000 of "qualified tax-exempt obligations" during the current calendar year.

SECTION 9. That this Council hereby authorizes the City to participate in the Ohio Market Access Program – Note Wrap - offered by the Treasurer of the State of Ohio (the "Program"), provided that (a) participation in the Program is in the best interests of the City and (b) the City Manager or the Finance Director affirmatively elects to participate in the Program in the Certificate of Award.

SECTION 10. That the Standby Note Purchase Agreement (the "Standby Purchase Agreement") required as part of the Program is hereby authorized in the form presented to this Council with such changes not materially adverse to the City as may be approved by the authorized signatories of the City executing the Standby Purchase Agreement, as provided in this ordinance. The City acknowledges the agreement of the Treasurer of State in the Standby Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Notes at maturity, whether through its own funds or through the issuance of other obligations of the City, the Treasurer of State agrees (a) to purchase the Notes from the holders or beneficial owners thereof upon their presentation to the Treasurer of State for such purchase at a price of par plus accrued interest to maturity or (b) to purchase renewal notes of the City in a principal amount not greater than the principal amount of the Notes plus interest due at maturity, with such renewal notes bearing interest at a rate of the lower of the maximum interest rate provided by law or the 1-year MMD (Municipal Market Data) Index for "AAA"-rated obligations plus 400 basis points (or such other rate methodology in effect as part of the Program), maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days' notice, provided that in connection with the Treasurer of State's purchase of such renewal notes the City shall deliver to the Treasurer of State an unqualified opinion of nationally recognized bond counsel that (i) such renewal notes are the legal, valid, and binding general obligations of the City, and the principal of and interest on such renewal notes, unless paid from other sources, are to be paid from the proceeds of the levy of ad valorem taxes levied within the ten-mill limitation imposed by law on all property subject to ad valorem taxes levied by the City and (ii) interest on the renewal notes is includible in gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended to the same extent that interest on the notes is so excluded.

In addition, the City acknowledges that the Treasurer of State will establish an "After Maturity Interest Rate," as generally provided for as part of the Program and as specifically provided for within the Standby Purchase Agreement.

The Mayor and the Finance Director, as the officers signing the Notes, are authorized to take all actions that may in their judgment reasonably be necessary to provide for such Standby Purchase Agreement, including but not limited to the inclusion of a notation on the form of the

Notes providing notice to the holders or beneficial owners of the existence of such Standby Purchase Agreement and providing instructions to such holders or beneficial owners regarding the presentation of the Notes for purchase by the Treasurer of State at stated maturity.

This Council hereby authorizes further representations, warranties, and/or covenants to be made regarding the City's participation in the Program by virtue of the Certificate of Award and/or other Program documents, subject to review and approval by legal counsel to the City.

SECTION 11. The Finance Director is hereby further authorized to take such actions as may be reasonably requested by the purchaser of the Notes in order to make the Notes eligible for the services of The Depository Trust Company, New York, New York.

SECTION 12. All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such agreements, financing statements, closing certificates and other instruments or documents as are, in the opinion of bond counsel, necessary to carry out the purposes of this ordinance.

SECTION 14. This City Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 6) of the City are pledged for the timely payment of the debt charges on the Notes and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

SECTION 15. That the firm of Dinsmore & Shohl LLP ("Dinsmore"), is hereby engaged as the City's "bond counsel" and that the Finance Director is hereby authorized and directed to execute and deliver the engagement letter of Dinsmore in the form on file with the City.

SECTION 16. That the Finance Director is hereby authorized to apply, if she deems it appropriate, for a rating on the Notes from either Standard & Poor's Corporation or Moody's Investors Service, and to pay the fee for said rating to the extent authorized by law and approved by bond counsel.

SECTION 17. That the Finance Director is hereby directed to forward a certified copy of this Ordinance to the County Auditor.

SECTION 18. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 19. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety in the City for the reason that the immediate issuance of said Notes is required for the timely refinancing of the projects to which this financing relates including obtaining a favorable interest rate, therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 21, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins, Mayor

CERTIFICATE

The undersigned, Clerk of Council of the City of Miamisburg, Montgomery County, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 6851, passed by the Council of the City of Miamisburg, Ohio on April 21, 2020.

Kim Conder

Clerk of Council

CERTIFICATE

City of Miamisburg, Ohio

April 21, 2020

The undersigned, Finance Director of the City of Miamisburg, County of Montgomery, Ohio, hereby certifies that a copy of the foregoing Ordinance No. 6851, passed by the Council of the City of Miamisburg, County of Montgomery, Ohio, on _____, 2020, was certified this day to the County Auditor of the County of Montgomery, Ohio.

Finance Director

RECEIPT

The undersigned, County Auditor of the County of Montgomery, Ohio, hereby acknowledges receipt this day of the foregoing Ordinance No. _____, passed by the Council of the City of Miamisburg, County of Montgomery, Ohio, on _____, 2020.

County Auditor

By _____

Deputy _____

Dated: _____, 2020.

EXTRACT FROM MINUTES OF MEETING

The Council of the City of Miamisburg, County of Montgomery, Ohio, met in regular session, at 6:00 p.m., on the 21st day of April 2020, at via video conferencing, with the following members present: Mayor Collins, Councilmembers, Clark, Colvin, McCabe, Nestor, Nicholas, Stalder and Thompson

There was presented and read to Council Ordinance No. 6851, entitled:

ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$8,020,000 OF VARIOUS PURPOSE BOND ANTICIPATION NOTES, 2020 RENEWAL, BY THE CITY OF MIAMISBURG, OHIO, IN ANTICIPATION OF THE ISSUANCE OF BONDS, AND DECLARING AN EMERGENCY.

Mr. Thompson moved to suspend the rule requiring each ordinance or resolution to be read on three different days. Mr. McCabe seconded the motion and, the roll being called upon the question, the vote resulted as follows:

Mr. Nicholas then moved that Ordinance No. 6851 be adopted. Mr. Stalder seconded the motion and, the roll being called upon the question, the vote resulted as follows:

The ordinance was declared adopted April 21, 2020.

CERTIFICATE

The undersigned, Clerk of Council of said municipality, hereby certifies that the foregoing is a true and correct extract from the minutes of a meeting of the council of said municipality, held on the 21 day of April, 2020, to the extent pertinent to consideration and adoption of the above-entitled obligation.



Clerk of Council

CERTIFICATE OF MEMBERSHIP

The undersigned, Finance Director of the City of Miamisburg, Ohio, County of Montgomery hereby certifies that the following were the officers and members of council during the period proceedings were taken authorizing the issuance of not to exceed \$8,020,000 Various Purpose Limited Tax General Obligation Bond Anticipation Notes, 2020 Renewal, dated as of their date of issuance:

Mayor	<u>Michelle Collins</u>
City Manager	<u>Keith D. Johnson</u>
Finance Director	<u>Jennifer Johns</u>
Clerk of Council	<u>Kim Combs</u>
Member of Council	<u>Sarah Clark</u>
Member of Council	<u>Ryan Colvin</u>
Member of Council	<u>Mike McCabe</u>
Member of Council	<u>Jeff Nestor</u>
Member of Council	<u>Tom Nicholas</u>
Member of Council	<u>Greg Thompson</u>
Member of Council	<u>John Stalder</u>
Law Director	<u>Phil Callahan</u>

Finance Director

TRANSCRIPT CERTIFICATE

The undersigned, Clerk of Council of said City of Miamisburg, County of Montgomery, Ohio, hereby certifies that the following is a true and complete transcript of all proceedings relating to the authorization and issuance of the above-identified obligation.

Kim Combs

Clerk of Council

**CERTIFICATE AS TO MAXIMUM MATURITY OF
BONDS AND BOND ANTICIPATION NOTES**

The undersigned, being the fiscal officer of the City of Miamisburg, Ohio, within the meaning of Section 133.01 of the Uniform Public Securities Law of the Ohio Revised Code, hereby certifies to the City Council that the estimated life of the improvements financed with the proceeds of the sale of not to exceed \$8,020,000 of bonds, for the purpose of refinancing notes originally issued for the purposes of refinancing notes originally issued for the purposes of (i) paying part of the cost of constructing a new road in the City (Motoman) (\$1,600,000); (ii) providing funds to construct a new road, including road construction and related storm water improvements and related costs (United Grinding) (\$4,700,000); (iii) providing funds to acquire storm water easements and related costs (\$1,500,000) and related costs; (iv) constructing a new road including road construction and related storm water, irrigation and lighting improvements (\$220,000), is at least five (5) years and that the maximum maturity of said bonds, in accordance with Section 133.20 of the Uniform Public Securities Law of the Ohio Revised Code, is twenty-two (22) years, and the maximum maturity of notes issued in anticipation thereof is twelve (12) years.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
2020.

Finance Director

ORDINANCE NO. 6852

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO THE OHIO WATER/WASTEWATER AGENCY RESPONSE NETWORK AGREEMENT AND DECLARING AN EMERGENCY.

WHEREAS, certain Ohio water and wastewater agencies (the "Members") have formed the "Ohio Water/Wastewater Agency Response Network," (Ohio WARN), to share resources and assist each other in the form of personnel, equipment, materials and supplies in the event of emergencies that disrupt utility services; and

WHEREAS, the City of Miamisburg, operating water and wastewater utilities, would benefit from participation in Ohio WARN, and has the resources to provide assistance to other member agencies, if requested; and

WHEREAS, the Members agree to enter into the "Ohio Water/Wastewater Agency Response Network Mutual Aid Agreement" to describe the terms and conditions under which emergency assistance may be requested and provided.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Recognizing that emergencies may overwhelm Ohio WARN Members to provide utility services, and those Members may seek assistance from outside the area of impact. The signatory utilities to this Agreement hereby establish within the State of Ohio an Intrastate Program for Mutual Aid and Assistance.

Section 2.

The Mutual Aid and Assistance Program shall be administered through a Statewide Committee, which will provide coordination of the Mutual Aid and Assistance Program before, during and after an emergency. Under the leadership of an elected Chair, the Statewide Committee members shall plan and coordinate emergency planning and response efforts for the Mutual Aid and Assistance Program.

Section 3.

The City Manager is hereby authorized to enter into the Ohio Water/Wastewater Agency Response Network Mutual Aid Agreement, attached hereto and marked as Exhibit A, and to designate the Authorized Official as the Public Works Director.

Section 4.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and to ensure adequate resources are available to continue the safe and efficient operation of public utilities during an emergency, therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 21, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle Collins

Michelle L. Collins, Mayor

**OHIO WATER/WASTEWATER AGENCY RESPONSE NETWORK
MUTUAL AID AGREEMENT**

RECITALS

WHEREAS, certain Ohio water and wastewater agencies (the "Members") have formed the "Ohio Water/Wastewater Agency Response Network," (Ohio WARN), to share resources and to assist each other in the form of personnel, equipment, materials and supplies in the event of emergencies that disrupt utility services; and

WHEREAS, the Members have agreed to enter into this "Ohio Water/Wastewater Agency Response Network Mutual Aid Agreement," ("Agreement"), to describe the terms and conditions under which emergency assistance may be requested and provided; and

WHEREAS, by executing this Agreement, the Parties express their intent to participate in a program for Mutual Aid and Assistance within the State of Ohio.

NOW, THEREFORE, in consideration of the promises and the mutual undertakings contained in this Agreement, the Members of the Ohio WARN, as agreed upon, and authorized by, their respective legislative authorities, mutually agree as follows:

ARTICLE I. PURPOSE

Recognizing that emergencies may overwhelm Ohio WARN Members to provide services to their customers which may require them to seek assistance in the form of personnel, equipment and supplies from outside the area of impact, the signatory utilities to this Agreement hereby establish within the State of Ohio an Intrastate Program for Mutual Aid and Assistance. Through the Ohio WARN Program, Members shall coordinate voluntary response activities and shall share voluntary resources during emergencies as described in this Agreement.

ARTICLE II. DEFINITIONS

- A. **Agreement** – The Ohio Water/Wastewater Agency Response Network Mutual Aid Agreement.
- B. **Authorized Official** – An employee of a Member who is authorized by the Member's governing board or management to request assistance or offer assistance under this Agreement.
- C. **Emergency** – A natural or man-made event that is, or is likely to be, beyond the control of the available services, personnel, equipment and facilities of a Mutual Aid and Assistance Program Member.
- D. **Member** – Any public or private water or wastewater utility or its principals that executes this Agreement.

- E. **National Incident Management System (NIMS)** – A national, standardized approach to incident management and response created by the federal Department of Homeland Security that sets uniform processes and procedures for emergency response operations to prepare for, protect against, respond to and recover from emergency events.
- F. **Period of Assistance** – A specified period of time during which a Responding Member assists a Requesting Member. The period commences when personnel, equipment or supplies depart from a Responding Member’s facility and ends when the resources are returned to the Responding Member’s facility (portal to portal). All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.
- G. **Requesting Member** – A Member who requests assistance in accordance with the terms and conditions of this Agreement and the Mutual Aid and Assistance Program.
- H. **Responding Member** – A Member that responds to a request for assistance under the terms and conditions of this Agreement and the Mutual Aid and Assistance Program.
- I. **Statewide Committee** – A committee consisting of representatives from Members and other agencies that may have a role to play in the Mutual Aid and Assistance Program (e.g., public health, emergency management, rural water, water utility organizations) that shall administer the WARN Program for the state.
- J. **Work or Work-Related Period** – Any period of time in which either the personnel or equipment of the Responding Member are being used by the Requesting Member to provide assistance. Specifically included within such period of time are rest breaks when the personnel of the Responding Member will return to active work within a reasonable time. Also, included is mutually-agreed-upon rotation of personnel and equipment.

ARTICLE III. ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through a Statewide Committee. The purpose of a Statewide Committee is to provide coordination of the Mutual Aid and Assistance Program before, during and after an emergency. The Statewide Committee, under the leadership of an elected Chair, shall meet at least annually to address Mutual Aid and Assistance Program issues and to review emergency preparedness and response procedures. Under the leadership of the Chair, the Statewide Committee members shall plan and coordinate emergency planning and response activities for the Mutual Aid and Assistance Program.

ARTICLE IV. PROCEDURES

In coordination with the emergency management and public health systems of Ohio, the Statewide Committee shall develop operational and planning procedures for the OH WARN Program. These procedures shall be reviewed at least annually and updated as needed. The Members recognize that the Statewide Committee, set forth in Article III, above, shall develop an OH WARN Program Manual and/or an OH WARN Handbook to set forth general procedures and standards that shall be followed by each Member.

It is the responsibility of each Member to develop its own operational and planning procedures that identify the critical components of its own infrastructure and its emergency response resources.

ARTICLE V. REQUESTS FOR ASSISTANCE

- A. **Member Responsibility** – Within forty-eight (48) hours after execution of this Agreement, Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access; and maintain resource information made available for mutual aid and assistance response.

In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a Member. Requests for assistance can be made orally or in writing. When made orally, the request for assistance shall be prepared in writing as soon as practicable after the oral request. Requests for assistance shall be directed to the Authorized Official of a Member. Specific protocols for requesting aid are provided in the required procedures (Article IV).

- B. **Response to a Request for Assistance** – After a Member receives a request for assistance, the Authorized Official shall evaluate whether resources are available to respond to the request for assistance. As soon as possible after completing the evaluation, the Authorized Official shall inform the Requesting Member whether it has the resources to respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.
- C. **Discretion of Responding Member's Authorized Official** – Each Member recognizes and agrees that execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have absolute discretion as to the ability of that Member to respond to a request for assistance. An Authorized Official's decisions on the availability of resources shall be final.

ARTICLE VI. RESPONDING MEMBER PERSONNEL

- A. **National Incident Management System (NIMS)** – When providing assistance under this Agreement, the Requesting Member and Responding Member shall be organized and shall function under NIMS.

NIMS provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds. To be eligible for federal emergency management assistance, water and wastewater mutual aid and assistance programs must meet NIMS standards for emergency preparedness and response.

- B. **Control** – Personnel sent by a Responding Member shall remain under the direct supervision and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). Whenever practical, Responding Member personnel must be self-sufficient for up to 72 hours.
- C. **Food & Shelter** – The Requesting Member shall supply reasonable food and shelter for the Responding Member personnel. If the Requesting Member fails to provide food and shelter for Responding Member personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources must not exceed the per diem rates established by the State of Ohio for that area. The Requesting Member remains responsible for reimbursing the Responding Member for all costs associated with providing food and shelter, if such resources are not provided.
- D. **Communication** – The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to facilitate communications with local responders and utility personnel.
- E. **Status** – Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions.
- F. **Licenses & Permits** – To the extent permitted by law, Responding Member personnel who hold licenses, certificates or permits issued by the State of Ohio evidencing professional, mechanical or other skills and when such assistance is sought by the Requesting Member, shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

- G. **Right to Withdraw** – The Responding Member’s Authorized Official retains the right to withdraw some or all of its resources at any time. Notice of intention to withdraw must be communicated to the Requesting Member’s Authorized Official as soon as possible. Notice of withdrawal can be made orally or in writing and is within the complete discretion of the Responding Member. When made orally, the notice of withdrawal shall be prepared and submitted in writing as soon a practicable after the oral notice.

ARTICLE VII. COST REIMBURSEMENT

Unless otherwise mutually agreed in writing in whole or in part, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance.

- A. **Personnel** – Responding Member personnel are to be paid for work completed during a specified Period of Assistance according to the terms provided in their employment contracts or other conditions of employment. The supervisor(s) designated by the Responding Member(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits and indirect costs. Fringe benefit calculations shall be based on Federal Emergency Management Agency’s (FEMA) defined fringe benefits. If a Responding Member intends to calculate fringe benefits differently than those established by FEMA, the Responding Member must provide such calculations in writing to the Requesting Member’s Authorized Official prior to deploying personnel.
- B. **Equipment** – The Requesting Member shall reimburse the Responding Member for the use of equipment during a specified Period of Assistance. At a minimum, rates for equipment use must be based on the FEMA Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates in writing to the Requesting Member’s Authorized Official prior to supplying resources. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. In the event the Responding Member’s equipment is damaged during the Period of Assistance that is not caused by carelessness, negligence or operator error on the part of the Responding Member, the Requesting Member shall reimburse the Responding Member for repair or replacement of the damaged equipment. Damage must be reasonably attributable to the specific response and taking into consideration normal wear and tear.

- C. **Materials & Supplies** – The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned as soon as practicable to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.
- D. **Incidental Costs** – Other reasonably related incidental costs that are accrued by the Responding Member during the specified period of assistance shall be paid by the Requesting Member. Incidental costs include travel costs to deploy personnel to the Requesting Member's location, shipping costs to transport equipment, etc.
- E. **Payment Period** – The Responding Member must provide an itemized bill to the Requesting Member, listing the services provided, the dates services were provided, and the amount of payment due for all expenses it incurred as a result of providing assistance under this Agreement. The Responding Member shall send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Requesting Member must pay the bill in full on or before the sixtieth (60th) day following the billing date. The Requesting Member shall return any invalid or incomplete invoice to the Responding Member within thirty (30) days after the Requesting Member receives the invoice. An explanation will accompany the invoice that states the reason for the return and any information needed to correct the invoice. Unpaid bills become delinquent upon the sixty-first (61st) day following the billing date.
- F. **Disputed Billings** – Those undisputed portions of a bill shall be paid under the payment plan specified above. Only the disputed portions should be sent to arbitration under Article VIII.

ARTICLE VIII. DISPUTES

All disputes between two or more Members arising from participation in this Agreement, which cannot be settled through negotiation, shall be submitted to arbitration before a panel of three persons chosen from the Members of this Agreement, excluding those Members that are parties to the dispute. The Parties to the dispute shall determine whether the arbitration is binding or non-binding.

Each party to the dispute shall choose one panel member and those panel members shall agree on one additional panel member. The panel shall adopt rules of procedure and evidence, shall determine all issues in dispute by majority vote and shall assess damages. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties.

ARTICLE IX INSURANCE

Each Member shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Nothing in this Agreement shall act, or be construed, as a waiver of any statutory or common-law immunity or other exemption or limitation on liability that a Member may enjoy.

ARTICLE X INDEMNITY AND IMMUNITY

IDEMNITY

Neither Party will indemnify or hold harmless the other for any damages awarded in any civil action arising from any action or omission of either Party's officers, employees, agents, contractors, subcontractors or volunteers acting under this Agreement. Neither Party shall act or be deemed to be acting as agent for the other.

IMMUNITY

Nothing in this Agreement is intended to, and shall not, be construed to constitute a waiver of either Party's defenses, including immunity. Officers, employees, and volunteers of a Responding Member performing services at any place for a Requesting Member in good faith carrying out, complying with, or attempting to comply with this Agreement shall possess the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties in the jurisdiction in which they are normally officers or employed or rendering services. Such persons shall not be liable for any injury to, or death of, persons or damage to property as the result of performing services under this Agreement during training periods, test periods, practice periods, or other emergency management operations, or false alerts, as well as during any hazard, actual or imminent and subsequently to the same except in cases of willful misconduct. As used in this section, "emergency management volunteer" means only an individual who is authorized to assist any agency performing emergency management during a hazard.

ARTICLE XI WORKER'S COMPENSATION CLAIMS

Each Member is responsible for providing worker's compensation benefits and administering worker's compensation for its own personnel as it would in the normal course of business.

ARTICLE XII NOTICE

A Member who becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Members of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suite or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

ARTICLE XIII EFFECTIVE DATE

This Agreement shall be effective after the Member's governing authority executes the Agreement and the Statewide Committee receives the Agreement. The Statewide Committee shall maintain a master list of all Members in the state.

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

This Agreement shall continue in force and remain binding on each and every Member until December 31st of the year in which the Member executes the Agreement. This Agreement shall renew automatically for a period of one year upon the completion of the initial term and each subsequent one-year term unless and until such time a Member withdraws from participation in this Agreement.

ARTICLE XIV WITHDRAWAL

A Member may withdraw from this Agreement at any time and for any reason by providing written notice of its intent to withdraw to the Statewide Committee Chair.

ARTICLE XV MODIFICATION

This Agreement may be modified in writing to accommodate operational changes as the Members gain experience with the procedures established by the Agreement and the Ohio WARN. No provision of this Agreement may be modified, altered, or rescinded by individual Members to the Agreement. The Statewide Committee must approve in writing all modification requests.

ARTICLE XVI INTRASTATE & INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Members of this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of Ohio Intrastate Mutual Aid and Assistance Program and Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and wastewater utilities through this Agreement if such a Program were established.


ARTICLE XVII RECORDS, DOCUMENTS AND SENSITIVE INFORMATION

All records documents, writings or other information produced or used by the parties to this Agreement, which, under the laws of the State of Ohio, is classified as public or privileged, will be treated as such by the other parties to this Agreement. The parties to this Agreement shall not use any information, systems, or records made available to them for any purpose other than to fulfill their contractual duties specified in this Agreement. Both Requesting and Responding Members acknowledge that they will have access to sensitive information of others that may be considered sensitive or protected under the laws of the State of Ohio. If a Member receives a request to provide information of another Member or a third party, the Member receiving such request shall notify the other Member and they shall jointly agree upon what documentation is to be released.

NOW, THEREFORE, in consideration of the covenants and obligations in this Agreement, the Water and Wastewater Utility listed here manifests its intent to be a party to this Agreement and Member of the Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement this _____ day of _____, _____.

Water/Wastewater Utility: _____
(Name, address, city)

Authorizing Ordinance/Resolution Number: 6852

By:  _____ By: _____

Title: CITY MANAGER _____ Title: _____

By: _____ By: _____

Title: _____ Title: _____

ORDINANCE NO. 6853

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE TEAMSTERS LOCAL #957 AND DECLARING AN EMERGENCY.

WHEREAS, negotiations have occurred between the Teamsters Local #957 and the City of Miamisburg, and

WHEREAS, a mutually acceptable interim agreement has been reached between the parties; and

WHEREAS, the interim agreement has been approved by the Teamsters Local #957 bargaining unit; and

WHEREAS, the Council finds it in the best interest of the City of Miamisburg to adopt the agreement with the Teamsters Local #957.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized and directed to enter into an agreement for and on behalf of the City of Miamisburg with the Teamsters Local #957 to implement the provisions of the contract items in accordance with the negotiations between the parties, same having been reviewed by Council.

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, health, and welfare and for the further reason that Council desires to implement the provisions of the agreement between the Teamsters and the City of Miamisburg at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage effective January 1, 2020.

Passed: April 21, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6854

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE OHIO ASSOCIATION OF PUBLIC TREASURERS (OAPT) WORKERS' COMPENSATION GROUP RETROSPECTIVE RATING PROGRAM FOR THE POLICY YEAR BEGINNING JANUARY 1, 2021 AND DECLARING AN EMERGENCY.

WHEREAS, under the authority of Section 4123.29 of the Ohio Revised Code, employers may group together to achieve a potentially lower premium rate than they might have as individual employers; and

WHEREAS, the OAPT has created a Workers' Compensation Group Retrospective Rating Program to allow members to join together for that purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is authorized to sign the agreement applicable to membership in the Ohio Association of Public Treasurers (OAPT) Workers' Compensation 2021 Group Retrospective Rating Program on behalf of the City. Further, the City Manager is authorized to execute any other necessary or appropriate documents in connection with this program.

Section 2.

The City Manager is authorized to extend the agreement and all documents associated therewith for such periods as deemed appropriate and necessary.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the authorization is needed immediately to ensure the timely enrollment for participation in this cost savings program; therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 19, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle Collins

Michelle L. Collins, Mayor

ORDINANCE NO. 6855

AN ORDINANCE AMENDING ORDINANCE NO. 6803 TO PROVIDE FOR THE COST OF GROUP HEALTH INSURANCE BENEFITS THROUGH THE OHIO BENEFITS COOPERATIVE, INC., AND DECLARING AN EMERGENCY.

WHEREAS, the City Council authorized the City's membership and participation in the Ohio Benefits Cooperative, Inc. in January, 1995 for the purchase of group insurance benefits for City employees, and

WHEREAS, the Cooperative has authorized a renewal through Anthem Blue Cross/Blue Shield, as its current provider, and

WHEREAS, the City is entering into an agreement with the Cooperative for an additional two years to purchase group health insurance benefits.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Section 1 of Ordinance No. 6803, which reads as follows:

The City shall purchase through the Cooperative, health insurance benefits provided to City employees in accordance with the rules and regulations of the Cooperative, and shall pay through the Cooperative the appropriate premiums from September 1, 2019 not to exceed as follows:

<u>OBC PPO Option #1</u>	
Single	\$ 745.70
Family	\$ 2,010.45

Is now hereby amended to read as follows:

The City shall purchase through the Cooperative, health insurance benefits provided to City employees in accordance with the rules and regulations of the Cooperative, and shall pay through the Cooperative the appropriate premiums from September 1, 2020 not to exceed as follows:

<u>OBC PPO Option #1</u>	
Single	\$ 811.15
Family	\$ 2,186.91

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this premium payment authorization is needed immediately to ensure the timely enrollment of employees; therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 19, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6856

AN ORDINANCE AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMISBURG AND EVENFLO COMPANY INC. AND DECLARING AN EMERGENCY.

WHEREAS, Article VIII, Section 13 of the Ohio Constitution authorizes cities to lend their credit to private companies in order to create or preserve jobs and employment opportunities in such cities; and

WHEREAS, The City previously approved a development agreement with Evenflo, providing economic development assistance to the company.

WHEREAS, The City and Evenflo mutually desire to amend that development agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorizing to execute the First Amendment to the Development Agreement attached hereto as "Exhibit A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that it is in the best interest of the City that Evenflo company, Inc. remain at their facility in the City; therefore this measure shall take effect and be in force from and after its passage.

Passed: June 2, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins, Mayor

Exhibit A

First Amendment to Development Agreement

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is made and entered into as of the _____ day of _____, 2020, by and between the **CITY OF MIAMISBURG**, an Ohio municipal corporation having an address for purposes hereof at 10 N. First Street, Miamisburg, Ohio 45342 (the “City”), and **EVENFLO COMPANY, INC.**, a Delaware corporation having an address for purposes hereof at 225 Byers Road, Miamisburg, Ohio 45342 (the “Company”).

WITNESSETH:

WHEREAS, the City and the Company have heretofore entered into a Development Agreement, dated August 12, 2015 (the “Original Agreement”), pursuant to which the City provided financial assistance to the Company in the amount of a \$400,000 loan (the “Loan”) in order to assist the Company in making capital improvements consisting of building improvements, site improvements, furniture fixtures and equipment at an estimated total cost of \$2,400,000; and

WHEREAS, Section 3 of the Original Agreement provided for forgiveness of portions of the Loan on an annual basis in the event the Company maintained certain Minimum Aggregate Annual Payroll Amounts (as defined in the Original Agreement); and

WHEREAS, the Company and the City have agreed to amend the Original Agreement for the purposes of (a) extending the applicable dates by which the Minimum Aggregate Annual Payroll Amounts are measured, and (b) reducing the Minimum Aggregate Annual Payroll amounts with respect to tax years ending December 31, 2018 and thereafter;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. The second sentence of the second paragraph of Section 1 is hereby amended to read as follows:

The Company shall continue to lease the Building for a term of not less than the period described in Section 2.A hereof.

SECTION 2. The first sentence of Section 2.A of the Original Agreement is hereby amended to read as follows:

Subject to compliance by the Company with the terms and conditions of this Agreement, the City shall loan the Company, the sum of Four Hundred Thousand Dollars (\$400,000) at six percent (6%) interest per annum, (hereinafter referred to as the “Loan”) to be repaid within a period of six and one half (6½) years from the date the City advances such Loan (unless forgiven according to the terms of this Agreement).

SECTION 3. The last sentence of Section 2.A of the Original Agreement is hereby amended to read as follows:

The Company shall repay the Loan to the City on or before June 1, 2022, unless forgiven as provided in Section 3 below, in annual installments beginning June 1, 2017, and ending June 1, 2022, as provided in the Promissory Note.

SECTION 4. The first sentence of Section 3.A of the Original Agreement is hereby amended to read as follows:

“Minimum Aggregate Annual Payroll Amount” shall mean annual payroll of the following amounts by the specified dates:

\$12,000,000 by December 31, 2016;

\$12,500,000 by December 31, 2017; and

\$5,000,000 for December 31, 2018 and thereafter.

SECTION 5. The first paragraph of Section 3.B of the Original Agreement is hereby amended to read as follows:

On each June 1 commencing with June 1, 2017, and on each June 1 thereafter, if the Company maintained the applicable Minimum Aggregate Annual Payroll Amount for the prior year, the City shall forgive a portion of the outstanding Loan in the amount of the payment (including both principal and interest) presently due on the Promissory Note then outstanding, thereby reducing the amount presently payable, and with the understanding that if the Company maintains the applicable Minimum Aggregate Annual Payroll Amount subject to income taxation by the City through December 31, 2021, the Loan and interest due thereon shall be entirely forgiven by the City.

SECTION 6. Upon execution of this First Amendment, the Company shall execute an amended and restated Promissory Note (as defined in the Original Agreement), in the form attached hereto as *Exhibit A*, and deliver the same to the City. The Company shall provide to the City appropriate corporate resolutions, or such other documentation as may be necessary to evidence that the Company has authorized this First Amendment and the execution of the amended and restated Promissory Note. The original promissory note delivered with the Original Agreement shall be stamped cancelled and returned to the Company.

SECTION 7. Subject to the effectiveness of the amendments contemplated herein, the City hereby waives any and all existing defaults of the Company under the Original Agreement. The City’s failure, at any time or times hereafter, to require strict performance by the Company of any provision or term of the Original Agreement or this First Amendment shall not waive, affect or diminish any right of the City hereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver by the City of a breach of this First Amendment or any default under the Original Agreement shall not, except as expressly set forth in a writing signed by the City, suspend, waive or affect any other breach of this First Amendment or any default

under the Original Agreement, whether the same is prior or subsequent thereto and whether of the same or of a different kind of character. In no event shall the City's execution and delivery of this First Amendment establish a course of dealing among the City, the Company or any other obligor, or in any other way obligate the City to hereafter provide any amendments or waivers with respect to the Original Agreement. The terms and provisions of this First Amendment shall be limited precisely as written and shall not be deemed (a) to be a consent to any amendment or modification of any other term or condition of the Original Agreement, or (b) to prejudice any right or remedy which the City may now have under or in connection with the Original Agreement. Except as expressly provided in this First Amendment, the execution, delivery, and effectiveness of this First Amendment shall not operate as a waiver of any right, power or remedy of the City under the Original Agreement upon any default thereunder.

SECTION 8. The Original Agreement, as amended hereby, shall remain in full force and effect and is hereby ratified and confirmed.

SECTION 9. This First Amendment may be executed in multiple counterparts each of which shall be regarded for all purposes as an original and such counterparts shall constitute but one and the same instrument.

SECTION 10. This First Amendment is adopted with the intent that the laws of the State of Ohio shall govern its construction.

[Signature page follows]

[Signature page to First Amendment to Development Agreement]

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the date first written above.

CITY OF MIAMISBURG, OHIO

By: _____
Name: Keith D. Johnson
Title: City Manager

EVENFLO COMPANY, INC.

By: _____
Name: _____
Title: _____

Approved as to Form and Content for the City:

By: _____
Name: Phil Callahan
Title: Law Director

EXHIBIT A

FORM OF AMENDED AND RESTATED PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned Evenflo Company, Inc., a Delaware corporation (Maker), promises to pay to the order of the City of Miamisburg, Ohio (Payee), the sum of Four Hundred Thousand Dollars (\$400,000) with interest at the rate of 6% per annum. Principal and interest shall be due and payable as follows unless forgiven pursuant to the terms of the Development Agreement, dated as of August 12, 2015, by and between Maker and Payee, as amended by the First Amendment to Development Agreement, dated as of _____, 2020 (together, the "Development Agreement"):

<u>DATE PAYMENT DUE</u>	<u>AMOUNT</u>	
June 1, 2017	\$80,000	PLUS ACCRUED INTEREST
June 1, 2018	80,000	PLUS ACCRUED INTEREST
June 1, 2019	60,000	PLUS ACCRUED INTEREST
June 1, 2020	60,000	PLUS ACCRUED INTEREST
June 1, 2021	60,000	PLUS ACCRUED INTEREST
June 1, 2022	60,000	PLUS ACCRUED INTEREST

In the event that any payment of this Note is not paid within ten (10) days of its due date or in the event of the insolvency of Maker or the filing of bankruptcy proceedings, whether voluntary or involuntary (if such proceedings shall not be dismissed within sixty (60) days after the institution of the same), under the Bankruptcy Code with respect to the Maker, or in the event of the appointment of a receiver, or any marshalling of any assets of the Maker for the benefit of creditors, then the Payee, at his option, may accelerate this Note and declare the principal and interest on this Note immediately due and payable. The Maker shall be responsible for Payee's reasonable legal fees incurred in enforcing the terms of this Note.

This Note may be paid in full at any time without penalty.

Maker waives notice of default, presentment and notice of dishonor.

Maker shall mean each person, firm or corporation who executed this Note and each Maker shall be jointly and severally liable on this Note. This Note shall be governed by and construed in accordance with Ohio law.

The rights granted to Payee are not exclusive but are in addition to all other rights accruing to Payee in law or equity. Any failure of Payee to exercise these rights shall not operate as a waiver of such right or any other right under this Note.

This Note is subject to forgiveness in accordance with the terms and conditions more fully set forth in the Development Agreement and incorporated herein.

In the event that the interests of the person, firm or corporation who executed this Promissory Note are sold, assigned, pledged, transferred, conveyed or bequeathed to or for the benefit of any person, firm or corporation not a party to this Promissory Note, the provisions of this Promissory Note shall be binding upon any such new person, firm or corporation, and any such new person, firm or corporation shall take his/her interests subject to the terms of this Promissory Note.

Dated: _____, 2020

EVENFLO COMPANY, INC.

By: _____
Name: _____
Title: _____

ORDINANCE NO. 6857

AN ORDINANCE GRANTING THE CITY MANAGER THE AUTHORITY TO APPROVE ENCROACHMENTS IN THE PUBLIC RIGHT-OF-WAY AREA TO ALLOW EATING AND DRINKING ESTABLISHMENTS TO EXPAND THEIR SEATING AREAS ON A TEMPORARY BASIS, AND DECLARING AN EMERGENCY

WHEREAS, the State of Ohio has issued Emergency Health Orders for the entire State of Ohio; and

WHEREAS, Those health orders have negatively impacted the operation of several businesses within the state; and

WHEREAS, Due to those health orders eating and drinking establishments have severely diminished capacity for customer seating; and

WHEREAS, The City can offer Miamisburg eating and drinking establishments assistance by allowing them to expand their seating capacity into public right-of-way areas; and

WHEREAS, City Council wishes to give the City Manager the authority to approve such requests.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to allow encroachments into public right-of-ways on a temporary basis for the purpose of allowing eating and drinking establishments to expand their seating capacity. The encroachment shall only be permitted as long as the State of Ohio Emergency Health Orders causing the need for such expansions are still in effect.

Section 2.

The City Manager shall develop a process for allowing businesses to make such expansion requests.

Section 3.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that it is in the best interest of Miamisburg businesses that they be able to expand their seating capacity should they choose to do so, therefore, this ordinance shall take effect and be in force from and after its passage.

Passed: June 2, 2020

Attested: _____

Kim Combs
Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6858

AN ORDINANCE TO APPROVE THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CODIFIED ORDINANCES; TO PROVIDE FOR THE ADOPTION OF NEW MATTER IN THE UPDATED AND REVISED CODIFIED ORDINANCES; TO PROVIDE FOR THE PUBLICATION OF SUCH NEW MATTER; TO REPEAL ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, American Legal Publishing has completed its annual updating and revision of the Codified Ordinances of the City; and

WHEREAS, various ordinances and a resolution of a general and permanent nature that have been passed by Council since the date of the last updating and revision of the Codified Ordinances (February 5, 2019), have now been made a part of the Codified Ordinances; and

WHEREAS, certain changes were made in the Codified Ordinances to bring City law into conformity with State law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1. The editing, arrangement and numbering or renumbering of the following ordinances and parts of ordinances are hereby approved as parts of the various component codes of the Codified Ordinances of the City, so as to conform to the classification and numbering system of the Codified Ordinances.

<u>Ord. No.</u>	<u>Date</u>	<u>C.O. Section</u>
6835	12-17-19	881.03

Section 2. The following sections of the Codified Ordinances are or contain new matter in the Codified Ordinances and are hereby approved, adopted and enacted:

402.135, 402.22, 402.24, 402.305, 402.425, 402.57, 408.02, 412.05, 432.03, 432.13, 432.14, 432.16, 432.24, 434.03, 434.10, 436.01, 436.074, 436.09, 436.14, 438.30, 440.01, 440.05, 444.01, 444.02, 444.03, 444.04, 444.05, 444.13, 448.07, 452.03, 606.01, 606.11, 612.07, 624.01, 624.02, 624.03, 624.04, 624.06, 624.14, 624.16, 630.14, 636.001, 636.21, 642.14, 648.04, 666.03, 666.04, 666.23, 672.12, 678.01, 678.05, 678.07, 678.10, 678.14

EXHIBIT A

SUMMARY OF NEW MATTER CONTAINED IN THE 2020 REPLACEMENT PAGES FOR THE CODIFIED ORDINANCES OF MIAMISBURG, OHIO

New matter in the Codified Ordinances of Miamisburg, Ohio, as contained in the 2020 Replacement Pages therefor, includes legislation regarding:

<u>Section</u>	<u>New or amended matter regarding:</u>
402.135	Definition of electric bicycle.
402.22	Definition of motor vehicle.
402.24	Definition of motorized bicycle or moped.
402.305	Definition of predicate motor vehicle or traffic offense.
402.425	Definition of shared-use path.
402.57	Definition of vehicle.
408.02	General traffic penalty.
412.05	Prohibitions against pedestrians and slow-moving vehicles on freeways.
432.03	Rules governing overtaking and passing of vehicles.
432.13	Turn and stop signals.
432.14	Hand and arm signals.
432.16	Ambiguous or non-working traffic signals.
432.24	Driving upon sidewalks, tree lawns or curbs.
434.03	Maximum speed limits; assured clear distance ahead.
434.10	Vehicular homicide; vehicular manslaughter; vehicular assault.
436.01	Driver's or commercial driver's license required.
436.074	Driving under financial responsibility law suspension or cancellation; driving under a nonpayment of judgment suspension.
436.09	Display of license plates; registration; obstructions.
436.14	Removal of vehicles after accidents.
438.30	Use of occupant restraining devices.
440.01	Load limits.
440.05	Towing requirements; exception to size and weight restrictions.
444.01	Code application to bicycles.
444.02	Riding upon seats; carrying packages; motorcycle handle bars; helmets and glasses.
444.03	Attaching bicycles, motorcycles to other vehicles.
444.04	Riding on right side of roadway; riding abreast.
444.05	Lights, signal devices, brakes on bicycles.
444.13	Electric bicycles.
448.07	Operator's licenses; equipment; helmets; operation.
452.03	Prohibited standing or parking places.
606.01	Definitions related to general offenses.
606.11	Attempts.

<u>Section</u>	<u>New or amended matter regarding:</u>
612.07	Open container prohibited.
624.01	Definitions relating to drug offenses.
624.02	Trafficking in controlled substances; gift of marijuana.
624.03	Drug possession offenses.
624.04	Possession of drug abuse instruments.
624.06	Posting liquor age and firearm warning signs.
624.14	Controlled substance schedules.
624.16	Sale of pure caffeine product.
630.14	Skill-based amusement machines; prohibited conduct.
636.001	Definitions related to offenses relating to persons.
636.21	Illegal distribution of cigarettes, other tobacco products, or alternative nicotine products; transaction scans.
642.14	Railroad vandalism; criminal trespass; interference with operation of train; grade crossing device vandalism.
648.04	Disorderly conduct.
666.03	Sexual imposition.
666.04	Public indecency.
666.23	Nonconsensual dissemination of private sexual images.
672.12	Forging or selling forged identification cards.
678.01	Definitions related to weapons and explosives.
678.05	License or permit to possess dangerous ordnance.
678.07	Unlawful transactions in weapons.
678.10	Fireworks.
678.14	Concealed handgun licenses; possession of a revoked or suspended license; additional restrictions; posting of signs prohibiting possession.

ADOPTING ORDINANCE

Section 3. All ordinances and resolutions or parts thereof which are in conflict or inconsistent with any provision of the new matter adopted in Section 2 of this ordinance are hereby repealed as of the effective date of this ordinance except as follows:

- (a) The enactment of such sections shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full notwithstanding its repeal for the purpose of revision and recodification.
- (b) The repeal provided above shall not affect any legislation enacted subsequent to December 31, 2019.

Section 4. Pursuant to Section 4.15 of the City Charter, the Clerk of Council shall cause a notice of this ordinance to be published one time in a newspaper determined by the Council to be of circulation within the Municipality at least seven days prior to the final approval of this ordinance by Council, and no further publication shall be necessary.

Section 5. This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that it is immediately necessary to have an up-to-date codification of the legislation of the City; therefore, this measure shall take effect and be in full force from and after its passage.

Passed: June 16, 2020

Attest: _____



Kim Combs, Clerk of Council

Approved: _____



Michelle L. Collins, Mayor

ORDINANCE NO. 6859

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE GEBHART CHURCH ROAD PHASE II IMPROVEMENT PROJECT, AND DECLARING AN EMERGENCY

WHEREAS the City has advertised and received bids for the Gebhart Church Road Phase II Improvement Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Outdoor Enterprise LLC in the amount of One Million Four Hundred Forty Nine Thousand, Five Hundred Thirty Four Dollars and Forty Cents (\$1,449,534.40) for the Gebhart Church Road Phase II Improvement Project, pursuant to the bid forms submitted June 30, 2020, is hereby determined to be the lowest and best bid after bidding conducted according to law and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with Outdoor Enterprise LLC for the Gebhart Church Road Phase II Improvement Project in accordance with the terms contained in the bid specifications dated June 30, 2020.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to remain on schedule, for completion per the Ohio Public Works Commission Grant Project Agreement therefore, this measure shall take effect and be in force from and after its passed.

Passed: July 7, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6860

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO THE SECOND AMENDMENT TO THE REDEVELOPMENT AGREEMENT FOR MAIN STREET PROPERTIES AND DECLARING AN EMERGENCY.

WHEREAS, on or about February 21, 2017 the City entered in the Redevelopment Agreement for Main Street Properties with the Simplify Real Estate, LLC and Moda 4 Design, LLC; and

WHEREAS, since that time the City has worked to establish a Tax Increment Financing (TIF) district for the main street properties which are subject to the agreement; and

WHEREAS, the addition of a TIF for the project as well as the time needed to negotiate the related TIF agreements has resulted in a previous amendment to the agreement; and

WHEREAS, the Covid19 pandemic and its impact on the economy and specifically the lending environment delayed the project which requires a second amendment to the development agreement. and

WHEREAS, City Council wishes to amend the original agreement as needed to facilitate the redevelopment of the main street properties.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into the Second Amendment to The Redevelopment Agreement for Main Street Properties found as Exhibit A, attached hereto.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this amendment and addendum is needed at the earliest possible date to ensure timely compliance with scheduled construction activities, therefore, this measure shall be in force from and after its passage.

Passed: July 7, 2020

Attested: _____

Kim Combs
Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

Exhibit A

**Second Amendment to the Redevelopment Agreement
for Main Street Properties.**

**SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT
FOR MAIN STREET PROPERTIES**

THIS SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT FOR MAIN STREET PROPERTIES (the "Second Amendment") is made and entered into as of July ____, 2020, among the CITY OF MIAMISBURG, OHIO, an Ohio municipal corporation (the "CITY"), and SIMPLIFY REAL ESTATE LLC, an Ohio limited liability company ("SRE"), and MODA 4 DESIGN, LLC, an Ohio limited liability company ("M4") (SRE and M4 are collectively referred to as the "DEVELOPER") (individually, "Party" and collectively, the "Parties"), to amend and supplement that Redevelopment Agreement between the Parties dated February 21, 2019.

NOW THEREFORE, in consideration of the mutual promises, warranties, representations, agreements and undertakings set forth in this Second Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**ARTICLE I
TERM AND DATE EXTENSIONS**

1.01 OPTION TO PURCHASE PROPERTY. The term of the Option shall expire on December 31, 2020.

1.02 GRANT CONDITIONS. The Initial Grant Conditions and Additional Grant Conditions have been satisfied. The Final Grant Conditions shall be satisfied by December 31, 2021.

1.03 CITY PURCHASE OPTION. The City Option Term shall expire December 31, 2022. The City Option may only be exercised if construction of the Project has NOT been substantially completed by September 30, 2022.

**ARTICLE II
MISCELLANEOUS**

2.01 ASSIGNMENT. The Parties acknowledge and agree that SRE and M4 are assigning all of their rights, interest and obligations in that Redevelopment Agreement For Main Street Properties to 24 South Main LLC, an affiliated company of SRE and M4, subject to the obligations, covenants, conditions, and representations in said Agreement.

2.02 AGREEMENT OF GOVERNING AUTHORITIES. The Parties acknowledge and agree that their entering into this Second Amendment and the carrying out of their respective obligations and commitments described herein are each subject to approval by their respective governing authorities including, but not limited to:

- (a) The Miamisburg City Council.

(b) The Members of Simplify Real Estate LLC.

(c) The Members of MODA 4 Design, LLC.

No Party shall be bound to the terms and conditions of this Second Amendment until such time as the governing authority for such Party has authorized the Party's execution and delivery of this Second Amendment, and then only to the extent of such authorization; provided, however, notwithstanding the foregoing, each Party agrees to pursue their respective governing authority, with reasonable and appropriate diligence, all requisite approvals to this Second Amendment and the respective obligations and commitments herein, best efforts to obtain such approvals on or before July 31, 2020.

2.03 RATIFICATION. The Parties ratify and confirm the Agreement; subject, however, to the amendments, supplements and other modifications contained in this Second Amendment. Without limiting the foregoing, to the extent there are inconsistencies or conflicts between this Second Amendment and the Agreement, this Second Amendment shall control in all respects. To the extent terms are used in this Second Amendment as defined terms, but no meaning is thereto ascribed in this Second Amendment, the defined meaning contained in the Agreement shall control in all respects.

The Parties have caused this Second Amendment to be executed by their duly authorized representatives as of the date first written above.

CITY OF MIAMISBURG, OHIO

By: _____
Keith D. Johnson, City Manager
Signature expressly subject to Passage
of a valid Ordinance by Miamisburg City Council

SIMPLIFY REAL ESTATE LLC

By: _____
Eric Joo
Title: Principal

MODA 4 DESIGN, LLC

By: _____
Jason Sheets
Title: Principal

ORDINANCE NO. 6861

AN ORDINANCE AMENDING THE 2020 BUDGET AND ANNUAL APPROPRIATION ORDINANCE, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

To provide for current expenses of the City of Miamisburg for the fiscal year 2020, the annual appropriation ordinance is amended to add or subtract the following sums and they are hereby set aside and appropriated as follows:

<u>FUND.</u>	<u>AMOUNT</u>
General Fund	\$150,000.00
Municipal Court Computer Fund	\$17,461.44
Coronavirus Relief Fund	\$285,924.41
Water Fund	50,736.83
Sewer Fund	\$171,884.75
Capital Improvement Fund	\$85,000.00
City Garage Fund	<u>\$72,000.00</u>
Total	<u>\$833,007.43</u>

Section 2.

This ordinance is declared to be an emergency measure necessary for the public peace, health, safety, and welfare and for the further reason that these appropriations are needed at the earliest possible date to meet current obligations of the City for fiscal year 2020; therefore, this measure shall take effect and be in force from and after its passage.

Passed: July 7, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6862

AN ORDINANCE TO CERTIFY SPECIAL ASSESSMENTS FOR THE REPAIR OF CURBS, GUTTERS AND SIDEWALKS IN THE CITY OF MIAMISBURG, MONTGOMERY COUNTY, OHIO, TO THE COUNTY AUDITOR OF SAID COUNTY FOR THE COLLECTION THEREOF AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of Miamisburg, Montgomery County, Ohio, has heretofore by proper resolution declared the necessity for the repair of certain curbs, gutters and sidewalks in said city, given proper notice thereof and contracted all work necessary for said repair pursuant to Chapter 729 of the Revised Code of Ohio; and

WHEREAS, all the repair of certain curbs, gutters and sidewalks aforesaid has been completed as required by law, and the special assessments therefore have been levied pursuant to Resolution No. 2947 duly adopted by the Council of the City of Miamisburg, and

WHEREAS, the affected property owners have been notified of the assessment and certain assessments remain unpaid and are to be collected over a period of ten (10) years;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

All unpaid assessments in the amounts and for the benefit of the respective properties listed in Exhibit A to this Ordinance, which Exhibit A is hereby expressly made a part of this Ordinance, are to be placed upon the tax duplicate by the County Auditor of Montgomery County, Ohio, and collected as other taxes are collected by the County Treasurer of Montgomery County, Ohio, as provided by law.

Section 2.

Pursuant to Section 319.61 of the Revised Code of Ohio, a copy of this Ordinance with Exhibit A shall be certified to the County Auditor of Montgomery County, Ohio, by the Clerk of Council within twenty (20) days of its adoption together with a copy of the resolution levying said special assessments.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council authorization is needed at the earliest possible date, to meet the assessment deadline of the Montgomery County Auditor's Office; therefore, this measure shall take effect and be in force from and after its passage.

Passed: August 18, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor



I hereby certify that the attached is a true and correct copy of Ordinance No. 6862, entitled as follows:

AN ORDINANCE TO CERTIFY SPECIAL ASSESSMENTS FOR THE REPAIR OF SIDEWALKS, CURBS AND GUTTERS IN THE CITY OF MIAMISBURG, MONTGOMERY COUNTY, OHIO, TO THE COUNTY AUDITOR OF SAID COUNTY FOR THE COLLECTION THEREOF, AND DECLARING AN EMERGENCY.

Ordinance No. 6862 was adopted by the Council of the City of Miamisburg, Ohio, on August 18, 2020.

August 19, 2020
Date

Kim Combs
Kim Combs
Clerk of Council

EXHIBIT A
2019 SIDEWALK, CURB & GUTTER PROGRAM

ADDRESS	PARCEL ID NO./LOT NO.	AMOUNT
574 April Ct.	Parcel ID K46 01417 0019, Lot No. 5917	\$530.70
582 April Ct.	Parcel ID K46 01417 0018, Lot No. 5916	\$2,933.15
2163 Painter Pl.	Parcel ID K46 01417 0023, Lot No. 5921	\$1,201.50
2171 Painter Pl.	Parcel ID K46 01417 0017, Lot No. 5915	\$3,184.65
2178 Painter Pl.	Parcel ID K46 01417 0005, Lot No. 5903	\$1,628.70
2187 Painter Pl.	Parcel ID K46 01417 0025, Lot No. 5911 PT	\$904.10
2190 Painter Pl.	Parcel ID K46 01417 0008, Lot No. 5906	\$4,023.20
2191 Painter Pl.	Parcel ID K46 01417 0026, Lot No. 5911 PT	\$1,461.70
2193 Painter Pl.	Parcel ID K46 01417 0013, Lot No. 5911 PT	\$292.80
2194 Painter Pl.	Parcel ID K46 01417 0009, Lot No. 5907	\$1,811.70
2198 Painter Pl.	Parcel ID K46 01417 0010, Lot No. 5908	\$1,436.00
Highpoint Dr.	Parcel ID K46 50410 0013, Lot No. 5057	\$1,462.00
539 Fitzooth Dr.	Parcel ID K46 01419 0002, Lot No. 5845	\$135.20
549 Fitzooth Dr.	Parcel ID K46 01419 0001, Lot No. 5844	\$146.40
550 Fitzooth Dr.	Parcel ID K46 01419 0013, Lot No. 5856	\$173.80
2344 Oakbark St.	Parcel ID K46 01214 0036, Lot No. 5212	\$3,026.60
2348 Oakbark St.	Parcel ID K46 01213 0030, Lot No. 5213	\$4,265.70
2400 Royal Ridge Dr.	Parcel ID K46 01419 0022, Lot No. 5865	\$861.90
2405 Royal Ridge Dr.	Parcel ID K46 01419 0008, Lot No. 5851	\$101.40
2410 Royal Ridge Dr.	Parcel ID K46 01419 0023, Lot No. 5866	\$1,312.70
2415 Royal Ridge Dr.	Parcel ID K46 01419 0020, Lot No. 5863	\$606.90
2420 Royal Ridge Dr.	Parcel ID K46 01419 0024, Lot No. 5867	\$405.60
2425 Royal Ridge Dr.	Parcel ID K46 01419 0021, Lot No. 5864	\$849.40
2440 Royal Ridge Dr.	Parcel ID K46 01419 0026, Lot No. 5869	\$619.15
2500 Royal Ridge Dr.	Parcel ID K46 01419 0027, Lot No. 5870	\$135.20

583 Rotellini Dr.	Parcel ID K46 01508 0009, Lot No. 6024	\$1,557.00
588 Rotellini Dr.	Parcel ID K46 01508 0013, Lot No. 6028	\$1,610.40
593 Rotellini Dr.	Parcel ID K46 01508 0004, Lot No. 6019	\$2,525.40
594 Rotellini Dr.	Parcel ID K46 01508 0015, Lot No. 6030	\$6,633.20
595 Rotellini Dr.	Parcel ID K46 01508 0003, Lot No. 6018	\$4,361.00
2073 Belvo Rd.	Parcel ID K46 01508 0001, Lot No. 6016	\$2,221.40
1260 Central Ave.	Parcel ID K46 01005 0002, Lot No. 4507 PT	\$14,323.30
101 Heincke Rd. S.	Parcel ID K46 00514 0046, Lot No. PT 2782	\$677.10
210 Heincke Rd. S.	Parcel ID K46 01325 0001, Lot No. 5761	\$4,347.20
230 Heincke Rd. S.	Parcel ID K46 00706 0041, Lot No. PT 3468	\$183.00
243-245 Heincke Rd. S.	Parcel ID K46 01208 0001, Lot No. 5075	\$1,561.40
247-249 Heincke Rd. S.	Parcel ID K46 01208 0002, Lot No. 5247	\$292.80
251-253 Heincke Rd. S.	Parcel ID K46 01208 0003, Lot No. 5248	\$2,425.00
301-303 Heincke Rd. S.	Parcel ID K46 01208 0004, Lot No. 5249	\$951.60
305-307 Heincke Rd. S.	Parcel ID K46 01208 0005, Lot No. 5250	\$4,121.40
309-311 Heincke Rd. S.	Parcel ID K46 01208 0006, Lot No. 5251	\$1,963.80
407-409 Heincke Rd. S.	Parcel ID K46 01208 0008, Lot No. 5253	\$2,704.50
411-413 Heincke Rd. S.	Parcel ID K46 01208 0009, Lot No. 5254	\$1,873.80
415-417 Heincke Rd. S.	Parcel ID K46 01208 0010, Lot No. 5255	\$1,109.50
419-421 Heincke Rd. S.	Parcel ID K46 01208 0011, Lot No. 5256	\$3,836.40
423-425 Heincke Rd. S.	Parcel ID K46 01208 0012, Lot No. 5257	\$3,665.20
431-433 Heincke Rd. S.	Parcel ID K46 01208 0014, Lot No. 5259	\$2,487.00
435-437 Heincke Rd. S.	Parcel ID K46 01208 0015, Lot No. 5260	\$787.20
1440-1442 Church Dr.	Parcel ID K46 01208 0007, Lot No. 5252	\$278.80
	TOTAL	\$100,007.55

ORDINANCE NO. 6863

AN ORDINANCE TO CERTIFY SPECIAL ASSESSMENTS FOR THE DELINQUENT CHARGES AND CREDIT FOR THE CUTTING AND REMOVAL OF WEEDS, VEGETATION AND/OR GRASS, IN THE CITY OF MIAMISBURG, MONTGOMERY COUNTY, OHIO, TO THE COUNTY AUDITOR OF SAID COUNTY FOR THE COLLECTION THEREOF, AND DECLARING AN EMERGENCY.

WHEREAS, the owner(s) of properties indexed on the list that is attached (Exhibits A and B) hereto and made a part of this Ordinance being lots along various streets in the municipality, have been provided with written notice to cut and remove weeds, vegetation and/or grass, and

WHEREAS, the owner(s) of properties indexed on the list that is attached hereto (Exhibits A and B) and made a part of this Ordinance being lots along various street in the municipality have failed to comply with said notices and the City of Miamisburg then caused said cutting and removal of weeds, vegetation and/or grass, and

WHEREAS, all expenses and costs received were paid out of Municipal funds; and

WHEREAS, these delinquent charges and credit can be recovered by certification to the Montgomery County Auditor's Office for placement on the next property tax duplicate of the owner(s) of said property.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1

All unpaid charges in the amounts and for the benefit of the respective properties listed in Exhibits A and B to this Ordinance, which Exhibits A and B is hereby expressly made a part of this Ordinance, are to be placed upon the tax duplicate by the County Auditor of Montgomery County, Ohio, and collected as other taxes are collected by the County Treasurer of Montgomery County, Ohio, as provided by law.

Section 2

Pursuant to Section 319.61 of the Revised Code of Ohio, a copy of this Ordinance with Exhibit A shall be certified to the County Auditor of Montgomery County, Ohio, by the Clerk of Council within twenty (20) days of its adoption.

Section 3

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council authorization is needed at the earliest possible date to meet the assessment deadline of the Montgomery County Auditor's Office; therefore, this measure shall take effect and be in force from and after its passage.

Passed: August 18, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

I hereby certify that the above is a true and correct copy of Ordinance No. 6863 adopted by the Council of the City of Miamisburg, Ohio, on August 18, 2020.

August 19, 2020

Kim Combs
Kim Combs, Clerk of Council

CITY OF MIAMISBURG TAX ASSESSMENT
FROM JANUARY 1, 2020 THROUGH JULY 17, 2020

PROJECT CODE NUMBER	PARCEL ID	CHARGE	AUDITOR CHARGE	TOTAL
31-500	K46 00220 0028	\$1,500.00	\$75.00	\$1,575.00
31-500	K46 00221 0020	\$1,500.00	\$75.00	\$1,575.00
31-500	K46 00221 0021	\$1,500.00	\$75.00	\$1,575.00
31-500	K46 00335 0002	\$375.00	\$18.75	\$393.75
31-500	K46 00222 0068	\$1,875.00	\$93.75	\$1,968.75
31-500	K46 01015 0002	\$1,125.00	\$56.25	\$1,181.25
31-500	K46 01015 0001	\$1,125.00	\$56.25	\$1,181.25
31-500	K46 00338 0024	\$500.00	\$25.00	\$525.00
31-500	K46 00329 0061	\$500.00	\$25.00	\$525.00
31-500	K46 00220 0079	\$1,875.00	\$93.75	\$1,968.75
31-500	K46 00103 0035	\$1,500.00	\$75.00	\$1,575.00
31-500	K46 00217 0045	\$1,875.00	\$93.75	\$1,968.75
31-500	K46 00112 0117	\$1,500.00	\$75.00	\$1,575.00
31-500	K46 01419 0027	\$500.00	\$25.00	\$525.00
31-500	K46 00413 0032	\$750.00	\$37.50	\$787.50
31-500	K46 00111 0015	\$500.00	\$25.00	\$525.00
31-500	K46 00116 0005	\$375.00	\$18.75	\$393.75
31-500	K46 00719 0005	\$1,500.00	\$75.00	\$1,575.00
		\$20,375.00	\$1,018.75	\$21,393.75

CITY OF MIAMISBURG TAX ASSESSMENT CREDIT
FROM JANUARY 1, 2020 THROUGH JULY 17, 2020

PROJECT CODE NUMBER	PARCEL ID	CREDIT TOTAL
31-500	K46 00220 0021	(787.50)

ORDINANCE NO. 6864

AN ORDINANCE AUTHORIZING PAYMENT OF CERTAIN COSTS TO ADAM REMILLARD (DBA MONOCLE COMICS & COFFEE) WITHIN THE CITY OF MIAMISBURG RELATED TO THE DOWNTOWN MIAMISBURG RETAIL BUSINESS INCENTIVE PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, City Council authorized the Downtown Miamisburg Retail Business Incentive Program as a tool to improve the retail environment in downtown by fostering a better mix of retail shopping options for citizens of the City; and

WHEREAS, improving the mix of retail opportunities downtown will create spinoff economic activity beneficial to other downtown businesses; and

WHEREAS, the economic vitality of downtown is a major strategic priority for the City as evident in the City's Strategic Plan and the Miamisburg Downtown and Riverfront Master Plan; and

WHEREAS, Article VIII, Section 13 of the Ohio Constitution authorizes cities to lend their credit to private companies in order to create or preserve jobs and employment opportunities in such cities; and

WHEREAS, the City wishes to avail itself of the power granted to it by such Article in order to assist Spoonful in creating jobs and employment opportunities in Miamisburg.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, OHIO, STATE OF OHIO, TWO THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to execute the agreements attached herein as Exhibit "A" in substantially the form on file with the Clerk of Council with only such changes as are approved by the City Manager.

Section 2.

The Finance Director is hereby authorized to reimburse Adam Remillard (Monocle Comics & Coffee) an amount not to exceed \$5,000 for a portion of the expenses in connection with the location of the business within the City. The Finance Director shall make such payment from funds appropriated by City Council for the

Downtown Miamisburg Retail Business Incentive Program and only upon receipt of appropriate documentation.

Section 3.

The Council of the City of Miamisburg, Ohio, hereby finds and determines that all formal actions of this Council concerning and relating to the adoption of this ordinance were held in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code, and the rules of this Council adopted in accordance therewith.

Section 4.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that it is in the best interest of the City that Monocle Comics locate to the City in a timely manner; therefore this measure shall take effect and be in force from and after its passage.

Passed: August 18, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle L. Collins, Mayor

AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 2020, by and between, THE CITY OF MIAMISBURG, a charter city organized and existing under the laws of the State of Ohio, (hereinafter referred to as "City"), and Adam Remillard (dba. Monocle Comics & Coffee), (hereinafter referred to as "PROPRIETOR")

WHEREAS, PROPRIETOR desires to occupy a facility located at 22 S. Main St. Miamisburg, Ohio 45342 with the intent of operating a small business (Monocle Comics & Coffee) in the downtown area of Miamisburg; and

WHEREAS, PROPRIETOR expects to open said business within the next 30 days and create at least one fulltime job within the city; and

WHEREAS, PROPRIETOR is desirous of obtaining financial assistance from City to cover a portion of the costs related to the startup of PROPRIETOR'S business within the City; and

WHEREAS, PROPRIETOR has requested certain financial assistance from City, and has provided to City certain information on the Business, including historical information, financial projections, budgets, plans, forecasts, and such other information as may have been requested by City to facilitate its review and approval of the request. (All of the foregoing information is hereafter referred to as the "Application"); and

WHEREAS, the City is desirous of providing PROPRIETOR with financial assistance in order to further support the redevelopment of downtown and create additional job opportunities within the City.

NOW, THEREFORE, in consideration of mutual promises and agreements hereinafter set forth, the parties agree as follows:

1. PROPRIETOR hereby represents to City that the Application is, as of the date hereof, true and correct in all material respects. In the event of any change to such application, or any information comprising such, PROPRIETOR shall promptly advise City of such change. A material breach of the PROPRIETOR's representation in the first sentence of this Section 1 shall give City the right to terminate this Agreement in accordance with its terms.
2. Subject to compliance by the PROPRIETOR with the terms and conditions of this Agreement, the City shall loan the PROPRIETOR, the sum of Five Thousand Dollars (\$5,000) at four percent (4%) interest per annum (unless forgiven according to the terms of this Agreement) to be repaid within a period of two (2) years from the date the City advances such installment (hereinafter referred to as the "Loan"). Upon receipt of the Loan advance, the PROPRIETOR shall execute a promissory note in the form attached hereto as Exhibit "B" (hereinafter referred to as a "Promissory Note") and deliver the same to the City.

The PROPRIETOR shall provide to City appropriate corporate resolutions (if a corporation), written authorization of all members/partners (if a limited liability company/partnership), or such other documentation as may be necessary to evidence that Company has authorized the borrowing of the Loan amount, the execution of the Promissory Note, and the terms of this Agreement. The PROPRIETOR shall repay the Loan to the City on or before two (2) years from the date of the PROPRIETOR's receipt of the Loan, unless forgiven as hereafter provided.

3. For each month following the distribution of the Loan advanced by the City to the PROPRIETOR and on each successive month thereafter, the City shall forgive four and fifteen hundredths percent (4.15%) of the then outstanding Loan amount (principal and interest on such portion of Loan then outstanding) for each month the PROPRIETOR:

1. Maintains operations of the Business on a continuous basis with consistent business operating hours at the 22 S. Main St. address. Such hours shall be agreed upon by PROPRIETOR and City within three (3) months after the distribution of the Loan Advance.

2. Employ at least 1 full-time employee at the Business location for a period of not less than 24 months from the date of the Loan advance from the City.

with the understanding that if PROPRIETOR

1. Maintains operations of the Business on a continuous basis with consistent business operating hours at the 22 S. Main St. address. Such hours shall be agreed upon by PROPRIETOR and City within three (3) months after the distribution of the Loan Advance.

2. Employ at least 1 full-time employee at the Business location for a period of not less than 24 months from the date of the Loan advance from the City.

the Loan and interest due thereon shall be fully forgiven by City.

In the event PROPRIETOR fails to satisfy the requirements stated above, the City shall have the right to terminate this Agreement, and PROPRIETOR shall have no further right to obtain forgiveness of any additional portion of Loan. The termination of this Agreement shall not affect that portion of Loan that has heretofore been forgiven. The Promissory Note shall remain in full force and effect with respect to any unpaid balance that has not been forgiven prior to the termination.

4. Either party shall be entitled to seek injunctive relief to enforce the terms of this Agreement.
5. If PROPRIETOR ceases to do business, either entirely or in the City of Miamisburg, the City may declare the entire remaining un-forgiven principal and interest on the Loan immediately due and payable.

6. No waiver of any condition or covenant of this Agreement shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Agreement shall be construed to be a waiver on the part of City of any right or remedy in law or otherwise.
9. In the event that PROPRIETOR fails to perform all material covenants, conditions, or obligations set forth in this Agreement, City shall have the right to terminate this Agreement, and PROPRIETOR shall have no further rights hereunder.
10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound, have each caused this agreement to be executed by their authorized representatives as of the date set forth above.

THE CITY OF MIAMISBURG, OHIO

BY: Keith D. Johnson, City Manager

STATE OF OHIO

SS:

COUNTY OF MONTGOMERY

On the ____ day of _____, 2020, before me, a Notary Public in and for Montgomery County, Ohio, personally appeared Keith D. Johnson, City Manager of the City of Miamisburg, Ohio, who acknowledged that he did sign the foregoing Agreement on behalf of the City and that the same is his free act and deed.

IN WITNESS WHEREOF, I have hereunto affixed my name and official seal

NOTARY PUBLIC

Adam Remillard

STATE OF _____

SS:

COUNTY OF _____

On the ____ day of _____, 2020, before me a Notary Public in and for _
_____ County, _____, personally appeared _____, who
acknowledged that he/she did sign the foregoing Agreement and that the same is his/her free act
and deed.

IN WITNESS WHEREOF, I have hereunto affixed my name and official seal.

NOTARY PUBLIC

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned Adam Remillard (Maker) promises to pay to the order of the City of Miamisburg, Ohio (Payee), the sum of Five Thousand Dollars (\$5,000) with interest at the rate of 4% per annum. Principal and interest shall be due and payable as follows unless forgiven pursuant to the terms of a certain Agreement between maker and Payee of even date:

	Beginning Balance	Payment	Principal	Interest	End Bal
2/1/2021	\$5,000.00	\$217.12	\$200.46	\$16.67	\$4,799.54
3/1/2021	\$4,799.54	\$217.12	\$201.13	\$16.00	\$4,598.42
4/1/2021	\$4,598.42	\$217.12	\$201.80	\$15.33	\$4,396.62
5/1/2021	\$4,396.62	\$217.12	\$202.47	\$14.66	\$4,194.15
6/1/2021	\$4,194.15	\$217.12	\$203.14	\$13.98	\$3,991.01
7/1/2021	\$3,991.01	\$217.12	\$203.82	\$13.30	\$3,787.18
8/1/2021	\$3,787.18	\$217.12	\$204.50	\$12.62	\$3,582.68
9/1/2021	\$3,582.68	\$217.12	\$205.18	\$11.94	\$3,377.50
10/1/2021	\$3,377.50	\$217.12	\$205.87	\$11.26	\$3,171.64
11/1/2021	\$3,171.64	\$217.12	\$206.55	\$10.57	\$2,965.08
12/1/2021	\$2,965.08	\$217.12	\$207.24	\$9.88	\$2,757.84
1/1/2022	\$2,757.84	\$217.12	\$207.93	\$9.19	\$2,549.91
2/1/2022	\$2,549.91	\$217.12	\$208.62	\$8.50	\$2,341.29
3/1/2022	\$2,341.29	\$217.12	\$209.32	\$7.80	\$2,131.96
4/1/2022	\$2,131.96	\$217.12	\$210.02	\$7.11	\$1,921.95
5/1/2022	\$1,921.95	\$217.12	\$210.72	\$6.41	\$1,711.23
6/1/2022	\$1,711.23	\$217.12	\$211.42	\$5.70	\$1,499.81
7/1/2022	\$1,499.81	\$217.12	\$212.13	\$5.00	\$1,287.68
8/1/2022	\$1,287.68	\$217.12	\$212.83	\$4.29	\$1,074.85
9/1/2022	\$1,074.85	\$217.12	\$213.54	\$3.58	\$861.31
10/1/2022	\$861.31	\$217.12	\$214.25	\$2.87	\$647.06
11/1/2022	\$647.06	\$217.12	\$214.97	\$2.16	\$432.09
12/1/2022	\$432.09	\$217.12	\$215.68	\$1.44	\$216.40
1/1/2023	\$216.40	\$216.40	\$215.68	\$0.72	\$0.00

In the event that any payment of this Note is not paid within ten (10) days of its due date or in the event of the insolvency of Maker or the filing of bankruptcy proceedings, whether voluntary or involuntary (if such proceedings shall not be dismissed within sixty (60) days after the institution of the same), under the Bankruptcy Code with respect to the Maker, or in the event of the appointment of a receiver, or any marshalling of any assets of the Maker for the benefit of creditors, then the Payee, at his option, may accelerate this Note and declare the principal and

interest on this Note immediately due and payable. The Maker shall be responsible for Payee's reasonable legal fees incurred in enforcing the terms of this Note.

This Note may be paid in full at any time without penalty.

Maker waives notice of default, presentment and notice of dishonor.

Maker shall mean each person, firm or corporation who executed this Note and each Maker shall be jointly and severally liable on this Note. This Note shall be governed by and construed in accordance with Ohio law.

The rights granted to Payee are not exclusive but are in addition to all other rights accruing to Payee in law or equity. Any failure of Payee to exercise these rights shall not operate as a waiver of such right or any other right under this Note.

This Note is subject to forgiveness in accordance with the terms and conditions more fully set forth in that certain Agreement between Maker and Payee, dated the date hereof, and incorporated herein.

In the event that the interests of the person, firm or corporation who executed this Promissory Note are sold, assigned, pledged, transferred, conveyed or bequeathed to or for the benefit of any person, firm or corporation not a party to this Promissory Note, the provisions of this Promissory Note shall be binding upon any such new person, firm or corporation, and any such new person, firm or corporation shall take his/her interests subject to the terms of this Promissory Note.

Dated _____, 2020

By _____

Title Adam Remillard, Owner
Monocle Comics & Coffee

ORDINANCE NO. 6865

AN ORDINANCE TO WAIVE THE REQUIREMENT FOR COMPETITIVE BIDDING AS REQUIRED BY LAW AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE DOCUMENTS REQUIRED FOR THE SALE OF 0.32 ACRES OF REAL ESTATE LOCATED IN THE CITY OF MIAMISBURG TO MEDLAR DEVELOPMENT COMPANY, LLC AND DECLARING AN EMERGENCY.

WHEREAS, in the early 1990s, the City of Miamisburg acquired approximately 320 acres of real estate in the City of Miamisburg for the purposes of constructing a publicly owned and operated golf course, now known as PipeStone Golf Course; and

WHEREAS, the City later engaged a developer to develop a residential neighborhood on nearly 70 acres of this land owned by the City which was not needed for the construction of the golf course; and

WHEREAS, the City entered into an agreement with Republic Development to build the PipeStone Neighborhood; and

WHEREAS, it was the City's long-range vision to have residential development located on all of the remaining land not needed for the construction of the golf course; and

WHEREAS, per Ordinance 6799, Council authorized the City Manager to sell 2.719 acres of real estate owned by the City to facilitate the development of a residential neighborhood (Courseview at PipeStone); and

WHEREAS, a new developer (Medlar Development Company, LLC) has superseded Inverness Group as the developer of said land; and

WHEREAS, Medlar Development Company, LLC would like to purchase an additional 0.32 acres of land (the "Property") from the City to facilitate a modified residential development (Aberdeen); and

WHEREAS, at a study session with Council on February 18, 2020, it was determined that, provided that an acceptable development plan for the Aberdeen development were submitted and approved, that the sale of the 0.32 acre "Property" would be acceptable; and

WHEREAS, Council has deemed it most beneficial to see medium to high density residential development on the 0.32 acre "Property" still owned by the City; and

WHEREAS, Medlar Development Company, LLC is a development company with extensive experience in residential development; and

WHEREAS, the City believes the most efficient, cost effective, and highest and best use of the Property is to allow it to be developed in conjunction with recently annexed land in the surrounding area; and

WHEREAS, it is anticipated that the development of the Property will provide multiple benefits to the City which may include, but not be limited to, new jobs, new housing opportunities for its residents, and additional tax revenue; and

WHEREAS, the City has determined this proposal to be the best way to accomplish its goals of residential growth since the Property, in its present state, is not developed or generating revenue; and

WHEREAS, the City will sell the Property to Medlar Development Company, LLC in connection with the Development Agreement and Real Estate Purchase Agreement contained within Ordinance 6799 and pursuant to the approved preliminary development plan for the Aberdeen Development contained in Ordinance 6846; and

WHEREAS, the City had the Property appraised by a licensed appraiser and intends to sell the Property to Medlar Development Company, LLC at the fair market value of \$27,000 per acre; and

WHEREAS, the parties believe that the development of the Property pursuant to the approved preliminary development plan are in the vital and best interests of the City, the public peace, health, safety, and welfare of its residents and is necessary for the creation and preservation of jobs and to improve the welfare of the people of the City; and

WHEREAS, Council has determined that the City has no need to use the Property for municipal purposes; and

WHEREAS, the City Council has, under its Home Rule powers, has necessarily waived the advertising and bidding requirement for the sale of the Property.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

Pursuant to its Home Rule powers, the City Council hereby determines that it is in the City's best interests to sell the Property to Medlar Development Company, LLC as surplus property not needed for municipal purposes, and that the City desires to achieve full vision of the PipeStone development as originally intended and therefore waives the requirement for competitive

bidding as otherwise required by law for the reasons stated in the preamble hereof and authorizes the City Manger to execute any and all documents required to facilitate the sale of the Property as identified in Exhibits "A" (plat of survey) and "B" (legal description) attached hereto and made a part hereof. This is determined by the City Council to be in the public interest of the City of Miamisburg.

Section 2.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, and for the further reasons as set forth herein and that this real estate sale is needed at the earliest possible date to ensure that the project construction remains on schedule; therefore, this measure shall take effect and be in force from and after its passage.

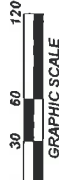
Passed: September 1, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L Collins
Michelle L. Collins, Mayor

Exhibit A

PLAT OF SURVEY
 Section 23, Town 2, Range 5 M.R.s.
 Miami Township
 Part Lot No. 6308 of the Consecutive Numbers
 of Lots of the City of Miamisburg
 Montgomery County, Ohio
 Tract 1 - 0.320 Acres
 Tract 2 - 1.162 Acres
TOTAL - 1.482 Acres

Bearings are based on the West Line of the subject property conveyed to The City of Miamisburg by deed recorded in DMF 92-522B(2) taken from the State Plane Coordinate System, NAD 83, Geoid 2003 Ohio South Zone, ODOT VRS Network being: N 13°02'24" W.



THE CITY OF MIAMISBURG
 DMF 92-522B(2) (80.0636 Ac.) (Parcel III)
 LOT NUMBERS 6305 - 6310
 K46-014-22-0002
 SJK 92-057

THE CITY OF MIAMISBURG
 I.R. Deed 19-050783 (Tract 1)(0.199 Acres)
 PT. LOT 6308
 K46-014-22-0025
 SJK 92-057
 SR 2019-0074

MEDLAR DEVELOPMENT COMPANY, LLC
 I.R. Deed 20-006866
 PT. LOT 6308
 1719 Acres
 K46-014-22-0027
 SR 2019-0074

MEDLAR DEVELOPMENT COMPANY, LLC
 I.R. Deed 20-006866
 LOT 9663
 17.479 Acres
 K46-014-22-0025
 SR 2019-0234

- LEGEND:**
- indicates 3/8" Iron Pin fud. (unless noted)
 - indicates 5/8" Rebar set (NRP OHIO PS-6834)
 - indicates Mag Nail or PK Nail fud.
 - indicates Mag Nail set
 - indicates Rail Road Spike fud.
 - indicates Pipe fud. (size as noted)
 - indicates Stone fud.
 - indicates Monument Box with Iron Pin fud.

CERTIFICATION

I hereby certify that this plat of survey was prepared in accordance with Ohio Administrative Code Chapter 4733-37 Standards for Boundary Surveys and is an accurate representation of an actual field survey performed by our company/surveyors under my supervision in April, 2020. All monumentation has been found or is to be set as shown.

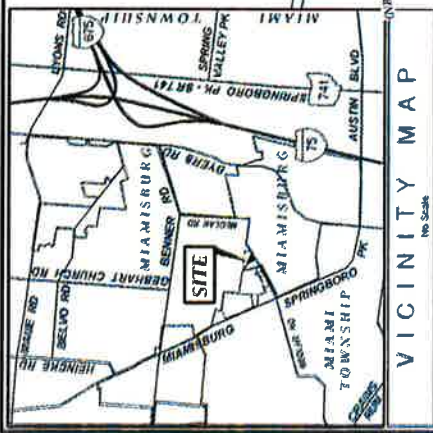


Ready H. Norfleet, P.E.
 Ohio License No. 6634
 Date

NB
NORFLEET, BROWN & PETKEWICZ
ENGINEERS - SURVEYORS
 228 BYERS ROAD, SUITE 204
 MIAMISBURG, OHIO 45342
 (937) 847-2113
 SCALE: 1"=60'
 DRAWN: RHN
 CHECKED:
 DATE: 4-19-20
 JOB No.: 20-7639

SURVEY NOTES:

- 1) The following Survey, Plat and Deed References were used:
 Subject Property Deed:
 DMF 92-522B(2)
 RECORD PLANS:
 P.B. "GG", PG. 019
 SURVEY RECORDS:
 SUR 92-057, SR 2019-0074, SR 2019-0234
- 2) Occupation in general fits the surveyed facts.
- 3) All monumentation found or set is in good condition unless otherwise shown.
- 4) Iron Pins Set are 30" X 5/8" rebar with plastic cap stamped "NRP OHIO PS-6834".



VICINITY MAP

No. Scale

TPOB TRACT 2

TPOB TRACT 2

POB TRACT 1 & 2

MEDLAR ROAD (RM VARIES)

Lot 3
 R.C. Cox Plat
 P.B. "GG", Pg. 19

WINNIE MAE FELTNER
 I.R. Deed 25-016772 (1.133 AC)
 K45-026-09-0035
 I.R. Deed 15-016772 (0.257 AC)
 K45-026-09-0039

NRP OHIO PS6834

I.R. Miamisburg Conveyance Plat
 P.B. "GG", Pg. 19

Exhibit B



NORFLEET, BROWN & PETKEWICZ INC.

CIVIL ENGINEERS & SURVEYORS

228 BYERS ROAD · SUITE 204 · MIAMISBURG, OHIO 45342

(937) 847-2313 · FAX (937) 847-2303

RANDY H. NORFLEET, P.E., P.S.
WILLIAM C. PETKEWICZ, P.S.

DANIEL O. MUTZNER, P.E.
JONATHAN L. NORFLEET, P.E.

Tract 1 DESCRIPTION OF 0.320 ACRES

Situate in Section 23, Town 2, Range 5 M.Rs., located in the City of Miamisburg, County of Montgomery, State of Ohio, being part of City Lot No. 6308 of the Consecutive Numbers of Lots of the City of Miamisburg, Ohio and being a part of a 1.482 acre tract of land as conveyed to the City of Miamisburg by deed recorded in I.R. Deed 19-050785 and being more particularly described as follows:

BEGINNING at a Railroad Spike found at the southwest corner of said Lot No. 6308, said point also being the southeast corner of R.C. Cox Plat as recorded in Plat Book "GG", Page 19 and also being on the centerline of Medlar Road (Right of Way varies);

Thence along the centerline of Medlar Road North $60^{\circ}29'18''$ East, a distance of 116.47 feet to a PK Nail found at an angle point;

Thence continuing along the centerline of Medlar Road North $59^{\circ}51'21''$ East, a distance of 172.98 feet to a Mag Nail found at the southeast corner of a 2.719 acre tract of land conveyed to Medlar Development Company, LLC by deed recorded in I.R. Deed 20-005866;

Thence along the east line of said 2.719 acre tract, North $24^{\circ}06'53''$ West, passing an iron pin found (NBP OHIO PS#6834) on the north right of way line of Medlar Road at 24.89 feet, for a total distance of 105.00 feet to an iron pin set (NBP OHIO PS#6834), said point being the **TRUE POINT OF BEGINNING** of the parcel herein described;

Thence continuing along the east line of said 2.719 acre tract, North $24^{\circ}06'53''$ West, a distance of 285.03 feet to an iron pin found (NBP OHIO PS#6834) at the northeast corner of said 2.719 acre tract, said point also being on a south line of an 80.0636 acre tract of land conveyed to the City of Miamisburg by deed recorded in Deed MF 92-522B02;

Thence along the south line of said 80.0636 acre tract of land, South 72°18'30" East, a distance of 81.40 feet to an iron pin set (NBP OHIO PS#6834);

Thence along a new division line, South 24°06'53" East, a distance of 174.55 feet to an iron pin set (NBP OHIO PS#6834);

Thence along a new division line, South 23°04'26" West, a distance of 82.71 feet returning to the **TRUE POINT OF BEGINNING**, containing 0.320 acres, more or less and being subject to all legal covenants, restrictions, easements and highways of record.

This description is based on a field survey performed by Norfleet, Brown and Petkewicz Inc. under the supervision of Randy H. Norfleet, P.S., Ohio license No. 6834 in April, 2020. Bearings are based on the West Line of the subject property (conveyed to The City of Miamisburg by deed recorded in Deed MF 92-522B02) taken from the State Plane Coordinate System, NAD 83, Geoid 2003 Ohio South Zone, ODOT VRS Network being: North 13°02'24" West. Plat of Survey recorded in the Montgomery County Engineer's Record of Land Surveys in Volume 2020, Page 0116.



Randy H. Norfleet, P.S.
Ohio License No. 6834
August 05, 2020



PAUL W. GRUNER, P.E., P.S.
MONTGOMERY COUNTY ENGINEER
APPROVED FOR POINT OF BEGINNING,
ACREAGE AND CLOSURE ONLY
DATE 8/13/20 FILE NO. 2020-0116

BY Wayne B. H.



ORDINANCE NO. 6866

AN ORDINANCE TO WAIVE THE REQUIREMENT FOR COMPETITIVE BIDDING AS REQUIRED BY LAW AND TO ENTER INTO AN AGREEMENT FOR THE DESIGN, FABRICATION AND INSTALLATION OF A POOL GUTTER SYSTEM WITH PRECISION SWIMMING STRUCTURES CONTRACTORS, LLC., AND DECLARING AND EMERGENCY.

WHEREAS, City Council desires to enter into an agreement for the design, fabrication and installation of a new gutter system for the Sycamore Trails Aquatic Center; and

WHEREAS, Precision Swimming Structures Contractors, LLC. is the sole source provider capable of providing all necessary designs, documents, fabrication and installation according to project timelines and Ohio Department of Health regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

City Council hereby waives the requirement for competitive bidding as required by law to allow for the design, fabrication and installation of a new gutter system by Precision Swimming Structures Contractors, LLC. as the sole source provider of the system capable of providing all necessary design, documentation and regulatory compliance meeting project timelines.

Section 2.

City Council hereby authorizes the City Manager to enter into a contract with Precision Swimming Structures Contractors, LLC at a cost not to exceed \$185,000.

Section 3.

This measure is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare, and for the further reason that this agreement is needed at the earliest possible date to allow for prompt installation of said gutter system prior to other improvement project needs and facility opening schedules; therefore this measure shall take effect and be in force from and after its passage.

Passed: September 15, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6867

AN ORDINANCE TO WAIVE THE REQUIREMENT FOR COMPETITIVE BIDDING AS REQUIRED BY LAW AND TO ENTER INTO AN AGREEMENT FOR THE SURFACE PREPARATION AND INSTALLATION OF ECOFINISH THERMOPLASTIC LINER SYSTEM WITH SWIMSAFE POOL MANAGEMENT, INC., AND DECLARING AN EMERGENCY.

WHEREAS, City Council desires to enter into an agreement for the surface preparation and installation of a new thermoplastic liner system for the Sycamore Trails Aquatic Center; and

WHEREAS, SwimSafe Pool Management, Inc. is the sole source provider of this product within the region and sole provider capable of meeting project specifications and timelines.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

City Council hereby waives the requirement for competitive bidding as required by law to allow for the surface preparation and installation of a new EcoFinish Thermoplastic Pool Liner system by SwimSafe Pool Management, Inc. as the sole source provider of the system capable of meeting project specifications and timelines.

Section 2.

City Council hereby authorizes the City Manager to enter into a contract with SwimSafe Pool Management Inc., at a cost not to exceed \$165,000.

Section 3

This measure is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare, and for the further reason that this agreement is needed at the earliest possible date to allow for prompt installation of said pool liner system in accordance with facility opening schedules; therefore this measure shall take effect and be in force from and after its passage.

Passed: September 15, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins, Mayor

ORDINANCE NO. 6868

AN ORDINANCE TO ENACT CHAPTER 876 – MASSAGE ESTABLISHMENTS – TO PART 8, TITLE TWO, OF THE CODIFIED ORDINANCES OF THE CITY OF MIAMISBURG FOR THE PURPOSE OF CREATING STANDARDS FOR MASSAGE ESTABLISHMENTS IN THE CITY OF MIAMISBURG AND DECLARING AN EMERGENCY.

WHEREAS, there has been a recent increased interest in the establishment of massage service businesses in the City of Miamisburg; and

WHEREAS, the City's regulations for massage establishments were in need of review to ensure the health, safety and welfare of its residents were protected without harming legitimate businesses; and

WHEREAS, by Ordinances 6719 and 6753, the City adopted and extended a moratorium on the issuance of zoning authorizations and certificates of occupancy for businesses offering massage services in order to provide sufficient time to discuss the health, safety, and public welfare risks of massage services in the City; and

WHEREAS, massage services were the top industry for sex trafficking in 2017 and locations offering massage services have become a hotbed of illegal activities ranging from money laundering to human trafficking; and

WHEREAS, multiple divisions of the State of Ohio already provide comprehensive health and safety requirements as part of occupational licenses that are relevant to massage services, including (but not limited to) the state medical board's licensing and regulation of massage therapy in accordance with Revised Code Section 4731.15 and related sections; and

WHEREAS, pursuant to Revised Code Section 715.61, "Any municipal corporation may regulate and license ... all persons engaged in the trade, business or profession of ... massaging"; and

WHEREAS, massage services are offered independently or as part of medical or cosmetological services which require appropriate regulations to ensure the health, safety, and welfare of citizens and avoid nuisances; and

WHEREAS, the new application requirements for businesses offering massage services requires a fee to be established in Chapter 214 – Fee Schedule – of the Administration Code; and

WHEREAS, City Council has determined it to be in the best interest of the health, safety and welfare of the community to regulate and/or license businesses that offer massage services and similar uses.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

Chapter 876 – Massage Establishments – of these Codified Ordinances is hereby adopted as follows:

876.01 PURPOSE AND INTENT.

The State of Ohio, through the State Medical Board of Ohio, regulates the practice of massage therapy as a limited branch of medicine by requiring practitioners to satisfy education, character, and examination requirements to obtain a license to practice massage therapy. Although licensed massage therapists are subject to a national code of ethics and standards of practice, the City Council finds that for some massage establishments, the business in fact is sexual conduct or the intimation of sexual conduct, including human trafficking, rather than lawful massage therapy. Such illegal uses are contrary to the public health, safety, and welfare.

It is a purpose and intent of this chapter to impose licensing requirements to help prevent illegal massage, prostitution, and related sex crimes, yet without hindering legitimate massage establishments operating under a business structure with external oversight that serves that purpose. It is a purpose of this chapter to regulate the operation of massage establishments and spa establishments, and to regulate employees of such establishments who are not licensed as Massage Therapists by the state, as an exercise of the city's police power in order to protect the health, safety and general welfare of the citizens of the city.

876.02 DEFINITIONS.

- (a) For the purposes of this Chapter, the words and phrases defined in the sections hereunder shall have the meanings respectively ascribed to them herein unless a different meaning is clearly indicated by the context:
- (1) "CLIENT" means a person who receives a Massage Treatment for a fee or any consideration whatsoever.
 - (2) "DIRECTOR" means the Director of the City of Miamisburg Development Department or the Director's designee.
 - (3) "DRAPING" means non-transparent linen, towel, or other opaque cloth which securely covers a Client's Specified Anatomical Areas by folding, tucking or fastening.
 - (4) "EMPLOYEE" means any person who is employed by, or renders any service at, a Massage Establishment for

compensation. "Employee" includes a contract employee, freelance employee, temporary employee, or an independent contractor.

- (5) "EXEMPT" means a person who provides Massage as a portion of and Incidental to services in accordance with a license issued by any of the following:
- A. The Ohio State Cosmetology and Barber Board or its predecessors pursuant to Ohio Revised Code Chapter 4709 to 4713;
 - B. The State of Ohio Board of Nursing pursuant to Ohio Revised Code Chapter 4723;
 - C. The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board pursuant to Ohio Revised Code Chapter 4755;
 - D. The Ohio State Chiropractic Board pursuant to Ohio Revised Code Chapter 4734;
 - E. The State Medical Board of Ohio pursuant to Ohio Revised Code Chapters 4730 to Chapter 4762;
 - F. The State Medical Board of Ohio pursuant to Ohio Revised Code Chapters 4731 except those licensed pursuant to Revised Code Section 4731.15 to practice "massage therapy."
 - G. Schools, colleges, or institutions approved by and determined to be in good standing with the State Medical Board of Ohio that have the Massage therapy curriculum required for students to become Massage Therapists upon course completion and the students enrolled in such schools, colleges, or institutions.
- (6) "INCIDENTAL" shall have the meaning as ascribed in Chapter 1230 of these Codified Ordinances
- (7) "LICENSE" means a massage practitioner license issued by the State Medical Board of Ohio to practice "Massage Therapy" pursuant to and in accordance with Revised Code Section 4731.15.
- (8) "MASSAGE" means the use of any method on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, pressing, compressing, percussing, stretching, rotating, heating, cooling, or stimulating of, the external soft parts of a living human body, which may be performed with direct or indirect human contact, or with the aid of an apparatus, appliance, or other tool or object. The term also includes tub, shower, or cabinet baths; as well as oil rubs;

liniments; antiseptics; powders; creams; lotions; ointments; alcohol rubs; salt glows; hot or cold packs, liquids, or solid objects; or other similar types of substances; upon the external soft parts of a living human body which may be applied by direct or indirect human contact, or with the aid of any electrical, mechanical, or vibratory apparatus, appliance, or other tool or object.

- (9) "MASSAGE ESTABLISHMENT" means any establishment having a fixed place of business where any Person engages in, conducts, carries on, or permits for consideration, Massage and Massage Treatments; including but not limited to, any hot tub/sauna, relaxation, spas, or tanning establishments in which Massage Treatments are made available to members of the public.
- (10) "MASSAGE SCHOOL" means a facility which meets the minimum standards for training and curriculum as determined by section 4731-1-15 of the Ohio Administrative Code, or the equivalent licensing authority of another state, or is within the public-school system of this state.
- (11) "MASSAGE THERAPIST" means any person who has a License in good standing as a Massage Therapist from the State Medical Board of Ohio.
- (12) "MASSAGE TREATMENT" means providing for a fee or any consideration whatsoever any of the following services:
 - A. Massage;
 - B. A method of treatment that involves the application of oil rubs; liniments; antiseptics; powders; creams; lotions; ointments; alcohol rubs; salt glows; hot or cold packs, liquids, or solid objects; or other similar types of substances; upon the external soft parts of a living human body which may be applied by direct or indirect human contact, or with the aid of any electrical, mechanical, or vibratory apparatus, appliance, or other tool or object.
- (13) "MOBILE MASSAGE" means an activity not having a fixed place of business where a person or entity advertises the availability of, offers, provides, or permits to be carried on, any activity related to or including the provision of a Massage Treatment. "Mobile Massage" includes outcall or traveling "Massage Treatment" and can be separated into two different categories: corporate or residential.

- (14) "PERSON" means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.
- (15) "REGISTRATION CERTIFICATE" means a certificate of registration issued by the City of Miamisburg to a Massage Establishment or Mobile Massage Therapist.
- (16) "SPECIFIED ANATOMICAL AREA", "State of Nudity", and "State of Semi-nudity" shall have the meaning ascribed to them in Chapter 1299 of these Codified Ordinances.

876.03 REGISTRATION CERTIFICATE REQUIRED.

Within ninety (90) days of the effective date of this Chapter, all Massage Establishments and Mobile Massage practitioners operating in the City of Miamisburg shall obtain a Registration Certificate for a Massage Establishment to operate. No person shall operate a Massage Establishment, offer or perform Massage Treatment, or practice Mobile Massage without a Registration Certificate. Massage Establishments operating in the City of Miamisburg shall meet the following licensing and registration requirements:

- (a) No person shall operate a Massage Establishment in the City of Miamisburg:
 - (1) Without a Registration Certificate for a Massage Establishment;
 - (2) Where a Massage Treatment is offered or performed by a person who is not either a Massage Therapist or Exempt; and
 - (3) Without a Zoning Authorization and Certificate of Occupancy for the Massage Establishment.
- (b) No person shall offer or perform a Massage Treatment in a Massage Establishment or as a Mobile Massage practitioner:
 - (1) Unless such person is either Exempt or a Massage Therapist;
 - (2) In a Massage Establishment that does not have a Registration Certificate;
 - (3) Or, in the case of a Mobile Massage practitioner, without a Registration Certificate.

876.04 REGISTRATION PROCSS AND FEE.

- (a) A person who wishes to obtain a Registration Certificate for a Massage Establishment or as a Mobile Massage Therapist shall submit a registration application to the Director and pay a reasonable registration fee sufficient to pay the cost of administering this Chapter as established in Chapter 214 – Fee Schedule – of these Codified Ordinances.

- (b) The registration application shall be in a form designated by the Director or designee and include all of the following:
 - (1) Full legal name and current residential address of the applicant;
 - (2) The address of the proposed Massage Establishment or Mobile Massage practitioner;
 - (3) A list of services to be offered at the Massage Establishment, or a list of services to be offered by the Mobile Massage practitioner;
 - (4) The full name of any person who will provide Massage Treatments at the Massage Establishment or will be performing Mobile Massages, including their license numbers provided by the State Medical Board of Ohio;
 - (5) Sufficient information to identify the License for each Massage Therapist; and
 - (6) If applicable, the website of the Massage Establishment or Mobile Massage practitioner.

- (c) The Director or designee shall issue the Registration Certificate unless the Director or designee finds:
 - (1) The registration application is incomplete or contains inaccurate or fraudulent information;
 - (2) The License of a Massage Therapist or anyone identified who will provide Massage Treatments cannot be verified;
 - (3) Within two years before the date the application is submitted, the applicant, or any Massage Therapist listed on the registration application, was the applicant for a Registration Certificate that was revoked or denied. Nothing herein prohibits the Director or designee from issuing a Registration Certificate for a previously denied application that has been substantially modified.
 - (4) The Zoning Authorization has not been approved for the Massage Establishment.

- (d) The registration applications shall be submitted and approved before a Massage Establishment or Mobile Massage practitioner can be operated and massage services offered.

- (e) Massage Establishments or Mobile Massage practitioners that were in operation prior to the effective date of this Chapter must submit a registration application not later than ninety (90) days after the effective date of this Chapter.

- (f) Following review of the application, the Director or designee shall send, by First Class U.S. Mail addressed to the applicant, either a

Registration Certificate or a written statement that the application was denied and the reason(s) therefore.

- (g) Any person who has been denied a Registration Certificate may appeal such denial in accordance with Section 876.09.

876.05 REGISTRATION EXPIRATION, RENEWAL, AND DUTY TO UPDATE.

- (a) Each Registration Certificate shall be signed by the Director or designee and such certificate shall contain the following information:
 - (1) The name of the applicant to whom the Registration Certificate is issued;
 - (2) The name and address of the Massage Establishment or the Mobile Massage practitioner;
 - (3) The full name of each Therapist identified on the Application; and
 - (4) The effective date of the Registration Certificate.
- (b) Each Registration Certificate shall be displayed in a conspicuous location readily visible to a person entering the Massage Establishment through a public entrance. Mobile Massage practitioners shall carry a copy of the Registration Certification when performing Massage Treatment within city limits.
- (c) Each Registration Certificate shall be valid for two (2) years from the date it is issued.
- (d) A person who operates a Massage Establishment shall notify the Director when a new Massage Therapist begins working at the Massage Establishment. The notice shall be received by the Director no more than fifteen (15) days after the first day the Therapist provides a Massage Treatment in the Massage Establishment.
- (e) No more than ninety (90) nor less than seven (7) days before expiration of the Registration Certificate, the applicant shall submit a new registration application and pay the fee in accordance with Section 876.04.
- (f) A Registration Certificate shall not be transferrable. If ownership or operation of a Massage Establishment transfers, the Registration Certificate shall automatically expire.

876.06 REQUIREMENTS FOR MASSAGE ESTABLISHMENTS AND MOBILE MASSAGE PRACTITIONERS.

Every person who owns, operates, manages, or supervises a Massage Establishment, or who otherwise causes a Massage Establishment to operate shall assure all the following:

- (a) The Registration Certificate is displayed in a conspicuous location readily visible to a person entering the Massage Establishment through a public entrance;
- (b) Compliance with all the following:
 - (1) Applicable regulations issued by the Montgomery County Public Health District;
 - (2) Applicable provisions of the Ohio Revised Code Sections 4713.08, 4731.15, and 4734.10;
 - (3) The Codified Ordinances of the City of Miamisburg.
- (c) All tables and surfaces in the Massage Establishment shall be clean and disinfected;
- (d) Clean linen, towels, and other materials are provided in connection with any Massage Treatment;
- (e) Massage Treatments provided in the Massage Establishment are provided only by Massage Therapists;
- (f) Employees permit and cooperate in any inspections provided for in this Chapter;
- (g) Operating hours. No Massage Establishment shall be kept open for business, and no Massage Therapist shall administer Massages after the hour of ten PM or before the hour of seven AM.
- (h) Mobile Massage. Massage Therapists providing Mobile Massage must carry their Registration Certificate with them to each location where the Massage Therapists intends to perform Massage.

876.07 PROHIBITIONS.

- (a) No person who owns, operates, manages or supervises the operation of a Massage Establishment shall do any of the following:
 - (1) Allow any Employee or any Massage Therapist to appear in any state of undress, to wear transparent clothing, or clothing that otherwise reveals a Specified Anatomical Area;
 - (2) Allow any Employee or Massage Therapist to provide a Massage Treatment to a Client who is in a State of Nudity, a State of Semi-nudity, or who reveals a Specified Anatomical Area;
- (b) No person shall do any of the following:

- (1) Advertise or offer Massage Treatments or a related service unless they are Exempt or are licensed as Massage Therapists to provide such Massage Treatments;
 - (2) Appear in a Massage Establishment in any state of undress, transparent clothing, or clothing that otherwise reveals a Specified Anatomical Area;
 - (3) Provide a Massage Treatment to a Client who is in a State of Nudity, a State of Semi-nudity, or who reveals a Specified Anatomical Area.
- (c) No person shall place, publish, distribute, or cause to be placed, published, or distributed any advertising material using sexual or provocative words or images.
- (d) No person shall advertise Massage Treatment services with the suggestion or promise of a sexual service or activity.
- (e) Nothing shall prohibit a Massage Therapist from providing a Massage Treatment to a Client who is covered only by Draping, or prohibiting a Massage Therapist from removing such Draping as necessary upon the Client's explicit consent.
- (f) Transfer of Massage Establishment or Massage Services Registration Certificate. No Registration Certificate issued pursuant to this Chapter shall be transferred or assigned in any manner, whether by authorization or law or otherwise, from any location to another location or from Person to Person, except that a Person possessing a Registration Certificate, issued by the City, may move from one employer to another without filing a new application or paying a new fee, so long as the Registration Certificate holder notifies the Director, in writing, of the change in their employment within five (5) business days of such change. Failure to make this notification within five (5) business days shall be grounds for suspension or revocation of a Registration Certificate.

876.08 INSPECTIONS.

- (a) Any person or their designee having jurisdiction to enforce the provisions of this Chapter may enter the public entrance of a Massage Establishment without notice during all hours of operation for the purpose of verifying that a valid Registration Certificate is displayed in accordance with this Chapter, that the City has timely received the full name of any person providing Massage Treatments in order to verify the License of each, and that all other provisions of the herein Chapter have been satisfied.

- (b) Inspections shall be conducted at least once per year to determine compliance with this Chapter.
- (c) In accordance with constitutional provisions governing searches, any person or their designee shall have the authority to enter all Massage Establishments within the City during all hours of operation to conduct an inspection, to investigate, or to perform the duties imposed upon the enforcement officer or designee by this Chapter. The enforcement officer or designee shall present credentials and request entry. If entry is refused, the enforcement officer may obtain a search warrant in accordance with section 2933.21 of the Ohio Revised Code.
- (d) A Massage Establishment shall be given ten (10) days from the date of inspection to correct any violations of this Chapter.

876.09 ADMINISTRATIVE APPEAL.

- (a) A person who has filed a completed registration application and has been denied a Registration Certificate, or who has had a Registration Certificate revoked, may appeal that denial or revocation within fifteen (15) days of the denial or revocation thereof by filing a written statement with the Director. The written statement shall include the applicant's full name and contact information (including mailing address, phone number, and email addresses), and shall state the basis for such appeal, including a summary of all relevant facts and circumstances.
- (b) The Director or designee shall review the written statement, shall set a time and a place for an administrative hearing, shall provide reasonable notice prior to such hearing, and shall establish the reasonable procedures, therefore. The Director or designee shall determine whether to grant or deny the Registration Certificate and shall issue a final determination in writing.

876.10 SEVERABILITY.

This chapter and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural

aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter.

876.99 PENALTY.

- (a) Whoever violates any provision of this Chapter shall be guilty of a minor misdemeanor.
- (b) If the offender previously was convicted of any provision of this Chapter within the past three (3) years, the offense is a misdemeanor of the first degree.
- (c) In addition to any penalty set forth in subsections (a) and (b) above, the Development Department may revoke a Registration Certificate of a Massage Establishment for a violation of any provisions of this Chapter.

Section 2.

Add the following fee to Chapter 214 under the "Other Permits" table of Section 214(a):

Registration Certificate for Massage Establishments and Mobile Massage Practitioners	\$100 per application
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Section 3.

Registration Certificate application fees for massage establishments already in legal operation on the effective date of this Ordinance shall be waived for the first application. Subsequent applications shall be accompanied by the required fee as provided for in Chapter 214 of the Miamisburg Codified Ordinances.

Section 4.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason that Council desires to declare such new regulations effective at the earliest possible date in order to limit the possibility that additional relaxation massage establishments will seek to operate in the City, therefore, this measure shall take effect and be in force from and after its passage.

Passed: September 15, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6869

AN ORDINANCE TO AMEND AND SUPPLEMENT VARIOUS CHAPTERS OF THE PLANNING AND ZONING CODE OF THE CITY OF MIAMISBURG IN ORDER TO UPDATE VARIOUS DEFINITIONS, TO UPDATE HOME OCCUPATION AND OTHER DESIGN STANDARDS, RESIDENTIAL CONVERSION STANDARDS, PLANNED DEVELOPMENT STANDARDS, VARIOUS USE LISTS, AND PARKING STANDARDS.

WHEREAS, Numerous updates have been made to the Planning and Zoning Code over the last several years; and

WHEREAS, Certain sections of the Planning and Zoning Code require updates in order to better clarify standards and improve upon the existing code; and

WHEREAS, The Covid-19 Pandemic will likely result in more people working from home, which requires updates to the process for approving home occupations; and

WHEREAS, The requirement that home occupations be approved via a public hearing process is contradictory to the home occupation standards of Chapter 1296; and

WHEREAS, Fitness gyms and eating establishments with indoor seating are appropriate uses in the Neighborhood Business (NB-1) District; and

WHEREAS, Residential conversion standards of the Central Service District (CSD-1) are excessively prohibitive and require updating; and

WHEREAS, There are sections of the MB-1 District language that should be updated; and

WHEREAS, The standards for planned developments should be clarified; and

WHEREAS, Various definitions of the Planning and Zoning Code should be updated; and

WHEREAS, Miamisburg's parking standards are outdated and should be updated; and

WHEREAS, These amendments will further the City's goal of encouraging orderly and high-quality development while also being flexible and responsive to changing use operations and conditions; and

WHEREAS, The Planning Commission has recommended that the Planning and Zoning Code be amended and supplemented to provide necessary updated regulations for various sections of the Code, including standards relating to parking, home occupations, use lists, and residential conversions; and

WHEREAS, City Council, after consideration of the Planning Commission's recommendation, has determined it to be in the best interest of the City of Miamisburg to provide for such regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

Remove the following definitions from Section 1230.08 – Definitions – of the Planning and Zoning Code:

ALLEY: See THOROUGHFARE.

AUTOMOBILE FUELING/RECHARDING STATION: An establishment in which motor vehicle fuels, including alternative fuels such as natural gas or hydrogen (stored only in underground tanks), are retailed directly to the public on the premise. This use does not include accessory automobile service garage uses, including, but not limited to, such uses as oil changes, tire servicing and repair, washing, greasing, lubrication and brake repair.

AUTOMOBILE SERVICE CENTER: An establishment in which the retail sale of accessories and services for automobiles are provided as the primary use, including the customary space and facilities for the installation of such commodities on or in such vehicles, but not including the space for facilities for major storage, repair, bumping, painting and refinishing.

HOME OCCUPATION: Any lawful activity carried out for gain by a resident conducted as an accessory use in a resident's dwelling unit.

MASSAGE: A method of treating or stimulating the external parts of the human body by rubbing, stroking, kneading, tapping, touching or vibrating with the hand or any instrument for pay.

MASSAGE ESTABLISHMENT: Any establishment having a fixed place of business where massages are administered for pay, including but not limited to, massage parlors, health clubs, sauna baths, men's lounges, finger painting studios, steam baths and similar uses comprising the elements of massage as defined in this section. This definition shall not be construed to include a hospital, nursing home, medical clinic or the office of a physician, surgeon, chiropractor, osteopath or physical therapist duly licensed by the State of Ohio, nor barber shops or beauty salons in which massages are administered only to the scalp, the face, the neck or the shoulder.

PERSONAL SERVICES: Excluding offices of physicians and dentists, establishments engaged in providing services to the general public, such as shoe repair, watch repair, barber shops, beauty shops, nail care establishments, hair removal establishments, electrolysis establishments, establishments providing facials and body treatments or makeup application, dry cleaners, tailors, toning or tanning establishments, and laundries.

SEMI CUTOFF: See CUTOFF, SEMI.

SWIMMING POOL: A pool, pond, lake or open tank containing over 3.5 feet of water at any point and maintained by the owner or manager.

- A. Private. Exclusively used without paying an additional charge for admission by the residents and guests of a single household, a multi-family development or a community, the members and guests of a club or the patrons of a motel or hotel; an accessory use.
- B. Community. Operated with a charge for admission; a primary use.

YARD: A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three feet above the general ground level of the graded lot upward, except as modified by Section 1289.05, provided accessories, ornaments and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.

- A. Yard, front. A yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.
- B. Yard, rear. A yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.
- C. Yard, side. A yard extending from the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear yards.

Section 2.

Add the following definitions to Section 1230.08 – Definitions – of the Planning and Zoning Code:

ALLEY: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

AUTOMOBILE FUELING/RECHARGING STATION: An establishment in which motor vehicle fuels, including alternative fuels such as natural gas or

hydrogen (stored only in underground tanks), are retailed directly to the public on the premise. This use does not include accessory automobile service garage uses, including, but not limited to, such uses as oil changes, tire servicing and repair, washing, greasing, lubrication and brake repair.

BIOSWALE: A constructed, linear depression lined with vegetation, designed to filter pollutants from stormwater runoff prior to discharge to a catch basin or receiving waters.

DISABILITY: A physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include drug addicts or alcoholics when they are using alcohol, illegal drugs, or using legal drugs to which they are addicted.

HOME OCCUPATION: An occupation carried on in a dwelling unit by the resident thereof; provided that the use is limited in extent and clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof or adversely affect the uses permitted in the zoning district of which it is a part.

PERSONAL SERVICES: Excluding offices of physicians and dentists, establishments engaged in providing services involving the care of a person or involving the care of personal goods or apparel. Such establishments include: laundries; clothing rental establishments; nail care establishments, barber shops; hair removal establishments; hair care and styling establishments; electrolysis establishments; health clubs; establishments providing facials or body treatments or make-up application; steam baths; body massage establishments; beauty shops; shoe, leather and handbag repair establishments; dry cleaners; tailors; toning or tanning establishments; and hair or body salons.

SWIMMING POOL: Any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, above-ground, and on-ground swimming pools, hot tubs, and spas.

- A. Private. Exclusively used without paying an additional charge for admission by the residents and guests of a single household, a multi-family development or a community, the members and guests of a club or the patrons of a motel or hotel; an accessory use.
- B. Community/public. Operated with a charge for admission; a primary use.

YARD: A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three feet above

the general ground level of the graded lot upward, except as modified by Section 1289.06, provided accessories, ornaments and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.

- A. Front Yard. A yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.
- B. Rear Yard. A yard extending between side lot lines across the rear of a lot and from the rear lot line to the rear of the principal building.
- C. Side Yard. A yard extending from the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear yards.

Section 3.

Section 1242.02 – Permitted Uses – of the Planning and Zoning Code, which reads as follows:

1242.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-1 District:
 - (1) Single-family dwellings.
 - (2) Accessory buildings incidental to the principal use which do not include any activity conducted as a business, such as the following:
 - A. Private garages or carports;
 - B. A structure for storage incidental to a permitted use;
 - C. A child's playhouse, a treehouse or a birdhouse;
 - D. Statuary, arbors, trellises, barbecue equipment, flagpoles, fences, play equipment, nonmechanical laundry drying equipment, walls and hedges; or
 - E. Swimming pools, tennis courts and similar play facilities.
 - (3) Family day care home, Type B.
- (b) The following special uses are subject to review in accordance with Chapter 1294:
 - (1) Governmentally owned and/or operated parks, playgrounds and golf courses.
 - (2) Private noncommercial and nonresidential golf courses, tennis clubs, country clubs and similar recreational uses.
 - (3) Cemeteries.
 - (4) Churches and other buildings for the purpose of religious worship.
 - (5) Cultural institutions, including public libraries, art galleries and museums.

- (6) Educational institutions.
- (7) Hospitals.
- (8) Home occupations.
- (9) Child care centers, nursery schools and day nurseries if conducted within an existing church or nonprofit educational institution.
- (10) Bed and breakfast facilities.

Shall be amended to read as follows:

1242.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-1 District:
 - (1) Single-family dwellings.
 - (2) Home occupations subject to the standards of Chapter 1296.
 - (3) Accessory buildings incidental to the principal use which do not include any activity conducted as a business, such as the following:
 - A. Private garages or carports;
 - B. A structure for storage incidental to a permitted use;
 - C. A child's playhouse, a treehouse or a birdhouse;
 - D. Statuary, arbors, trellises, barbecue equipment, flagpoles, fences, play equipment, nonmechanical laundry drying equipment, walls and hedges; or
 - E. Swimming pools, tennis courts and similar play facilities.
 - (4) Family day care home, Type B.
- (b) The following special uses are subject to review in accordance with Chapter 1294:
 - (1) Governmentally owned and/or operated parks, playgrounds and golf courses.
 - (2) Private noncommercial and nonresidential golf courses, tennis clubs, country clubs and similar recreational uses.
 - (3) Cemeteries.
 - (4) Churches and other buildings for the purpose of religious worship.
 - (5) Cultural institutions, including public libraries, art galleries and museums.
 - (6) Educational institutions.
 - (7) Hospitals.
 - (8) Child care centers, nursery schools and day nurseries if conducted within an existing church or nonprofit educational institution.
 - (9) Bed and breakfast facilities.

Section 4.

Section 1244.02 – Permitted Uses – of the Planning and Zoning Code, which reads as follows:

1244.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-2 District:
 - (1) Single-family dwellings.
 - (2) Accessory buildings incidental to the principal use which do not include any activity conducted as a business.
 - (3) Family day care home, Type B.
- (b) The following special uses are subject to review in accordance with Chapter 1294: All special uses as provided in the R-1 District.

Shall be amended to read as follows:

1244.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-2 District:
 - (1) Single-family dwellings.
 - (2) Home occupations subject to the standards of Chapter 1296.
 - (3) Accessory buildings incidental to the principal use which do not include any activity conducted as a business.
 - (4) Family day care home, Type B.
- (b) The following special uses are subject to review in accordance with Chapter 1294:
 - (1) All special uses as provided in the R-1 District.

Section 5.

Section 1246.02 – Permitted Uses – of the Planning and Zoning Code, which reads as follows:

1246.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-3 District:
 - (1) Single-family dwellings.
 - (2) Accessory buildings incidental to the principal use which do not include any activity conducted as a business.
 - (3) Family day care home, Type B.
- (b) The following special uses are subject to review in accordance with Chapter 1294:
 - (1) All special uses permitted as such within the R-2 District.
 - (2) Single-family dwellings on lots of seventy-foot widths.
 - (3) Two-family dwellings.

Shall be amended to read as follows:

1246.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-3 District:
 - (1) Single-family dwellings.
 - (2) Home occupations subject to the standards of Chapter 1296.
 - (3) Accessory buildings incidental to the principal use which do not include any activity conducted as a business.
 - (4) Family day care home, Type B.
(Ord. 3272. Passed 5-18-82; Ord. 4189. Passed 4-18-89.)

- (b) The following special uses are subject to review in accordance with Chapter 1294:
 - (1) All special uses permitted as such within the R-2 District.
 - (2) Single-family dwellings on lots of seventy-foot (70) widths.
 - (3) Two-family dwellings.
(Ord. 2712. Passed 8-1-78.)

Section 6.

Section 1248.02 – Permitted Uses – of the Planning and Zoning Code, which reads as follows:

1248.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-4 District:
 - (1) Two-family dwellings.
 - (2) Multifamily dwellings (8 units per acre).
(Ord. 4996. Passed 5-21-96.)
 - (3) Accessory buildings incidental to the principal use which do not include any activity conducted as a business.
(Ord. 3272. Passed 5-18-82.)

- (b) The following special uses are subject to review in accordance with Chapter 1294
 - (1) All special uses permitted as such within the R-3 District, with the exception of two-family dwellings, which are generally permitted uses within this District.
 - (2) Single-family dwellings, detached and attached.
 - (3) Townhouses.
 - (4) Multifamily dwellings (12 units per acre).
(Ord. 4996. Passed 5-21-96.)
 - (5) Community-oriented residential social service facilities.
 - (6) Housing for the elderly.
 - (7) Residential conversions.
 - (8) Child care centers, nursery schools and day nurseries.

(Ord. 3519. Passed 6-19-84.)

Shall be amended to read as follows:

1248.02 PERMITTED USES.

- (a) The following uses are generally permitted uses in the R-4 District:
- (1) Two-family dwellings.
 - (2) Multifamily dwellings (8 units per acre).
(Ord. 4996. Passed 5-21-96.)
 - (3) Home occupations subject to the standards of Chapter 1296.
 - (4) Accessory buildings incidental to the principal use which do not include any activity conducted as a business.
(Ord. 3272. Passed 5-18-82.)
- (b) The following special uses are subject to review in accordance with Chapter 1294:
- (1) All special uses permitted as such within the R-3 District, with the exception of two-family dwellings and home occupations, which are generally permitted uses within this District.
 - (2) Single-family dwellings, detached and attached.
 - (3) Townhouses.
 - (4) Multifamily dwellings (12 units per acre).
(Ord. 4996. Passed 5-21-96.)
 - (5) Community-oriented residential social service facilities.
 - (6) Housing for the elderly.
 - (7) Residential conversions.
 - (8) Child care centers, nursery schools and day nurseries.
(Ord. 3519. Passed 6-19-84.)

Section 7.

Section 1254.02 – Permitted Uses – of the Planning and Zoning Code which reads as follows:

1254.02 PERMITTED USES.

- (a) The following uses are generally permitted in the NB-1 District:
- (1) All generally permitted and special uses in the OS-1 District, with the exception of those uses permitted as special uses in subsection (b) hereof.
 - (2) Eating establishments, carryout and/or delivery only.
 - (3) Convenience stores (non-drive-thru).
 - (4) Personal service establishments.
 - (5) Shops producing merchandise to be sold on the premises, provided that not more than five persons are employed on the premises in such production.
 - (6) Animal grooming establishments.

- (7) Boutique retail.
 - (8) Technical repair establishments.
 - (9) Accessory buildings incidental to the principal use.
- (b) The following special uses are subject to review in accordance with Chapters 1294 and 1296:
- (1) Hospitals.
 - (2) Nursing homes.
 - (3) Nonprofit, professional, service, charitable and labor organizations.
 - (4) Churches.

Shall be amended to read as follows:

1254.02 PERMITTED USES.

- (a) The following uses are generally permitted in the NB-1 District:
- (1) All generally permitted and special uses in the OS-1 District, with the exception of those uses permitted as special uses in subsection (b) hereof.
 - (2) Eating establishments, carryout and/or delivery only (fast food) – non-drive-thru.
 - (3) Eating establishments, standard (non-drive-thru).
 - (4) Convenience stores (non-drive-thru).
 - (5) Personal service establishments.
 - (6) Shops producing merchandise to be sold on the premises, provided that not more than five persons are employed on the premises in such production.
 - (7) Household pet grooming establishments (no raising, breeding, or boarding).
 - (8) Boutique retail.
 - (9) Technical repair establishments.
 - (10) Fitness centers and gyms.
 - (11) Accessory buildings incidental to the principal use.
- (b) The following special uses are subject to review in accordance with Chapters 1294 and 1296:
- (1) Hospitals.
 - (2) Nursing homes.
 - (3) Nonprofit, professional, service, charitable and labor organizations.
 - (4) Churches.

Section 8.

Section 1260.02 – PERMITTED USES – of the Planning and Zoning Code, which reads as follows:

1260.02 PERMITTED USES.

(a) The following uses are generally permitted uses in the CBD-1 District:

(1) Retail Uses.

- A. Antiques, without refinishing operations.
- B. Apparel.
- C. Art galleries and studios.
- D. Bakery, retail with no drive-through facilities.
- E. Bicycle sales, rental, and repair.
- F. Barber shops.
- G. Beauty shops.
- H. Book stores, not including adult bookstores.
- I. Collectibles.
- J. Cafes, delis and coffee houses.
- K. Camera and photography studios.
- L. Computer stores.
- M. Drug stores with no drive-through facilities.
- N. Dry cleaner pick-up stations.
- O. Eating establishments: Standard alcoholic beverage sales permitted but must be ancillary to dining area and sales.
- P. Fitness instruction, including aerobics, dance, gymnastics, yoga, martial arts.
- Q. Florists.
- R. Fruit and vegetable markets.
- S. Furniture stores.
- T. General stores.
- U. Gift/novelty stores.
- V. Grocery stores.
- W. Hardware stores.
- X. Hobby/toys stores.
- Y. Home decorating/interior design.
- Z. Ice cream parlors.
- AA. Jewelry.
- BB. Musical recordings.
- CC. Newsstands.
- DD. Optical.
- EE. Pet products and pet supplies.
- FF. Shoes and shoe repair.
- GG. Specialty food stores.
- HH. Sporting equipment.
- II. Stationery.
- JJ. Video sales and rental, not including adult video store.
- KK. Wine shop.
- LL. Micro-breweries/micro-wineries.

- MM. Brewpubs.
- (2) Office uses.
 - A. Architectural.
 - B. Accounting.
 - C. Advertising.
 - D. Commercial banks with no drive through facilities.
 - E. Dentists.
 - F. Doctors.
 - G. Employment agencies.
 - H. Engineering.
 - I. Financial planning.
 - J. Human and public relations.
 - K. Professional offices.
 - L. Insurance agents.
 - M. Legal.
 - N. Management, personnel services and public relations.
 - O. Real estate.
 - P. Security brokers.
 - Q. Tax services.
- (3) Residential uses. Residential unit(s) above the first floor.
- (4) Public uses.
 - A. Governmental offices.
 - B. Libraries.
 - C. Parking lots.
 - D. Parks.

(b) The following special uses are subject to review in accordance with Chapter 1294.

- (1) Drive-through facilities for ATMs at commercial banks.
- (2) General stores producing merchandise to be sold at retail, provided that no more than five persons are employed on the premises in such production.
- (3) Museums.
- (4) Open-air markets.
- (5) Outdoor seating areas for eating establishments, cafes, delis and coffee houses.
- (6) Theaters, excluding adult drive-in theater, adult entertainment, adult entertainment business, or adult mini-motion picture theater.
- (7) Pet sales and pet grooming as a principal use or an accessory use exclusive of animal boarding activities.

Shall be amended to read as follows:

1260.02 PERMITTED USES.

(a) The following uses are generally permitted uses in the CBD-1 District:

(1) Retail Uses.

- A. Antiques, without refinishing operations.
- B. Apparel.
- C. Art galleries and studios.
- D. Bakery, retail with no drive-through facilities.
- E. Bicycle sales, rental, and repair.
- F. Barber shops.
- G. Beauty shops.
- H. Book stores, not including adult bookstores.
- I. Collectibles.
- J. Cafes, delis and coffee houses.
- K. Camera and photography studios.
- L. Computer stores.
- M. Drug stores with no drive-through facilities.
- N. Dry cleaner pick-up stations.
- O. Eating establishments: Standard alcoholic beverage sales permitted but must be ancillary to dining area and sales.
- P. Fitness instruction, including aerobics, dance, gymnastics, yoga, martial arts.
- Q. Florists.
- R. Fruit and vegetable markets.
- S. Furniture stores.
- T. General stores.
- U. Gift/novelty stores.
- V. Grocery stores.
- W. Hardware stores.
- X. Hobby/toys stores.
- Y. Home decorating/interior design.
- Z. Ice cream parlors.
- AA. Jewelry.
- BB. Musical recordings.
- CC. Newsstands.
- DD. Optical.
- EE. Pet products and pet supplies.
- FF. Shoes and shoe repair.
- GG. Specialty food stores.
- HH. Sporting equipment.
- II. Stationery.
- JJ. Video sales and rental, not including adult video store.
- KK. Wine shop.
- LL. Micro-breweries/micro-wineries.
- MM. Brewpubs.

(2) Office uses.

- A. Architectural.
 - B. Accounting.
 - C. Advertising.
 - D. Commercial banks with no drive through facilities.
 - E. Dentists.
 - F. Doctors.
 - G. Employment agencies.
 - H. Engineering.
 - I. Financial planning.
 - J. Human and public relations.
 - K. Professional offices.
 - L. Insurance agents.
 - M. Legal.
 - N. Management, personnel services and public relations.
 - O. Real estate.
 - P. Security brokers.
 - Q. Tax services.
- (3) Residential uses. Residential unit(s) above the first floor.
- (4) Public uses.
- A. Governmental offices.
 - B. Libraries.
 - C. Parking lots.
 - D. Parks.

- (b) The following special uses are subject to review in accordance with Chapter 1294.
- (1) Drive-through facilities for ATMs at commercial banks.
 - (2) General stores producing merchandise to be sold at retail, provided that no more than five persons are employed on the premises in such production.
 - (3) Museums.
 - (4) Open-air markets.
 - (5) Outdoor seating areas for eating establishments, cafes, delis and coffee houses.
 - (6) Theaters, excluding adult drive-in theater, adult entertainment, adult entertainment business, or adult mini-motion picture theater.
 - (7) Household pet grooming as a principal use or an accessory use exclusive of animal boarding activities.

Section 9.

Section 1262.02 – PERMITTED AND PROHIBITED USES - of the Planning and Zoning Code, which reads as follows:

1262.02 PERMITTED AND PROHIBITED USES.

(a) The following uses are generally permitted in the CSD-1 District:

- (1) Art galleries.
- (2) Arts centers.
- (3) Single-family dwellings, two-family dwellings.
- (4) Eating establishments, fast food (carryout and delivery only).
- (5) Printing, publishing, lithography, and binding establishments.
- (6) Business services, mailing, reproduction establishments.
- (7) Banks and credit unions (without drive-thrus).
- (8) Funeral homes.
- (9) Technical repair establishments.
- (10) Upholstering, paint, paper hanging, decorating and sign painting shops and other similar enterprises.
- (11) Household pet grooming establishments (no raising, breeding or boarding).
- (12) Veterinarian hospitals or clinics provided that:
 - A. Services will be strictly on an "outpatient basis" with no raising, breeding or boarding of animals, except for the confinement of small household pets under treatment facilities within the office.
- (13) Medical offices and clinics.
- (14) Business, professional and administrative offices.
- (15) Contractor's offices.
- (16) Microbreweries/wineries.
- (17) Home occupations.
- (18) Residential conversions meeting the standards of Section 1262.09.
- (19) Accessory buildings in cooperation with the principal use.

(b) The following special uses are subject to review in accordance with Chapters 1294 and 1296:

- (1) Multifamily dwellings.
- (2) Banks and credit unions (with drive-thru facilities).
- (3) Eating establishments, fast food (drive-in and drive-thru).
- (4) Eating establishments, standard. Alcohol sales are permitted but must be ancillary to food sales and dining.
- (5) Car washes.
- (6) Wholesale and warehouse establishments exclusive of truck terminals and exclusive of open storage of any kind.
- (7) Parking lots constructed in accordance with Chapter 1292.
- (8) Theaters (non-drive-in).

- (9) Automotive service stations and repair garages; automotive display and sales.
 - (10) Residential conversions not meeting the standards of Sections 1262.09(a) and/or 1262.09(b).
 - (11) Brewpubs.
 - (12) Shops producing merchandise to be sold on the premises.
 - (13) Contractor's shops.
 - (14) Laundry and dry-cleaning shops.
 - (15) Bed and breakfasts.
 - (16) Boutique retail provided that:
 - A. The use is located on the ground floor of a structure.
 - B. The gross floor area of the boutique retail use is no more than 2,000 square feet.
 - C. The use is located in a structure or tenant space originally built for non-residential purposes and does not involve the conversion of a residential structure or use into a non-residential structure or use.
- (c) The following uses are prohibited in the CSD-1 District:
- (1) Outdoor storage of any kind as a principal or accessory (major or minor) use.
 - (2) Outdoor production or fabrication of any kind.

Shall be amended to read as follows:

1262.02 PERMITTED AND PROHIBITED USES.

- (a) The following uses are generally permitted in the CSD-1 District:
- (1) Art galleries.
 - (2) Arts centers.
 - (3) Single-family dwellings, two-family dwellings.
 - (4) Eating establishments, fast food (carryout and delivery only).
 - (5) Printing, publishing, lithography, and binding establishments.
 - (6) Business services, mailing, reproduction establishments.
 - (7) Banks and credit unions (without drive-thrus).
 - (8) Funeral homes.
 - (9) Technical repair establishments.
 - (10) Upholstering, paint, paper hanging, decorating and sign painting shops and other similar enterprises.
 - (11) Household pet grooming establishments (no raising, breeding or boarding).
 - (12) Medical offices and clinics.
 - (13) Business, professional, and administrative offices.
 - (14) Contractor's offices.
 - (15) Microbreweries/wineries.
 - (16) Home occupations subject to the standards of Chapter 1296.
 - (17) Residential conversions meeting the standards of Section 1262.09.

- (18) Boutique retail provided that:
 - A. The use is located on the ground floor of a structure.
 - B. The gross floor area of the boutique retail use is no more than 3,000 square feet.
 - C. The use is in a structure or tenant space originally built for non-residential purposes.
 - (19) Accessory buildings in cooperation with the principal use.
- (b) The following special uses are subject to review in accordance with Chapters 1294 and 1296:
- (1) Multifamily dwellings.
 - (2) Banks and credit unions (with drive-thru facilities).
 - (3) Eating establishments, fast food (drive-in and drive-thru).
 - (4) Eating establishments, standard. Alcohol sales are permitted but must be ancillary to food sales and dining.
 - (5) Car washes.
 - (6) Wholesale and warehouse establishments exclusive of truck terminals and exclusive of open storage of any kind.
 - (7) Parking lots constructed in accordance with Chapter 1292.
 - (8) Theaters (non-drive-in).
 - (9) Automotive service stations and repair garages; automotive display and sales.
 - (10) Residential conversions not meeting the standards of Sections 1262.09(a) and/or 1262.09(b).
 - (11) Brewpubs.
 - (12) Shops producing merchandise to be sold on the premises.
 - (13) Contractor's shops.
 - (14) Laundry and dry-cleaning shops.
 - (15) Bed and breakfasts.
 - (16) Veterinarian hospitals provided that:
 - A. Services will be strictly on an "outpatient basis" with no raising, breeding or boarding of animals, except for the confinement of small household pets under treatment facilities within the office.
- (c) The following uses are prohibited in the CSD-1 District (note: the absence of a use on this list does not imply that the use is permitted in the CSD-1 District):
- (1) Outdoor storage of any kind as a principal or accessory (major or minor) use.
 - (2) Outdoor production or fabrication of any kind.

Section 10.

Section 1262.09 – RESIDENTIAL COVERSION STANDARDS – of the Planning and Zoning Code, which reads as follows:

1262.09 RESIDENTIAL CONVERSION STANDARDS.

- (a) Residential to Non-Residential: Residential conversions in the Central Service District (CSD-1) where a residential structure is converted into a non-residential structure or use shall be limited to structures located along an arterial street as labeled in the Official Miamisburg Thoroughfare Plan and shall be limited to the conversion of residential structures into small professional offices or medical clinics with three or fewer principal professionals or bed and breakfast facilities. In these cases, a mixing of uses (residential and office in live/work settings) is permitted. No residential conversion shall create an environment that diminishes the character of a predominately residential area of the CSD.
- (b) In all cases where an existing residential structure or use is converted into a non- residential use or structure, the residential character of the structure shall be retained.
- (c) No residential structure or use shall be converted into a use that is not permitted in the Central Service District as either a generally-permitted use or a special use.

Shall be amended to read as follows:

1262.09 RESIDENTIAL CONVERSION STANDARDS.

- (a) Residential to Non-Residential. Residential conversions in the Central Service District (CSD-1) where a residential use in a residential structure is converted into a non-residential use shall be limited to structures located along an arterial street as labeled in the Official Miamisburg Thoroughfare Plan and shall be limited to the conversion of residential uses in residential structures into small professional offices or medical clinics with three or fewer principal professionals or bed and breakfast facilities. In these cases, a mixing of uses (live/work settings) is permitted.
- (b) In all cases where an existing residential use in a residential structure is converted into a non-residential use, the residential character of the structure shall be retained.
- (c) No residential structure or use shall be converted into a use that is not permitted in the Central Service District (CSD-1) as either a generally-permitted use or a special use.

Section 11.

Section 1271.01 – PURPOSE – of these codified ordinances, which reads as follows:

1271.01 PURPOSE.

The Mound Business Park District is designed to promote the health, safety and general welfare and orderly growth of Mound Business Park in order to

create an employment-dense, clean, and functional business park; to codify that institutional controls have been imposed upon parcels within Mound Business Park (see Section 1271.10); to establish basic standards for structures, landscaping and other improvements on the properties within the Business Park which promote high quality, innovative and unified site design.

(Ord. 6758. Passed 1-15-19.)

Shall be amended to read as follows:

1271.01 PURPOSE.

The Mound Business Park District is designed to promote the health, safety and general welfare and orderly growth of Mound Business Park in order to create an employment-dense, clean, and functional business park; to codify that institutional controls have been imposed upon parcels within Mound Business Park (see Section 1271.11); to establish basic standards for structures, landscaping and other improvements on the properties within the Business Park which promote high quality, innovative and unified site design.

Section 12.

Section 1271.03 – PERMITTED USES – and SECTION 1271.04 - PROHIBITED USES - of these codified ordinances, which read as follows:

1271.03 PERMITTED USES.

The following uses shall be generally-permitted in the MB-1, unless specifically called out as special uses:

(a) Industrial.

- (1) Industrial or scientific research, design, and testing centers, together with related research and engineering laboratories and office buildings to accommodate executive, administrative, professional, accounting, engineering, architectural, and support personnel.
- (2) Manufacturing that uses advanced or leading technology in the manufacturing process excluding the uses prohibited under Section 1271.04.
- (3) Food research, pharmaceutical research, and similar operations including pilot or experimental product development excluding those prohibited under Section 1271.04.
- (4) Telecommunications companies engaged in electronic transfer, routing, and processing of information.
- (5) The manufacture or assembly of general, precision, medical, dental, and optical instruments and goods; plastic, metal, and rubber products; and tools, hardware, and cutlery.

- (6) The manufacturing, compounding, assembling, or treatment of articles or goods from previously prepared materials: cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass hair, horn, leather, paper, precious or semi-precious metals or stones, shell, textiles, tobacco, yarns, wax, wire, and wood (excluding saw and planing mills, mulching operations and similar enterprises).
 - (7) The manufacturing, compounding, processing, packaging, treatment, or fabrication of such products as: bakery goods, candy, and food products; ceramics and pottery; cosmetics and dyes; and clothing, jewelry, and apparel accessories.
 - (8) The manufacture or assembly of electrical appliances, electrical and electronic equipment, electronic instruments or precision devices, including the manufacture of parts for such devices.
 - (9) Printing, lithography, blueprinting, and similar uses.
 - (10) Data processing and computer centers, including electronic data processing and computer equipment service establishments.
 - (11) Warehouses and wholesale establishments, exclusive of truck terminals, distribution centers and open storage of any kind.
- (b) Office.
- (1) Data processing and computer centers, including electronic data processing and computer equipment service establishments.
 - (2) General office buildings and uses, provided that goods are not manufactured, exchanged, or sold on the premises.
 - (3) Electronic data processing and computer centers.
 - (4) Business, professional and administrative offices.
 - (5) Call centers and dispatch centers.
 - (6) Trade schools, colleges and universities for individuals aged 18 or older (Special Use).
- (c) Civic.
- (1) Museums (Special Use).
(Ord. 6758. Passed 1-15-19.)

1271.04 PROHIBITED USES.

The following uses are prohibited in the MB-1:

- (a) Building material sales, including establishments which sell hardware, glass, paint, and lumber, and which may require outdoor retail or wholesale display or sales areas.
- (b) Yards of general contractors and construction yards.
- (c) Outdoor storage as a principal or major accessory use.

- (d) Classification yards.
 - (e) Team tracks and depots.
 - (f) Sawing and planing mills.
 - (g) Meat packing.
 - (h) Asphalt or asphalt product manufacturing and/or handling.
 - (i) Bulk storage stations for liquids, acids and/or petroleum products.
 - (j) Metal buffing, plating and polishing shops; millwork and planing mills; painting shops; and welding shops.
 - (k) Mini-storage or self-storage facilities or any kind or size, whether for rental or sale.
 - (l) Truck, tractor, equipment and trailer sales, rental and/or repair.
 - (m) Truck terminals, truck plazas, truck stops.
 - (n) Food research, handling, preparation and packaging of fish, sauerkraut, vinegar, yeast, and rendering or refining of fats and oils.
 - (o) Drive-in theaters.
 - (p) Daycare centers (child or adult), as accessory or principal uses.
 - (q) Junk, scrap, wrecking yards, or salvage yards of any kind.
 - (r) Automobile service garages and/or automobile repair garages.
 - (s) Petroleum refining, petroleum storage.
 - (t) Sewage disposal plants and landfills.
 - (u) Coal, coke, and fuel yards.
 - (v) Cement, lime, gypsum, or plaster manufacturing.
 - (w) Distillation of bone, coal, tar, petroleum, refuse, grain or wood.
 - (x) Fertilizer manufacturing.
 - (y) Compost or storage of garbage, offal, dead animals, refuse, or rancid fats.
 - (z) Incineration, glue manufacturing, size or gelatin manufacturing where the processes include the refining or recovery of products from animal refuse or offal.
 - (aa) Livestock feeding yards, slaughtering of animals, or stock yards.
 - (bb) Petroleum or asphalt refining or manufacturing.
 - (cc) Smelting or refining of metals from ores.
 - (dd) Steam board hammers and forging presses.
 - (ee) Storage, curing and tanning of raw, green, or salted hides or skins.
 - (ff) Manufacturing involving the use of sulphurous, sulphuric, nitric, picric, carbolic, hydrochloric or other corrosive acids.
 - (gg) Residential uses of any kind.
 - (hh) Agricultural uses of any kind.
 - (ii) Community centers, playgrounds and any other recreational facilities for children less than 18 years of age.
 - (jj) Outdoor production and manufacturing.
 - (kk) Medical clinics and offices.
 - (ll) Hospitals.
- (Ord. 6758. Passed 1-15-19.)

Shall be amended to read as follows:

1271.03 PERMITTED USES.

The following uses shall be generally-permitted in the MB-1, unless specifically called out as special uses:

(a) Industrial.

- (1) Industrial or scientific research, design, and testing centers, together with related research and engineering laboratories and office buildings to accommodate executive, administrative, professional, accounting, engineering, architectural, and support personnel.
- (2) Manufacturing that uses advanced or leading technology in the manufacturing process excluding the uses prohibited under Section 1271.04.
- (3) Food research, pharmaceutical research, and similar operations including pilot or experimental product development excluding those prohibited under Section 1271.04.
- (4) Telecommunications companies engaged in electronic transfer, routing, and processing of information.
- (5) The manufacture or assembly of general, precision, medical, dental, and optical instruments and goods; fabrication of plastic, metal, and rubber products; and tools, hardware, and cutlery.
- (6) The manufacturing, compounding, fabrication, assembling, or treatment of articles or goods from previously prepared materials, such as: cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass hair, horn, leather, paper, precious or semi-precious metals or stones, shell, textiles, tobacco, yarns, wax, wire, and wood (excluding saw and planing mills, mulching operations, and similar enterprises).
- (7) The manufacturing, compounding, fabrication, processing, packaging, treatment, or fabrication of such products as: bakery goods, business machinery, clocks, toys, cosmetics, electrical and electronic products, components and equipment, food products, tools, die gauges, machine shop products, pharmaceuticals, candy, and food products; ceramics and pottery; cosmetics and dies; and clothing, jewelry, and apparel accessories.
- (8) The manufacture or assembly of electrical appliances, electrical and electronic equipment, electronic instruments or precision devices, including the manufacture of parts for such devices.
- (9) Printing, lithography, blueprinting, and similar uses.

- (10) Warehouses and wholesale establishments, exclusive of truck terminals and distribution centers, and exclusive open storage of any kind.
 - (11) Light sheet metal products fabrication, including heating and ventilating equipment.
- (b) Office.
- (1) Data processing and computer centers, including electronic data processing and computer equipment service establishments such as IT support services.
 - (2) General office buildings and uses, provided that goods are not exchanged or sold on the premises.
 - (3) Electronic data processing and computer centers.
 - (4) Business, professional, and administrative offices.
 - (5) Call centers and dispatch centers.
 - (6) Trade schools, colleges and universities for individuals aged 18 or older (Special Use).
- (c) Civic.
- (1) Museums (Special Use).

1271.04 PROHIBITED USES.

The following uses are prohibited in the MB-1 District. The absence of a use from this Section shall not imply that said use is permitted in the MB-1 District. This list is intended to serve as a guide, not an exhaustive list of prohibited uses:

- (a) Retail building material sales, including establishments which sell hardware, glass, paint, and lumber, and which may require outdoor retail or wholesale display or sales areas.
- (b) Yards of general contractors and construction yards.
- (c) Outdoor storage as a principal or major accessory use.
- (d) Classification yards.
- (e) Team tracks and depots.
- (f) Sawing and planing mills.
- (g) Meat packing.
- (h) Asphalt or asphalt product manufacturing and/or handling.
- (i) Bulk storage stations for liquids, acids and/or petroleum products.
- (j) Metal buffing, plating and polishing shops; millwork and planing mills; painting shops; and welding shops.
- (k) Mini-storage or self-storage facilities of any kind or size, whether for rent or sale.
- (l) Truck, tractor, equipment and trailer sales, rental and/or repair.
- (m) Truck terminals, truck plazas, truck stops.
- (n) Food research, handling, preparation and packaging of fish, sauerkraut, vinegar, yeast, and rendering or refining of fats and oils.
- (o) Drive-in theaters.

- (p) Daycare centers (child or adult), as accessory or principal uses.
- (q) Junk, scrap, wrecking yards, or salvage yards of any kind.
- (r) Automobile service garages and/or automobile repair garages.
- (s) Petroleum refining, petroleum storage.
- (t) Sewage disposal plants and landfills.
- (u) Coal, coke, and fuel yards.
- (v) Cement, lime, gypsum, or plaster manufacturing.
- (w) Distillation of bone, coal, tar, petroleum, refuse, grain or wood.
- (x) Fertilizer manufacturing.
- (y) Compost or storage of garbage, offal, dead animals, refuse, or rancid fats.
- (z) Incineration, glue manufacturing, size or gelatin manufacturing where the processes include the refining or recovery of products from animal refuse or offal.
- (aa) Livestock feeding yards, slaughtering of animals, or stock yards.
- (bb) Petroleum or asphalt refining or manufacturing.
- (cc) Smelting or refining of metals from ores.
- (dd) Steam board hammers and forging presses.
- (ee) Storage, curing and tanning of raw, green, or salted hides or skins.
- (ff) Manufacturing involving the use of sulphurous, sulphuric, nitric, picric, carbolic, hydrochloric or other corrosive acids.
- (gg) Residential uses of any kind.
- (hh) Agricultural uses of any kind.
- (ii) Community centers, playgrounds and any other recreational facilities for children less than 18 years or age.
- (jj) Outdoor production and manufacturing.
- (kk) Medical clinics and offices.
- (ll) Hospitals.

Section 13.

Sections 1271.06, 1271.06, 1271.07, 1271.08, 1271.09, 1271.10, and 1271.11 of these codified ordinances, which read as follows:

1271.06 YARD REQUIREMENTS.

- (a) Yard requirements in the MB-1 District are as follows:
 - (1) Minimum front yard depth At the discretion of the Planning Commission when looking at the surrounding characteristics and the proposed site design.
 - (2) Minimum rear yard depth See subsection (c) hereof.
 - (3) Minimum side yard width See subsection (c) hereof.
- (b) Special uses shall comply with all pertinent development standards contained in Chapter 1296.
- (c) Two times the height of the principal building. If adjacent lots are commercially or industrially-developed, side and rear yard requirements shall be at the discretion of the Planning Commission.

Where a side or rear yard abuts upon a residential district or use, said side or rear yard shall in no case be less than 100 feet. Also refer to Section 1271.09(b)(4) of this chapter for screening and buffering requirements within side and rear yard areas.
(Ord. 6758. Passed 1-15-19.)

1271.06 STRUCTURAL REQUIREMENTS.

- (a) Structural Requirements. Structural requirements in the MB-1 District are as follows:

Maximum building height: As approved by the Planning Commission. Single-story buildings shall be limited to forty-five feet in height while the Planning Commission may approve increases in the maximum height requirements for buildings exceeding forty-five feet in height that contain multiple occupiable stories at an average height increase of fifteen feet in height per story above the first three stories.

- (b) Architectural Standards. The following architectural standards shall apply to development in the MB-1 District:

- (1) Façade materials. Building facades shall be constructed with durable, long lasting materials. Unacceptable façade building materials as principal façade elements include: exterior insulation finish systems (EFIS), such as Dry-vit, Sto-Wall and other brands, imitation wood, plain concrete block and unadorned tilt up panel. Corrugated steel siding is also prohibited on new construction - such siding is permissible when expanding an existing steel-sided structure provided such additions are appropriately designed and not easily visible from any public right-of-way. The Planning Commission may approve steel siding on rear building elevations provided that such materials are designed appropriately and not easily visible from any public right-of-way. "Designed appropriately" is defined as steel siding that, if corrugated, has a shallow corrugation ($\leq 1/8$ of an inch), is colored appropriately to match the remainder of the structure and is screened from view from public rights-of-way with evergreen and deciduous vegetation to the extent deemed necessary by the Planning Commission based upon the proposed site design and existing characteristics of the surrounding area.
- (2) Glass. The use of glass is encouraged on front facades and should comprise a minimum of twenty-five percent of the first floor of buildings elevations facing a public right-of-way.
- (3) Main building entrances. Public entrances shall be inviting and pronounced with lighting; high quality building materials;

and architectural elements that draw the eye to the opening such as decorative transoms, columns, recesses, canopies or protrusions.

- (4) Break long, flat walls. Where building with long continuous walls are oriented to the street, the use of contrasting architectural features is encouraged to provide visual relief and break the building mass at regular intervals.
- (5) Accents. The use of building accents such as recesses, offsets, arches, canopies, raised parapets over doors, etc. that accent public and primary entrances to buildings are encouraged.
- (6) Rooftop mechanical equipment shall be screened with roof form.
(Ord. 6758. Passed 1-15-19.)

1271.07 PARKING AND LOADING REQUIREMENTS.

See Chapter 1292 for off-street parking and loading space requirements.
(Ord. 6758. Passed 1-15-19.)

1271.08 SIGNS.

For sign standards, refer to the sign design standards applicable to the RO-1, I-1 and I-2 Zoning Districts in Chapter 1293 of the Planning and Zoning Code.
(Ord. 6758. Passed 1-15-19.)

1271.09 SUPPLEMENTAL REGULATIONS.

- (a) Site Plan Review. Site plan review is required for all development activities in the MB-1 Zoning District in accordance with Chapter 1294.
- (b) Landscaping Standards. Landscaping has a significant impact on the quality of the environment. In addition to visual appeal, landscaping provides an essential buffer and screen for undesirable features such as parking lots and utility features.
 - (1) General requirements. As a general guideline, a consistent landscape program is encouraged throughout Mound Business Park, including a mix of evergreen trees, canopy trees, ornamental trees, shrubs, and flowering ground covers to provide an inviting environment for employees and guests of Mound Business Park.
 - (2) Landscaping adjacent to rights-of-way (Mound Road and Benner Road). Due to Mound Road and Benner Road having much greater visibility in the community relative to the other streets within Mound Business Park, more stringent landscaping standards for both screening and beautification purposes are required for these road frontages. A minimum screen height is also established to screen parking

lots and uses from surrounding properties. The tables below depict the landscaping standards for both the Mound Road and Benner Road frontages:

TABLE 1271.09 - 1 Landscaping and Screening Requirements along Mound Road

Mound Road			
Use	Minimum Buffer Width	Minimum Screen Height	Minimum Plant Materials
Office, Business	20 feet	30 inches	1 Group A tree every 40 feet OR 1 Group B tree every 30 feet AND 10 shrubs for every 100 lineal feet*
Industrial	20 feet	30 inches	1 Group A tree every 40 feet OR 1 Group B tree every 30 feet AND 10 shrubs for every 100 lineal feet*

*shrub plantings shall grow into a continuous hedge meeting the minimum screen height requirement.

TABLE 1271.09 - 2 Landscaping and Screening Requirements along Benner Road

Benner Road			
Use	Minimum Buffer Width	Minimum Screen Height	Minimum Plant Materials
Office, Business	35 feet	30 inches	1 Group A or B tree 20 lineal feet AND 10 shrubs for every 100 lineal feet*
Industrial	35 feet	30 inches	1 Group A or B tree every 15 lineal feet AND 10 shrubs for every 100 lineal feet*

*shrub plantings shall grow into a continuous hedge meeting the minimum screen height requirement.

- (3) Landscaping adjacent to other rights-of-way. Landscaping adjacent to other public rights-of-way shall meet the streetscape landscaping standards of Chapter 1290 of this Code.
- (4) Landscape buffers between properties. The intent of bufferyards is to reserve an appropriate area to:
 - A. Screen different uses of land;
 - B. Screen parking lots from adjacent properties; and

- C. Enhance the long-term attractiveness and vitality of Mound Business Park as an attractive employment center. Buffer yards with required landscaping and screening materials shall be provided adjacent to perimeter boundaries and between individual lots as specified in the following table:

TABLE 1271.09 - 3 Types of Bufferyards Required Between Properties

PROPOSED USE	ADJACENT TO			
	Single or Two-Family Residential	Office Use/District	General Business Use/District	Industrial Use/District
Office/Business	C	A	A	B
Industrial	D	B	B	A

TABLE 1271.09 - 4 Specific Requirements within Bufferyards Between Properties

BUFFER ZONE	Minimum Buffer Width	Minimum Screen Height	Minimum Plant Materials
A	10 feet	--*	1 deciduous (Group A) or evergreen tree (Group C) per every 40 lineal feet
B	20 feet	--*	1 tree (Group A or C) per 25 lineal feet with a minimum of 40% evergreen trees
C	30 feet	5 feet**	1 tree (Group A or C) per 20 lineal feet with a minimum of 50% evergreen trees
D	40 feet	6 feet**	1 tree (Group A or C) per 15 lineal feet with a minimum of 70% evergreen trees

* No minimum screen height is required unless the Planning Commission finds that screening is needed between similar uses that have varying degrees of density or land use intensity.

** "Screens" for Buffer Zones C and D should be solid privacy fencing, not including slatted chain-link fences, unless an acceptable alternative is approved by the Planning Commission.

- (5) Foundation plantings. Buildings constructed at Mound Business Park shall include foundation plantings around all front building elevations. The landscaping bed should directly abut the building and be a minimum of five feet in width and contain living plantings aesthetically located and maintained. Depending upon the mature size of proposed foundation plantings, the average spacing of such plantings should be one shrub or perennial for every one-to-three feet of frontage.
- (6) Treatment of existing vegetation. Existing site topography and areas with substantial plant material, such as mature tree stands within required bufferyards, setbacks and required

opens spaces should be preserved to the greatest extent possible and integrated into the overall site design to preserve the natural character of Mound Business Park.

- (d) Screening Standards. Proper placement of utility and service features enhances the effectiveness of screening. Mechanical equipment, trash receptacles, and loading areas shall be located to the rear or side of the site and should not be visible from any public right-of-way.
 - (1) Mechanical equipment such as transformers and HVAC should not be located in front yards. All mechanical equipment, including both ground mounted and roof mounted equipment, shall be screened from view from adjacent public and private rights-of-way, as well as from all property zoned or used for residential purposes, through the use of evergreen plantings, enclosures or a combination of the two.
 - (2) Trash receptacles shall be located in side or rear yards and screened on three sides with durable building materials consistent in appearance and materials with that of the principal building. The fourth side shall be screened with an opaque gate with a lockable latch assembly. Bollards shall be provided to protect adjacent vehicles from gate over swing.

- (e) Lighting Standards. The provision of sufficient lighting is an important design feature that affects the overall appearance of a site during the day and provides significant impact on the safety of property at night.
 - (1) All non-decorative lighting shall be fully cut-off lights that do not emit light rays at angles above the horizontal plane as certified by a photometric test report.
 - (2) Decorative, pedestrian scale lights are encouraged in areas of pedestrian activity. All decorative lights over ten feet in height shall be shielded to avoid light spillage onto adjacent properties and road rights-of-way.
 - (3) Unpainted or uncoated, bare metal light poles are prohibited.
 - (4) Light poles shall be consistent with the overall architectural theme of the site.
 - (5) Light poles adjacent to residential uses shall have a height cap of sixteen feet and be fully cut-off and shielded from view from the adjoining residential property to completely block the light source from adjacent residentially-used properties.

- (f) Fencing Standards. In addition to the fencing standards of Chapter 1289, the following standards shall be applicable to properties located within the MB-1 Zoning District:
 - (1) Slatted chain-link fences are not permitted in the MB-1 District.

(Ord. 6758. Passed 1-15-19.)

1271.10 INSTITUTIONAL CONTROLS.

- (a) The site of Mound Business Park operated from 1948 to 2003 as an integrated research, development, and production facility that supported the nation's weapons and energy programs, with emphasis on explosives and nuclear technology. The U.S. Department of Energy (DOE) conducted a twenty-year, \$1 billion clean-up of the site that was overseen by the U.S. and Ohio Environmental Protection Agencies. Following this cleanup, the DOE implemented legally-enforceable activity and use restrictions known as institutional controls (ICs) to ensure that the environmental remedies remain protective of human health and the environment. These ICs run with the land in the form of deed restrictions and/or environmental covenants recorded with Montgomery County. These institutional controls are on file with the City of Miamisburg, the U.S. Department of Energy and may also be found within the Declaration of Covenants and Restrictions recorded with Montgomery County.
- (b) The DOE is responsible for monitoring and enforcing the ICs that limit site activities to industrial or commercial use (e.g., no residential or agricultural uses are permitted); prohibit the removal of soil from the original DOE site footprint without written approval from the regulators; prohibit the use of groundwater for any purpose without written approval from the regulators; and allow site access for federal and state agencies for sampling and monitoring. In addition, for the former DOE Technical (T) Building, ICs prohibit the removal of concrete floor materials to offsite locations and/or the penetration of floor materials in specified rooms of the building without written approval from the regulators.
(Ord. 6758. Passed 1-15-19.)

Shall be amended to read as follows:

1271.06 YARD REQUIREMENTS.

- (a) Yard requirements in the MB-1 District are as follows:
 - (1) Minimum front yard depth: At the discretion of the Planning Commission when looking at the surrounding characteristics and the proposed site design. All frontage and foundation landscaping requirements must be met and no sight distance issues may be created by building placement.
 - (2) Minimum rear yard depth: See subsection (c) hereof.
 - (3) Minimum side yard width: See subsection (c) hereof.
- (b) Special uses shall comply with all pertinent development standards contained in Chapter 1296.
- (c) Equal to the height of the principal building. If adjacent lots are commercially or industrially-developed, side and rear yard

requirements shall be at the discretion of the Planning Commission. Where a side or rear yard abuts upon a residential district or use, said side or rear yard shall in no case be less than 100 feet. Also refer to Section 1271.10(b)(4) of this chapter for screening and buffering requirements within side and rear yard areas.

1271.07 STRUCTURAL REQUIREMENTS.

Structural Requirements. Structural requirements in the MB-1 District are as follows:

- (a) Maximum building height. As approved by the Planning Commission. Single-story buildings shall be limited to forty-five (45) feet in height while the Planning Commission may approve increases in the maximum height requirements for buildings exceeding forty-five (45) feet in height that contain more than three occupiable stories at an average height increase of fifteen (15) feet in height per story above the first three stories.

- (b) Architectural Standards. The following architectural standards shall apply to development in the MB-1 District:
 - (1) Façade materials. Building facades shall be constructed with durable, long lasting materials. Unacceptable façade building materials as principal façade elements include: exterior insulation finish systems (EFIS), such as Dry-vit, Sto-Wall and other brands, imitation wood, plain concrete block and unadorned tilt up panel. Corrugated steel siding is also prohibited on new construction - such siding is permissible when expanding an existing steel-sided structure provided such additions are appropriately designed and not easily visible from any public right-of-way. The Planning Commission may approve steel siding on rear building elevations provided that such materials are designed appropriately and not easily visible from any public right-of-way. "Designed appropriately" is defined as steel siding that, if corrugated, has a shallow corrugation ($\leq 1/8$ of an inch), is colored appropriately to match the remainder of the structure and is screened from view from public rights-of-way with evergreen and deciduous vegetation to the extent deemed necessary by the Planning Commission based upon the proposed site design and existing characteristics of the surrounding area.
 - (2) Glass. The use of glass is encouraged on front facades and should comprise a minimum of twenty-five percent of the first floor of buildings elevations facing a public right-of-way.
 - (3) Main building entrances. Public entrances shall be inviting and pronounced with lighting; high quality building materials; and architectural elements that draw the eye to the opening

such as decorative transoms, columns, recesses, canopies or protrusions.

- (4) Break long, flat walls. Where building with long continuous walls are oriented to the street, the use of contrasting architectural features is encouraged to provide visual relief and break the building mass at regular intervals.
- (5) Accents. The use of building accents such as recesses, offsets, arches, canopies, raised parapets over doors, etc. that accent public and primary entrances to buildings are encouraged.
- (6) Rooftop mechanical equipment shall be screened with roof form.

1271.08 PARKING AND LOADING REQUIREMENTS.

See Chapter 1292 for off-street parking and loading space requirements.

1271.09 SIGNS.

For sign standards, refer to the sign design standards applicable to the RO-1, I-1, and I-2 Zoning Districts in Chapter 1293 of the Planning and Zoning Code.

1271.10 SUPPLEMENTAL REGULATIONS.

- (a) Site Plan Review. Site plan review is required for all development activities in the MB-1 Zoning District in accordance with Chapter 1294.
- (b) Landscaping Standards. Landscaping has a significant impact on the quality of the environment. In addition to visual appeal, landscaping provides an essential buffer and screen for undesirable features such as parking lots and utility features. In addition to other landscaping and screening standards elsewhere in the Miamisburg Planning and Zoning Code, the following landscaping requirements are applicable to all properties within the MB-1 District:
 - (1) General requirements. As a general guideline, a consistent landscape program is encouraged throughout Mound Business Park, including a mix of evergreen trees, canopy trees, ornamental trees, shrubs, and flowering ground covers to provide an inviting environment for employees and guests of Mound Business Park.
 - (2) Landscaping adjacent to rights-of-way (Mound Road and Benner Road). Due to Mound Road and Benner Road having much greater visibility in the community relative to the other streets within Mound Business Park, more stringent landscaping standards for both screening and beautification purposes are required for these road frontages. A minimum screen height is also established to screen parking lots and uses from surrounding properties. The tables below depict the

landscaping standards for both the Mound Road and Benner Road frontages:

TABLE 1271.10 - 1 Landscaping and Screening Requirements along Mound Road

<i>Mound Road</i>					
<i>Use</i>	<i>Minimum Width</i>	<i>Buffer</i>	<i>Minimum Height</i>	<i>Screen</i>	<i>Minimum Plant Materials</i>
Office, Business	20 feet		30 inches		1 Group A tree every 40 feet AND 10 shrubs for every 100 lineal feet*
Industrial	20 feet		30 inches		1 Group A tree every 40 feet AND 10 shrubs for every 100 lineal feet*

*Shrub plantings shall grow into a continuous hedge meeting the minimum screen height requirement.

TABLE 1271.10 - 2 Landscaping and Screening Requirements along Benner Road

<i>Benner Road</i>					
<i>Use</i>	<i>Minimum Width</i>	<i>Buffer</i>	<i>Minimum Height</i>	<i>Screen</i>	<i>Minimum Plant Materials</i>
Office, Business	35 feet		30 inches		1 Group A or C tree 20 lineal feet AND 10 shrubs for every 100 lineal feet*
Industrial	35 feet		36 inches		1 Group A or C tree every 15 lineal feet AND 10 shrubs for every 100 lineal feet*

*Shrub plantings shall grow into a continuous hedge meeting the minimum screen height requirement.

- (3) Landscaping adjacent to other rights-of-way. Landscaping adjacent to other public rights-of-way shall meet the streetscape landscaping standards of Chapter 1290 of this Code.
- (4) Landscape buffers between properties. The intent of bufferyards is to reserve an appropriate area to:
 - A. Screen different uses of land;
 - B. Screen parking lots from adjacent properties; and
 - C. Enhance the long-term attractiveness and vitality of Mound Business Park as an attractive employment center. Buffer yards with required landscaping and screening materials shall be provided adjacent to perimeter boundaries and between individual lots as specified in the following table:

TABLE 1271.10 - 3 Types of Bufferyards Required Between Properties

PROPOSED USE	ADJACENT TO			
	Single or Two-Family Residential	Office Use/District	General Business Use/District	Industrial Use/District
Office/Business	C	A	A	B
Industrial	D	B	B	A

TABLE 1271.10 - 4 Specific Requirements within Bufferyards Between Properties

BUFFER ZONE	Minimum Buffer Width	Minimum Screen Height	Minimum Plant Materials
A	10 feet	--*	1 deciduous (Group A) or evergreen tree (Group C) per every 40 lineal feet
B	20 feet	--*	1 tree (Group A or C) per 25 lineal feet with a minimum of 40% Group C trees
C	30 feet	5 feet**	1 tree (Group A or C) per 20 lineal feet with a minimum of 50% Group C trees
D	40 feet	6 feet**	1 tree (Group A or C) per 15 lineal feet with a minimum of 70% Group C trees

*No minimum screen height is required unless the Planning Commission finds that screening is needed between similar uses that have varying degrees of density or land use intensity.

**"Screens" for Buffer Zones C and D should be solid privacy fencing, not including slatted chain-link fences, unless an acceptable alternative is approved by the Planning Commission.

- (5) Foundation plantings. Buildings constructed at Mound Business Park shall include foundation plantings around all front building elevations. The landscaping bed should directly abut the building and be a minimum of five feet in width and contain living plantings aesthetically located and maintained. Depending upon the mature size of proposed foundation plantings, the average spacing of such plantings should be one shrub or perennial for every one-to-three feet of frontage.
 - (6) Treatment of existing vegetation. Existing site topography and areas with substantial plant material, such as mature tree stands within required bufferyards, setbacks and required opens spaces should be preserved to the greatest extent possible and integrated into the overall site design to preserve the natural character of Mound Business Park.
- (d) Screening Standards. Proper placement of utility and service features enhances the effectiveness of screening. Mechanical equipment, trash receptacles, and loading areas shall be located to the rear or side of the site and should not be visible from any public right-of-way.

- (1) Mechanical equipment such as transformers and HVAC should not be located in front yards. All mechanical equipment, including both ground mounted and roof mounted equipment, shall be screened from view from adjacent public and private rights-of-way, as well as from all property zoned or used for residential purposes, through the use of evergreen plantings, enclosures or a combination of the two.
 - (2) Trash receptacles shall be located within side or rear yards and be screened on three sides with durable building materials consistent in appearance and materials with that of the principal building. The fourth side shall be screened with an opaque gate with a lockable latch assembly. Bollards shall be provided to protect adjacent vehicles from gate over swing.
- (e) Lighting Standards. The provision of sufficient lighting is an important design feature that affects the overall appearance of a site during the day and provides significant impact on the safety of property at night.
- (1) All non-decorative lighting shall be fully cut-off lights that do not emit light rays at angles above the horizontal plane.
 - (2) Decorative, pedestrian scale lights are encouraged in areas of pedestrian activity. All decorative lights over ten feet in height shall be shielded to avoid light spillage onto adjacent properties and road rights-of-way.
 - (3) Unpainted or uncoated, bare metal light poles are prohibited.
 - (4) Light poles shall be consistent with the overall architectural theme of the site.
 - (5) Light poles adjacent to residential uses shall have a height cap of sixteen (16) feet and be fully cut-off and shielded from view from the adjoining residential property.
- (f) Fencing Standards. In addition to the fencing standards of Chapter 1289, the following standards shall be applicable to properties located within the MB-1 Zoning District:
- (1) Slatted chain-link fences are not permitted in the MB-1 District.

1271.11 INSTITUTIONAL CONTROLS.

- (a) The site of Mound Business Park operated from 1948 to 2003 as an integrated research, development, and production facility that supported the nation's weapons and energy programs, with emphasis on explosives and nuclear technology. The U.S. Department of Energy (DOE) conducted a twenty-year, \$1 billion clean-up of the site that was overseen by the U.S. and Ohio Environmental Protection Agencies. Following this cleanup, the DOE implemented legally enforceable activity and use restrictions known as institutional controls (ICs) to ensure that the environmental

remedies remain protective of human health and the environment. These ICs run with the land in the form of deed restrictions and/or environmental covenants recorded with Montgomery County. These institutional controls are on file with the City of Miamisburg, the U.S. Department of Energy and may also be found within the Declaration of Covenants and Restrictions recorded with Montgomery County.

- (b) The DOE is responsible for monitoring and enforcing the ICs that limit site activities to industrial or commercial use (e.g., no residential or agricultural uses are permitted); prohibit the removal of soil from the original DOE site footprint without written approval from the regulators; prohibit the use of groundwater for any purpose without written approval from the regulators; and allow site access for federal and state agencies for sampling and monitoring. In addition, for the former DOE Technical (T) Building, ICs prohibit the removal of concrete floor materials to offsite locations and/or the penetration of floor materials in specified rooms of the building without written approval from the regulators.

Section 14.

Section 1275.07 – DEVELOPMENT GUIDELINES REPORTS – of these codified ordinances which reads as follows:

1275.07 DEVELOPMENT GUIDELINES REPORTS.

- (a) The ordinance adopting a Special Development District shall also adopt a Development Guidelines Report containing the specific development guidelines for the area where such a district is requested, and the Special Development District shall be marked on the Official Zoning Map of the City of Miamisburg, Ohio.
- (b) The Development Guidelines Report shall be in conformity with any land use plan or study that applies to the area in question, and shall include the following items which shall be evaluated by the Planning Commission and City Council in accordance with the purposes set forth in Section 1275.01:
 - (1) Land uses (permitted, special, and prohibited uses).
 - (2) Building architecture (materials, height, accents, canopies, etc.)
 - (3) Building placement, orientation and setbacks.
 - (4) Signage (placement, size, materials, height, design, illumination).
 - (5) Landscaping and screening (street frontages, bufferyards, site interior, irrigation).
 - (6) Circulation of pedestrians and vehicles on the site, including emergency vehicle access and proposed pedestrian connections to public pedestrian networks in the area of the development.

- (7) Traffic Impact Study (TIS) reports and planned public infrastructure improvements.
- (8) Parking lot design, including landscaping, parking space and drive aisle sizes.
- (9) Pedestrian amenities (scaled lighting, bike parking, walkways, striped pavement through parking areas, etc.).
- (10) Lighting and electrical service, including pole design and height, base design, light intensity (including the submittal of a photometric report for exterior and interior lighting).
- (11) Sewer and water service connection locations.
- (12) Storm water drainage, including a grading plan for the site.
- (13) Fences and screening facilities designs.
- (14) Any other development-related item deemed necessary by the City of Miamisburg staff, the Planning Commission, and/or City Council.

Shall be amended to read as follows:

1275.07 DEVELOPMENT GUIDELINES REPORTS.

- (a) The ordinance adopting a Special Development District shall also adopt a Development Guidelines Report containing the specific development guidelines for the area where such a district is requested, and the Special Development District shall be marked on the Official Zoning Map of the City of Miamisburg, Ohio.
- (b) The Development Guidelines Report shall include the following items which shall be evaluated by the Planning Commission and City Council in accordance with the purposes set forth in Section 1275.01:
 - (1) Land uses (permitted, special, and prohibited uses).
 - (2) Building architecture (materials, height, accents, canopies, etc.)
 - (3) Building placement, orientation, and setbacks.
 - (4) Signage (placement, size, materials, height, design, illumination).
 - (5) Landscaping and screening (street frontages, bufferyards, site interior, irrigation).
 - (6) Circulation of pedestrians and vehicles on the site, including emergency vehicle access and proposed pedestrian connections to public pedestrian networks in the area of the development.
 - (7) Traffic Impact Study (TIS) reports and planned public infrastructure improvements.
 - (8) Parking lot design, including landscaping, parking space and drive aisle sizes.
 - (9) Pedestrian amenities (scaled lighting, bike parking, walkways, striped pavement through parking areas, etc.).

- (10) Lighting and electrical service, including pole design and height, base design, light intensity (including the submittal of a photometric report for exterior and interior lighting).
- (11) Sewer and water service connection locations.
- (12) Storm water drainage, including a grading plan for the site.
- (13) Fences and screening facilities designs.
- (14) Any other development-related item deemed necessary by the City of Miamisburg staff, the Planning Commission, and/or City Council.

Section 15.

Section 1276.03 – General Standards for Planned Development – which reads as follows:

- (a) Reference should be made to Chapters [1275](#) and [1278](#) through [1286](#) for specific standards for respective Planned Development Districts.
- (b) A requested change to a Planned Development District or Special Development District shall only be approved when City authorities make specific findings of fact directly based upon respective evidence presented by the applicant supporting conclusions that:
 - (1) The proposed development is in conformity with any applicable land use plan and/or comprehensive plan of the City of Miamisburg.
 - (2) The proposed planned development will not jeopardize the public health, safety and welfare.
 - (3) The development will not impose undue burden on public services and facilities, such as fire and police protection.
 - (4) The site will be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development, and the streets and driveways on the site of the proposed development will be adequate to serve the residents or occupants of the proposed development.
 - (5) The location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a planned development not used for structures, parking and loading areas, or accessways, shall be landscaped or otherwise improved.
 - (6) The development promotes a harmonious relationship between land uses within the site and a harmonious relationship with surrounding development, utilizing adequate buffers where necessary.
 - (7) The proposed development provides a high quality and more useful design of landscaping and open space and amenities

than would normally be required under the strict application of existing zoning and subdivision requirements.

- (8) The proposed development provides a high quality of building materials, architectural details, building orientation, off-street parking designs, and other site features than would normally be required under the strict application of existing zoning and subdivision requirements.
- (9) Natural features such as watercourses, tree stands, wetlands, and rock outcrops will be preserved, to the degree possible, so that they can be incorporated into the layout to enhance the overall design of the planned development.
- (10) The layout must be designed to take advantage of the existing land contours in order to provide satisfactory road gradients and suitable building lots and to facilitate the provision of proposed services.
- (11) The development plan contains such proposed covenants, easements and other provisions relating to the proposed development standards as may reasonably be required for the public health, safety and welfare.
- (12) The planned development can be substantially completed within the period of time specified in the schedule of development submitted by the developer.

Shall be amended to read as follows:

- (a) Reference should be made to Chapters 1275 and 1278 through 1286 for specific standards for respective Planned Development Districts.
- (b) A requested change to a Planned Development District or Special Development District shall only be approved when City authorities make specific findings of fact directly based upon respective evidence presented by the applicant supporting conclusions that:
 - (1) The proposed planned development meets the intent of any applicable land use plan and/or comprehensive plan of the City of Miamisburg.
 - (2) The proposed planned development will not jeopardize the public health, safety and welfare.
 - (3) The development will not impose undue burden on public services and facilities, such as fire and police protection.
 - (4) The site will be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development, and the streets and driveways on the site of the proposed development will be adequate to serve the residents or occupants of the proposed development.
 - (5) The location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible

with the surrounding land uses, and any part of a planned development not used for structures, parking and loading areas, or accessways, shall be landscaped or otherwise improved.

- (6) The development promotes a harmonious relationship between land uses within the site and a harmonious relationship with surrounding development, utilizing adequate buffers where necessary.
- (7) The proposed development provides a high quality and more useful design of landscaping and open space and amenities than would normally be required under the strict application of existing zoning and subdivision requirements.
- (8) The proposed development provides a high quality of building materials, architectural details, building orientation, off-street parking designs, and other site features than would normally be required under the strict application of existing zoning and subdivision requirements.
- (9) Natural features such as watercourses, tree stands, wetlands, and rock outcrops will be preserved, to the degree possible, so that they can be incorporated into the layout to enhance the overall design of the planned development.
- (10) The layout must be designed to take advantage of the existing land contours in order to provide satisfactory road gradients and suitable building lots and to facilitate the provision of proposed services.
- (11) The development plan contains such proposed covenants, easements and other provisions relating to the proposed development standards as may reasonably be required for the public health, safety and welfare.
- (12) The planned development can be substantially completed within the period of time specified in the schedule of development submitted by the developer.

Section 16.

Table 1-1 of Section 1292.05 – Parking Space Dimensions; Number of Spaces Required – of these codified ordinances which reads as follows:

<i>Table 1-1</i>							
<i>Parking Pattern</i>	<i>Maneuvering Lane Width</i>		<i>Parking (1)</i>	<i>Parking (2)</i>		<i>Total Width of Two Tiers of Spaces Plus Maneuvering Lane</i>	
	<i>One-Way</i>	<i>Two-Way</i>	<i>Space Width (ft.)</i>	<i>Space (ft.)</i>	<i>Length</i>	<i>One-Way (ft.)</i>	<i>Two-Way (ft.)</i>
0°	11	18	8-1/2	25		28	35
30° to 53°	12	20	9	21		54	62
54° to 74°	13	24	9	21		55	66
75° to 90°	15	26	9-1/2	20		55	66

Note: (1) Measured perpendicular to the longitudinal space centerline
 (2) Measured along the longitudinal space centerline

Shall be amended to read as follows:

Parking Pattern	Maneuvering Lane Width		Parking (1)	Parking (2)	Total Width of Two Tiers of Spaces Plus Maneuvering Lane	
	One-Way	Two-Way	Space Width (ft.)	Space Length (ft.)	One-Way (ft.)	Two-Way (ft.)
0°	12	18	9	23	30	36
30° to 53°	13	20	9	19	Varies*	Varies*
54° to 74°	18	24	9	19	Varies*	Varies*
75° to 90°	24	26	9-1/2	18	60	62

Note: (1) Measured perpendicular to the longitudinal space centerline
 (2) Measured along the longitudinal space centerline
 *Minimum maneuvering lane and parking space sizes must be met.

Section 17.

Section 1296.15 – Home Occupations – of the Miamisburg Planning and Zoning Code, which reads as follows:

1296.15 HOME OCCUPATIONS.

- (a) The home occupation shall be clearly incidental and subordinate to the home's use for residential purposes, and not more than 25% of the gross floor area of the principal structure shall be used in the conduct of the home occupation.
- (b) The use shall be conducted by the occupant with no employees.
- (c) The workers, residents and customers of the home occupation shall neither interfere with nor impair the uses of the surrounding area.
- (d) The use shall be carried on entirely within the dwelling and not in an accessory building.
- (e) The use shall not constitute primary or incidental storage facilities for a business, industrial or agricultural activity conducted elsewhere.
- (f) No activity, materials, goods or equipment indicative of the proposed use shall be visible from any public way or adjacent property.
- (g) For purposes of identification of a home occupation, there shall be no more than one nonilluminated sign not to exceed two square feet in area and attached flat against a building wall. Aside from such sign, there shall be no exterior evidence of the conduct of the home occupation.
- (h) The proposed use shall not generate noise, odor, dust, smoke, electromagnetic interference or vehicular or pedestrian traffic in an amount which would tend to depreciate the residential character of the neighborhood in which the proposed use is located.

Shall be amended to read as follows:

1296.15 HOME OCCUPATIONS.

Purpose. The following standards for home occupations are intended to provide reasonable opportunities for employment within the home, while avoiding changes to the residential character of the dwelling unit that accommodates a home occupation, or the surrounding neighborhood, where allowed by this section:

- (a) The home occupation shall be clearly incidental and subordinate to the home's use for residential purposes, and not more than 25% of the gross floor area of the principal structure shall be used in the conduct of the home occupation.
- (b) The use shall be conducted by the occupant(s) with no employees who do not live on the premise.
- (c) The workers, residents, and customers of the home occupation shall neither interfere with nor impair the uses of the surrounding area.
- (d) No traffic shall be generated by a home occupation in greater volumes than would normally be expected in a residential neighborhood.
- (e) The use shall be carried on entirely within the dwelling and not in an accessory building.
- (f) The use shall not constitute primary or incidental storage facilities for a business, industrial, or agricultural activity conducted elsewhere.
- (g) No activity, materials, goods, or equipment indicative of the proposed use shall be visible from any public way or adjacent property.
- (h) There shall be no window display, outdoor storage, or display of equipment, materials, or supplies associated with the home occupation.
- (i) The proposed use shall not generate noise, odor, dust, smoke or other particular matter, glare, electromagnetic interference or vehicular or pedestrian traffic in an amount which would tend to depreciate the residential character of the neighborhood in which the proposed use is located or which would otherwise constitute a nuisance or safety hazard to occupants of adjacent or nearby properties.
- (j) The following uses are examples of prohibited home occupations (note: this is not an exhaustive list and a use absent from this list does not imply that the use would be permitted as a home occupation. This list is meant to serve as a guide):
 - A. Automobile and other vehicle repair and service.
 - B. Vehicle washing.
 - C. Automobile sales.
 - D. Construction, landscaping, or similar contractor facilities (an office-only use is allowed in compliance with the above standards) and other outdoor storage;
 - E. Outdoor storage;

- F. Fitness/health facilities that provide group activities or services;
 - G. Medical clinics, laboratories, or doctor's offices.
 - H. Tattoo or piercing parlors;
 - I. Welding and machine shop operations;
 - J. Retail uses where there is stock-in-trade on site;
 - K. Veterinarian clinics, kennels, and similar establishments;
 - L. Any home occupation that violates the standards of this Section;
 - M. Other similar uses as determined by the Development Department.
- (k) All home occupations shall receive a zoning authorization from the Development Department and any other required documentation shall be provided to the applicable agencies prior to the initiation of the home occupation.
 - (l) No signs shall be permitted for the home occupation.

Section 18.

Section 1296.25 – Microbreweries, Microwineries and Brewpubs – which reads as follows:

1296.25 MICROBREWERIES, MICROWINERIES AND BREWPUBS.

- (a) Each brewpub, microbrewery or microwinery shall manufacture and sell alcoholic beverages in accordance with the provisions of the Ohio Division of Liquor Control and shall maintain current licenses as required by said agency.
- (b) The only alcoholic beverages permitted to be sold or sampled on-site shall be those manufactured at the brewpub, microbrewery or microwinery.
- (c) No outdoor storage shall be permitted.
- (d) All malt, vinous or distilled liquor production shall be within completely enclosed structures.
- (e) By-products or waste from the production of malt, vinous or distilled liquor shall be properly disposed of off the property.
- (f) The emission of odors or smells in such quantities as to produce a public nuisance or hazard is not permitted.
- (g) Excessive noise in violation of Section 1291.04 shall prohibited.

Shall be amended to read as follows:

1296.25 MICROBREWERIES, MICROWINERIES, AND BREWPUBS.

- (a) Each brewpub, microbrewery or microwinery shall manufacture and sell alcoholic beverages in accordance with the provisions of the

Ohio Division of Liquor Control and shall maintain current licenses as required by said agency.

- (b) The only alcoholic beverages permitted to be sold or sampled on-site at microbreweries, microwineries, and brewpubs shall be those manufactured at the microbrewery or microwinery. Brewpubs that meet the definition of "Eating Establishment, Standard", as defined in Chapter 1230 of this Code, may be permitted to sell alcoholic beverages manufactured off the premise.
- (c) No outdoor storage shall be permitted.
- (d) All malt, vinous or distilled liquor production shall be within completely enclosed structures.
- (e) By-products or waste from the production of malt, vinous or distilled liquor shall be properly disposed of off the property.
- (f) The emission of odors or smells in such quantities as to produce a public nuisance or hazard is not permitted.
- (g) Excessive noise in violation of Section 1291.04 shall prohibited.

Section 19.

This measure shall take effect and be in full force from and after the earliest period allowed by law.

Passed: February 16, 2021 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6870

AN ORDINANCE APPROVING PROJECT CONSENT LEGISLATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE SR725/SR741 SIGNAL TIMING PROJECT AND DECLARING AN EMERGENCY.

PRELIMINARY LEGISLATION

Rev. 6/26/00

**PID No. 112430
MOT SR725/SR741**

The following is an Ordinance enacted by the City of Miamisburg, Montgomery County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the stated described project.

SECTION I – Project Description

WHEREAS, the State has determined the need for the described project:

Upgrade of the MOT SR725/SR741 Signal Timing System including providing traffic signal equipment controllers at various City of Miamisburg intersections within the project.

NOW THEREFORE, be it ordained by the City of Miamisburg of Montgomery County, Ohio.
LPA

SECTION II – Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project.

SECTION III – Cooperation Statement

The LPA shall cooperate with the Director of Transportation in the above described project as follows:

The State shall assume and bear 100% of all of the costs of the improvement.

The LPA agrees to pay 100% of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.

**CERTIFICATE OF COPY
STATE OF OHIO**

City of Miamisburg of Montgomery County, Ohio

I, Kim Combs, as Clerk of the City of Miamisburg, of Montgomery County, Ohio, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 6870 adopted by the legislative Authority of the said City of Miamisburg on the 6th day of October, 2020.

That the publication of such Ordinance has been made and certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and certificate of publication thereof are of record in Ordinance No. 6870
Page n/a
Record No.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this 7 day of October 2020.

Kim Combs

(Clerk)

(CITY SEAL)

City of Miamisburg, Montgomery County, Ohio
(LPA)

(If the LPA is designated as a City then the "City Seal" is required. If no Seal, then a letter stating "No Seal is required to accompany the executed legislation.")

The foregoing is accepted as a basis for proceeding with the project herein described for the City of Miamisburg, Montgomery County, Ohio.
(LPA)

Attested: _____ Date _____
(Contractual Agent)

.....
For the State of Ohio

Attested: _____ Date _____
(Director, Ohio Department of Transportation)

SECTION IV – Utilities and Right-of-Way Statement

The LPA agrees that all right-of-way required for the described project will be made available in accordance with current State and Federal regulations.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

SECTION V – Maintenance

Upon completion of the Project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C., Section 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

SECTION VI – Authority to Sign


I, City Manager of said City of Miamisburg, is hereby empowered on behalf of the
(Contractual Agent) (LPA)

City of Miamisburg to enter into contracts with the Director of Transportation which is
(LPA)

necessary to complete the above described project.

Passed: October 6, 2020
(Date)

Attested: Kim Conboy
(Clerk)



City Manager

Attested: Kim Conboy
(Clerk)



Mayor

The Ordinance is hereby declared to be an emergency measure to expedite the highway project and to promote highway safety. Following appropriate legislative action, it shall take effect and be in force immediately upon its passage and approval, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

ORDINANCE NO. 6871

AN ORDINANCE TO ESTABLISH A NO THRU TRUCK ZONE ON A DESIGNATED ROADWAY WITHIN THE MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT (JEDD), AND DECLARING AN EMERGENCY.

WHEREAS, Miami Township and the City of Miamisburg are the parties to that certain 2017 Amended and Restated Miami Crossing Joint Economic Development District contract, effective as of January 1, 2017, that provides for the operation of the Miami Crossing Joint Economic Development District; and

WHEREAS, upon the request of Miami Township after Resolution by the JEDD Board, Miamisburg may, according to the JEDD contract, exercise all of the powers of a municipal corporation, and may perform all of the functions and duties of a municipal corporation, with the JEDD, including without limitation, the exercise of its powers to regulate vehicular traffic, including, but not limited to, the establishment of speed limits; and

WHEREAS, the designated roadway is within the Miami Crossing JEDD; and

WHEREAS, a review and analysis of the roadway was completed by the City of Miamisburg; and

WHEREAS, City Council desires to exercise its powers as requested by Miami Township in Township Resolution 063-2020.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

A no thru truck zone be established on Vienna Parkway, as set forth in Exhibit A, attached hereto.

Section 2.

This measure is declared to be an emergency measure necessary for the immediate preservation of the public peace, safety and welfare and for the further reason that these changes are needed at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage.

Passed: October 6, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6872

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE SMALL PUMP STATION IMPROVEMENTS PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg has advertised and received bids for the Small Pump Station Improvements Project in accordance with law; and

WHEREAS, the City of Miamisburg contracted with Hazen and Sawyer, P.C., the City's Wastewater Master Plan engineering consultant, to design the Small Pump Station Improvements Project; and

WHEREAS, the Wastewater Master Plan recommended replacement of the Cherry Hill Pump Station and modification upgrades of the Byers Road Small Pump Station.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Queen City Mechanicals, Inc. for the Small Pump Station Improvements Project submitted on October 21, 2020 is hereby determined to be the lowest and best bid after bidding conducted according to law. Their bid is hereby accepted with the total bid amount of \$700,529.00.

Section 2.

The City Manager is hereby authorized to execute a contract with Queen City Mechanicals, Inc. upon the terms in the contract documents and all attachments thereto.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date in order to complete construction in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: November 3, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6873

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MIAMI TOWNSHIP TO ASSESS COSTS RELATED TO THE MAINTENANCE OF SPECIFIC PUBLIC DEDICATED ROADWAY, AND DECLARING AN EMERGENCY

WHEREAS, the City accepted the Denman Annexation February 19, 2019 by ORD No. 6776; and

WHEREAS, the developer of the Aberdeen Subdivision located on the Denman Annexation territory has received zoning approval from the City; and

WHEREAS, the project includes one parcel still located within Miami Township; and

WHEREAS, one of the two entrances to the subdivision is located on this township parcel and will consist of approximately 195 lineal feet of public roadway; and

WHEREAS, for continuity and because this roadway services a subdivision located in the City, Council wishes to enter into an agreement to maintain this roadway as though it is a City roadway.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into the Agreement to Assess Costs Related to Specific Public Dedicated Roadway. The Agreement shall be in substantially the same form as the document attached hereto as "Exhibit A".

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the Aberdeen project is currently under construction and this agreement is critical to keep the project moving as planned therefore, this ordinance shall take effect and be in force from and after its passage.

Passed: November 3, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6874

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE HVAC CONTROLS PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg has advertised and received bids for the HVAC Controls Project in accordance with law; and

WHEREAS, the City of Miamisburg intends to install an open, interoperable, remotely accessible HVAC Controls Platform within the Civic Center in order to enhance the management of HVAC Systems, while providing remote access and interoperability between various other facility management systems, in part, in response to COVID-19; and

WHEREAS the City of Miamisburg has authorized the use of funds for improvements, through Resolution 2969, for expenditures incurred due to the public health pandemic within the categories of remote technology and building improvements.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Comfort Systems USA for the HVAC Controls Project submitted on 11/16/2020 is hereby determined to be the lowest and best bid after bidding conducted according to law. Their bid is hereby accepted with the total bid amount of \$119,900.00.

Section 2.

The City Manager is hereby authorized to execute a contract with Comfort Systems USA upon the terms in the contract documents and all attached thereto.

Section 3.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: December 1, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORINDANCE NO. 6875

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE KEYLESS ENTRY PROJECT, AND DECLARING AND EMERGENCY.

WHEREAS, the City of Miamisburg has advertised and received bids for the Keyless Entry Project in accordance with law; and

WHEREAS, the City of Miamisburg intends to install keyless access control platform within public buildings in order to increase the safety of public buildings and reduce the number of commonly touched surfaces, which is open and interoperable with other facility management platforms, in response to COVID-19; and

WHEREAS the City of Miamisburg has authorized the use of funds for improvements, through Resolution 2969, for expenditures incurred due to the public health pandemic within the categories of touchless equipment and building improvements.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Comfort Systems USA for the Keyless Entry Project submitted on 11/16/2020 is hereby determined to be the lowest and best bid after bidding conducted according to law. Their bid is hereby accepted with the total bid amount of \$274,680.00.

Section 2.

The City Manager is hereby authorized to execute a contract with Comfort Systems USA upon the terms in the contract documents and all attached thereto.

Section 3.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: December 1, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins, Mayor

ORDINANCE NO. 6876

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE TOUCHLESS FIXTURES PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg has advertised and received bids for the Touchless Fixtures Project in accordance with law; and

WHEREAS, the City of Miamisburg intends to update its fixtures within public buildings in order to reduce the number of commonly touched surfaces, in response to COVID-19; and

WHEREAS the City of Miamisburg has authorized the use of funds for improvements, through Resolution 2969, for expenditures incurred due to the public health pandemic within the category of touchless equipment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Frye Mechanicals for the Touchless Fixtures Project submitted on 11/16/2020 is hereby determined to be the lowest and best bid after bidding conducted according to law. Their bid is hereby accepted with the total bid amount of \$66,131.

Section 2.

The City Manager is hereby authorized to execute a contract with Frye Mechanicals upon the terms in the contract documents and all attached thereto.

Section 3.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: November 17, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6877

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE PIPESTONE RESTROOM CONSTRUCTION PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg has advertised and received bids for the Pipestone Restroom Construction Project in accordance with law; and

WHEREAS, the City of Miamisburg intends to purchase two (2) pre-fab kit-style restroom units at Pipestone Golf Course, and has solicited contractors to construct these units; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Pinnacle Construction for the Pipestone Restroom Construction Project submitted on 11/20/2020 is hereby determined to be the lowest and best bid after bidding conducted according to law. Their bid is hereby accepted with the total bid amount not to exceed \$155,701.

Section 2.

The City Manager is hereby authorized to execute a contract with Pinnacle Construction upon the terms in the contract documents and all attached thereto.

Section 3.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: December 1, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins, Mayor

ORDINANCE NO. 6878

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO ADDENDUM SEVENTEEN (17) TO THE MASTER CONTRACT WITH HAZEN AND SAWYER, P.C. FOR CONSTRUCTION ADMINISTRATION AND INSPECTION SERVICES PERTAINING TO THE SMALL PUMP STATION IMPROVEMENTS PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, on August 6, 2013 the City authorized a Master Contract for Professional Engineering Services with Hazen and Sawyer, P.C. for professional engineering services related to the wastewater system improvements associated with implementation of the Wastewater Collection and Treatment Facilities General Plan Update; and,

WHEREAS, the work must begin as soon as possible to ensure timely compliance with the Ohio EPA permit schedule and to maintain the City's wastewater system preserving the health and safety of the public; and,

WHEREAS, the professional engineering consulting firm of Hazen and Sawyer, P.C. has been selected as the City's pre-qualified professional engineering consultant for wastewater utility work due to their practical technical approach and thorough understanding of the City's wastewater system.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The Addendum Seventeen (17) proposal submitted by Hazen and Sawyer, P.C. in the amount of \$115,624 for Construction Administration and Inspection services pertaining to the Small Pump Station Improvements Project is hereby determined to be necessary to implement the Wastewater Master Plan improvements.

Section 2.

The City Manager is hereby authorized to sign Addendum Seventeen (17) with Hazen and Sawyer, P.C. for Construction Administration and Inspection services pertaining to the Small Pump Station Improvements Project in the Scope of Services attached hereto and marked as Exhibit A at a cost not to exceed \$115,624.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the professional engineering services are needed at the earliest possible date to ensure timely compliance with the Ohio EPA permit schedule, therefore, this measure shall take effect and be in force from and after its passage.

Passed: December 1, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins, Mayor

**ADDENDUM 17 TO
AMENDED AND RESTATED MASTER CONTRACT
FOR PROFESSIONAL ENGINEERING SERVICES**

This Addendum is executed this ___ day of December, 2020, in connection with the Amended and Restated Master Contract for Professional Engineering Services between the **City of Miamisburg, Ohio** (“OWNER”) and **Hazen and Sawyer, P.C.** (“ENGINEER”) dated as of October 10, 2013 (the “Agreement”) which is incorporated herein by reference and made a part hereof. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. In the event a term of this Addendum conflicts with a term of the Agreement, the terms of this Addendum shall prevail.

SCOPE OF SERVICES:

The ENGINEER will provide services for the Project as further provided on Exhibit A attached hereto and incorporated herein by reference (the “Services”).

COMPENSATION:

The OWNER will compensate ENGINEER for the Services as follows:

Total Compensation Maximum Price for Small Pump Station Improvements Construction Services	\$ 115,624.00
Subcontractor Price (Barge Design Solutions- included in total price above)	\$ 10,000.00
Estimated Reimbursables (included in total price above) Direct Expenses: Mileage, shipping, copying and miscellaneous (at cost)	\$ 1,090.00

SCHEDULE:

The ENGINEER shall perform the Services commensurate with the project final completion date. Time for performance shall be extended as necessary to correspond with the construction project schedule.

IN WITNESS WHEREOF, the parties hereto have made and executed this Change Order the day and year indicated herein:

Attest:

CITY OF MIAMISBURG, OHIO

Witness

By: _____
Name: Keith D. Johnson
Title: City Manager

Attest:

HAZEN AND SAWYER, P.C.

Witness

By: _____
Name: Gary J. Haubner, P.E.
Title: Vice President

EXHIBIT A
SCOPE OF SERVICES
Construction Services for
Small Pump Station Improvements
City of Miamisburg, Ohio

ENGINEER will provide construction administration and part-time construction observation during the construction phase of the Miamisburg Collection System improvements, specifically the Small Pump Station Improvements in this scope. In summary, these services include:

- ◆ Construction contract administration.
- ◆ Resident Project Representation observation.
- ◆ Meetings and communication with contractors, utilities, regulatory agencies and other third parties.
- ◆ Document management.
- ◆ Shop drawing reviews and material/equipment reviews.
- ◆ Request for Information (RFI) responses.
- ◆ Review proposed change orders and change authorizations for intent, cost, and schedule impact.

A detailed summary of these services is included in the following tasks.

TASK 1-- CONSTRUCTION ADMINISTRATION

1A - CONSTRUCTION COORDINATION AND MEETINGS

- *Pre-Construction Meeting.* Upon contract Award, ENGINEER will coordinate with OWNER and arrange for a pre-construction meeting with the contractor. The contractor will be advised of the procedural requirements for execution of the work, organization, line of authority and communication with OWNER, work plan and progress, quality control, shop drawings and other submittals, field operations (concrete placement, etc.), cost control, construction contract compliance, and other special administrative issues.
- *Monthly Progress Meetings.* Monthly progress meetings with the Contractor and OWNER to discuss progress, review shop drawings and RFI status, and coordinate construction activities. A four-week work plan will be requested from the Contractor and discussed prior to the conclusion of each monthly progress meeting.
- *Coordination City Staff.* For routine interfaces, the ENGINEER will coordinate with the operations and maintenance staff to establish any procedures that facilitate the contractor's access without adverse effect on other projects or system operations.

1B - DOCUMENT CONTROL AND SUBMITTALS

- *Document Management.* A computerized document control system will be utilized specifically for records management. Correspondence, submittals, deliverables, and other documents will be organized, and timely responses assured, through a database log which provides accountability by assigning and tracking reply responsibility and due date.
- *Response to RFIs.* Upon receipt of a request, the ENGINEER will coordinate and provide expedient response from the Design Team. A log will be maintained to track the status of

each RFI (estimated 10 RFIs).

- *Shop Drawing Review.* All construction related shop drawings will be reviewed for conformance with contract requirements (maximum of 40). A list of all required shop drawing submittals will be developed at the start of construction and reconciled with the contractor's compiled list, based on a comprehensive review of the contract documents. A list of all outstanding shop drawing submittals and all long-lead submittals will be generated monthly and distributed to the contractor for action, with duplicate copies to the OWNER.
- *Changes and Claims Management.* To resolve changes and claims quickly and fairly, ENGINEER will monitor the project to identify issues early, when they can be more easily resolved. Potential issues will be tracked through a computerized database. Contractor claims will be reviewed for entitlement based on contract provisions, supporting documentation and field observations and records. When entitlement is verified, an independent change estimate will be prepared and reconciled with the contractor's quotation to identify variances, which require negotiation. Appropriate documentation of the change order will be prepared, and actual expenditures will be verified if reimbursable changes are authorized. Assumes preparation of 2 change orders during the project.
- *Schedule Reviews.* Our overall objective in reviewing contractor schedules is to ensure that the schedules portray both the work and progress accurately and without bias. Our schedule review commences with the contractor's initial master time schedule, to assure that the schedule will be suitable for effective progress monitoring. After the baseline plan revision is established, ENGINEER will monitor progress against the baseline plan, identify potential delays or adverse trends requiring corrective action, identify upcoming interfaces that will require OWNER's action, and assure that schedule revisions meet contract requirements. Monthly reports will be provided to OWNER to indicate the current construction status and identify actions that would enhance or impact the project's cost or schedule. ENGINEER will also utilize the progress schedule to review and analyze any contractor delay claims or requests for time extensions and will recommend an appropriate resolution.
- *Progress Payments.* Management of the contractor payment process is one of the OWNER's most effective tools in assuring that performance meets expectations as identified in the contract requirements. At project inception, ENGINEER will review the contractor's proposed schedule of values (SOV) to assure that they fairly reflect anticipated costs. On a monthly basis, ENGINEER will work with OWNER to independently review the project's schedule status and construction work in place, to develop a progress payment recommendation based on the value of work completed. In addition, process WPCLF reimbursement requests for the OWNER to DEFA on a monthly basis.
- *Final Inspection.* ENGINEER will evaluate project status and prepare substantial completion documentation. Final inspection will be conducted and punchlist prepared. ENGINEER will prepare final completion documentation once punchlist items are complete.

1C – CONTRACT DOCUMENTS / RECORD DRAWINGS

- *Contract Documents.* Prepare and coordinate execution of all contract documents based on addenda changes to the documents during the bid phase. Make and distribute hard

copies of contract “conformed” documents for OWNER and Contractor(s) (up to 4 sets) and electronic copies. At project final completion, provide electronic copies on USB flash drive to the OWNER of project Contract Documents and Document Control submittals (meeting minutes, RFI’s, shop drawings, inspection reports, etc.).

- *Record Drawings.* A record copy of the Construction Contract Documents will be maintained by the Contractor. Documents will be annotated to reflect all changes made during the construction process and dimensioned for quick location of underground structures and utilities. ENGINEER will review the Contractor’s record drawings on a monthly basis.

TASK 2 — CONSTRUCTION OBSERVATION

2A — RESIDENT PROJECT REPRESENTATIVE

- *Resident Project Representative.* Resident Project Representative (RPR) will be provided to monitor progress and conduct on-site observations of the Contractor's work to determine if the work generally conforms to the construction contract documents, and that the design concept has been implemented and its integrity preserved by the Contractor. The RPR will work with OWNERs staff, including the designated on-site representative to observe and document construction activities. The RPR will also witness and accept required field tests prior to acceptance. ENGINEER will monitor contractor performance and progress, quality control, cost, and other particular requirements of the contract. RPR effort is estimated based on 12 hours per week for the 6-month actual construction period (contract time is 280 days, but RPR inspection not needed throughout)

2B — ADDITIONAL OBSERVATION AND SERVICES

Depending on the specific construction activities that are being performed, additional on-site observation and other services will be provided. These services will include the following:

- *On-Site Observation.* Additional personnel (discipline engineers involved in the design) will be on-site to observe / inspect specific construction activities.

TASK 3 – PERFORMANCE CERTIFICATION

ENGINEER shall assist OWNER in correcting unforeseen operational problems for a period of one year from the date of substantial completion. ENGINEER shall prepare and present a One Year Certification Report to the OWNER which shall include a summary of the previous year's operating results, a discussion of problems incurred and their solution. Performance certification will be submitted to OEPA for approval as required.

ASSUMPTIONS

Our construction engineering and field observations scope and effort are based on the following assumptions:

- The construction phase effort, including engineering and field observations is based on 9-month construction period. However, field work will be actively going on for a total of 6 months.
- The cost for any additional engineering services, which result from extraordinary contractor acceleration, any individual contract time extensions, revisions to contract

drawings or specifications, changed conditions, or Contractor initiated substitutions/proposals, will need to be provided through an amendment to ENGINEER'S contract.

- All surveying required during construction will be provided by the contractor.
- Geotechnical and materials testing services will be included in contractor's scope of work. Testing is not included in this scope of work.

EXHIBIT B

PROJECT SCHEDULE AND MEETINGS

ENGINEER has estimated the following target dates for key milestones, which is based on the assumption of a December 2020 OWDA Board approval of construction loan.

Task/Milestone	Target Date
Contractor NTP	January 2021
Substantial Completion	September 2021
Final Completion	October 2021

ORDINANCE NO. 6879

ANNUAL APPROPRIATION ORDINANCE FOR 2021

AN ORDINANCE TO ESTABLISH ANNUAL APPROPRIATIONS FOR FISCAL YEAR 2021 AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

To provide for the current expenses and other expenditures of the City of Miamisburg for the Fiscal Year of 2021, the following sums be, and they are hereby set aside and appropriated as follows:

<u>FUND</u>	<u>ANNUAL APPROPRIATION</u>
General Fund	
Council	\$158,333
Mayor	24,542
City Manager	686,822
Finance	281,066
Law Director	80,498
Court	1,355,951
Prosecutor	310,480
Civil Service	2,794
Human Resources	406,565
Buildings & Land	713,756
Miscellaneous	2,228,522
Fire	2,600,000
Police Patrol	4,596,414
Criminal Investigations	706,542
Police Administration	876,146
Police Communications	323,533
Jail & Evidence	86,308
Animal Control	10,000
Refuse	1,180,000
Development & Planning	390,391
Engineering	430,922
Building Inspection/Code Enforcement	373,187
Community Development	322,276
Mound GC Clubhouse	190,244
Pool	390,507

Parks	1,253,455
Recreation Administration	587,217
Recreation Program	252,227
Recreation Facilities Administration	428,694
Traffic Maintenance	<u>85,188</u>
Total General Fund	\$21,332,580
Sick Leave Conversion	200,000
City Income Tax	18,726,313
Fire Levy	1,200,000
Law Enforcement	46,200
Drug Law Enforcement	3,000
Indigent Drivers Alcohol Treatment	60,000
Enforcement & Education	5,000
Law Enforcement Assistance	1,000
Federal Law Enforcement	30,000
Municipal Court Probation Services	145,530
Municipal Court Computer	28,000
Municipal Court Special Projects	174,195
Miami Conservancy District	82,000
Indigent Drivers Interlock & Alcohol Monitoring	20,000
Austin Center TIF	9,604,618
Recreational Programs	276,694
Motor Vehicle License Tax	50,000
Street Maintenance	1,208,744
State Highway	156,239
Court Modernization	146,620
Capital Improvement	3,348,916

General Bond Retirement	609,908
Special Assessment Bond Retirement	41,000
2012 KMCN D/S Reserve	5,000
Income Tax Facility Improvement	5,511,547
Water	4,746,040
Water Capital Improvement	1,077,700
Water Surplus	2,150,000
Sewer	5,036,741
Sewer Capital Improvement	564,400
Sewer Surplus	2,750,000
Sewer Treatment Plant Improvement	1,400,000
Golf Course Development	1,208,448
Service Center	218,491
City Garage	537,317
Satellite Juvenile Court	35,830
Downtown Redevelopment	20,000
Board of Building Standards Assessment	2,500
Miami Crossings JEDD	1,000,000
Austin Center JEDD	<u>1,200,000</u>
GRAND TOTAL 2021	\$84,960,571

Section 2.

The Finance Director is hereby authorized to draw warrants for payment from any of the foregoing appropriations or an Ordinance or Resolution of the City Council to make the expenditures; provided that no warrants shall be drawn or paid for salaries or wages except for the persons employed by authority of and in accordance with law or Ordinance.

Section 3.

This Ordinance is declared to be an emergency measure necessary for the public peace, health, safety and welfare and for the further reason that the City of Miamisburg desires to meet its current obligations for the Fiscal Year 2021; therefore, this measure shall take effect and be in force from and after its passage.

Passed: December 1, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6880

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO THE SECOND AMENDMENT TO THE AGREEMENT WITH MIAMISBURG CITY SCHOOLS FOR THE LEASE OF CERTAIN CITY PROPERTY, AND DECLARING IT AN EMERGENCY.

WHEREAS, the original executed agreement between the City and Miamisburg City Schools commenced on October 20, 2009.

WHEREAS, the first amendment to the original agreement between the City and Miamisburg City Schools commenced on December 5, 2017 and is in its second five (5) year extension.

WHEREAS, the City and Miamisburg City Schools wish to amend the agreement to clarify language and update equipment.

WHEREAS, the City and Miamisburg City Schools mutually agree to amend the agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to execute the second amendment to the Agreement with Miamisburg City Schools upon the terms contained in the Agreement between the City and Miamisburg City Schools.

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date; therefore this measure shall take effect and be in force from and after its passage.

Passed: December 1, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle L. Collins, Mayor

SECOND AMENDMENT TO LICENSE AGREEMENT

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (“**Amendment**”) is made and entered into effective as of the date last signed below, by and between City of Miamisburg, a municipal corporation (“**City**”) and Miamisburg City Schools (“**Licensee**”).

WHEREAS, City and Licensee’s predecessor in interest entered into a License Agreement with an Effective Date of October 20, 2009, the date of execution (“**Agreement**”) with respect to the Property and Tower Space (as the property is defined in the Agreement and shown on Exhibit B, attached hereto and made a part hereof) that is near, at, on or part of the Real Property located at 779 Byers Road, Miamisburg, OH 45342.

WHEREAS, the City and Licensee desire to enter into this Second Amendment in order to modify and amend certain provisions of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee covenant and agree as follows:

1. The terms and conditions and exhibits of the Agreement and the recitals above are incorporated herein by this reference, and capitalized terms used in this Second Amendment shall have the same meanings such terms are given in the Agreement.
2. Subsection 2.3 of the Agreement is hereby deleted in its entirety and replaces in full with the following:
License Fee During Extension Term. The annual fee which are based upon the number of transmitters, type and size of equipment will not be assessed, but the City reserves the right to apply rental fees in the future.
3. Subsection 2.4 of the Agreement is hereby deleted in its entirety and replaced in full with the following:
Use of Property and Tower Space. Licensee shall not remove any existing improvements on the Property without the City’s consent. Licensee shall use the Property as a two-way radio station with the equipment as described in Exhibit A and no other purpose. The City hereby grants such rights of access over a surrounding property owned by the City, which may be necessary for the Licensee. The Licensee shall notify and receive approval from the City prior to accessing the site. Licensee agrees it will repair any damage to any surrounding property and equipment owned by the City caused by Licensee’s activities and return such property to its original condition, reasonable wear and tear excepted. The Licensee will utilize the City’s engineering consultant and contractor for all work performed on the water tower or associated equipment. If during the term of the License, the Licensee wishes to install new or different antennas or related equipment for radio communications on the tower, Licensee shall give the City sixty (60) days prior written notice, and such change shall require a review and prior approval by the City, which approval will not be unreasonably withheld; provided,

however, that the City's prior review and approval shall not be necessary for replacement of existing equipment having identical physical characteristics as the original equipment. Installation location of new equipment will be subject to review and approval by the City. Licensee and its authorized representatives shall have the right to ingress and egress, with prior notification and approval by City, to and from the Tower during the City's normal business hours, provided however that Licensee's use shall not interfere with the City's use of the property. The City may, at its option, require Licensee to keep any equipment installed on the Tower painted as much as possible to match color of the Tower. Licensee shall always be the sole and exclusive owner of all their antennas and other property which it installs on the Tower, and also all equipment and personal property installed by the Licensee on the Property.

The City hereby grants to the Licensee the right to install and maintain Licensee's transmission line between its equipment on the Property and its equipment on the Tower. The City shall have the right to designate the route to be utilized by such transmission line, provided that such designation shall be consistent and in accordance with good and acceptable engineering practice, considering both technical and safety factors.

- 4. Subsection 3.9 of the Agreement is hereby deleted in its entirety and replaces in full with the following:

Date of Agreement: When Binding. This Amendment shall be deemed dated the later of the two dates set forth opposite each party's signature. Presentation of this Amendment by Licensee to the City shall not constitute an offer unless such Amendment has been signed by Licensee, and shall not be binding until executed by both the City and Licensee. The expiration date of this Amendment shall be December 31, 2025

- 5. All other terms and conditions of the Agreement will remain the same and in full force and effect and are ratified and confirmed by the parties. To the extent there is any conflict between the terms and conditions of the Agreement and this First Amendment, the terms and conditions of this First Amendment will govern and control.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year last signed below:

LICENSOR: CITY OF MIAMISBURG, OHIO

LICENSEE: MIAMISBURG CITY SCHOOLS

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A – Equipment List

Equipment List as of the signed date of this Amendment is amended to include the following:

- 150.5-158.5 5.25DB Fiberglass Omni Antenna
- Commscope ½" Foam Helix Cable
- Type N(M) Positive Stop for ½", AL4RPV, LDF4, HL4RPV
- 125-1000MHZ BLKHD Arrestor N/F
- Belden RG142B/U Plenum

Exhibit B – Property Location

ORDINANCE NO. 6881

AN ORDINANCE TO REZONE CITY LOT, PARCEL ID K46 00718 0073 OF THE CITY OF MIAMISBURG, FROM THE CURRENT ZONING DESIGNATIONS OF RO-1 (RESEARCH OFFICE) AND I-1 (LIGHT INDUSTRIAL) TO SDD-1 (SPECIAL DEVELOPMENT DISTRICT) AND TO APPROVE THE COMPANION PRELIMINARY DEVELOPMENT PLAN FOR THE POST-ACUTE MEDICAL REHABILITATION DEVELOPMENT.

WHEREAS, an agent of the owner of city lot, parcel ID K46 00718 0073 has filed an application with the City of Miamisburg Development Department to rezone the lot from RO-1 (Research-Office) and I-1 (Light Industrial) to SDD-1 (Special Development District); and

WHEREAS, the City of Miamisburg Planning Commission has reviewed the requested rezoning in accordance with the provisions set forth in the City Charter and the Planning and Zoning Code; and

WHEREAS, the City of Miamisburg Planning Commission has found the proposed preliminary development plan to be consistent with the requirements and standards of the Planning and Zoning Code; and

WHEREAS, the City of Miamisburg Planning Commission has found that the most recent land use plan for this area of town is outdated, having been adopted in 1990; and

WHEREAS, the Sycamore Campus of the Kettering Health Network has expanded along with several other developments in the surrounding area since 1990, and these developments in the area have created a need to reevaluate the existing land use plan for this area; and

WHEREAS, updated regulation of land use and site design on the east side of Alexandersville from the hospital campus is in the best interest of the City; and

WHEREAS, such regulations will result in more orderly and higher quality development; and

WHEREAS, appropriate medical uses should be permitted to occupy land on the east side of Alexandersville Road, like such uses being permitted north of State Route 725 from the hospital campus; and

WHEREAS, City Council, after consideration of the Planning Commission's recommendation, has determined it to be in the best interest of the City of Miamisburg to adopt certain amendments to the Miamisburg Land Use Plan

to incorporate the allowance of medical uses directly east of the Sycamore Campus of the Kettering Health Network along Alexandersville Road; and

WHEREAS, The City of Miamisburg Planning Commission has found that the proposed preliminary development plan is in conformance with the City of Miamisburg Comprehensive Plan; and

WHEREAS, City Council has reviewed the Planning Commission's recommendation on this matter.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The Preliminary Development Plan for the Post-Acute Medical Rehabilitation Development, located on City Lot, Parcel ID K46 00718 0073, such parcel as shown in "Exhibit A" attached hereto is hereby approved.

Section 2.

The Preliminary Development Plan for the Post-Acute Medical Rehabilitation Development, as shown in "Exhibit B", attached hereto and made a part thereof, is hereby approved. This preliminary development plan shall be subject to the standards and conditions included in the Preliminary Development Plan Report, as listed in Section 4 below and incorporated herein.

Section 3.

Approval of the Preliminary Planned Development Plan for the Post-Acute Medical (PAM) Rehabilitation Development also constitutes the rezoning of the parcel shown on "Exhibit A." The parcel is hereby rezoned from the current zoning classifications of RO-1 (Research-Office) and I-1 (Light Industrial) to SDD-1 (Special Development District-1) and is subject to the preliminary development plan shown in "Exhibit B."

Section 4.

The Preliminary Development Plan Report for the Post-Acute Medical Rehabilitation Development, shown in "Exhibit C" attached to this ordinance and incorporated herein, is hereby approved.

Section 5.

The Zoning Map is subsequently amended, attached to and made a part of Ordinance No. 2712 is hereby amended to reflect the foregoing rezoning classification contained herein and the City Manager is authorized and directed to cause said rezoning to be reflected on the Zoning Map.

Section 6.

This measure shall take effect and be in full force from and after the earliest period allowed by law.

Passed: February 16, 2021

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

Exhibit A - Location Map



Legend

Parcels

0 70 140 280 420 560 Feet

**Exhibit C - Preliminary
Development Guidelines Report**

**Special Development District 1 (SDD-1)
Preliminary Development Guidelines Report**
Southeast corner of the intersection of Alexandersville and Crosspointe

SECTION 1 - DESCRIPTION OF THE SITE AND INTENT.

PARCEL 1:

This rezoning encompasses a single parcel at the southeast corner of the intersection of Alexandersville Road and Crosspointe Drive that measures approximately 5.15 acres in size. The property is zoned RO-1 (Research-Office) and I-1 (Light Industrial).

OWNERSHIP OF THE SITE.

The property is currently owned by Mehland Developers of 521 Byers Road, Ste 201, Miamisburg, OH 45342.

JUSTIFICATION FOR SPECIAL DEVELOPMENT DISTRICT DESIGNATION.

The subject site is located on the edge of a light industrial zoning district and business park (Southpointe Business Park) and directly across Alexandersville from the Sycamore Campus of the Kettering Health Network. Due to the strategic location and desire of such uses to operate near one another, this rezoning a Special Development District (SDD-1) can be justified due to the proximity to Kettering Health Network's Sycamore Campus.

INTENT.

The intent is to develop the site as a hospital along with associated parking, drive aisle, and landscaping areas. The location of the site is optimal for this use due to the proximity to the Sycamore Campus of the Kettering Health Network.

Refer to Exhibit 1 – Preliminary Site Plan – attached to this Special Development District document and incorporated herein for the preliminary site plan for the property.

PURPOSE.

This Special Development District (SDD-1) is created for the property to provide for adequate controls of the development of the site to ensure that the development of the property as a hospital will not be contrary to the intent Miamisburg's Comprehensive Plan and the existing development pattern of the surrounding area.

SECTION 2 - DEVELOPMENT GUIDELINES.

- (a) Site. The Site is vacant and measures approximately 5.15 acres in size. The development of the site shall be in conformance with the following standards and guidelines:
- (1) Permitted Uses. The following uses are generally-permitted on the Site:
 - A. Industrial or scientific research, design, and testing centers, together with related research and engineering laboratories and office buildings to accommodate executive, administrative, professional, accounting, engineering, architectural, and support personnel.
 - B. Food research, pharmaceutical research, and similar operations including pilot or experimental product development.
 - C. Telecommunications companies engaged in electronic transfer, routing, and processing of information.

- D. The manufacture or assembly of general, precision, medical, dental, and optical instruments, goods, hardware, tools, and cutlery; fabrication of plastic, metal, and rubber products.
- E. The manufacturing, compounding, assembling, or treatment of articles or goods from previously prepared materials, such as: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semi-precious metals or stones, sheet metal (excluding large stampings such as automobile fenders or bodies), shell, textiles, tobacco, wax, wire, wood (excluding saw and planing mills and other similar establishments), and yarns.
- F. The manufacture, compounding, processing, packaging or treatment of such products as, but not limited to, bakery goods, boxes and paperboard containers, business machinery, candy, clocks, toys, cosmetics, electrical and electronic products, components and equipment, food products, hardware, cutlery, tools, die gauges, machine shop products and pharmaceuticals.
- G. The manufacture or assembly of electrical appliances, electrical and electronic equipment, electronic instruments or precision devices, including the manufacture of parts for such devices.
- H. Printing, lithography, blueprinting, and similar uses.
- I. Data processing and computer centers, including electronic data processing and computer equipment service establishments.
- J. Business, professional, and administrative offices.
- K. Photographic studios.
- L. Light sheet metal products, including heating and ventilating equipment, cornices, or eaves.
- M. Hospitals.
- N. Medical offices and clinics.
- O. Wholesale sales facilities.
- P. Warehouses and wholesale establishments, exclusive of truck terminals and distribution centers, and exclusive open storage of any kind.

(2) Special Uses. The following uses are special uses on the Site:

- A. None.

(3) Prohibited Uses. The following uses are prohibited in the SDD-1 District (note: the absence of a use from this list does not imply that the use is permitted):

- A. Outdoor storage as a principal or major accessory use.
- B. Outdoor production or fabrication of any kind.

(4) Yard and Lot Frontage Requirements. Yard and lot frontage requirements for the SDD-1 are as follows:

- A. Minimum lot frontage: Refer to the standards of the I-1 District.
- B. Minimum front yard depth: Refer to the standards of the I-1 District.
- C. Minimum rear yard depth: Fifty (50) feet.
- D. Minimum side yard depth: Fifty (50) feet.
- E. Minimum parking lot and paved surface setback from Crosspointe Drive and Alexandersville Road rights-of-way: Twenty (20) feet

- (5) Structural and architectural requirements.
- A. Maximum building height: Refer to the standards of the I-1 District.
 - B. Permitted exterior building materials: Primary exterior building materials shall be a combination of glass, brick, stone, decorative brick, split-face block, EIFS and smooth, or textured Architectural Metal Panels (The Planning Commission shall review the materials and determine if the materials are Architectural Metal Panels or Metal Siding that meet these requirements, based on the appearance and specifications of the materials).
 - C. Prohibited exterior building materials: Corrugated Metal Siding shall be prohibited. (Note: The Planning Commission shall determine if materials are Architectural Metal Panels or Metal Siding, based on the appearance and specifications of the materials).

Refer to Exhibit 2 – Preliminary Building Elevations – attached to this Special Development District (SDD-1) document and incorporated herein for the building elevations for the proposed structure.

- (6) Signs. Refer to the applicable sign standards imposed upon the RO-1, I-2, and I-2 zoning districts in the Planning and Zoning Code.

(7) Landscaping and Screening.

A. Site Landscaping. All landscaping shall be installed and maintained pursuant to *Exhibit 3 – Preliminary Landscaping Plan – attached to this Special Development District (SDD-1) document and incorporated herein.* Generally, the following minimum landscaping standards shall be met on the site:

- a. Northern Frontage. A buffer measuring at least 20' plus one (1) Group A tree for every 35 feet of linear frontage length. Plus, five (5) shrubs for every fifty (50) feet of parking lot length along the street frontage.
- b. Eastern Lot Line. A buffer measuring twenty (20) feet in width with one Group A or C tree planted for every twenty-five (25) feet of lineal bufferyard length (minimum 40% Group C).
- c. Southern Lot Line. A buffer measuring twenty (20) feet in width with one Group A or C tree planted for every twenty-five (25) feet of lineal bufferyard length (minimum 40% Group C).
- d. Western Frontage. A buffer measuring twenty (20) feet in width plus one (1) Group A tree for every twenty (20) feet of frontage. Plus, four (4) shrubs every 20 lineal feet of frontage.
- e. Parking lot landscaping. One (1) Group A tree for every twelve (12) parking spaces inside of islands and peninsulas within the lot.
- f. General site landscaping. One (1) tree (Group A, B, or C) for every 1,500 sq. ft. of floor area for the first 20,000 sq. ft. then one (1) tree (Group A, B, or C) for every 3,000 sq. ft. thereafter. Trees planted within the parking lot may be counted toward this requirement. Minimum of 50% of these trees shall be Group A.
- g. Irrigation. Irrigation systems for the landscaping areas are encouraged.
- h. Other landscaping standards. Refer to the Planning and Zoning Code for other landscaping standards applicable to this site, such as tree diversity requirements and freestanding sign landscaping requirements.

- B. Mechanical Equipment. All rooftop mechanical equipment, hoods, etc... shall be screened through the use of architectural elements and building materials consistent with the building character which shall extend to a height tall enough to screen the equipment from view from the street or adjacent property. Any ground-mounted mechanical equipment shall be screened with fencing or landscaping or a combination. The Development Department shall review and approve the proposed screening material and height that will be used.
- C. Dumpsters and Refuse Areas. All dumpsters and refuse areas screened on three (3) sides with durable building materials consistent with the colors and materials used on the façade of the principal building. The fourth side shall be screened with a decorative opaque gate with a lockable latch assembly. Bollards shall be provided to protect adjacent vehicles from gate over-swing.

(8) Parking and Loading Requirements.

- A. Refer to the parking and loading requirements of the Planning and Zoning Code for the minimum number of required off-street parking and loading spaces.
- B. Parking space and drive aisle size requirements for the SDD-1 are as follows:

<i>SDD-1 Parking Space and Drive Aisle Size Requirements</i>						
	<i>Maneuvering Lane Width</i>		<i>Parking (1)</i>	<i>Parking (2)</i>	<i>Total Width of Two Tiers of Spaces Plus Maneuvering Lane</i>	
<i>Parking Pattern</i>	<i>One-Way</i>	<i>Two-Way</i>	<i>Space Width (ft.)</i>	<i>Space Length (ft.)</i>	<i>One-Way (ft.)</i>	<i>Two-Way (ft.)</i>
0°	12	18	9	23	30	36
30° to 53°	13	20	9	19	Varies*	Varies*
54° to 74°	18	24	9	19	Varies*	Varies*
75° to 90°	24	26	9-1/2	18	60	62

Note: (1) Measured perpendicular to the longitudinal space centerline
 (2) Measured along the longitudinal space centerline
 *Minimum maneuvering lane and parking space sizes must be met.

(9) Pedestrian Amenities.

- A. Bicycle parking is encouraged for the site.
- B. A paved pedestrian connection from the sidewalk on Crosspointe Drive to the subject building is encouraged for the Site.
- C. Striped walkways where the drive aisles for the parking lot cross the existing sidewalks in the right-of-way are encouraged.

(10) Lighting.

- A. No non-fully-cut off light fixtures shall be utilized on the Site, including wall packs and fixtures not attached to light poles. Exceptions: pedestrian-scale coach, postlamp, and bollard light fixtures.
- B. A photometric plan shall be submitted for any new development as a part of the plan review procedure.
- C. All light poles and light support structures shall be anodized or otherwise coated to minimum glare from the light source. Wood poles are not permitted.
- D. Pole height. Light pole heights shall not exceed twenty-five (25) feet, including the bases the poles are placed on.

F. Shields. If needed due to excessive glare, light sources shall be shielded from adjacent properties and rights-of-way.

(11) Other standards and guidelines.

- A. Storm Water Management. Storm water management systems shall meet the requirements of the Miamisburg Engineering and Public Works Departments.
- B. Phasing. This Special Development District (SDD-1) will be constructed in a single phase, estimated to take one (1) year from the start of construction to complete.
- C. Fences. Barbed and razor wire, chain-link, and bare metal fences are prohibited from the site. For all other fence standards, refer to Chapter 1289 of the Planning and Zoning Code.
- D. Requirements not listed herein. Refer to the Planning and Zoning Code of the City of Miamisburg and any other applicable guiding documents. The absence of a standard from this document does not imply that the site is not also subject to the applicable standards or the Planning and Zoning Code and any other applicable guiding documents.

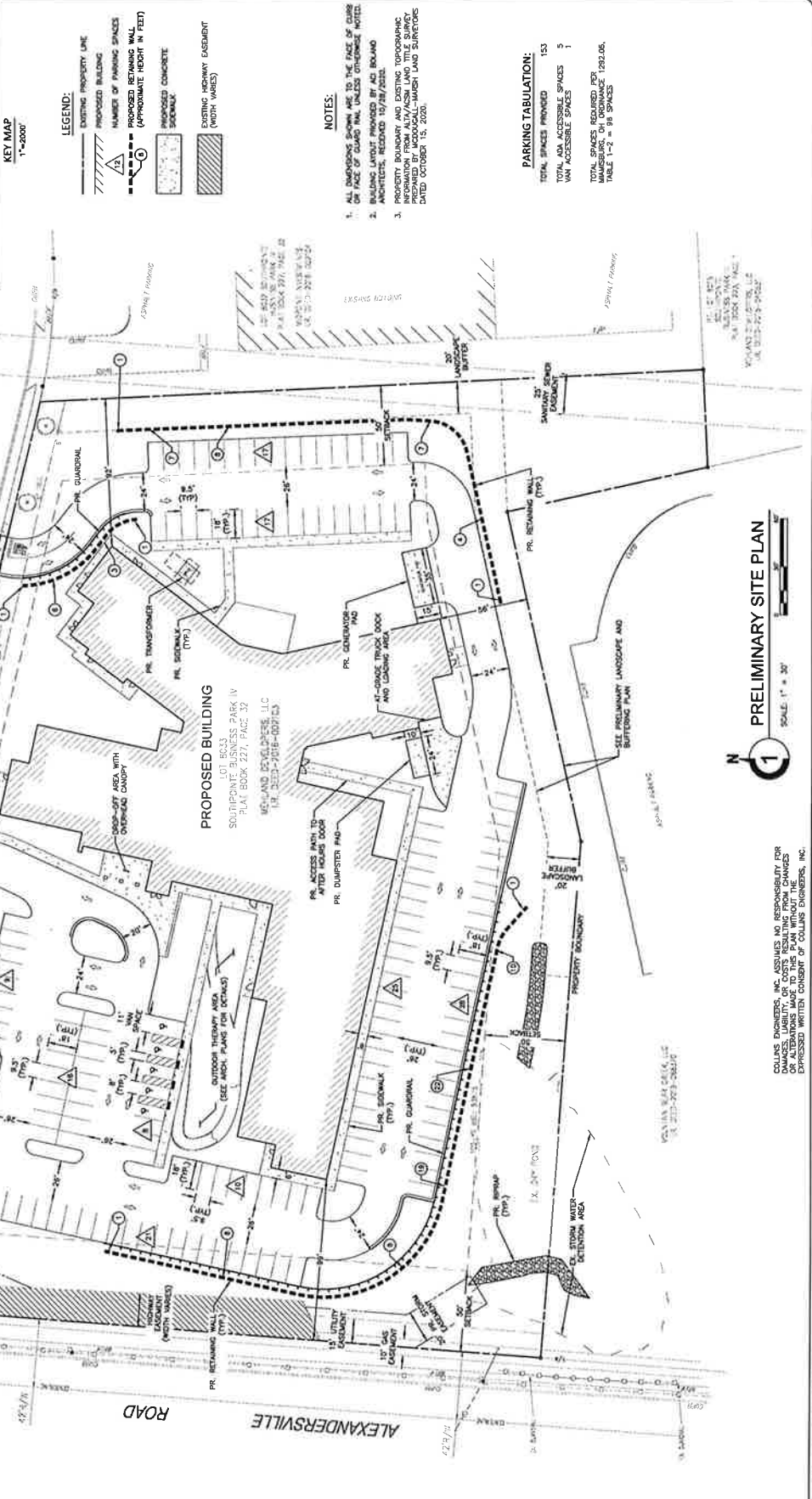
Post Acute Medical Rehabilitation Development Report
 Exhibit 13 - Preliminary Site Plan

COLLINS ENGINEERS
 2025 YEARS FORWARD
 2000 N. Highway, WI 53212
 Phone: 414-282-6903
 Fax: 414-282-6955

Catalyst Healthcare Real Estate
 2050 N. Highway, WI 53212

**CATALYST HEALTHCARE FACILITY
 PRELIMINARY SITE PLAN**
 Menomonee, OH

NO.	DATE	DESIGN BY	DESCRIPTION



- LEGEND:**
- EXISTING PROPERTY LINE
 - PROPOSED BUILDING
 - NUMBER OF PARKING SPACES
 - PROPOSED RETAINING WALL
 - PROPOSED ASPHALT DRIVEWAY
 - PROPOSED ASPHALT DRIVEWAY
 - PROPOSED CONCRETE SIDEWALK
 - EXISTING HIGHWAY EASEMENT (WIDTH VARIES)

- NOTES:**
- ALL DIMENSIONS ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.
 - BUILDING LAYOUT PROVIDED BY A.S. BROAD ARCHITECTS, RECEIVED 10/28/2022.
 - PROPERTY BOUNDARY AND EXISTING TOPOGRAPHIC INFORMATION FROM ALTA/SUBDIVISION SURVEY MANUSCRIPT OF RECORD # 222.05, DATED OCTOBER 15, 2020.

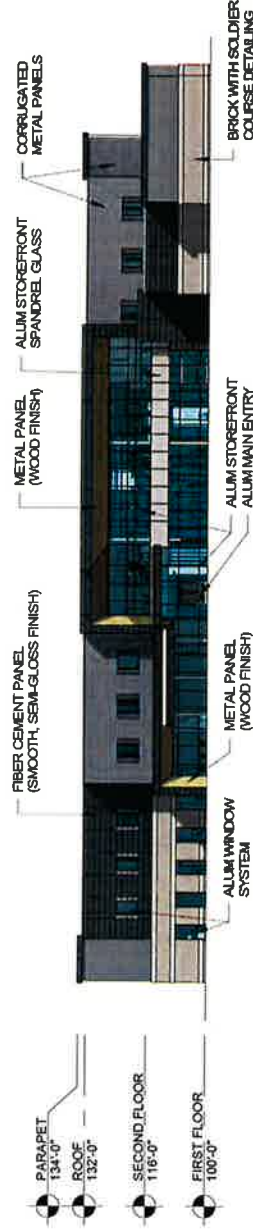
PARKING TABULATION:

TOTAL SPACES PROVIDED	153
TOTAL ADA ACCESSIBLE SPACES	5
VAN ACCESSIBLE SPACES	1

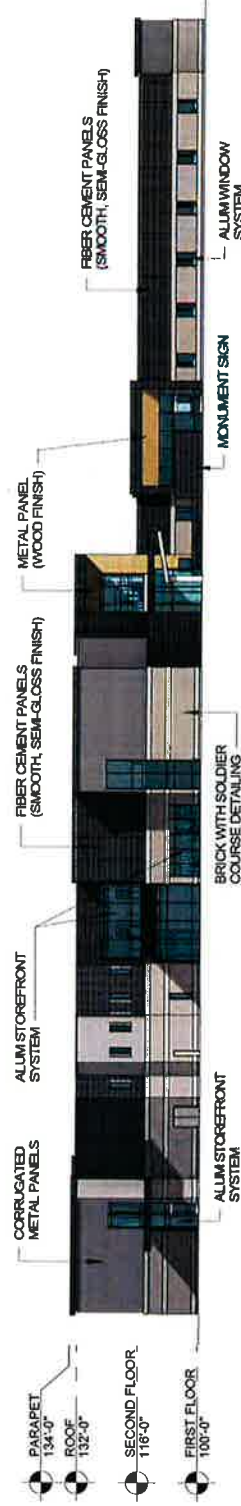
TOTAL SPACES PROVIDED FOR MANUSCRIPT OF RECORD # 222.05, TABLE 1-2 = 98 SPACES



COLLINS ENGINEERS, INC. ASSUMES NO RESPONSIBILITY FOR OMISSIONS, INADEQUACIES, OR COSTS RESULTING FROM CHANGES TO THIS PLAN. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND WRITTEN CONSENT OF COLLINS ENGINEERS, INC.



WEST ELEVATION SCALE 1/32"=1'-0"

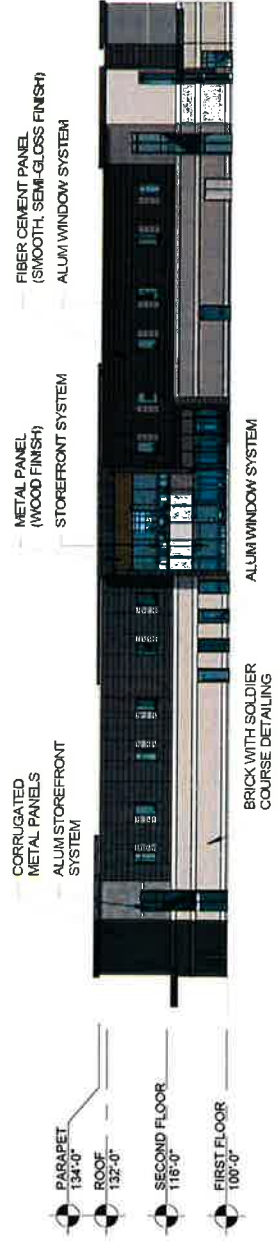


NORTH ELEVATION FRONT SCALE 1/32"=1'-0"

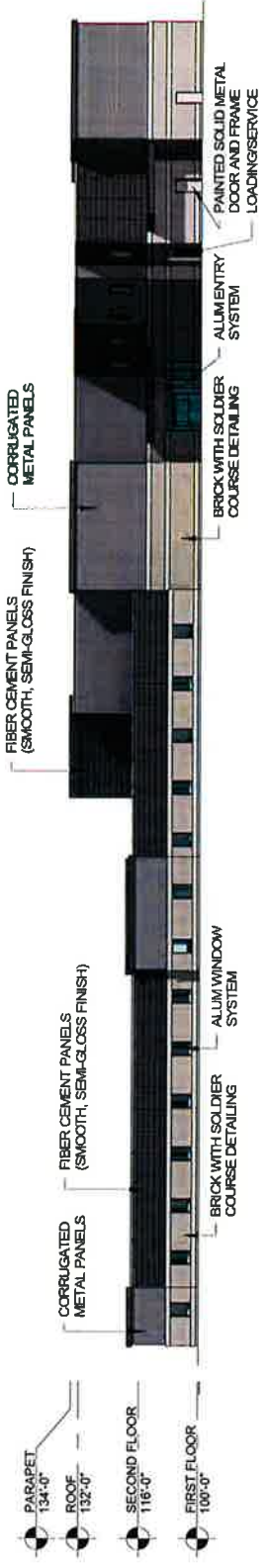
ALL SOLID METAL PAINTED DOORS: 4'X4" VISION
PANEL 62" ABOVE BASE OF DOOR, CENTERED

ELEVATIONS

REF COLORS & MATERIALS SHEET



EAST ELEVATION SCALE 1/32"=1'-0"



SOUTH ELEVATION BACK SCALE 1/32"=1'-0"

ALL SOLID METAL PAINTED DOORS: 4"x4" VISION PANEL 62" ABOVE BASE OF DOOR, CENTERED

COLORS & MATERIALS

MATERIAL IMAGES



1
BRICK exterior walls
"Beige Gray Velour" and "Black Hills Velour"
from Glen Gery
↓
rough texture of regional
materials



2
FIBER CEMENT PANEL exterior walls
"Grizzle Gray" and "Cinder"
by Nichiha
↓
smooth semi-gloss finish
contrasts brick

color compliments lighter
tones of town architecture



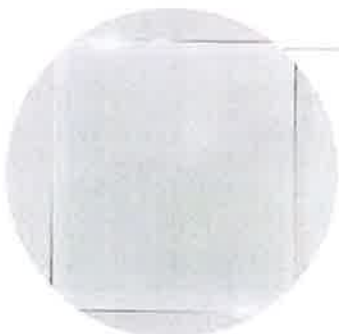
3
METAL PANEL columns, detailing
Wood Tone "Dark National Walnut"
Aluminum Panel System by Longboard
↓
natural wood look

color compliments browns and
golds of architecture and wildlife



4
PREFINISHED ALUMINUM
windows, storefront, canopies, overhangs, copings, soffits
Storefront Walls, Windows, Canopies
↓
needed to support windows

gives a modern appearance to
the building



5
GLASS glazing, vision panels
Storefront Walls, Windows



6
METAL PANEL exterior walls, screening
UNA-CLAD DELTA panel in "Cityscape" color



Post Acute Medical Rehabilitation Development Report

Exhibit 3 - Preliminary Landscaping Plan

PLANTING NOTES

- ALL PLANTS, TOPSOIL AMENDMENTS, MULCH, STONES, SEED, MIXES AND OTHER RELATED MATERIALS SHALL BE ONLY AS SHOWN AND SPECIFIED UNLESS OTHERWISE APPROVED BY THE OWNER'S REPRESENTATIVE.
- ALL PLANT MATERIAL SHALL MEET ANSI Z602.1 AMERICAN STANDARD FOR NURSERY STOCK, AND IS SUBJECT TO INSPECTION BY THE OWNER'S REPRESENTATIVE. UNAPPROVED PLANTS NOT APPROVED BY OWNER'S REPRESENTATIVE SHALL BE REPLACED WITH ACCEPTABLE SPECIMEN.
- PLANTING SOIL SHALL BE COMPOSED OF 45% TOPSOIL, 45% COURSE SAND, AND 10% COMPOST BY VOLUME. ALL PLANTS SHALL BE PLANTED IN A MINIMUM OF 12" DEPTH. TOPSOIL SHALL BE CLEAN OF ROOTS, BRUSH, STONES LARGER THAN 2" DIAMETER, CLAY, AND OTHER DEBRIS. PLANTING BEDS SHALL BE GROWN, BACKFILL AROUND ROOT BALLS OF PLANT MATERIAL WITH A BLEND OF 50% PLANTING SOIL AND 50% NATIVE SOIL.
- FERTILIZER FOR SHRUBS AND TREES SHALL BE OF COMMERCIAL GRADE, AND OF A COMPOSITION RECOMMENDED FOR ESTABLISHMENT OF PLANT MATERIAL.
- ALL PLANTING BEDS SHALL HAVE A MINIMUM OF FOUR INCHES OF PLANTING SOIL, ROTOTILLED LIGHTLY INTO EXISTING SOIL, AND BAKED SMOOTH PRIOR TO PLANTING. PLANTING BEDS SHALL BE BAKED TO A MINIMUM OF 100°F. PLANTING BEDS SHALL BE BAKED TO A MINIMUM OF 2" DEPTH. REMOVE STONES, STICKS, ROOTS AND EXTRANEOUS MATTER AND LEGALLY DISPOSE OFF OF OWNER'S PROPERTY. TOP DRESS WITH 1" PLANTING SOIL BAKED SMOOTH.
- SEEDED TURF WILL BE ACCEPTED WHEN A HEALTHY, UNIFORM AND CLOSE STAND OF GRASS HAS BEEN ESTABLISHED. FREE OF WEEDS AND SURFACE IRREGULARITIES WITH COVERAGE EXCEEDING 90 PERCENT OVER ANY 10 Sq. Ft. AND BARE SPOTS NOT EXCEEDING 50% INCHES.
- SOIL CONTRACTOR TO USE ONLY CULTIVARS THAT FALL IN THE TOP 5% OF THE NTEP (NATIONAL TURFGRASS EVALUATION PROGRAM).
- ALL PLANT MATERIAL, OTHER THAN SEEDS/SOD + PLUG AREAS, WILL BE MULCHED WITH 2" THICKNESS OF CYPRESS MULCH, FERTILIZED, AND THOROUGHLY WATERED IN. DO NOT USE PAINTED OR DYED MULCH.
- PROTECT MAINTENANCE BY EXPERIENCED WORKERS IN LANDSCAPE INSTALLATION/MAINTENANCE IMMEDIATELY AFTER PLANTS HAVE BEEN DELIVERED TO THE SITE UNTIL ACCEPTANCE OF THE JOB BY THE OWNER. MAINTENANCE INCLUDES BUT IS NOT LIMITED TO: WEEDING, PRUNING, WATERING, FERTILIZING, AND PROTECTING PLANTS FROM DAMAGE BY VEHICLES, ANIMALS, GROUNDCOVERS, TURF, AND ANY OTHER PLANT TYPE UNTIL ACCEPTANCE OF THE JOB BY THE OWNER.
- ALL PLANT MATERIAL SHALL BE GUARANTEED FOR ONE YEAR EXCEPT TREES WHICH SHALL BE GUARANTEED FOR TWO YEARS BEGINNING AT FINAL ACCEPTANCE OF WORK.
- PRIOR TO START OF CONSTRUCTION, REVIEW WITH OWNER'S REPRESENTATIVE WHAT EXISTING PLANT MATERIAL IS TO BE PRESERVED, TRANSPANTED ON-SITE, AND/OR REMOVED.
- CONTRACTOR SHALL PERFORM ALL WORK REQUIRED TO PROTECT THE ADJOINING PROPERTY, STREETS, SIDEWALKS, CURBS, TREES, UTILITIES, ETC. FROM DAMAGE (GENERAL NOTES ON SHEET C001).
- ALL UNSTALLED PLANT MATERIAL SHALL BE THE RESPONSIBILITY OF THE CITY OF MARIETTA'S COPIED ORDINANCES. SEE CHAPTER 1292.05-1292.07, AND 1292.03, AND ANY OTHER APPLICABLE SECTIONS.

CLEAN-UP AND WARRANTY NOTES

- REMOVE EXCESS MATERIAL (E.G. GEBRIS, SOILS, MULCH, ETC) AND CLEAN UP SITE.
- WARRANT ALL HEAVY INSTALLED PLANT MATERIAL. CONTRACTOR WILL REPLACE ANY PLANTS THAT ARE NOT ALIVE, HEALTHY AND IN A VIGOROUS CONDITION AT THE END OF THE WARRANTY PERIOD. LABOR REQUIRED TO INSTALL ALL FAILED PLANTS WILL BE PROVIDED BY THE CONTRACTOR. SEE PLANTING NOTES FOR WARRANTY PERIOD.
- MAINTAIN PLANTS UNTIL FINAL ACCEPTANCE OF JOB IN ORDER TO MAINTAIN HEALTHY AND VIGOROUS PLANT MATERIAL. SEE PLANTING NOTE 13.
- RESEED ALL DISTURBED TURF AREAS.

SEE SHEET C001 FOR GENERAL NOTES, EROSION AND SEDIMENT CONTROL SPECIFICATIONS, AND GENERAL GRADING SPECIFICATIONS.

COLLINS ENGINEERS, INC. ASSUMES NO RESPONSIBILITY FOR ANY ALTERATIONS MADE TO THIS PLAN WITHOUT THE EXPRESSED WRITTEN CONSENT OF COLLINS ENGINEERS, INC.

COLLINS ENGINEERS
2033 West Howard Avenue
Middletown, VA 22645
Phone: 410-281-9955

Real Estate
Catalyst Healthcare
2060 N Humboldt Blvd
Suite 225
Middletown, VA 22645

CATALYST HEALTHCARE FACILITY
Middletown, OH

NO.	DATE	DESIGN BY	DESCRIPTION

CD PROJECT: 80-12660
DESIGN BY:
CHECKED BY:
DATE: 07/2023
SCALE:
SHEET NO: **L001**

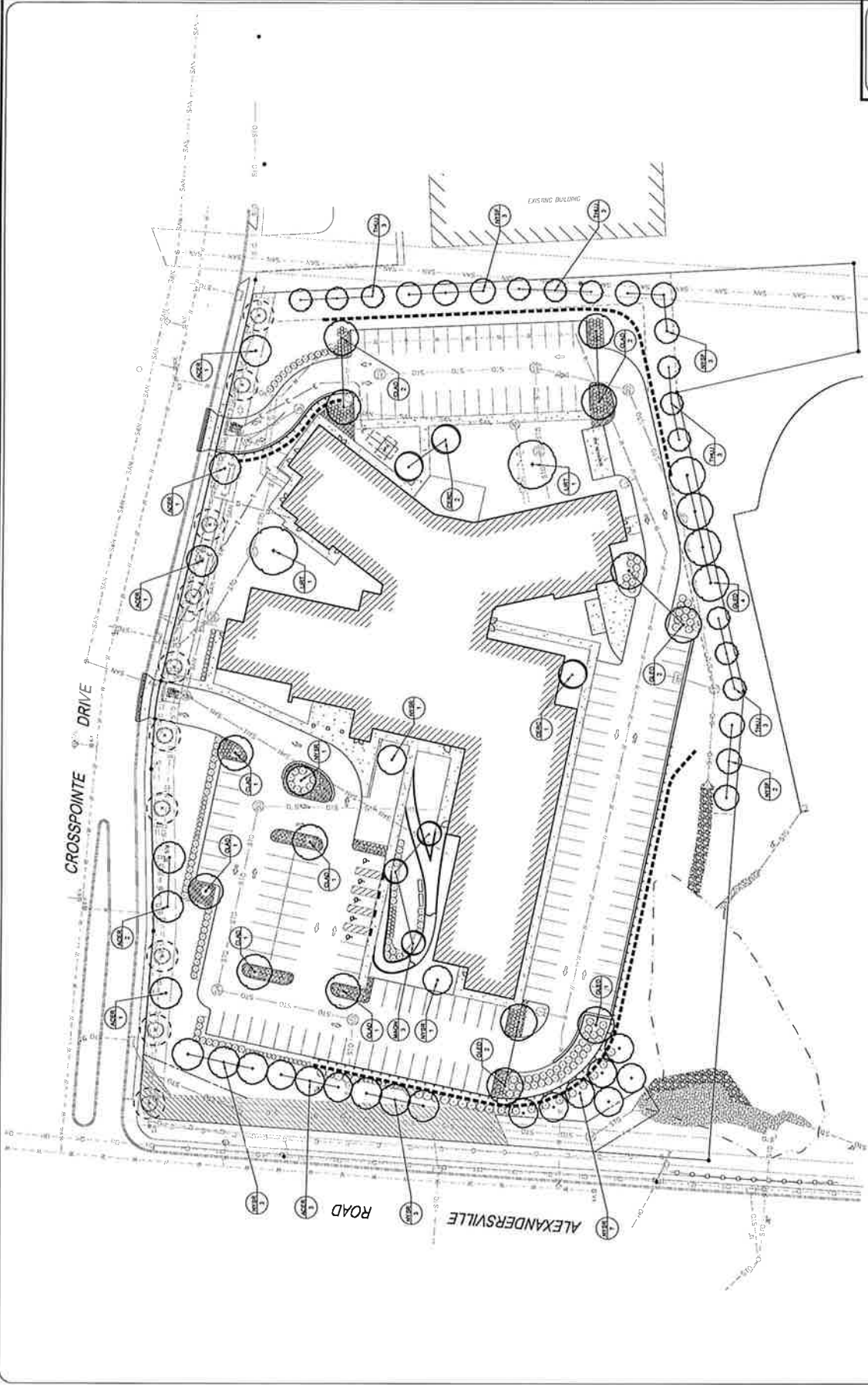
COLLINS ENGINEERS
 2033 West Howard Avenue
 Milwaukee, WI 53221
 Phone: 414-282-6965
 Fax: 414-282-6955

Catalyst Healthcare
 Real Estate
 2050 N Humboldt Blvd
 Suite 225
 Milwaukee, WI 53212

CATALYST HEALTHCARE FACILITY
 Miamisburg, OH

NO.	DATE	DESIGN BY	DESCRIPTION

SET PROJECT: 65-12660
 DESIGN BY:
 DRAWN BY:
 CHECKED BY:
 DATE: 01/12/2021
 SCALE: 1"=30'
 SHEET NO.: L002



**PRELIMINARY PLANTING
 PLAN - TREES**
 SCALE: 1" = 30'

SEE SHEET L-01 FOR
 GENERAL AND SHEET NOTES.
 COLLINS ENGINEERS, INC. ASSUMES NO RESPONSIBILITY FOR
 DAMAGES, LIABILITY, OR COSTS RESULTING FROM CHANGES
 TO THE ORIGINAL DESIGN OR FROM ANY INFORMATION
 EXPRESSED OR IMPLIED, ORIGINATED BY COLLINS ENGINEERS, INC.

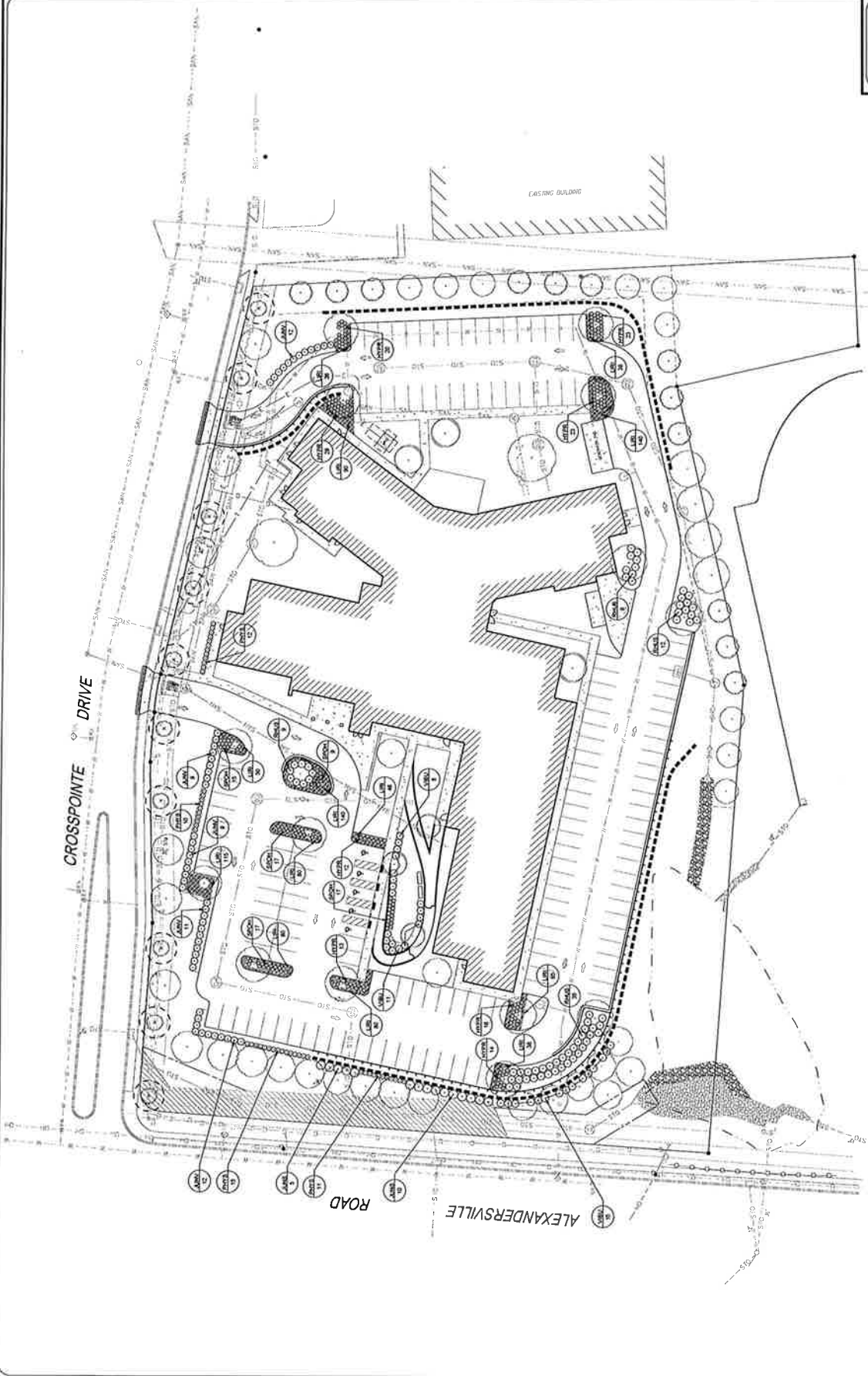
COLLINS ENGINEERS
 3033 West Howard Avenue
 Milwaukee, WI 53221
 Phone: 414-282-6905
 Fax: 414-282-9555

Catalyst Healthcare
 Real Estate
 2080 N Humboldt Blvd
 Suite 225
 Milwaukee, WI 53212

CATALYST HEALTHCARE FACILITY
 Miami, OH

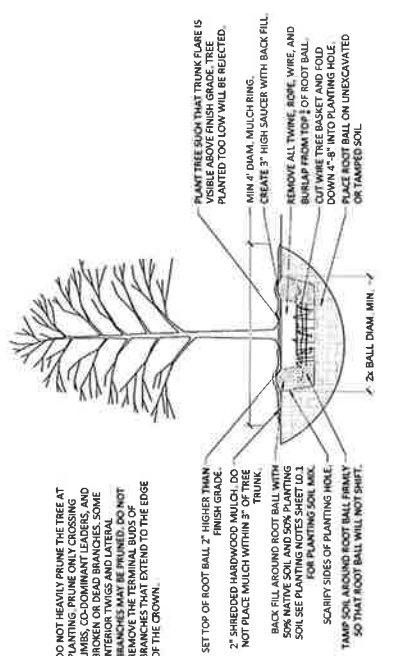
NO.	DATE	DESIGN BY	DESCRIPTION

CUI PROJECT: 01-7260
 DESIGN BY:
 DRAWN BY:
 CHECKED BY:
 DATE: 01/13/2023
 SCALE: 1"=30'
 SHEET NO.: L003

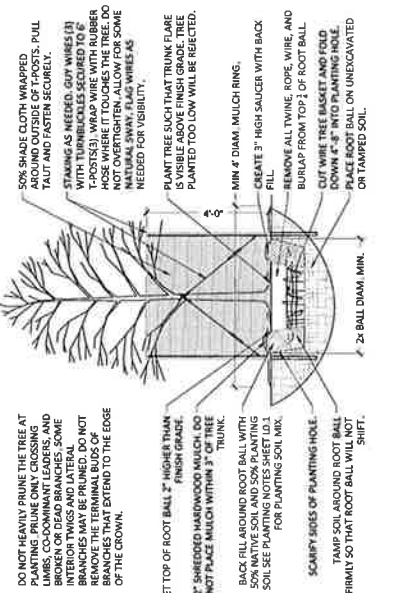


PRELIMINARY PLANTING PLAN - SHRUBS/OTHER
 SCALE: 1" = 30'
 1

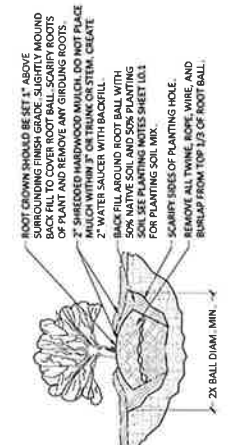
SEE SHEET L-01 FOR GENERAL AND SHEET NOTES.
 COLLINS ENGINEERS, INC. ASSUMES NO RESPONSIBILITY FOR DAMAGES, LIABILITY, OR COSTS RESULTING FROM CHANGES OR ALTERATIONS MADE TO THIS PLAN WITHOUT THE WRITTEN CONSENT OF COLLINS ENGINEERS, INC.



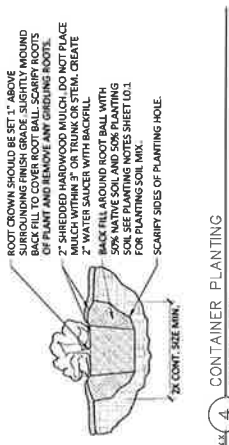
1 TREE PLANTING WITH STAKING/PROTECTION
 DESCRIPTION, SECTION
 SCALE: 1/2" = 1'



2 TREE PLANTING
 DESCRIPTION, SECTION
 SCALE: 1/2" = 1'



3 BALLED SHRUB PLANTING
 DESCRIPTION, SECTION
 SCALE: 1/2" = 1'



4 CONTAINER PLANTING
 DESCRIPTION, SECTION
 SCALE: 1/2" = 1'

QTY	KEY LATIN	COMMON	MIN. SIZE	NOTES
12	ACER x 'Crimson Sunset'	Crimson Sunset Maple	2" Cal. B&B	
3	CERC Cercis canadensis 'Appalachian Red'	Appalachian Red Redbud	8" B&B	
9	CLAD Cladrasia kentuckea 'Perkins Pink'	Perkins Pink Yellowwood	2" Cal. B&B	
9	GLAD Gleditsia tricanthos var. inermis 'Skyline'	Skyline Thornless Honeylocust	2" Cal. B&B	
2	LIRT Liriodendron tulipifera 'Emerald City'	Emerald City Tulip Poplar	2" Cal. B&B	
3	MAGN Magnolia x 'Butterflies'	Butterflies Magnolia	8" B&B	
9	NYSF Nyssa sylvatica 'Firestairer'	Firestairer Tupelo	2" Cal. B&B	
13	NYSR Nyssa sylvatica 'Red Rage'	Red Rage Tupelo	2" Cal. B&B	
12	THUJ Thuja 'Green Giant'	Green Giant Arborvitae	6" B&B	
Shrubs				
150	HYPR Hypericum kalmianum 'Ames'	St. John's Wort	5 Gal.	
15	JUNJ Juniperus chinensis 'Sea Green'	Sea Green Juniper	5 Gal.	
44	JUNV Juniperus virginiana 'Grey Owl'	Grey Owl Juniper	5 Gal.	
48	PHYS Physocarpus opulifolius 'Tiny Wine Gold'	Tiny Wine Gold Ninebark	5 Gal.	
65	RHUS Rhus aromatica 'Gro-Low'	Gro-Low Sumac	5 Gal.	
34	VIBU Viburnum caryocarpum 'Spice Baby'	Spice Baby Viburnum	5 Gal.	
Grasses/Perennials/Vines				
1000	LIRI Liriope muscari 'Big Blue'	Big Blue Lilyturf	1 Gal.	Plant 18" o.c.
75	SPOH Sporobolus heterolepis	Prairie Dropseed	1 Gal.	

*** Any substitution requests to be approved by owner in writing.

SEE SHEET L-01 FOR GENERAL AND SHEET NOTES.
 COLLINS ENGINEERS, INC. ASSUMES NO RESPONSIBILITY FOR ANY CHANGES OR ALTERATIONS MADE TO THIS PLAN WITHOUT THE EXPRESSED WRITTEN CONSENT OF COLLINS ENGINEERS, INC.

5 PLANT SCHEDULE



PLANNING COMMISSION STAFF REPORT

FOR THE MEETING OF JANUARY 25, 2021

CASE NUMBER: RZ-01-2020

PREPARED BY: Ryan Homsj, City Planner

APPLICANT: Catalyst HRE
41 N. Jefferson St, 4th Floor
Pensacola, FL 32502

OWNER: Mehland Developers
521 Byers Road, Ste 201
Miamisburg, OH 45342

LOCATION: Southeast corner of the
intersection of Crosspointe & Alexandersville

ZONING: RO-1 (Research Office) & I-1
(Light Industrial)

REQUEST: Approve a rezoning of the 5.15-acre property at the southeast corner of the intersection of Alexandersville Road and Crosspointe Drive from RO-1 (Research-Office) and I-1 (Light Industrial) to Special Development District 1 (SDD-1)

STAFF RECOMMENDATION: Approval w/ Conditions

Introduction/Background

The Development Department has received an application for the approval of a rezoning of the 5.15-acre property at the southeast corner of the intersection of Alexandersville Road and Crosspointe Drive from the current zoning designations of RO-1 (Research-Office) and I-1 (Light Industrial) to Special Development District 1 (SDD-1). The purpose of this rezoning is to allow for the construction of a 60-bed (42 short term and 18 long term) post-acute medical facility on the property. Since the use is considered a hospital, a rezoning is required since such uses are not permitted in either the RO-1 or I-1 Districts.

The applicant is requesting approval under the recently-enacted special development district process. The proposed district would permit most of the same uses as the AO-1 (Austin) District, minus the retail/commercial uses and plus hospitals. This will allow the proposed use to move forward while ensuring that any potential future users of the property remain either light industrial or hospital-type uses.

The subject property is currently vacant.

City Council held their first reading of Ordinance 6881 at their December 1, 2020 meeting. At that meeting, Council motioned to forward the ordinance to the Planning Commission for a public hearing. Following your proceedings on this matter, City Council will have a second reading of the subject ordinance.

Ordinance

The subject ordinance and exhibits are attached to this report. Proposed changes to the ordinance, which add the preliminary development guidelines report as an exhibit to the ordinance are depicted in this format.

If Council chooses to approve this request at the second reading, the applicant will be required to submit any additional requested/needed information along with the Final Development Plan report later, in order to ensure that the FDP conforms substantially to the preliminary plan and any adopted conditions.

Surrounding Land Uses & Built Environment

The immediate vicinity of the subject property includes a mixture of uses. To the north is Crosspointe Drive, *Miamisburg Vision Care*, and a vacant lot. To the east is *More Wholesale*, to the south is a mixed tenant light industrial/office building, and to the west is Alexandersville Road and a portion of *Sycamore Glen Retirement Community*. The map below depicts the subject property and surrounding area.



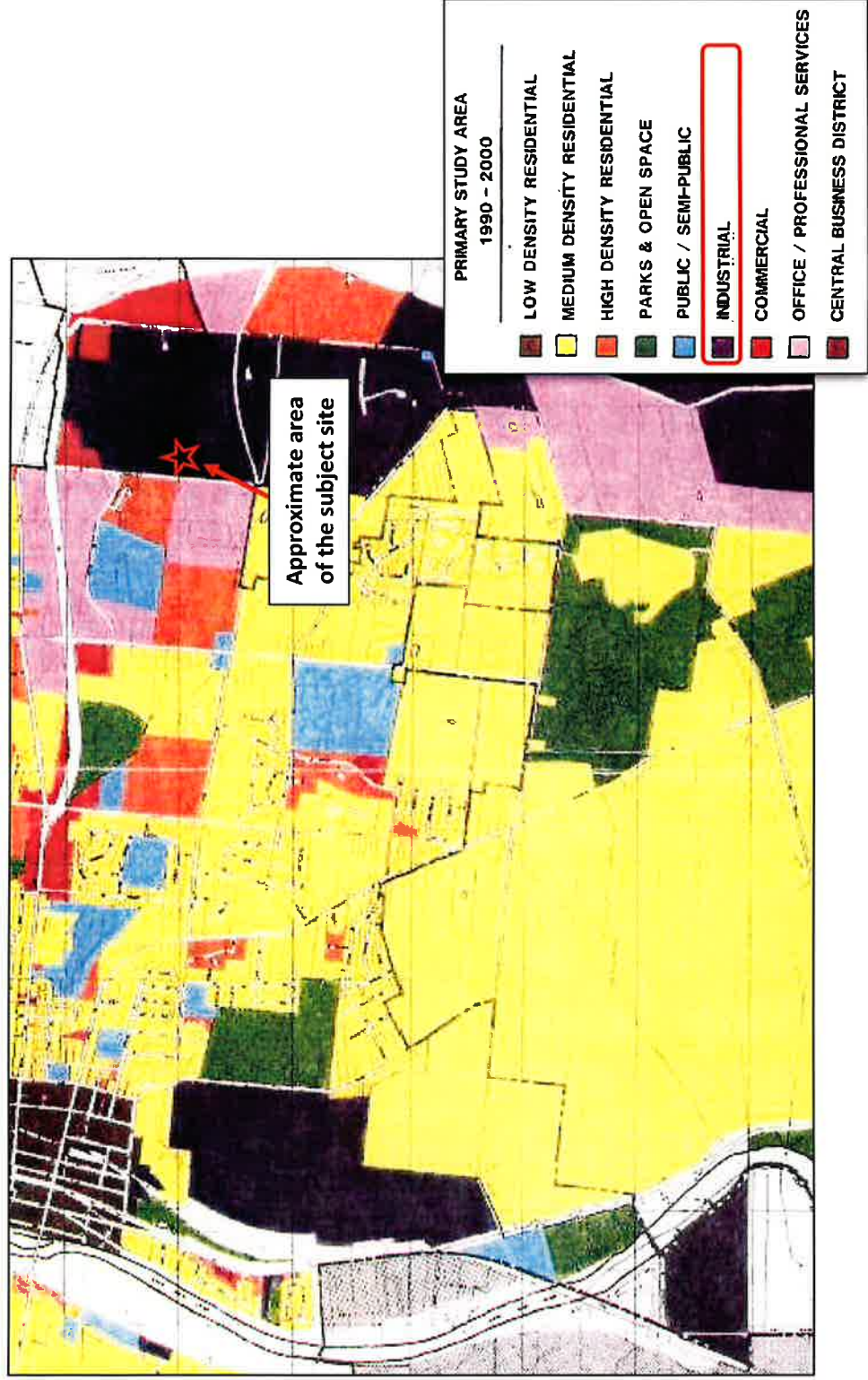
Subject Property

The subject property is vacant and slopes downwards from east-to-west and is currently vacant.



Miamisburg Land Use Plan

The 1990 Miamisburg Land Use Plan identifies the subject property as being industrial. That plan calls for the continued development of the "emerging industrial corridor developing on Byers Road." Due to significant development projects in the surrounding area and the growth of the Sycamore Campus of the Kettering Health Network, staff believes this use is in keeping with the intent of the 1990 land use plan. Also, that plan states: "when an application is made for a zoning change within the City, the Land Use Plan should be consulted to determine the applicant's compliance with the City's long range goals and policies that affect the subject property. The applicant's property should be generally located on the Land Use Plan map to determine the policies initially applicable in reviewing the request. Due to the nature of the request, other policies may also apply in making a decision on the requested zoning change. Individual policies, in general, should be interpreted generally and liberally rather than narrowly and specifically."



Special Development District Requirements (Chapter 1275)

In order to qualify for rezoning as a special development district, one of the following criteria must be met by the site, per Section 1275.04 of the Planning and Zoning Code:

- (a) Areas that have site constraints imposed by unique physical features such as relatively rugged topography, atypical soils, areas of heavy tree cover, rock outcropping or streams; adjoining land use difficulties; and/or traffic impact or lot configurations that make development difficult;
- (b) Areas where blighting influences are identified, with blighting influences being any current use of land which, if allowed to remain unmodified, will foreseeably evolve into blight or will encourage blight to rise in neighboring land areas;
- (c) Areas that are identified as being strategically located by reason of size, relationship to other properties, relationship to thoroughfares or other transportation routes, where development and/or redevelopment could have major impacts upon the overall economic and aesthetic health of the City of Miamisburg; and/or where the project is of such size and/or potential impact upon its surroundings that additional controls are believed necessary;
- (d) The proposed site is one of significant locational and/or historic importance, such as within or adjacent to the Community Civic Center, the Miamisburg Mound area, etc;
- (e) Areas where the existing built environment does not lend itself to quality new development and/or revitalization which would meet the guiding planning documents of the City of Miamisburg.

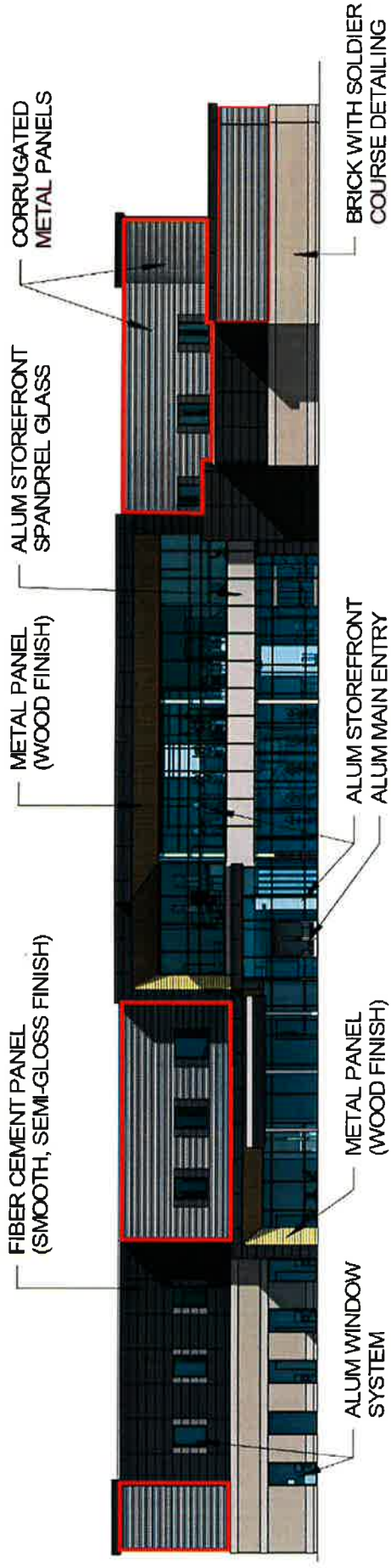
Letters C and D are most applicable to the subject site due to the proximity to the Sycamore Campus of the Kettering Health Network as well as the strategic location of the site that lends itself to supporting the continued growth of medical uses around the hospital.

Elevations and Building Materials

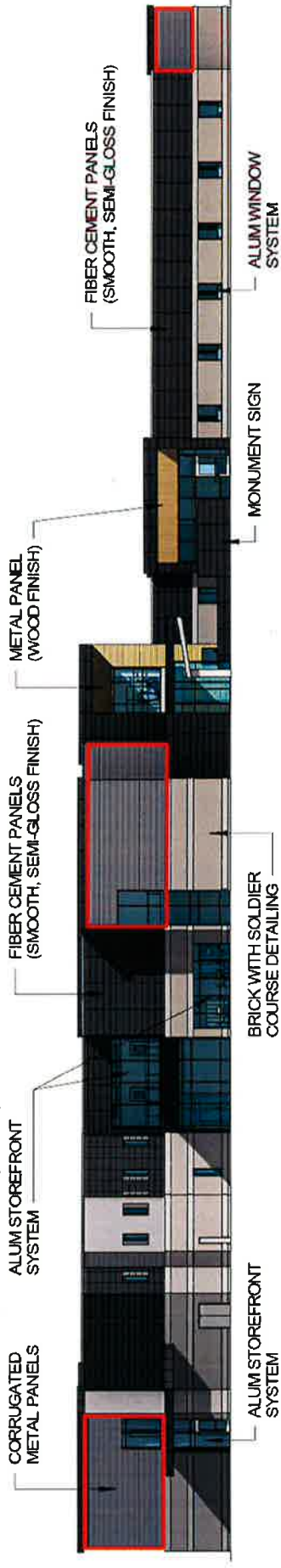
The building will be comprised of a combination of brick, fiber cement, architectural metal siding (faux wood design), and corrugated metal panels. Other than the corrugated metal panels (outlined in red), these proposed materials meet the expectations of staff regarding this project.

The submitted elevations are shown on the following pages.

Below: West elevation (facing Alexandersville)



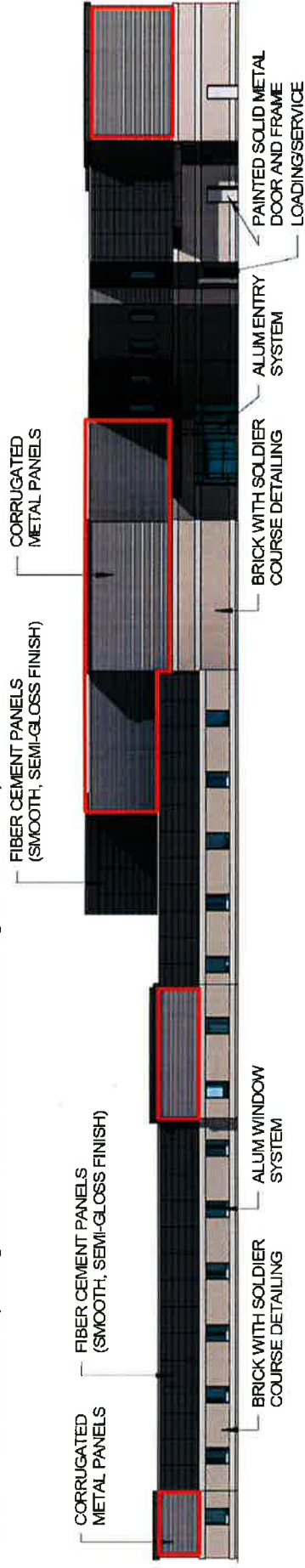
Below: North elevation (facing Crosspointe)



Below: east elevation (facing Moreb Wholesale)



Below: south elevation (facing multi-tenant industrial building to the south)



Access & Traffic

Access to the site will be provided by two access points onto Crosspointe Drive. The TIS that has been submitted with the project has been reviewed by our City Engineer and no comments regarding any issues with the proposed access points have been provided. A traffic memo reflecting the estimated additional trips to be generated by the use was provided as a part of the review, and when looking at the capacity of Alexandersville and Crosspointe, staff has no concerns with the proposed use relating to access and traffic.

Circulation

The site plan shows two access points to the site from Crosspointe. The applicant has submitted a turning radius sheet showing that the site can accommodate emergency vehicles.

Parking

The parking requirements for hospitals as outlined in Chapter 1292 of the Planning and Zoning Code are as follows:

Hospital Parking Requirements		
Code Area	Number of Required Spaces	Proposed
1 per each 2 beds, plus	62 beds (31 spaces)	[x]
1 per each staff doctor, plus	~32 doctors (32 spaces) – High estimate in order to assume that 1 space is provided for each employee on-site at any one time	[x]
1 per each 2 employees	65 employees (33 spaces)	[x]
TOTAL	96	153

Lighting

Staff is recommending a condition that the applicant continue working with staff on finalizing the lighting plan for the site as a part of the final development plan. The expectation is that all the fixtures, aside from any coach lights, post lamps, or bollards of a pedestrian scale shall be fully cut-off fixtures.

Utilities & Public Infrastructure

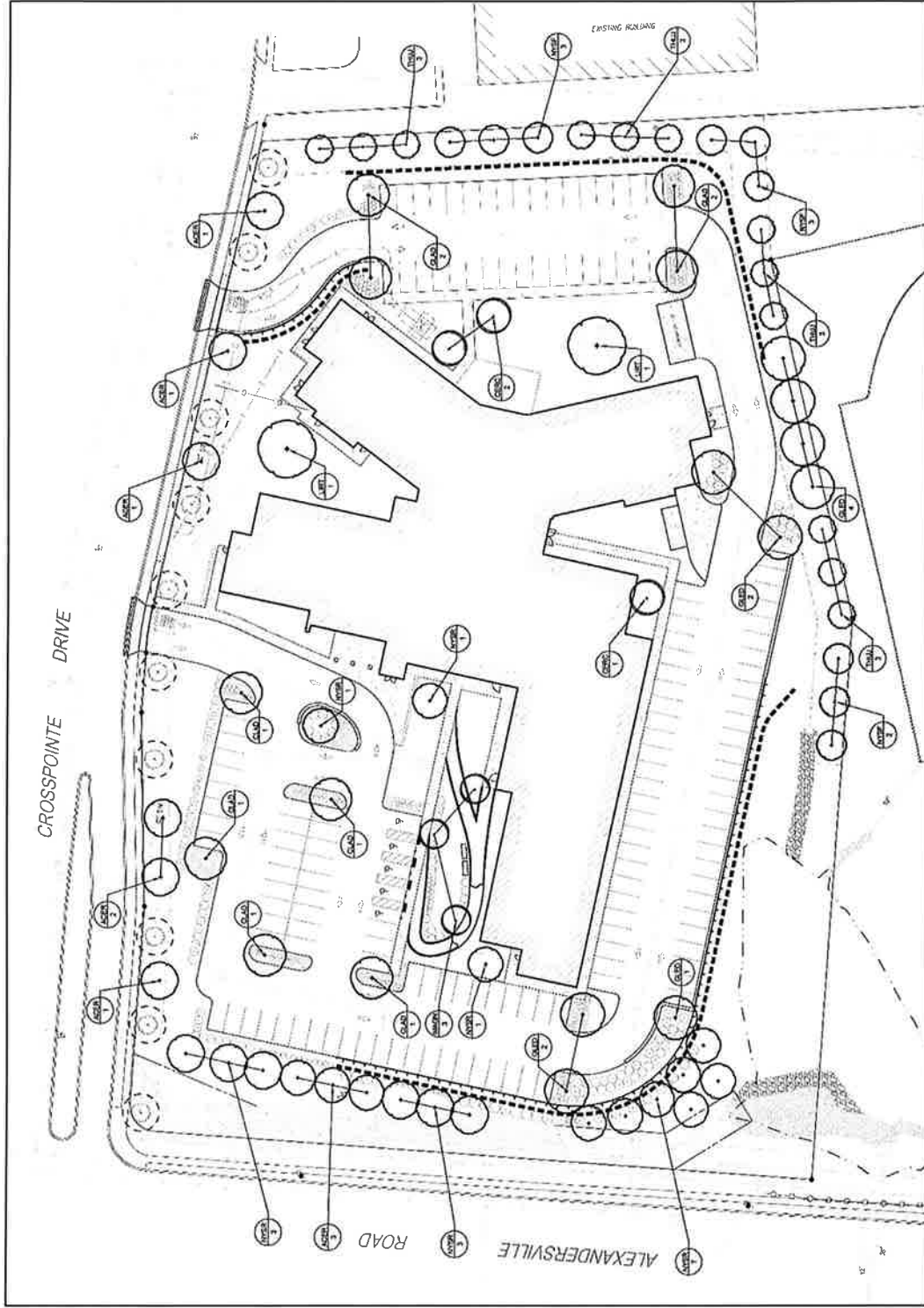
The subject site is fairly “shovel ready” with regards to utilities. There are existing water and sewer taps that stub into the property and the preliminary utility plans have been reviewed by the City Engineer. Any modifications requested or required by the Public Works and Engineering Departments shall be made by the applicant/developer.

Stormwater Management

Southpointe Business Park utilizes a level of regional detention which will be utilized by this project. There is an existing detention pond in the southwest corner of the subject property that extends into the neighboring property to the south.

Landscaping and Screening

For special development districts, the landscaping requirements are at the discretion of the Planning Commission. The general standard of Chapter 1276 regarding landscaping is that the landscaping proposed shall exceed the base landscaping requirements contained in the Planning and Zoning Code. Further, for past special development districts, we have referred to the standards of the Austin Overlay (AO-1) District as a place to start. The applicant has submitted the landscaping plan below as a work in progress, but this plan meets virtually all of the proposed standards for this SDD.



GENERAL PLANNED DEVELOPMENT STANDARDS

Several general standards are listed in Section 1276.03 of the "Planned Development Generally" Chapter of the Planning and Zoning Code that all planned developments must abide by. Many of these standards are geared toward protecting the public health, safety and welfare from several different perspectives, including traffic, police and fire protection, compatibility of the proposed land use with the surrounding area, and adequate protection of the proposed land use from those existing in the area and vice versa. Most of these general standards are met by the current plan and any suggested conditions deal largely with the submittal of additional documents as the plan is fully solidified. The standards are listed in bold below.

- (1) ***The proposed development is in conformity with any applicable land use plan and/or comprehensive plan of the City of Miamisburg.***

Standard met. While the subject property is outlined as being "industrial" on the most recent land use plan for this area of town, land use plan policies and objectives are meant to be interpreted liberally when looking at several applicable goals and objectives. Further, the developments that have occurred in the surrounding area, particularly the expansion of the KHN campus and associated medical uses on surrounding properties, since the latest land use plan was adopted justifies the approval of this rezoning as meeting the intent of the land use plan.

- (2) ***The proposed planned development will not jeopardize the public health, safety and welfare.***

Standard met. No negative impact on the public health, safety, or welfare are anticipated by this development.

- (3) ***The development will not impose undue burden on public services and facilities, such as fire and police protection.***

Standard met. As with all development projects, Miamisburg's fire marshal reviews the plans in order to ensure that they meet the applicable fire code standards.

- (4) ***The site will be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development, and the streets and driveways on the site of the proposed development will be adequate to serve the residents or occupants of the proposed development.***

Standard met. A traffic memo has been provided by the applicant which has been reviewed by our City Engineer. Based upon that memo and the proposed site design, the surrounding roadways are expected to be able to absorb the additional traffic imposed on them by this development with no needed improvements.

- (5) ***The location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a planned development not used for structures, parking and loading areas, or accessways, shall be landscaped or otherwise improved.***

Standard met. The placement of the building is appropriate for the site and appropriate setbacks and parking areas are proposed.

- (6) ***The development promotes a harmonious relationship between land uses within the site and a harmonious relationship with surrounding development, utilizing adequate buffers where necessary.***

Standard met. The preliminary landscaping plan submitted for the site includes sufficient buffering on the south and east sides of the property.

- (7) ***The proposed development provides a high quality and more useful design of landscaping and open space and amenities than would normally be required under the strict application of existing zoning and subdivision requirements.***

Condition recommended. Based on the staff recommendations for landscaping, this standard is expected to be met by this development. The preliminary landscaping plan, which is still a work in progress, already appears to meet this requirement.

- (8) ***The proposed development provides a high quality of building materials, architectural details, building orientation, off-street parking designs, and other site features than would normally be required under the strict application of existing zoning and subdivision requirements.***

Condition recommended. The materials proposed by the applicant include a mixture of brick, fiber cement, architectural metal (wood finish), glass, and corrugated metal siding. More corrugated metal siding is proposed vs. what has been permitted for such projects in the past, for this reason, a condition is being recommended relating to reducing or eliminating the corrugated metal siding in exchange of other materials to be reviewed and approved as a part of the final development plan review.

- (9) ***Natural features such as watercourses, trees and rock outcrops will be preserved, to the degree possible, so that they can be incorporated into the layout to enhance the overall design of the planned development.***

N/A. There are few natural areas on the site. There is a drainage channel through the center of the site, but this is more a part of the storm water system of Southpointe Business Park rather than a natural stream corridor.

- (10) ***The layout must be designed to take advantage of the existing land contours in order to provide satisfactory road gradients and suitable building lots and to facilitate the provision of proposed services.***

Standard met. Due to the downward slope (from east to west) of the property, the site is being graded to accommodate the proposed building and parking areas. Due to the grade change, retaining walls will be installed along the edges of the parking and driveway surfaces of the development.

- (11) ***The development plan contains such proposed covenants, easements and other provisions relating to the proposed development standards as may reasonably be required for the public health, safety and welfare.***

N/A to this kind of development.

- (12) *The planned development can be substantially completed within the period of time specified in the schedule of development submitted by the developer.***

Standard met. Assuming this rezoning is approved, the applicant would like to begin site work in April or May of 2021 and have the facility open in 2022. This is a reasonable timeline for constructing such a facility.

RECOMMENDATION

The proposed SDD is located within an area of town that has undergone major development and redevelopment projects over the last few decades, including new office, industrial, and residential uses. Much of this growth is being driven by the presence of the Sycamore Campus of the Kettering Health Network, which remains a major economic driver for the City. The proposed hospital seeks the subject location in order to be located near the larger hospital campus. From a zoning perspective, the proposed site plan and preliminary development plan meets the applicable standards of the Planning and Zoning Code. Additional details relating to the building materials, landscaping, and lighting must be submitted as a part of the final development plan, which the applicant has agreed to do. Some of these submittals will require modifications to the plan, but none of the modifications should change the overall layout of the site.

With that, staff is recommending that the following recommendation be forwarded to City Council by the Planning Commission:

1. Recommend that City Council **adopt** Ordinance #6881 to approve the rezoning and preliminary development plan for the post-acute medical (PAM) development contained herein with the following conditions which shall be met by the final development plan and report, to be submitted and reviewed for consistency with the preliminary development plan at a later date:
 - a. The applicant agrees to coordinate with and adhere to any modification recommended by the City Engineer, Public Works Director, and/or Fire Marshal related to public utilities, roadway improvements, sight distance, storm water management, and emergency access to this site.
 - b. The final lighting details for the site be submitted for review and approval as a part of the Final Development Plan (FDP) submittal.
 - c. The applicant agrees to submit details relating to the design of the proposed retaining walls, including any building-code-required railings and barriers.
 - d. The applicant agrees to submit updated building elevation drawings for review and approval by the Planning Commission as a part of the Final Development Plan that eliminate or significantly reduce the use of corrugated metal siding on the building.
 - e. As a part of the final plan, the applicant agrees to submit an official Final Development Plan and Report for the site; organizing and listing plans for all applicable uses, landscaping, setbacks, access, lighting, grading, storm water management, architectural elements, etc...of the site, to be reviewed and approved by the Planning Commission and City Council, to ensure that the Final Development Plan conforms to the Preliminary Development Plan and any adopted conditions.
2. Further, the Planning Commission recommends that Ordinance #6881 be approved with the modifications recommended by the Planning Commission. These recommended modifications, which are reflected on the attached ordinance, include:
 - a. Modification of Exhibit B to the most recent preliminary site plan for the property.
 - b. The addition of the preliminary development plan report and associated exhibits into Ordinance #6881 as *Section 4*. The exhibits of the Preliminary Development Plan Report include the following exhibits:
 - i. Exhibit 1 – Preliminary Site Plan
 - ii. Exhibit 2 – Preliminary Building Elevations
 - iii. Exhibit 3 – Preliminary Landscaping and Buffering Plan

The associated ordinance and exhibits are attached.



MEMORANDUM

To: Keith Johnson, City Manager
From: Ryan Homs, City Planner
Date: February 9, 2021
Re: Preliminary Development Plan for PAM Facility on Alexandersville (Ordinance 6881)

Ordinance 6881, if passed, will approve the preliminary development plan for the proposed Post-Acute Medical (PAM) facility proposed to be located at the southeast corner of the intersection of Alexandersville and Crosspointe Drive within Southpointe Business Park. This ordinance also would rezone the subject property from I-1 (Light Industrial) and RO-1 (Research-Office) to SDD-1 (Special Development District 1).

The proposed development includes the construction of a 2-story, 62-bed hospital facility on the currently-vacant 5-15-acre piece of land at the southeast corner of the intersection of Alexandersville and Crosspointe Drive. When this proposal went before Council last year for a first reading, the facility was proposed to be a single-story and include 42 beds, but PAM is seeking to relocate some of their existing beds that are currently located in Sycamore Hospital to this facility.

This item went before Council for a first reading on 12/1/2020 where the ordinance was forwarded to the Planning Commission for their review and recommendation. On 1/25/2021, the Planning Commission reviewed this item and held their public hearing.

Planning Commission Recommendation:

At the public hearing held by the Planning Commission on 1/25/2021, the Planning Commission passed the following recommendation onto City Council:

1. *that City Council **adopt** Ordinance #6881 to approve the rezoning and preliminary development plan for the post-acute medical (PAM) development contained herein with the following conditions which shall be met by the final development plan and report, to be submitted and reviewed for consistency with the preliminary development plan at a later date:*
 - a. *The applicant agrees to coordinate with and adhere to any modification recommended by the City Engineer, Public Works Director, and/or Fire Marshal related to public utilities, roadway improvements, sight distance, storm water management, and emergency access to this site.*
 - b. *The final lighting details for the site be submitted for review and approval as a part of the Final Development Plan (FDP) submittal.*
 - c. *The applicant agrees to submit details relating to the design of the proposed retaining walls, including any building-code-required railings and barriers.*
 - d. *The applicant agrees to submit updated building elevation drawings for review and approval by the Planning Commission as a part of the Final Development Plan that eliminate or significantly reduce the use of corrugated metal siding on the building.*
 - e. *As a part of the final plan, the applicant agrees to submit an official Final Development Plan and Report for the site; organizing and listing plans for all applicable uses, landscaping, setbacks, access, lighting, grading, storm water management, architectural elements, etc. . . . of the site, to be reviewed and approved by the Planning Commission and City Council, to ensure that the Final Development Plan conforms to the Preliminary Development Plan and any adopted conditions.*
2. *Further, the Planning Commission recommends that Ordinance #6881 be approved with the modifications recommended by the Planning Commission. These recommended modifications, which are reflected on the attached ordinance, include:*
 - a. *Modification of Exhibit B to the most recent preliminary site plan for the property.*
 - b. *The addition of the preliminary development plan report and associated exhibits into Ordinance #6881 as Section 4. The exhibits of the Preliminary Development Plan Report include the following exhibits:*
 - i. *Exhibit 1 – Preliminary Site Plan*
 - ii. *Exhibit 2 – Preliminary Building Elevations*
 - iii. *Exhibit 3 – Preliminary Landscaping and Buffering Plan*

The amended ordinance with the exhibits as well as the full Planning Commission staff report are attached.

ORDINANCE NO. 6882

AN ORDINANCE AMENDING THE 2020 BUDGET AND ANNUAL APPROPRIATION
ORDINANCE AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF
OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING,
THAT:

Section 1.

To provide for the current expenses and other expenditures of the City of Miamisburg
for the Fiscal Year of 2020, the following amended sums be, and they are hereby set
aside and appropriated as follows:

<u>FUND</u>	<u>AMOUNT</u>
General Fund	
Council	\$158,294
Mayor	24,524
City Manager	679,896
Finance	297,059
Law Director	80,324
Court	1,480,456
Prosecutor	285,112
Civil Service	2,587
Human Resources	390,974
Buildings & Land	367,602
Miscellaneous	2,754,914
Fire	2,600,000
Police Patrol	4,416,703
Criminal Investigations	696,913
Police Administration	993,429
Police Communications	315,500
Jail & Evidence	86,140
Animal Control	10,000
Refuse	1,180,000
Development & Planning	403,600
Engineering	561,715
Building Inspection/Code Enforcement	377,898
Community Development	360,341
Pool	395,928
Parks	857,699
Recreation Administration	587,277
Recreation Program	563,030
Traffic Maintenance	66,520
Total General Fund	<u>\$20,994,435</u>

City Income Tax	\$19,436,961.00
Fire Levy	1,200,000.00
Police & Fire Pension	71,318.62
Austin TIF	9,717,000.00
Self-Supporting Recreation	84,686.00
Coronavirus Relief	1,163,037.00
Sidewalk, Curb and Gutter	3,440.00
Roadway Improvement	7,661.50
Issue II	246,377.00
KMCN DS Reserve	1,462.80
Water Capital	750,500.00
Water Treatment Plant Improvement	250,000.00
Sewer Treatment Plant Improvement	500,000.00
Austin JEDD	1,380,000.00

Section 2.

This ordinance is declared to be an emergency measure necessary for the public peace, health, safety, and welfare and for the further reason that these appropriations are needed at the earliest possible date to meet current obligations of the City for fiscal year 2020; therefore, this measure shall take effect and be in force from and after its passage.

Passed: December 15, 2020 Attested: 
Kim Combs, Clerk of Council

Approved: 
Michelle L. Collins, Mayor

ORDINANCE NO. 6883

AN ORDINANCE AUTHORIZING THE ADVANCEMENT OF FUNDS FROM THE GENERAL FUND TO THE AUSTIN CENTER TAX INCREMENT FINANCING (TIF) FUND AND DECLARING AN EMERGENCY.

WHEREAS, the City has entered into a cooperative agreement with Miami Township, the City of Springboro, the Miamisburg City School District and the Montgomery County Transportation Improvement District (TID) for the construction of the Austin Center Interchange and related improvements, and

WHEREAS, pursuant to the agreement, revenues generated by the TIF District within the Interchange are made by the City to the Miamisburg School District from the Austin Center TIF Fund, and

WHEREAS, the Austin Center TIF Fund balance is not sufficient to pay the full deferred compensation payment to the Miamisburg School District, and

WHEREAS, City Council desires to advance funds from the General Fund to the Austin Center TIF Fund to pay the deferred compensation to be reimbursed to the General Fund when sufficient TIF revenue exists,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The sum of \$500,000 is hereby appropriated in and authorized to be advanced from the General Fund to the Austin Center TIF Fund.

Section 2.

The \$500,000 shall be reimbursed to the General Fund with TIF revenues collected in the Austin TIF Fund in such amounts and at such times as Council, by motion, deems appropriate and necessary.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council authorization is needed at the earliest possible date, to meet the assessment deadline of the Montgomery County Auditor's Office; therefore, this measure shall take effect and be in force from and after its passage.

Passed: December 15, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins, Mayor

ORDINANCE NO. 6884

AN ORDINANCE TO ESTABLISH THE SALARIES AND CERTAIN BENEFITS FOR THE CITY MANAGER, LAW DIRECTOR, PROSECUTOR, AND CLERK OF COUNCIL, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The salary of the City Manager is hereby established at \$140,796.49 annually.

Section 2.

The salary of the Law Director is hereby established at \$68,418.46 annually.

Section 3.

The salary of the Prosecutor is hereby established at \$98,131.74 annually.

Section 4.

The salary of the Clerk of Council is hereby established at \$7,754.11 annually.

Section 5.

This measure is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare, and for the further reason that these salary changes are needed at the earliest possible date to allow the compensation to be effective December 28, 2020, therefore, this measure shall take effect and be in force from and after its passage.

Passed: December 15, 2020 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 6885

AN ORDINANCE ESTABLISHING WAGES AND BENEFITS OF EMPLOYEES OF THE CITY OF MIAMISBURG, OHIO BY ENACTING PAY AND BENEFIT SCHEDULES FOR THE VARIOUS CLASSES, AND REPEALING ORDINANCE NO. 6827 AND ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT HEREWITH, AND DECLARING AN EMERGENCY.

WHEREAS, it is necessary to establish the compensation of employees in service to the City of Miamisburg, Ohio; and

WHEREAS, it is necessary to establish benefits of Public Safety and Service Department Supervisors in service to the City of Miamisburg, Ohio to provide parity in benefits.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The pay ranges and schedule of benefits for classifications of employment for the City of Miamisburg are hereby established in accordance with the compensation plan attached hereto, made a part hereof and marked as Exhibit A.

Section 2.

The schedule of benefits in parity for Supervisory Staff in employment for the City of Miamisburg are hereby established in accordance with the benefit schedule attached hereto, made a part hereof and marked as Exhibit B.

Section 3.

The rates of pay for employees contained in the aforementioned compensation and benefits plans shall be established by the City Manager.

Section 4.

Staffing levels will be determined by the City Manager within appropriation limits adopted by City Council.

Section 5.

The classifications attached hereto may be employed in a full-time, part-time or seasonal/temporary capacity. The part-time and seasonal rates shall be determined by dividing the annual rate by 2080, unless otherwise listed as hourly.

Section 6.

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety health, and welfare and for the further reason that the City desires to adopt the compensation and benefits schedules effective December 28, 2020, therefore, this measure shall take effect after its passage.

Passed: December 15, 2020

Attested:

Kim Combs
Kim Combs, Clerk of Council

Approved:

Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A**2021 Pay Schedule**

POSITION	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>DEPARTMENT HEADS</u>		
ASSISTANT CITY MANAGER	\$91,680.73	\$115,551.18
CITY ENGINEER	\$91,680.73	\$115,551.18
COMMUNITY DEVELOPMENT DIRECTOR	\$91,680.73	\$115,551.18
DEVELOPMENT DIRECTOR	\$91,680.73	\$115,551.18
FINANCE DIRECTOR	\$91,680.73	\$115,551.18
HUMAN RESOURCES DIRECTOR	\$91,680.73	\$115,551.18
PARKS & RECREATION DIRECTOR	\$91,680.73	\$115,551.18
POLICE CHIEF	\$91,680.73	\$115,551.18
PUBLIC WORKS DIRECTOR	\$91,680.73	\$115,551.18
<u>CITY MANAGER'S OFFICE</u>		
PUBLIC INFORMATION OFFICER	\$65,485.62	\$79,118.76
ASSISTANT TO THE CITY MANAGER	\$52,459.54	\$72,106.88
ADMINISTRATIVE ASSISTANT TO THE CITY MANAGER	\$47,235.78	\$63,591.30
<u>ADMINISTRATIVE SUPPORT</u>		
PROJECT MANAGER	\$91,680.73	\$115,551.18
INFORMATION SYSTEMS MANAGER	\$67,712.16	\$86,637.80
HUMAN RESOURCES SPECIALIST	\$32,990.49	\$63,591.30
ADMINISTRATIVE ASSISTANT	\$32,990.49	\$58,076.60
CLERK	\$23,908.17	\$46,162.98
INTERN	\$23,908.17	\$41,600.00
<u>COMMUNITY DEVELOPMENT DEPARTMENT</u>		
COMMUNITY DEVELOPMENT COORDINATOR	\$38,224.17	\$58,076.60

2021 Pay Schedule

<u>POSITION</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>ECONOMIC DEVELOPMENT DEPARTMENT</u>		
CHIEF BUILDING OFFICIAL	\$74,416.08	\$95,252.53
CITY PLANNER	\$67,712.16	\$86,637.80
BUILDING INSPECTOR	\$65,485.62	\$79,118.76
HOUSING INSPECTOR	\$38,224.17	\$63,591.30
CODE ENFORCEMENT OFFICER	\$38,224.17	\$63,591.30
<u>ENGINEERING DEPARTMENT</u>		
ENGINEERING TECHNICIAN	\$51,721.14	\$84,520.83
TRAFFIC SUPERVISOR	\$58,079.06	\$74,502.76
<u>FINANCE DEPARTMENT</u>		
ASSISTANT FINANCE DIRECTOR	\$74,416.08	\$95,252.53
INCOME TAX ADMINISTRATOR	\$65,485.62	\$82,878.28
INCOME TAX SPECIALIST 1	\$30,762.68	\$63,591.30
FINANCE TECHNICIAN	\$30,762.68	\$63,591.30
INCOME TAX CLERK	\$23,908.17	\$46,162.98
<u>PUBLIC WORKS DEPARTMENT</u>		
PUBLIC WORKS PROJECT MANAGER	\$81,680.73	\$105,551.18
PUBLIC UTILITIES SUPERINTENDENT	\$67,712.16	\$86,637.80
PUBLIC WORKS SUPERINTENDENT	\$67,712.16	\$86,637.80
ENVIRONMENTAL COORDINATOR	\$61,219.78	\$75,124.12
PUBLIC UTILITIES SUPERVISOR	\$58,079.06	\$74,502.76
PUBLIC WORKS SUPERVISOR	\$58,079.06	\$74,502.76
CHIEF OPERATOR	\$51,721.14	\$65,753.39
MAINTENANCE WORKER	\$19,760.00	\$36,244.00

2021 Pay Schedule

<u>POSITION</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>SAFETY DEPARTMENT</u>		
POLICE CAPTAIN	\$93,048.10	\$104,066.97
LIEUTENANT	\$90,908.44	\$101,679.12
ASSISTANT TO THE CHIEF OF POLICE	\$39,520.27	\$62,504.30
RECORDS CLERK	\$37,830.61	\$49,324.84
<u>MUNICIPAL COURT</u>		
CLERK OF COURT	\$65,138.75	\$92,478.19
ASSISTANT CLERK OF COURT	\$56,733.75	\$84,144.36
BAILIFF	\$34,438.97	\$59,912.69
ASSIGNMENT COMMISSIONER	\$37,760.03	\$57,316.03
CHIEF CIVIL CLERK	\$32,779.50	\$57,316.03
DEPUTY CLERK	\$26,223.60	\$56,473.18
LAW CLERK	\$42,025.00	\$56,733.75
SECRETARY TO THE JUDGE	\$39,923.75	\$55,683.13
MAGISTRATE	\$19,779.26	\$29,716.44
CHIEF PROBATION OFFICER	\$51,931.64	\$69,242.18
PROBATION OFFICER	\$32,779.50	\$59,898.55
ASSISTANT PROBATION OFFICER	\$29,716.44	\$56,473.18

2021 Pay Schedule

<u>POSITION</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>PARKS AND RECREATION DEPARTMENT</u>		
PARKS & FACILITIES SUPERINTENDENT	\$67,712.16	\$86,637.80
RECREATION & SPECIAL EVENTS SUPERINTENDENT	\$67,712.16	\$86,637.80
PARKS SUPERVISOR	\$58,079.06	\$74,502.76
FACILITY SUPERVISOR	\$58,079.06	\$74,502.76
RECREATION OPERATIONS SUPERVISOR	\$58,079.06	\$74,502.76
PROGRAM & EVENTS SUPERVISOR	\$58,079.06	\$74,502.76
RECREATION OPERATIONS MANAGER	\$45,000.00	\$56,662.50
MOUND GOLF COURSE MANAGER	\$45,000.00	\$56,662.50
COMMUNITY CENTER MANAGER	\$45,000.00	\$56,662.50
PROGRAM & EVENT MANAGER	\$45,000.00	\$56,662.50
MARKETING & COMMUNICATIONS MANAGER	\$45,000.00	\$56,662.50
PARKS CREW LEADER	\$45,000.00	\$56,662.50

PARKS AND RECREATION PART-TIME AND SEASONAL POSITIONS

	<u>Min. \$/Hour</u>	<u>Max. \$/Hour</u>
Aquatic Team Member	\$9.50	\$10.80
Swim Instructor Assistant	9.50	10.80
Recreation Team Member	9.50	10.80
Site Coordinator	9.50	12.80
Lifeguard	9.50	13.80
Crew Leader	10.80	13.80
Day Camp Coordinator	10.80	13.80
Swim Instructor	10.80	13.80
Park Maintenance	9.50	15.80
Facility Maintenance	9.50	15.80
Driver	10.80	15.80
Recreation Coordinator	10.80	15.80
Day Camp Director	10.80	15.80
Mound Golf Course Clubhouse Team Member	10.80	15.80
Aquatic Assistant Manager	12.80	15.80
Aquatic Center Manager	13.80	18.80
Customer Service Coordinator	10.80	18.80
Program & Event Coordinator	10.80	20.80
Sports League Manager	10.80	20.80
Mound Golf Course Assistant Manager	15.80	23.80

Benefit Parity

Command Positions/Non-organized

Police Captain**
Police Lieutenant**

Benefits

Uniform Allowance +\$250**
Education Incentive**

Management Positions/Non-organized

Public Works Superintendent
Public Utilities Superintendent
Public Works Supervisor/Fleet
Public Works Supervisor
Public Utilities Supervisor
Traffic Supervisor
Chief Operator
Parks and Facilities Superintendent
Parks Supervisor
Facility Supervisor
Parks Crew Leaders

Benefits

Safety shoes/Safety glasses
Call Back and Call In Pay
Holiday Pay
Compensatory Time
Meal Allowance
Overtime
Tool Allowance

Group A- Holiday Pay only

Parks and Facilities Superintendent

Group B- Holiday Pay and Safety Shoes/Safety Glasses

Public Works Superintendent
Public Utilities Superintendent
Parks Supervisor
Facility Supervisor

Group C - Safety Shoes/Safety Glasses, Call Back and Call In Pay, Holiday Pay, Compensatory Time, Meal Allowance, Overtime

Public Works Supervisors
Public Utilities Supervisors
Traffic Supervisor
Chief Operator
Parks Crew Leaders

Group D - Safety Shoes/Safety Glasses, Call Back and Call In Pay, Holiday Pay, Compensatory Time, Meal Allowance, Overtime, and Tool Allowance

Fleet Maintenance Supervisor

All benefits are equivalent to the bargaining unit except where specifically denoted.

ORDINANCE NO. 6886

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION AND DECLARING AN EMERGENCY.

WHEREAS, negotiations have occurred between the Ohio Patrolmen's Benevolent Association and the City of Miamisburg, and

WHEREAS, a mutually acceptable tentative agreement has been reached between the Ohio Patrolmen's Benevolent Association and the City of Miamisburg; and

WHEREAS, the tentative agreement has been approved by the Ohio Patrolmen's Benevolent Association; and

WHEREAS, the Council finds it in the best interest of the City of Miamisburg to adopt the agreement with the Ohio Patrolmen's Benevolent Association.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized and directed to enter into an agreement for and on behalf of the City of Miamisburg with the Ohio Patrolmen's Benevolent Association to implement the provisions of the contract items in accordance with the negotiations between the parties, same having been reviewed by Council.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council desires to implement the provisions of the agreement between the Ohio Patrolmen's Benevolent Association and the City of Miamisburg to ensure approval of the negotiated contract at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage effective December 28, 2020.

Passed: December 15, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ADDENDUM TO CONTRACT

IT IS AGREED this ___ day of December, 2020, that the CITY OF MIAMISBURG (the "City") and the OHIO PATROLMEN'S BENEVOLENT ASSOCIATION (the "Union") are parties to a Collective Bargaining Agreement (the "Agreement") for Patrol Officers dated January 1, 2019 through December 31, 2021.

WHEREAS, the Contract between the parties provided for a Reopener for the year 2021 on the subjects of base wages and health insurance; and

WHEREAS, the parties have met on November 23, 2020 and tentatively agreed to the following changes to the Agreement as follows:

1. The Patrol Officers Bargaining Unit shall receive a base wage increase of two and one-half percent (2½%), effective the full first pay period of 2021, i.e. beginning December 28, 2020.
2. Each Patrol Officer Bargaining Unit member will be entitled to forty (40) hours of Hazardous Duty Paid Leave time off, effective January 1, 2021. Such Hazardous Duty Paid Leave must be used prior to midnight December 31, 2021 and prior to the use of all other paid leave with the exception of Personal Business Leave.

If not used by December 31, 2021, such remaining Hazardous Duty Paid Leave will be cashed out.

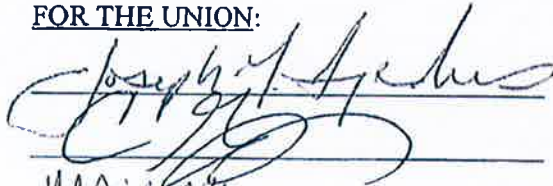
For purposes of permitting use of such Hazardous Duty Paid Leave, the Chief of Police will use the rules surrounding Vacation eligibility as a guide.

THIS AGREEMENT is to be presented to the City's Council for approval in December 2020.

APPROVED:

FOR THE CITY:

FOR THE UNION:



MSingh

ORDINANCE NO. 6887

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE TEAMSTERS LOCAL #957, AND DECLARING AN EMERGENCY.

WHEREAS, negotiations have occurred between the Teamsters Local #957 and the City of Miamisburg, and

WHEREAS, a mutually acceptable tentative agreement has been reached between the parties; and

WHEREAS, the tentative agreement has been approved by the Teamsters Local #957 bargaining unit; and

WHEREAS, the Council finds it in the best interest of the City of Miamisburg to adopt the agreement with the Teamsters Local #957.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized and directed to enter into an agreement for and on behalf of the City of Miamisburg with the Teamsters Local #957 to implement the provisions of the contract items in accordance with the negotiations between the parties, same having been reviewed by Council.

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, health, and welfare and for the further reason that Council desires to implement the provisions of the agreement between the Teamsters and the City of Miamisburg at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage effective December 28, 2020.

Passed: December 15, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

INTERIM COLLECTIVE BARGAINING AGREEMENT

This Agreement is between the City of Miamisburg, Ohio (City) and Teamsters Local Union No. 957 (Local 957) for the period of January 1, 2021 through December 31, 2021 on the following terms:

WHEREAS, both parties are signatory to an ongoing collective bargaining agreement (Contract) with a stated expiration date of December 31, 2019; and

WHEREAS, both parties entered into an Interim Collective Bargaining Agreement on April 22, 2020 to keep the Contract in place while the parties were negotiating for a new collective bargaining agreement and to provide the employees represented by Local 957 with a wage increase of 2.5% retroactive to the beginning of the first full pay period in January 2020; and

WHEREAS, the parties agree to further postpone the negotiations for a new collective bargaining agreement, and to resume the current negotiations on or about November 1, 2021 with a limited number of issues from both parties as set forth below and grant the employees represented by Local 957 with an additional 2.5% wage increase effective on the first full pay period in January 2021.

NOW, THEREFORE, the parties agree as follows:

1. The City shall grant a 2.5% wage increase to the employees represented by the Union effective the first full pay period in January 2021.
2. Wages for 2022 (Article 11/Exhibit A) – Both parties may make a proposal on base wage adjustments for 2022.
3. Employer's Issues:
 - (a) Recognition, Dues Deduction and Management Rights (Article 2): The City maintains its proposal and further negotiation the issue of Article 2 regarding fair share fees and part-time/seasonal employees.
 - (b) Hours of Work and Overtime (Article 8): The City maintains its initial proposal on the issue of Article 8, Section 6, First Paragraph, regarding the

definition of what constitutes hours of work. All other language in Article 8 remains current contract language.

- (c) Facilities Maintenance Classification Issue: The City maintains its proposals on the issue of Article 11 & Exhibits A/B. (Facilities Maintenance language to mirror Parks Maintenance language.)

4. Union's Issues

- (a) Article 8-Hours of Work and Overtime: The Union maintains its proposals and further negotiations on Article 8-Sections 5 and 7.
- (b) Article 11-Wages and Exhibits a and B: The Union maintains its proposals and further negotiations on Article 11-Section 1 (only as it relates to compensation increases for 2022) including Exhibits A and B and Section 5.
- (c) Article 16-Insurance: The Union maintains its proposal and further negotiations on Article 16, Section 1.

5. All other proposals not tentatively agreed to nor specifically included in this Interim Agreement are hereby dropped.

This Interim Collective Bargaining Agreement is adopted on the last date written below as affirmed by the signatures below.

NOW, THEREFORE, be it resolved and agreed that this Interim Collective Bargaining Agreement is adopted this ____ day of December, 2020, as affirmed by the signatures set forth below.

FOR THE CITY OF MIAMISBURG

FOR TEAMSTERS LOCAL UNION NO.
957

ORDINANCE NO. 6888

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT WITH MONTGOMERY COUNTY CONCERNING THE BUSINESS FIRST! PROGRAM FOR A PERIOD BEGINNING 2021 AND ENDING IN 2025 AND TO PROVIDE ANNUAL FINANCIAL SUPPORT FOR THE PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg as a member jurisdiction has agreed to continue its participation in a countywide economic development initiative called "The Business First! Program"; and

WHEREAS, the mission of the Program is to support the growth and retention of local businesses by identifying their needs and providing information and resources to satisfy their needs; and

WHEREAS, the Member Jurisdictions desire to identify the roles of certain Member Jurisdiction participants, the composition of the Program, the relationship between the Member Jurisdictions and the projected outcomes of the Program; and

WHEREAS, the Program will provide benefits to all Member Jurisdictions and the Regional Resource Partners as defined hereinafter; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to execute the intergovernmental cooperation agreement and expend the necessary funds to participate in the program as described in Exhibit A.

Section 2.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason that Montgomery County has requested that the jurisdictions approve the agreement at the earliest possible date, therefore, this measure shall take effect and be in force from and after its passage.

Passed: December 15, 2020

Attested: _____

Kim Combs
Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A

**BUSINESSFIRST! FOR A GREATER DAYTON REGION
BUSINESS RETENTION AND EXPANSION PROGRAM
Intergovernmental Cooperation Agreement
2021-2025**

**BUSINESSFIRST! FOR A GREATER DAYTON REGION
BUSINESS RETENTION AND EXPANSION PROGRAM
Intergovernmental Cooperation Agreement
2021-2025**

This Intergovernmental Cooperation Agreement (“Agreement”), dated this _____ day of _____, 2020, is between the City of Beavercreek, Ohio – *county of Greene*; the City of Brookville, Ohio; Butler Township, Ohio; the City of Centerville, Ohio; the City of Clayton, Ohio; Darke County, Ohio; the City of Dayton, Ohio; the City of Eaton, Ohio – *county of Preble*; the City of Englewood, Ohio; the City of Fairborn, Ohio – *county of Greene*; the Village of Farmersville, Ohio; the City of Germantown, Ohio; Greene County, Ohio; Harrison Township, Ohio; the City of Huber Heights, Ohio; Jefferson Township, Ohio; the City of Kettering, Ohio; Miami Township, Ohio; Miami County, Ohio; the City of Miamisburg, Ohio; the City of Moraine, Ohio; the City of Piqua, Ohio – *county of Miami*; Preble County, Ohio; the City of Riverside, Ohio; the City of Tipp City, Ohio – *county of Miami*; the City of Springboro, Ohio – *county of Warren*; the City of Trotwood, Ohio; the City of Troy, Ohio – *county of Miami*; the City of Vandalia, Ohio; Washington Township, Ohio; the City of West Carrollton, Ohio; the City of Xenia, Ohio – *county of Greene*; and Montgomery County, Ohio (hereinafter collectively referred to as “Member Jurisdictions”).

Recitals

The Member Jurisdictions desire to participate in a region-wide Economic Development initiative called the “BusinessFirst! Program” (“Program”);

The mission of the Program is to support the growth and retention of local businesses by identifying their needs and providing information and resources to satisfy those needs;

The Member Jurisdictions desire to clarify the roles of its participants, the composition of the Program, the relationships between the Program and the current Member Jurisdictions, and the projected outcomes of the Program;

The Program will provide benefits to all Member Jurisdictions and the Regional Resource Partners (as defined below);

In consideration of the mutual promises and covenants set forth below, the Member Jurisdictions agree as follows:

I. The BusinessFirst! Program

The BusinessFirst! Program is an economic development initiative that was initially designed to retain businesses in Montgomery County, Ohio. BusinessFirst! has grown throughout the Dayton region to include additional counties and jurisdictions. National studies have shown that approximately eighty percent of job growth is the result of the expansion of business already located in a jurisdiction.

The Program is designed to assist the participating jurisdictions to work in an integrated and systematic manner among economic development organizations to connect with the wealth generating companies which are already present in the community and determine what they need to grow and be successful. Our communities are committed to meeting the needs businesses of all sizes. The Program was designed and an initial test implementation was undertaken in 2001. In 2002 and in subsequent years, additional Member Jurisdictions were added as part of full implementation of the Program regionwide.

The Program design and implementation, including survey design, database, and technology development, have been facilitated by ExecutivePulse, Inc., (ExecutivePulse) a company based in Erie, Pennsylvania.

The Program will continue through calendar year 2025.

II. Definitions

- A. "Business Client" means any business included in the Program database;
- B. "Regional Resource Partner" is any government department, or community and economic development organization at the city, county, or state level, but not a Member Jurisdiction, that has formally agreed to participate in the Program through execution by its employees or agents of the Member Jurisdiction Employee/Representative Protocol Agreement Certification (included in Appendix A).

III. Role of Member Jurisdictions

Each Member Jurisdiction, throughout the term of its participation in the Program, is responsible for the following:

- A. To provide computer equipment and internet access for its own use to access the shared Program database;
- B. To develop retention and expansion teams, called "Outreach Professionals," to survey companies within its respective jurisdiction;
- C. To identify target industries and businesses to be surveyed;
- D. To collect Program business and industry data and upload into the Program database from businesses and industries located in its jurisdiction;

- E. To appoint one representative to serve on the Program Advisory Committee;
- F. To require all of its employees and representatives who will be involved in the Program, who will conduct the Program business or industry surveys, or who will have access to the Program database to execute the “Member Jurisdiction Employee/Representative Protocol Agreement Certification” (Protocol Agreement Certification), a copy of which is attached as Appendix A. Copies of all executed Protocol Agreement Certifications will be maintained by the Montgomery County Department of Community and Economic Development. Each Member Jurisdiction will keep all executed Protocol Agreement Certifications and provide copies of those certifications to the Montgomery County Department of Community and Economic Development. Upon request, a Member Jurisdiction will also provide copies of executed Protocol Agreement Certifications to any other Member Jurisdiction;
- G. To participate in training with ExecutivePulse and the Montgomery County Department of Community and Economic Development in order to improve the knowledge and skillset of its employees and to attend periodic Program training and refresher courses;
- H. Jurisdictions joining the program that are outside of Montgomery County, Ohio, will provide financial support for the Program through a one-time entry fee of \$3,000 to Montgomery County to manage and maintain the BusinessFirst! System by Montgomery County;
- I. To provide annual financial support for the Program in an amount not to exceed \$1,500 per year (due by June 1 of each calendar year) beginning in 2021 through 2025, with the exception of Montgomery County, Ohio, which will provide Program staffing and other services, as defined in Section IV. Failure to pay by the June 1 deadline in any given calendar year will result in a review of the delinquency circumstances by the Executive Committee for possible referral to the Program Advisory Committee for sanctions
- J. To contact Regional Resource Partners within 24-48 hours of visiting a business to request assistance on behalf of Business Clients;
- K. To follow-up with Regional Resource Partners and Business Clients to ensure that their needs were addressed;
- L. To update the Program database records with the actions taken on behalf of any Business Client by the Regional Resource Partner;
- M. To maintain the confidentiality of Program information in accordance with the Member Jurisdiction Employee/Representative Protocol Agreement (Appendix A), subject to any disclosures required by Ohio’s public records laws;
- N. To notify Montgomery County Department of Community and Economic Development of all public records requests regarding Program data or information concerning Program data.

IV. Role of Montgomery County Department of Community and Economic Development

In addition to participating in the Program as a Member Jurisdiction, the Montgomery County Department of Community and Economic Development agrees to function as the Contract Manager for the Program. In this capacity, the Montgomery County Department of Community and Economic Development agrees to be responsible for administering the contract with ExecutivePulse for the Program on behalf of the Member Jurisdictions and acting as the point of contact for Member Jurisdictions in all matters relating to ExecutivePulse invoices for the services rendered for the Program, including training, technology upgrades, and customer service calls.

In addition to acting as the Contract Manager, the Montgomery County Department of Community and Economic Development also agrees to function as the Implementing Agency for the Program.

In this capacity, the Department of Community and Economic Development will be responsible for the following:

- A. To facilitate the development and implementation of the Program, including coordination of all ongoing training about BusinessFirst!;
- B. To provide, on a quarterly basis, aggregate regional reports based on BusinessFirst! visits;
- C. To serve as liaison between the Member Jurisdictions, Regional Resource Partners, and ExecutivePulse;
- D. To provide technical assistance to the Member Jurisdictions, as needed;
- E. To provide "Outreach Professionals" and Regional Resource Partners with password access to the Program database. New database program users will be given "Outreach Professional" level of access for their respective jurisdiction and service areas (See Appendix B for access level descriptions);
- F. To coordinate all technology upgrades and improvements made to the Program survey tool;
- G. Provide support for an Executive Committee for the purpose of being a recommending body to the Program Advisory Committee. The Executive Committee makes recommendations on policies, procedures, new expenses, and program changes, including but not limited to improvements to the software system and creating working committees;
- H. As the Member Jurisdictions' point of contact regarding the ExecutivePulse contract, Montgomery County will provide the Program Advisory Committee an annual financial statement of the BusinessFirst! Program.

V. Role of Executive Committee

The purpose of the Executive Committee is that of a recommending body to the Program Advisory Committee. The Executive Committee makes recommendations on policies, procedures, written grievances, new expenses, and program changes, including but not limited to improvements to the

software system and creating working committees. The Executive Committee will meet as often as needed but no fewer than four times per year.

A. Selection and Term of Executive Committee Members:

1. Members will be made up of one representative from a participating Member Jurisdiction from each county in the BusinessFirst! region. Member Jurisdictions in each of the represented counties will nominate and select their county's representative for the Executive Committee. For purposes of selection and representation on the Executive Committee, the City of Springboro will be included in Montgomery County.

As the Program's Implementing Agency, Member Jurisdiction Montgomery County will have a permanent seat on the Executive Committee. Montgomery County's seat is in addition to the seat allocated to a Member Jurisdiction from Montgomery County. Montgomery County is ineligible to hold the seat allocated to a Member Jurisdiction from Montgomery County.

2. By December 31 of each year, Montgomery County and the Member Jurisdictions of each county will select their respective representatives for the Executive Committee to serve a one-year term commencing January 1 of the next year through a process mutually agreed by the county's Member Jurisdictions.

- B. If an Executive Committee member is unavailable to appear at a meeting or temporarily unable to serve, they may vote by proxy. This person's Member Jurisdiction may also nominate a substitute to serve during the person's period of unavailability. An Executive Committee member's unavailability may not exceed a total of 90 days during their term.

If an Executive Committee member becomes or is reasonably expected to be unavailable for a period exceeding 90 days of their term, then the person's seat will be deemed vacant. Within 30 days of the seat becoming vacant, the Member Jurisdiction(s) represented by the vacant seat will select a new representative for the Executive Committee to serve the remainder of the vacant seat's one-year term through a process mutually agreed by those Member Jurisdictions.

VI. Role of Regional Resource Partners

As each Member Jurisdiction's Outreach Professionals visit local businesses related to the Program, these businesses may have a need for further assistance. The Member Jurisdiction will contact Regional Resource Partners—defined as any government department, or community and economic development organization at the city, county, or state level, but not a Member Jurisdiction, that has formally agreed to participate in the Program through execution by its employees or agents of the Protocol Agreement—to request additional assistance for their business clients. Regional Resource Partners are asked to do the following:

- A. To respond directly to the referred Program business within 24-48 hours from time of contact by a Member Jurisdiction or the Montgomery County Department of Community and Economic Development;

- B. To appoint a contact person who will be responsible for attending meetings related to issues affecting the Program and serving as a liaison with the Montgomery County Department of Community and Economic Development;
- C. To require all employees and representatives who will be involved in the Program or who will have access to the Program database, to execute the Protocol Agreement Certification. Copies of all executed Protocol Agreement Certifications will be maintained by the Montgomery County Department of Community and Economic Development. Each Regional Resource Partner will keep all executed Protocol Agreement Certifications and provide copies of those certifications to the Montgomery County Department of Community and Economic Development. Upon request, a Regional Resource Partner will also provide copies of executed Protocol Agreement Certifications to any Member Jurisdiction;
- D. To update the Program database records with the actions taken on behalf of any Program business client by the Regional Resource Partner;
- E. To maintain the confidentiality of Program information in accordance with the Member Jurisdiction Employee/Representative Protocol Agreement (Appendix A), subject to any disclosures required by Ohio's public records laws;
- F. To assist the Member Jurisdictions on Program retention and expansion visits when requested;
- G. In the event that a Regional Resource Partner is contacted by a business regarding an interjurisdictional relocation or expansion, the Regional Resource Partner agrees to inform the business of the BusinessFirst! Program relating to company relocations and the Montgomery County Department of Community and Economic Development.

VII. Additional Participant Expectations

As a participant in the Program, the Member Jurisdiction agrees to abide by the following Program protocols:

Relations with Business Clients:

No Member Jurisdiction or Regional Resource Partner, nor their employees or representatives, of may release any information about any Business Client without permission of the particular client to the extent permitted by law and except as noted in this section of the Agreement and as required by Ohio's public records laws.

Pursuit of Businesses:

The BusinessFirst! program was created to establish a systematic method for retaining and expanding businesses within the Member Jurisdictions. The underlying philosophy of the program is that we as a region agree that it is desirable, whenever possible, to retain and expand businesses in the jurisdictions in which they reside. In the event a BusinessFirst! Member Jurisdiction is unable to retain a business, it is the explicit goal to retain the business in the county in which it resides, and if not the county, the Dayton region. Therefore, no employee or representative of any Member Jurisdiction may actively pursue businesses in another Member Jurisdiction. "Actively pursue" is defined as when a Member Jurisdiction contacts businesses within another participating BusinessFirst! community by methods including but not limited to cold calls, mail, or visits.

Relocation of Businesses:

If a Member Jurisdiction is contacted by a business or the representative of a business residing in another Member Jurisdiction regarding a relocation or expansion, and the business or their representative requests available site or incentive information, Member Jurisdictions will adhere to the following protocol:

- A. Notify the business that in the county where they reside, incentives such as enterprise zones or other incentive programs that require county approval or participation may require the consent of the affected jurisdiction. The BusinessFirst! Program is and will continue to be a forum for discussion between individual communities regarding JEDDs, tax sharing, and other innovative Economic Development initiatives. Articulate the BusinessFirst! philosophy to the business. Member Jurisdictions will state that they will work with the business, but they will inform the Member Jurisdiction that may be negatively impacted so that the Member Jurisdiction may attempt to conduct a BusinessFirst! interview to ascertain how the business may be assisted and retained in the community. The Member Jurisdiction that has been contacted by the business should explain the BusinessFirst! philosophy to the business:
 1. Communities want to assist the business so that they are successful regardless of where they are located. In so doing, it is the intent to do whatever may be done to keep the business in the community where they currently reside, but if not, keep them in the county or the Dayton region.
 2. If unable to keep the business in the community due to a variety of business issues (e.g. current space too small or too large, market conditions change, etc.), the Member Jurisdiction that may be negatively impacted due to a loss will work with the county where the business resides to begin assisting the business to find alternative locations. Member Jurisdictions that adhere to the protocol are in no way prohibited from assisting the business.
 3. Also, Member Jurisdiction/Member Jurisdictions are to do the following:
 - a. Notify the affected Member Jurisdiction and BusinessFirst! participating county with a phone call.
 - b. Post an electronic journal entry with a "BusinessFirst! Relocation Notification" through ExecutivePulse technology to the affected Member Jurisdiction and county.

- c. If applicable, a conference call with all affected communities can be facilitated about the potential relocation of the business at the request of any of the communities involved. The intent is to exchange information about the business's needs (e.g., why they need to relocate) and to ensure an open line of communication among the communities approached by the business.
 - d. It is possible that if a relocation occurs, incentives may be used on a case-by-case basis.
 4. When a participating BusinessFirst! county becomes aware of a potential business relocation or consolidation from a participating BusinessFirst! community to a non-participating community, the county will have the responsibility to institute the BusinessFirst! protocol as stated above.

Business Consolidations:

When a Member Jurisdiction learns of a potential consolidation, it will notify all of the other BusinessFirst! Member Jurisdictions in which the business has existing operations. The situation is to be treated as a business relocation as described above.

Information Sharing/Database Access – No employee or representative of a Member Jurisdiction or Regional Resource Partner may access or attempt to access information about Business clients outside of its respective jurisdictional responsibility. Program database design will include password and other protections. The Member Jurisdictions and Regional Resource Partners are strictly responsible for the security of the Program database passwords and will take all precautions necessary to avoid disclosure to non-authorized persons.

Administration – The Montgomery County Department of Community and Economic Development will administer and assign passwords necessary to access the Program database and to retrieve and input data. The Member Jurisdictions agree that the Montgomery County Department of Community and Economic Development will have full and unrestricted access to all information contained in the Program database for the limited purpose of monitoring and evaluating the data and information to analyze business issues and trends on an aggregate basis.

Public Records - In the event a Member Jurisdiction receives a public records request relating to the Program, the Member Jurisdiction will promptly forward the request to the Program Implementing Agency, the Montgomery County Department of Community and Economic Development.

VIII. Addition of New Member Jurisdiction(s)

The BusinessFirst! Program may add new Member Jurisdictions upon approval by a simple majority of existing Member Jurisdictions. Upon approval, the new Member Jurisdiction will be added by legislation from the Montgomery County Board of County Commissioners and the new Member Jurisdiction, as well as by a separately executed signature page to this Agreement.

IX. Role of Program Advisory Committee

The Program Advisory Committee will be the decision-making body for the Program. It will be composed of one representative from each Member Jurisdiction. It will meet every other month to discuss policies and procedures of the Program, to identify areas of the Program that require further improvements, and to review and act upon recommendations of the Executive Committee.

X. Penalties and Grievances

In general, the penalty for violation of any Program policy, protocol, or any requirement by the Member Jurisdiction may include, but is not limited to, written reprimand, suspension, or termination of Program database access.

If a Member Jurisdiction suspects or believes a violation has occurred of this Agreement or any of the Program policies, conditions, or requirements, it will advise the Executive Committee by filing a written grievance. The Executive Committee will make a recommendation to the Program Advisory Committee. The determination of whether a violation has occurred and any penalty to be imposed will be made by the majority vote of the Program Advisory Committee.

XI. Term

The Member Jurisdiction agrees that the Program intends to operate for a minimum of five additional years, starting in 2021. A Program evaluation will occur in 2025 to determine the continued implementation of the Program.

This Agreement will remain effective until December 31, 2025, unless terminated earlier in accordance with Section XII. In the event all Member Jurisdictions agree to renew this Agreement to continue the Program, the renewal will be reduced to writing, executed by an authorized representative of all Member Jurisdictions, and if applicable or required, approved by the legislative body of each Member Jurisdiction.

XII. General Provisions

- A. Termination – This Agreement may be terminated in its entirety by mutual written agreement between all Member Jurisdictions active at the time of the termination. If a Member Jurisdiction seeks to terminate its participation in the Program, it must provide written notice of its intent to terminate its participation to the Montgomery County Department of Community and Economic Development. The termination will be effective at the date specified in the written notice, and the terminating Member Jurisdiction will promptly complete any termination activities specified by the Montgomery County Department of Community and Economic Development. The terminating Member Jurisdiction will be prohibited from using for its economic benefit any confidential information gained through its participation in the Program.
- B. Amendment or Modification – This Agreement may be amended or modified by the parties, provided that any such amendment or modification makes specific reference to this Agreement, is executed in writing, is signed by an authorized representative of each

Member Jurisdiction, and if required or applicable, is approved by the legislative or governing body of the Member Jurisdiction(s).

- C. Capacity to Execute – The Member Jurisdictions certify that all actions necessary to execute this Agreement with Montgomery County were taken and that the person executing this Agreement is authorized to do so and has the power to bind the jurisdiction to the terms and conditions of this Agreement.
- D. Liability – Each Member Jurisdiction agrees to release the other parties to this Agreement from any and all liability, which may be caused by or arise from the wrongful or negligent conduct of the parties’ respective employees, contractors, or agents in the performance of this Agreement or during participation in the Program. Notwithstanding, none of the parties waive any available immunities under the law.
- E. Integration – This Agreement represents the entire agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements, or contracts, whether oral or written, relating to the subject matter of this Agreement.
- F. Governing Law – This Agreement will be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.
- G. Relationship of Parties – At no time may the relationship between the parties under this Agreement be construed, held out, or considered as a joint venture, principal-agent, or employer-employee, except as stated otherwise in this Agreement.
- H. Representations – In executing this agreement, the Member Jurisdiction represents that it has the legislative authority to meet its financial obligation to fund the Program from 2021 through 2025 in accordance with federal, state, and local law governing the encumbrance and expenditure of public funds.
- I. Severability - If any term or provision of this Agreement or the application thereof to any person or circumstance is determined to any extent be invalid or unenforceable, the remainder of the Agreement and the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected and will be valid and enforceable to the fullest extent permitted by law.

(The remainder of this page intentionally left blank)

Each of the parties intending to be legally bound has caused this Agreement to be executed by its authorized representative as of the date and year first above written.

WITNESSES:

**BOARD OF COUNTY COMMISSIONERS
OF MONTGOMERY COUNTY, OHIO**

BY: _____
Judy Dodge, County Commissioner

BY: _____
Deborah A. Lieberman, County Commissioner

BY: _____
Carolyn Rice, County Commissioner

OR

BY: _____
Michael B. Colbert
Administrator
Montgomery County, Ohio

WITNESSED BY:

JURISDICTION: _____

COUNTY: _____

BY: _____

ITS: _____

DATE: _____

APPROVED AS TO FORM:
MATHIAS A. HECK, JR., Prosecuting Attorney

BY: _____/DATE _____
Chief Assistant Prosecuting Attorney

Appendix A: Protocol Agreement

Related to the BusinessFirst! Retention and Expansion Program

Purpose:

The purpose of this agreement is to prevent any persons employed or otherwise engaged by a Member Jurisdiction or Regional Resource Partner (as these terms are defined in the **BUSINESSFIRST! FOR A GREATER DAYTON REGION, BUSINESS RETENTION AND EXPANSION PROGRAM, Intergovernmental Cooperation Agreement 2021-2025**) from breaching the established protocols, rules, policies, and procedures of the BusinessFirst! Retention and Expansion Program (“Program”) and to provide the operational protocol between all Member Jurisdictions and Regional Resource Partners participating in the Program.

Definitions:

- A. Business Client – Any business included in the Program database.
- B. Employee or representative – Any person currently employed by or retained on behalf of a Member Jurisdiction or Regional Resource Partner and has access to Program data and information or otherwise assists the Member Jurisdiction in participating in the Program.

Confidentiality:

- A. Relations with Business Clients - No Member Jurisdiction or Regional Resource Partner, nor their employees or representatives, may release any information about any Business Client without permission of the particular client to the extent permitted by law, except as noted in Section VII of the BusinessFirst! Intergovernmental Agreement and as required by Ohio’s public records laws.
- B. Information Sharing/Database Access - No employee or representative may view or attempt to view information about Business Clients outside of their respective jurisdictional responsibility. Program database design will include password and other protections. Member Jurisdictions and Regional Resource Partners will be strictly responsible for the security of the Program database passwords and will take all precautions necessary to avoid disclosure to non-authorized persons.
- C. Administration - Montgomery County, Ohio, will administer and assign passwords necessary to access the Program database and to retrieve and input Business Client information. Montgomery County Department of Community and Economic Development will have full and unrestricted access to all information contained in the Program database for the limited purpose of monitoring and evaluating the data and information to analyze business issues and trends on an aggregate basis.
- D. Public Records - If any Member Jurisdiction or Regional Resource Partner receives a public records request relating to the Program or information concerning Program data, the Member Jurisdiction will promptly forward the request to the Program Implementing

Agency, the Montgomery County Department of Community and Economic Development.

Penalties and Grievances:

In general, the penalty for violation of any Program policy, protocol, or any requirement by a Member Jurisdiction, Regional Resource Partner, or their respective employees and representatives may include but is not limited to written reprimand, suspension, or termination of Program database access.

If a Member Jurisdiction suspects or believes a violation has occurred of this Agreement or any of the Program policies, conditions, or requirements, it will advise the Executive Committee by filing a written grievance. The Executive Committee will make a recommendation to the Program Advisory Committee. The determination of whether a violation has occurred and any penalty to be imposed will be made by the majority vote of the Program Advisory Committee.

Action:

All Member Jurisdictions and Regional Resource Partners will require all employees and representatives who may have access to the Program database or are otherwise associated with the Member Jurisdiction's or Regional Resource Partner's participation in the Program to read and execute the Employee/Representative Protocol Agreement Certification. The Certification requires signors to attest that they will follow the requirements, protocols, rules, regulations, and policies of the Program. Copies of all executed Protocol Agreement Certifications will be maintained by the Montgomery County Department of Community and Economic Development. Each Member Jurisdiction and Regional Resource Partner will keep all executed Protocol Agreement Certifications and provide copies of those certifications to the Montgomery County Department of Community and Economic Development. Upon request, a Member Jurisdiction or Regional Resource Partner will also provide copies of executed Protocol Agreement Certifications to any Member Jurisdiction.

(The remainder of this page intentionally left blank)

**EMPLOYEE/REPRESENTATIVE
PROTOCOL AGREEMENT
CERTIFICATION**

I, _____, as (an employee)/(a representative) of the Member Jurisdiction/Regional Resource Partner identified below, have read a copy of the Protocol Agreement governing participation in the BusinessFirst! Program (“Program”).

I hereby agree to abide by all terms, conditions, protocols, and policies of Program, especially those regarding the confidential nature of the Program information and data that I may possess, access, or gain during the course of my employment with the Member Jurisdiction/Regional Resource Partner and association with the BusinessFirst! Program. I further declare that no promise, inducement, or agreement has been made to me for executing this Certification.

Signed this _____ day of _____, _____.

Signed in the presence of:

Witness

(Print Name)

Member Jurisdiction/Regional Resource Partner:

APPENDIX B

Jurisdiction and Partner Access Levels

User Role Options

Each ExecutivePulse CRM System provides data access by User Roles. User Roles generally consist of the following, but may vary based on your unique CRM system configuration:

Regional Administrator — Full management control over contacts, companies, and all other entities in the database across all jurisdictions. Full reporting capabilities.

Administrator — Full management control over contacts, companies, and all other entities in the database within their assigned jurisdiction/community. Full reporting capabilities.

Resource Provider — Can see only basic “need-to-know” information about entities in the database.

BSC Outreach – Full management control over contacts and companies. Full reporting capabilities. Ability to manage facility resources at the Business Solutions Center.

BusinessFirst! Outreach – All capabilities of the Administrator, minus the ability to manage other database users.

Viewer — All capabilities of the Outreach Professional, minus the ability to manage companies.

ORDINANCE NO. 6889

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ANNEXATION AGREEMENT WITH MIAMI TOWNSHIP AND TO FILE A PETITION WITH THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO TO CHANGE THE MIAMI TOWNSHIP LINES OF 93.54 ACRES LOCATED IN MIAMI TOWNSHIP AND THE CITY OF MIAMISBURG IN ORDER TO REMOVE THE TERRITORY FROM MIAMI TOWNSHIP AND MAKE THE TOWNSHIP LINES IDENTICAL, IN PART, WITH THE LIMITS OF THE CITY OF MIAMISBURG, OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, 93.54± acres adjacent to and south of Benner Road in Miami Township, Ohio was annexed to the City of Miamisburg in 2007 following the expedited type-2 process provided for in Ohio Revised Code Section (“R.C.”) 709.023, approved by Montgomery County Commissioners Resolution No. 07-12, accepted by City of Miamisburg Resolution No. 5974 and recorded in Instrument No. ANNX-07-032688 on April 19, 2007;

WHEREAS, the City of Miamisburg and Miami Township, Montgomery County, Ohio, have determined that it is in the best interest of their respective residents, citizens, and taxpayers to enter into an Annexation Agreement to permit the City to file a petition to exclude the annexed territory from the Township under R.C. 503.07 as provided in R.C. 709.023(H), R.C. 709.192 and R.C. 503.07 upon the terms set forth in the Annexation Agreement hereinafter set forth; and

WHEREAS, the Annexation Agreement provides that, upon exclusion of this 93.54± acre territory from Miami Township, any compensation payments due Miami Township shall be made by the City of Miamisburg pursuant to the terms of the Annexation Agreement and the 93.54± acres annexed shall no longer be subject to Miami Township’s real property taxes, which Agreement is binding upon the county auditor by law, including R.C. 709.19(B); and

WHEREAS, Miami Township approved the Annexation Agreement by Miami Township Resolution No. 86-2020 on December 1, 2020 and the City now desires to approve such agreement and conform the boundaries of Miami Township as provided in the Annexation Agreement; and

WHEREAS, Ohio Revised Code Section 503.07 authorizes the legislative authority of the city, by a vote of a majority of its members, to petition a board of county commissioners to change the township boundaries within the limits of the municipal corporation in order to make them identical, in whole or in part, with the limits of the City of Miamisburg; and

WHEREAS, the City of Miamisburg desires to change the township boundaries of 93.54± acres in Miami Township in Montgomery County within the City of Miamisburg to make them identical in part with the City and exclude them from Miami Township.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into the Annexation Agreement attached hereto as Exhibit 1, or in the format substantially similar to attached Exhibit 1 with such changes that are not inconsistent with the intent of the Agreement and this Ordinance and not adverse or detrimental to the City.

Section 2.

That the City Manager or his authorized representative is hereby authorized and directed, on behalf of this Council, to prepare and present to the Board of County Commissioners of Montgomery County, Ohio a petition praying for a change in the boundary lines of Miami Township as is necessary to accomplish the removal of the 93.54± acres of territory annexed to Miamisburg in 2007 utilizing the expedited type-2 annexation process and now located within both the municipal limits of the City of Miamisburg and the jurisdictional limits Miami Township, Montgomery County, Ohio from Miami Township and place it exclusively in the City of Miamisburg, Montgomery County, as provided in the attached Annexation Agreement with Miami Township and as permitted and provided by law.

Section 3.

That the 93.54± acre territory within the municipal limits of the City of Miamisburg and Miami Township that is to be removed from Miami Township was annexed to the City by City of Miamisburg Resolution No. 5974 and recorded in Instrument No. ANNX-07-032688 on April 19, 2007 and is described in Exhibit 2 hereto and shown on the map or plat as Exhibit 3 hereto.

Section 4.

That the Clerk of Council is hereby authorized and directed to prepare two certified copies of the Annexation Agreement, two certified copies of this Ordinance, and two certified copies of the minutes of the meeting at which this Ordinance was adopted, showing its adoption by a vote of the majority of the members of the Miamisburg City Council, being the legislative authority of the City of Miamisburg and forward those documents to the City Manager or his authorized representative for filing the petition to conform boundaries.

Section 5.

That this Ordinance is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and shall take effect and be in

force from and after its passage. The reason for said declaration of emergency is to facilitate the development of the property in the city, to relieve Miami Township of any obligation to serve the territory that remains in the township, to allow for the immediate change of township boundaries as provided by the Annexation Agreement of the parties, and to permit the territory to receive services from Miamisburg without overlapping or conflicting services from Miami Township and to permit its inhabitants and future inhabitants to vote in the appropriate jurisdiction.

Passed: December 15, 2020

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle L. Collins, Mayor

4820-0076-9492v2

ANNEXATION AGREEMENT

This Annexation Agreement (the "Agreement") is entered into by and between the City of Miamisburg, Ohio, an Ohio municipal corporation (hereafter "City" or "Miamisburg") and the Board of Trustees of Miami Township, Montgomery County, Ohio, an Ohio township (hereafter "Township" or "Miami"), pursuant to Ohio Revised Code Section 709.192 and is effective on the date last executed below.

WHEREAS, 93.54± acres adjacent to and south of Benner Road in Miami Township, Ohio was annexed to the City of Miamisburg in 2007 following the expedited type-2 process provided for in Ohio Revised Code Section ("R.C.") 709.023; and

WHEREAS, such 93.54± acre annexation was approved by Montgomery County Commissioners Resolution No. 07-12, accepted by City of Miamisburg Resolution No. 5974 and recorded in Instrument No. ANNX-07-032688 on April 19, 2007; and

WHEREAS, a map and legal description of the 93.54± acre annexed territory is attached and includes two (2) parcels of real property described in Deed 89-0005B07 and 90-0411A10 comprised of 86.7± acres being Auditor's Parcel Nos. K453-02612-0002 and K453-02612-0003; 2.3635± acres described in Deed 2018-0060654 being Auditor's Parcel No. K453-02612-0089, 2.3634± acres described in Deed 2019-00007448 being Auditor's Parcel No. K453-02612-0090, and 2.3635± acres described in Deed 2019-00040855 being Auditor's Parcel No. K453-02612-0091 all such deeds being recorded in the Recorder's Office, Montgomery County, Ohio and parcels numbers being of record in the Auditor's Office, Montgomery County, Ohio and being located within the territory annexed as shown and described on the Exhibits attached hereto (the "Property"); and

WHEREAS, the City and the Township have determined that it is in the best interest of their respective residents, citizens, and taxpayers to enter into this Agreement to permit the City to file a petition to exclude the annexed territory from the Township under section 503.07 of the Revised Code as provided in R.C. 709.023(H), R.C. 709.192 and R.C. 503.07 upon the terms hereinafter set forth; and

WHEREAS, this Agreement has been approved by the Board of Trustees of Miami Township by Resolution No. _____, adopted on _____, 2020, and by the Council of the City of Miamisburg by Ordinance No. _____, adopted on _____, 2020.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Council of the City of Miamisburg, on behalf of the City, and the Board of Trustees of Miami Township, on behalf of the Township, (collectively, the "Parties") agree as follows:

1. Agreement and Purpose. This Agreement is entered into pursuant to Ohio Revised Code Section 709.192 to permit the City of Miamisburg to file a petition to conform the boundaries the 93.54± acres described and shown on the attached Exhibits currently located in Miami

Township and the City of Miamisburg for a change of township lines in order to make them identical, in part, with the limits of the City of Miamisburg and exclude them from Miami Township as provided in R.C. Chapter 503 and to make alternative provisions regarding payments by the City of Miamisburg in lieu of and that supersede the provisions of R.C. 709.19. The Parties intend by this Agreement to exercise all of the powers granted to the City and Township by the Constitution and statutes and laws of the State of Ohio to the full extent permitted by law.

2. Territory Subject to Agreement. The Property that is subject to this Agreement is shown on the annexation map attached as Exhibit A hereto, being approximately 93.54± acres located south of Benner Road and north of Shepard Road as described in Exhibit B and including Montgomery County Auditor's Parcel Numbers K453-02612-0002, K453-02612-0003, K453-02612-0089, K453-026-12-0090, and K453-02612-0091 on the Montgomery County GIS map attached as Exhibit C.

3. Changing of Township Boundaries. The City shall file a petition with the Montgomery County Board of County Commissioners, pursuant to R.C. Chapter 503 including R.C. Section 503.07, to have the Property excluded from Miami Township. The Township agrees that the Property that was previously annexed following the R.C. 709.023 annexation process shall be removed from the Township, that it consents to and will support the City's request to exclude the Property from the Township. No services shall be provided by the Township to the Property after the boundaries are conformed.

4. Annual Compensation Payments. The Parties agree that in lieu of making any of the payments required by R.C. 709.19, after the Township boundaries are changed and the boundaries of the Property are conformed to the City, the City will pay the Township annually an amount equivalent to fifty per cent (50%) of the property taxes the City actually receives from the Property (both current and/or delinquent) based upon the City's total current real property tax assessment of 6.752944 mills, for a period of fifteen (15) years commencing on the date set forth below. No annual compensation or any other payments shall be paid by the City to the Township for the Property. To determine the annual compensation payments to be paid by the City to the Township, the property valuation of the taxable Property shall be used each year for the year that the payment is due and the rate of 3.376 mills shall be applied. The City and Township agree they shall request the Montgomery County Auditor to assist in the calculation of the compensation based upon the current annual valuation and the application of a municipal tax rate of 3.375 mills to Properties that actually paid annual taxes and shall provide the Auditor with any information necessary to facilitate that calculation. There shall be no reduction in payments due from the City to the Township for any real property tax exemption that is granted by the City for the Property for commercial and industrial real, personal, or public utility property taxes pursuant to sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.45, 5709.62, or 5709.88 of the Revised Code, and any payment due the Township shall be calculated as if such an exemption had not occurred. The annual compensation payments from the City to the Township provided herein shall commence following the conformity of boundaries effective on the tax lien date for the tax year in which the City has collectively issued building permits for more than fifty percent (>50%) of all the residential lots approved in the Preliminary Planned Development Plan for the entire development on the Property and shall continue each tax year thereafter for a total of fifteen (15)

consecutive years at which time the City's obligation hereunder shall terminate. The City shall pay the Township on or before October 1st of the year in which real property taxes for the effective tax year for the Property are received by the City. In the event that the building permit criteria for the commencement of annual compensation payments from the City to the Township provided herein has not been met effective on the tax lien date of January 1, 2030, then the annual compensation payments shall commence effective on the January 1, 2030 tax lien date and be calculated, paid and continued as provided in this Paragraph 4, irrespective of the number of building permits issued.

5. Zoning. The property is currently zoned Planned Residential (PR) in the City of Miamisburg and such zoning requires a Preliminary Planned Development Plan for any proposed development on Property.

6. Future Contiguous Annexations. The City agrees that it shall not accept the annexation of any territory that directly shares an adjacent boundary with the 93.54 acre Property subject to this Agreement (identified in the attached Exhibits) without the express written consent of the Township.

7. Tax Levies. Nothing in this Agreement shall be interpreted as the sharing of any tax levy by and between the Township and City or the guarantee of a levy or its payment.

8. Support of Agreement. The City represents that nothing in this Agreement is in derogation of the provisions of the City's municipal charter. The Parties further agree that this Agreement is not and is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution or by any other provisions of the Ohio Constitution, or the powers of municipalities and townships authorized by the Ohio Revised Code. In the event that any other persons or parties in a court of law challenge this Agreement, or any of its terms, conditions, or provisions, the City and the Township agree to cooperate with one another and to use their best efforts in defending this Agreement with the objective of upholding this Agreement.

9. Signing Other Documents. The Parties hereto agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, and similar documents, and to take such other actions in order to effectuate the purpose of this Agreement. The Parties agree that this Agreement is intended to and shall constitute the consent and approval by the Township and the City for the conformity of the boundaries of the Property with the City and the exclusion of the Property from the Township under R.C. 503.07 and may be submitted to the Montgomery County Commissioners, including with any petition for the conformity of boundaries, as evidence thereof.

10. Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the City and the Township and their respective successors, subject, however, to the specific provisions hereof. This Agreement is not intended to and does not create rights or benefits of any kind for any persons or entities that are not a party to this Agreement.

11. Severability. In the event that any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason, that illegality or invalidity shall not affect the remainder of this Agreement, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein.

12. Captions and Headings. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provision or section hereof.

13. Entire Agreement. This written Agreement constitutes the entire agreement between the Parties and may only be amended, revised, or altered pursuant to an amendment in writing, executed by the Parties and properly promulgated and approved in accordance with their respective legislative authority.

14. Operative Law. This Agreement shall be governed by the laws of the State of Ohio now in effect and as they may be amended.

IN TESTIMONY WHEREOF, the Parties have caused multiple counterparts of this Agreement to be duly executed and dated and shall be effective upon on the date last executed below.

MIAMI TOWNSHIP BOARD OF TRUSTEES

CITY OF MIAMISBURG, OHIO

By: _____
Ronald L. Hess, Township
Administrator

By: _____
Keith D. Johnson, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM

Authorized and approved by Miami
Township Board of Trustees Resolution No.

By: _____
Philip Callahan, Law Director

Date: _____

Authorized and approved by City of
Miamisburg Ordinance No. _____

ATTACHEMENTS

Map and legal description of the 93.54± acre annexed territory



NORFLEET, BROWN & PETKEWICZ INC.

CIVIL ENGINEERS AND SURVEYORS

228 BYERS ROAD • SUITE 301 • MIAMISBURG, OHIO 45342

(937) 847-2313 • FAX (937) 847-2303

RANDY H. NORFLEET, P.E., P.S.
WILLIAM C. PETKEWICZ, P.S.
DANIEL O. MUTZNER, P.E.

KIRK P. DIEHL, P.S.
ROGER L. DOOLIN, P.E.
SCOTT P. FALKOWSKI, P.E.
CHARLES R. WBRAG, P.S.

**PROPOSED ANNEXATION TO THE CITY OF MIAMISBURG
93.54 ACRES**

Situate in the Township of Miami, County of Montgomery, State of Ohio being in a part of Section 29, Town 2, Range 5 M.R.S. and being part of lands owned by Virginia Elaine Garrison, Deborah Dianne Meyers and Eugene Richard Knight as described in M.F. #89-0005B07 & M.F. #90-0411A10 being more particularly described as follows:

Beginning at a southwest corner of said Garrison, Meyers & Knight lands also being the southeast corner of Lot No. 6142 owned by Julio C. & Tina L. Gonzalez as described in I.R. #04-054299, said point being on the existing corporation line;

Thence along said Garrison, Meyers & Knight west line and the existing corporation line, North 00°-30' East, a distance of 1361.05 feet to a point on the south right of way line of Benner Road (40' R/W);

Thence along the south right of way line of said Benner Road, South 89°-30' East, a distance of 1522.95 feet to a point;

Thence continuing along the south right of way line of said Benner Road, South 88°-45' East, a distance of 889.87 feet to a point on the east line of said Garrison, Meyers & Knight property;

Thence along the east line of said Garrison, Meyers, Knight property, South 00°-45' West, a distance of 1728.85 feet to a point on the north right of way line of Shephard Road (30' R/W);

Thence along the north right of way line of said Shephard Road, West, a distance of 15 feet to a point on the west right of way line of said Shephard Road;

Thence along the west right of way of Shephard Road, South 00°-45' West, a distance of 222.75 feet to a point on the north right of way line of said Shephard Road;

(1)

Thence along the north right of way line of said Shephard Road, West, a distance of 781.95 feet to a point on a west line of said Garrison, Meyers & Knight property;

Thence along the west line of said Garrison, Meyers & Knight property, North 01° East, a distance of 607.05 feet to a point on a south line of said Garrison, Meyers & Knight property;

Thence along a south line of said Garrison, Meyers & Knight property the following two (2) courses:

North 88° West, a distance of 468.6 feet to a point;

North 89°-30' West, a distance of 1377.75 feet to the **PLACE OF BEGINNING**.

Containing 93.54 acres. Not an actual field survey but completed from courthouse and on-line records.

William C. Petkewicz

William C. Petkewicz, P.S.

Ohio License No. 5749

Date: Nov 15, 2006



06-6125-description
jms
November 13, 2006

(2)

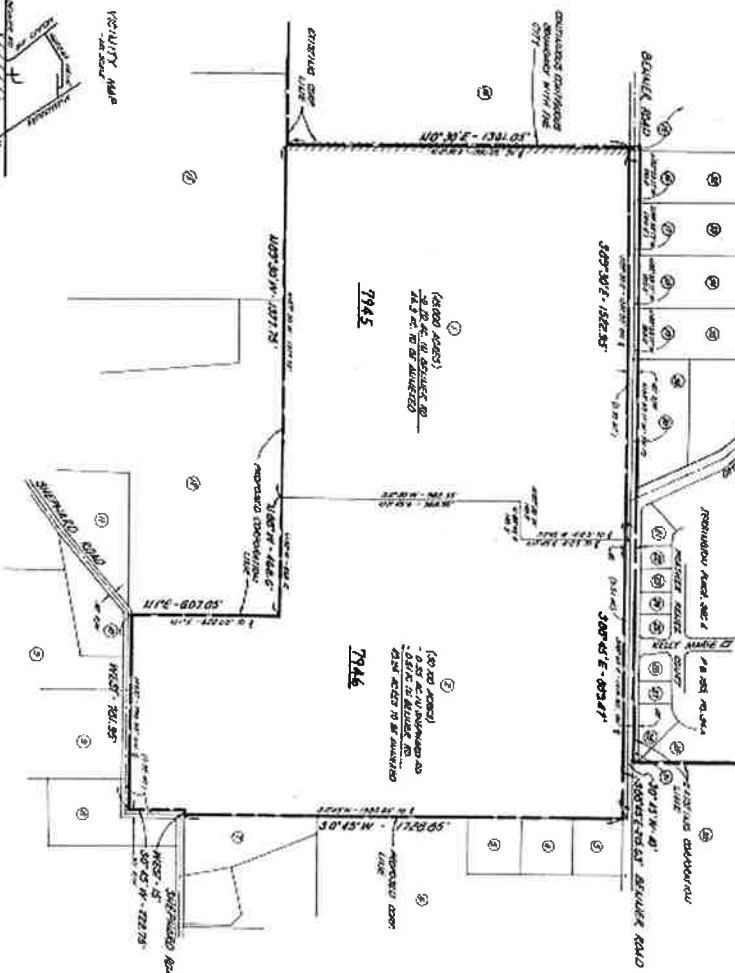
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MAY 1, 1921

206 pg 39

**PROPOSED ANNEXATION TO
THE CITY OF MIAMISBURG**

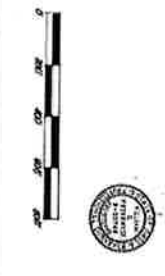
**SECTION 28, TOWN 2, RANGE 5 M.R.S.
MIAMI TOWNSHIP
MONTGOMERY COUNTY, OHIO
93.54 ACRES ANNEXATION**

NO. 10027 1938
NO. 10027 1938
MAY 1, 1921
MAY 1, 1921



LOT	ACRES	OWNER	REMARKS
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3	1.2
4	1.2
5	1.2
6	1.2
7	1.2
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100	1.2

PLAT BOOK 206 PAGE: 39



**NORFLEET SPORN
& PATTERSON INC.**
Surveyors
1000 N. High Street, Columbus, OH 43215
614-441-1111
FAX: 614-441-1112



William R. Sporn
Surveyor

SHEET 1 OF 1



NORFLEET, BROWN & PETKEWICZ INC.

CIVIL ENGINEERS AND SURVEYORS

228 BYERS ROAD • SUITE 301 • MIAMISBURG, OHIO 45342

(937) 847-2313 • FAX (937) 847-2303

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KIRK P. DIEHL, P.S.
ROGER L. DOOLIN, P.E.
SCOTT P. FALKOWSKI, P.E.
CHARLES R. WIRRIQ, P.S.

PROPOSED ANNEXATION TO THE CITY OF MIAMISBURG 93.54 ACRES

Situate in the Township of Miami, County of Montgomery, State of Ohio being in a part of Section 29, Town 2, Range 5 M.R.S. and being part of lands owned by Virginia Elaine Garrison, Deborah Dianne Meyers and Eugene Richard Knight as described in M.F. #89-0005B07 & M.F. #90-0411A10 being more particularly described as follows:

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Thence along the south right of way line of said Benner Road, South 89°-30' East, a distance of 1522.95 feet to a point;

Thence continuing along the south right of way line of said Benner Road, South 88°-45' East, a distance of 889.87 feet to a point on the east line of said Garrison, Meyers & Knight property;

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Thence along the north right of way line of said Shephard Road, West, a distance of 15 feet to a point on the west right of way line of said Shephard Road;

Thence along the west right of way of Shephard Road, South 00°-45' West, a distance of 222.75 feet to a point on the north right of way line of said Shephard Road;

(1)

EXHIBIT 2

Thence along the north right of way line of said Shephard Road, West, a distance of 781.95 feet to a point on a west line of said Garrison, Meyers & Knight property;

Thence along the west line of said Garrison, Meyers & Knight property, North 01° East, a distance of 607.05 feet to a point on a south line of said Garrison, Meyers & Knight property;

Thence along a south line of said Garrison, Meyers & Knight property the following two (2) courses:

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North 89°-30' West, a distance of 1377.75 feet to the **PLACE OF BEGINNING**.

Containing 93.54 acres. Not an actual field survey but completed from courthouse and on-line records.

William C. Petkewicz

William C. Petkewicz, P.S.

Ohio License No. 5749

Date: Nov. 15, 2006



06-6125-description

jms

November 13, 2006

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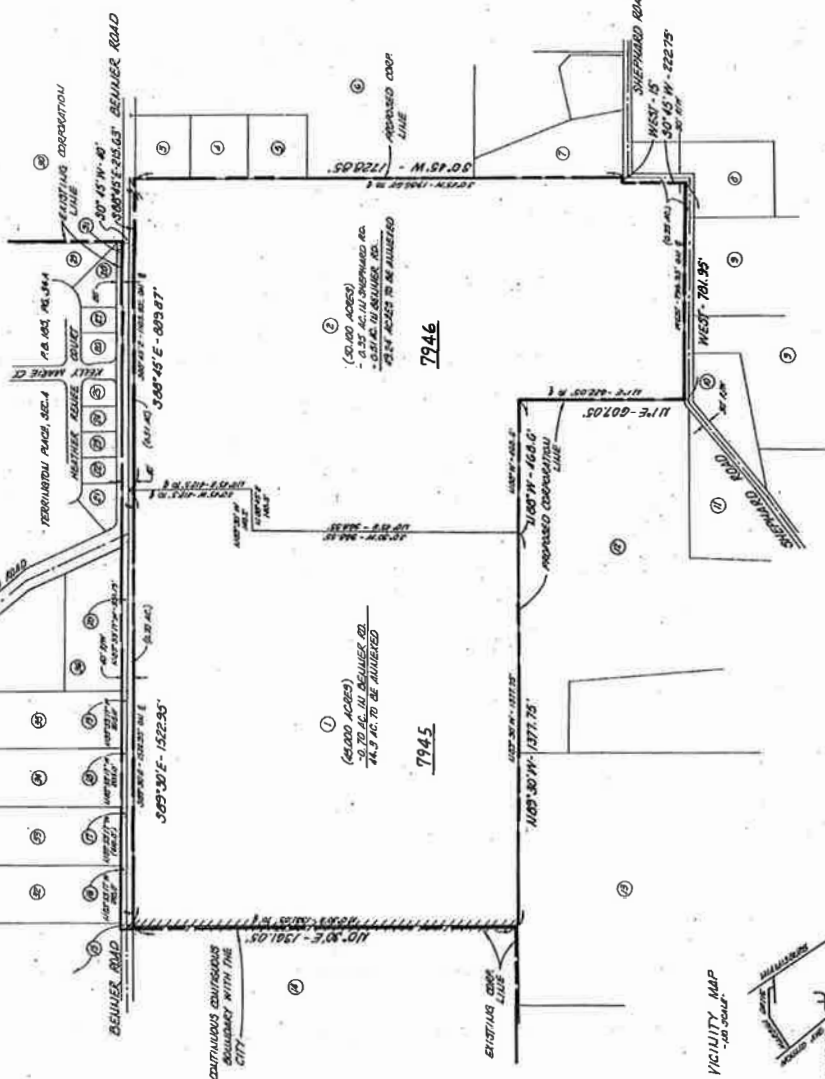
PROPOSED ANNEXATION TO THE CITY OF MIAMISBURG

SECTION 29, TOWN 2, RANGE 5 M.R.S.
MIAMI TOWNSHIP
MONTGOMERY COUNTY, OHIO
93.54 ACRES ANNEXATION

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INDICATES EXISTING CORPUSCULI LINE
INDICATES PROPOSED CORPUSCULI LINE
INDICATES CONTIGUOUS BOUNDARY WITH THE CITY

68-00-001007-123216
Montgomery, Ohio
11111 E. Braddock Avenue



ADJACENT OWNERS	DEED REFERENCE	ACRES ANNEXED	ACRES IN PORT-CO-WAY	PLANCE NUMBER
1. Wright Estate Express	1200-111	1.2	(0.70)	648 02615 0002
2. Wright Estate Express	1207-128	1.9		648 02615 0002
3. Wright Estate Express	04-060208	1.9		648 02615 0002
4. Wright Estate Express	04-071032	13.89		648 02615 0002
5. Wright Estate Express	06-071068	3.010		648 02615 0002
6. Wright Estate Express	77-08010	2.34		648 02615 0002
7. Wright Estate Express	04-072719	1.82		648 02615 0002
8. Wright Estate Express	04-08010	1.82		648 02615 0002
9. Wright Estate Express	04-071032	1.82		648 02615 0002
10. Wright Estate Express	04-071032	23.88		648 02615 0002
11. Wright Estate Express	04-071032	23.88		648 02615 0002
12. Wright Estate Express	04-071032	23.88		648 02615 0002
13. Wright Estate Express	04-071032	23.88		648 02615 0002
14. Wright Estate Express	04-071032	23.88		648 02615 0002
15. Wright Estate Express	04-071032	23.88		648 02615 0002
16. Wright Estate Express	04-071032	23.88		648 02615 0002
17. Wright Estate Express	04-071032	23.88		648 02615 0002
18. Wright Estate Express	04-071032	23.88		648 02615 0002
19. Wright Estate Express	04-071032	23.88		648 02615 0002
20. Wright Estate Express	04-071032	23.88		648 02615 0002
21. Wright Estate Express	04-071032	23.88		648 02615 0002
22. Wright Estate Express	04-071032	23.88		648 02615 0002
23. Wright Estate Express	04-071032	23.88		648 02615 0002
24. Wright Estate Express	04-071032	23.88		648 02615 0002
25. Wright Estate Express	04-071032	23.88		648 02615 0002
26. Wright Estate Express	04-071032	23.88		648 02615 0002
27. Wright Estate Express	04-071032	23.88		648 02615 0002
28. Wright Estate Express	04-071032	23.88		648 02615 0002
29. Wright Estate Express	04-071032	23.88		648 02615 0002
30. Wright Estate Express	04-071032	23.88		648 02615 0002
31. Wright Estate Express	04-071032	23.88		648 02615 0002
32. Wright Estate Express	04-071032	23.88		648 02615 0002
33. Wright Estate Express	04-071032	23.88		648 02615 0002
34. Wright Estate Express	04-071032	23.88		648 02615 0002
35. Wright Estate Express	04-071032	23.88		648 02615 0002
36. Wright Estate Express	04-071032	23.88		648 02615 0002



William R. Brown
10-15-06



SHEET 1 OF 1

NORFLEET, BROWN & PETERWICZ, INC.
Civil Engineers & Surveyors
11111 E. Braddock Avenue
Montgomery, Ohio 45327
P: (937) 439-2212 Fax: (937) 439-2088

EXHIBIT 3

DATE: 10/13/06
BY: W. R. BROWN
CHECKED BY: M. J. BROWN

39

PLAT BOOK 206 PAGE:

Notes:
1. Information shown herein taken from appropriate and on file records, and the official field notes.
2. THIS IS NOT A SURVEY.
3. CONTIGUOUS BOUNDARY WITH THE CITY.
4. PERCENT OF CONTIGUOUS WITH THE CITY.

ORDINANCE NO. 6890

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MIAMI TOWNSHIP TO ASSESS COSTS RELATED TO THE MAINTENANCE OF SPECIFIC PUBLIC DEDICATED ROADWAY, AND DECLARING AN EMERGENCY.

WHEREAS, the City accepted the Denman Annexation February 19, 2019 by Ordinance No. 6776; and

WHEREAS, the City entered into an annexation agreement with Miami Township related to the Deman annexation on June 5, 2018; and

WHEREAS, the City also entered into an annexation agreement with Miami Township related to Garrison annexation on December 15, 2020; and

WHEREAS, both annexation agreements contained provision requiring the City to either annex or maintain a specific portion of Benner Rd.; and

WHEREAS, upon investigation it has been determined that maintaining the roadway is more viable than annexing and therefore Council wishes to enter into an agreement to maintain this roadway as though it is a City roadway.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into the Agreement to Assess Costs Related to Specific Public Dedicated Roadway. The Agreement shall be in substantially the same form as the document attached hereto as "Exhibit A".

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the Aberdeen project is currently under construction and this agreement is critical to keep the project moving as planned therefore, this ordinance shall take effect and be in force from and after its passage.

Passed: December 15, 2020

Attested: _____

Kim Combs
Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A

**AGREEMENT TO ASSESS COSTS RELATED TO
SPECIFIC PUBLIC DEDICATED ROADWAY**

**AGREEMENT TO ASSESS COSTS
RELATED TO
SPECIFIC PUBLIC DEDICATED
ROADWAY**

This is an agreement by and between the Board of Trustees of Miami Township, Montgomery County, Ohio (hereinafter referred to as "TOWNSHIP") and the City of Miamisburg, Ohio (hereinafter referred to as "CITY").

WITNESSETH:

WHEREAS, the "Garrison Annexation" resulted in 93.54 acres of new territory added to the CITY; and,

WHEREAS, that annexation did not include the right-of-way of Benner Road immediately adjacent to the annexation; and,

WHEREAS, this portion of Benner Road is still located in the TOWNSHIP but the land abutting in on the north and south are situated in the CITY; and,

WHEREAS, the CITY and TOWNSHIP entered into an unrelated agreement that contained a requirement that the City annex this portion of Benner Road; and,

WHEREAS, legacy parcels located within the right-of-way have owners that can not be located making annexation impractical; and,

WHEREAS, the CITY has expressed the willingness to accept the responsibility of maintaining this portion of Benner Road until such time it can be properly annexed into the CITY.

In consideration of the mutual promises contained herein, the TOWNSHIP and the CITY hereby agree as follows:

1.0 IDENTIFICATION OF PUBLIC ROADWAY

The portion of Benner Road subject to this agreement is more fully identified on the attached Exhibit A. The subject roadway is located in the TOWNSHIP and is bounded by CITY property on the north and the south.

2.0 COSTS AND EXPENSES ASSUMED BY CITY

a. The CITY shall maintain said roadway as if it were located in the CITY. That maintenance shall include expenses assumed by the CITY for like dedicated roadways located in the CITY. Said expenses shall include, but not be limited to, snow removal, paving, maintenance of any city utilities located in the roadway and sidewalk, curb and gutter maintenance.

b. The CITY periodically assesses property owners for maintenance of improvements, including but not limited to, sidewalks, curb and gutters. In the event

improvements are made to this roadway consistent with improvements made within the subdivision, the CITY shall have the right to assess those improvements consistent with assessments made for similar improvements within the CITY. The TOWNSHIP, at the request of the CITY, shall cooperate in any way necessary to effectuate the assessment of these improvements onto adjoining properties. as all other part-time employees of the CITY.

3.0 REIMBURSEMENT

a. The CITY shall reimburse the TOWNSHIP for expenses it may incur after the effective date of this agreement related to the specific roadway. These expenses shall be limited to the specific roadway as set forth on Exhibit A as set forth in paragraph 1.0 above and shall not extend to any area beyond that specifically describe therein.

4.0 TERM OF AGREEMENT

This Agreement shall continue so long as the subject roadway is located in the TOWNSHIP. This agreement shall terminate only upon the annexation of the subject roadway in the CITY or upon mutual agreement of both parties.

5.0 GOVERNING LAW

This Agreement shall be construed and interpreted according to the laws of the State of Ohio.

6.0 ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties hereto and supersedes any and all prior and contemporaneous agreements, arrangements, and understandings between the parties. No amendment or modification shall be effective unless in writing and signed by duly authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth beneath each party's respective signature.

WITNESS:

CITY OF MIAMISBURG, OHIO

By: Keith Johnson, City Manager

Date: _____

**BOARD OF TOWNSHIP TRUSTEES
OF MIAMI TOWNSHIP, MONTGOMERY
COUNTY, OHIO**

WITNESS

By: Ron Hess, Township
Administrator

Date: _____

Exhibit A

Subject Roadway

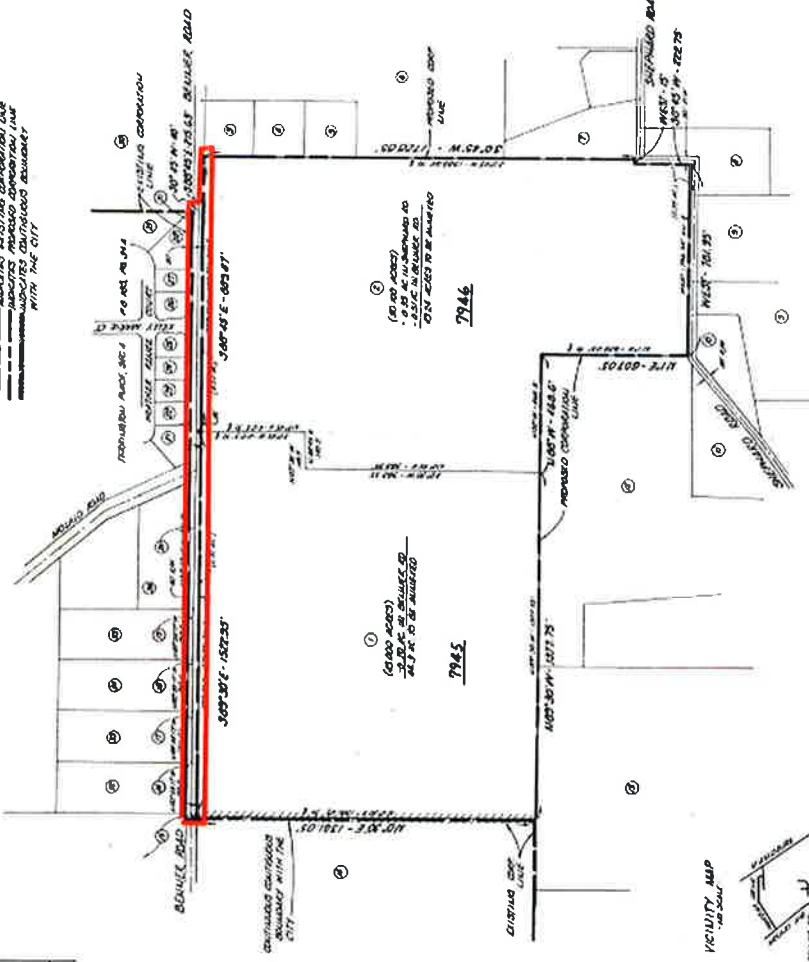
206 pg 39

PROPOSED ANNEXATION TO THE CITY OF MIAMISBURG

SECTION 29, TOWN 2, RANGE 5 M.R.S.
MIAMI TOWNSHIP
MONTGOMERY COUNTY, OHIO
93.54 ACRES ANNEXATION

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- - - - - MONITOR EXISTING CORPUSCULUM LINE
 - - - - - INDICATES PROPOSED CORPUSCULUM LINE
 - - - - - INDICATES CHANGING BOUNDARY WITH THE CITY



NO.	OWNER OF PROPERTY	ACRES	ADJACENT	ADJACENT	ADJACENT
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William R. Brown
 Professional Engineer
 No. 10876
 State of Ohio



W. R. BROWN & PETERWICZ, INC.
Civil Engineers & Surveyors

1000 N. W. 10th St., Suite 200
Fort Lauderdale, FL 33304
Phone: (954) 573-1111
Fax: (954) 573-1112
www.wrbrown.com

SHEET 1 OF 1

MOUNTAIN
 REC'D 11/18/10
 CLERK OF COURTS

PLAT BOOK 206 PAGE: 39

ORDINANCE NO. 6891

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH AVERY DENNISON CORPORATION PROVIDING A JOB CREATION REFUNDABLE TAX CREDIT, GRANTING THE TAX CREDIT, AND DECLARING AN EMERGENCY.

WHEREAS, Section 718.15 of the Ohio Revised Code (the City Act) authorizes municipalities to grant refundable or non-refundable credits against their city income taxes in exchange for new jobs; and

WHEREAS, the granting of the tax credits by the City of Miamisburg, Ohio (the "City") to Avery Dennison Corp. will (1) create jobs in the State of Ohio and this City, (2) the project is economically sound and will benefit the people of this State and the City by increasing opportunities for employment and strengthening the economy of the State and the City and (3) receiving the tax credits from the City is a major factor in the decision of Avery Dennison Corp. to go forward with the project.

NOW THEREFORE BE IT ORDAINED THAT THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into a Job Creation Tax Credit Agreement with Avery Dennison Corporation (the "Agreement") in substantially the form attached hereto as Exhibit "A" with only such changes as are approved by the City Manager. The agreement with the City will provide for the creation of 65 jobs to the city, and in consideration of those new jobs, will provide a job creation tax credit as more specifically set forth in the Agreement.

Section 2.

The City Council hereby finds and determines the (1) the Project, as defined in the Agreement, will create jobs in the City of Miamisburg, Ohio, (2) the Project is economically sound and will benefit the people of the State and this City by increasing opportunities for employment and strengthening the economy of the State and (3) receiving the tax credits from the City is a major factor in the decision of Avery Dennison Corp. to go forward with the Project.

Section 3.

The City Council hereby approves and grants a job creation tax credit as set forth in the Agreement authorized in Section 1 above.

Section 4.

That the City Manager, the Finance Director and the Clerk are hereby authorized to execute and deliver any other documents, agreements and certificates deemed necessary to effectuate the incentives set forth in the Agreement.

Section 5.

That the obligations of the City under this ordinance do not and shall not represent or constitute a debt or pledge of the full faith and credit or the taxing power of the City and no member of council, officer, official, employee, agent, or legal representative of the City shall be liable personally for any obligations under this Ordinance or the Agreement.

Section 6.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason to execute this agreement at the earliest possible date, therefore, this measure shall take effect and be in force from and after its passage.

Passed: December 15, 2020

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle Collins

Michelle L. Collins, Mayor

Exhibit "A"

Job Creation Tax Credit Agreement

JOB CREATION TAX CREDIT AGREEMENT

THIS TAX CREDIT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2021, even though the parties may sign at a later date, by and between the City of Miamisburg, Ohio, an Ohio municipal corporation (hereafter "City") and Avery Dennison Corporation acting through its Printer Systems Division (together with any existing or future business units created by Avery Dennison with operations in Miamisburg) (hereafter "Company"), a Delaware corporation.

RECITALS

Company has an office located at 170 Monarch Lane, Miamisburg, OH. Company plans to make significant capital investments into their building, site and machinery and equipment.

Company is currently one of the City's largest employers with 15 employees and a corresponding annual payroll of \$26.2M

Company is seeking to create at least 65 new jobs and at least \$6,000,000 in annual payroll in Miamisburg as part of the project. Company owns the property at 170 Monarch Lane and will invest nearly \$18,000,000 into building, site, machinery and equipment (the "Project"). The Project will create additional tax revenues for the City.

Company agreed to undertake this Project in the City, if various governmental entities provided the incentives for the development of the Project. The City has agreed to provide the hereinafter described incentive, if Company agrees to and does undertake the Project, create the jobs and provide the other economic opportunities created by the Project.

The City desires to encourage investment at the site and to encourage job creation in the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties, intending to be legally bound, agree as follows:

A. **Findings and Conclusions of the City.**

1. The City hereby finds that:
 - a. Company has the requisite financial responsibility and business experience to create employment opportunities in the City and to improve the economic climate of the City, County, State, District and surrounding areas.
 - b. The Project (i) will create jobs in the State, City, County and District; (ii) is economically sound and will benefit the people of the State, City, County and District by increasing opportunities for employment and strengthening the economy of these areas; and (iii) receiving the tax credits provided in section 718.15 of the Ohio Revised Code ("The Legislation") are major factors in Company's decision to locate the Project in the State, City and County.
 - c. It is in the best interest of the City to provide an income tax credit to Company in order to create additional job opportunities in the City.
2. The City has reviewed the project, and the project has been approved by the City.
3. The City Council ("Council") authorized the City Manager to enter into an agreement with Company providing for a Job Creation Refundable Tax Credit.

B. **Development of the Project.**

Subject to the conditions contained in this Agreement, Company shall undertake the Project at 170 Monarch Lane. The Project shall consist of building, site, machinery and equipment investments of nearly \$18,000,000 to be completed by December 31, 2023. As part of the Project, Company shall retain four hundred and fifteen (415) Existing Employees in the City with an annualized payroll of not less than \$26,200,000.

C. **Creation of New Jobs.**

Company shall create, or cause to be created, by December 31, 2023, 65 new full-time permanent jobs ("New Employees") with an annualized payroll of not less than \$6,000,000.

D. **New Job Tax Credits.**

1. Pursuant to section 718.15 of the Ohio Revised Code ("ORC 718.15"), the City is authorized to grant a refundable credit against the municipal income tax and to execute agreements with employers who are taxpayers of the City for the purpose of granting those employers new job creation tax credits against the employer's municipal income tax, those tax credits being provided to create new jobs in the City. To stimulate this job creation and to enhance the economic growth and stability of the City, State, County, and surrounding areas, the City finds that (i) the Project will create new jobs in the City and State; (ii) the Project is economically sound and will benefit the people of Ohio and the City by increasing opportunities for employment and strengthen the economy of the State and the City; and (iii) receiving the

municipal income tax credits provided herein is a major factor in the Company's decision to undertake the Project in the City and the State.

2. The Company has submitted an application to the City. This application has been reviewed by the City and the City has determined to grant the Company a new job creation tax credit (the "Tax Credit") of sixty-five percent (65%) of the new income tax revenue received by the City from New Employees hired by the Company in the City as a result of the development of the Project and its operations in the City for three (3) years. The Tax Credit shall relate to all New Employees hired in the City as a result of the development of the Project, with the credit commencing January 1, 2021, and for five (5) consecutive fiscal years of the Company thereafter (the "Tax Credit Period"). City acknowledges that the Company may commence employing New Employees at the Project prior to January 1, 2020, as a result of the development of the Project.
3. Company hereby agrees to use its best commercially reasonable efforts to maintain operations in the City for at least twice the number of years as the term of the Tax Credit. A calculation of the City Tax Credit pursuant to paragraph 3, below, for the application tax year shall be determined as follows:

A = Company existing payroll as indicated in this agreement.
B = Company total payroll each year during the Tax Credit Period
C = Miamisburg Tax Rate
D = The applicable Tax Credit percentage.

$(B-A) \times C \times D =$ The Tax Credit for the applicable tax year.

The City and all its departments acknowledges that all this information is confidential and agree that it shall be used only for the computation, verification and collection of the City Tax Credit. The City agrees that it shall not disclose this information to any person(s) not needing this information for such computation, verification or collection. The City further agrees not to disclose any of the information obtained by Company relating to the activities of the Company, including but not limited to those areas and market sectors where the Company is investing or making new hires.

4. Pursuant to approval by City Council (Ordinance No. _____, passed _____, 2020) and in compliance with the ORC 718.15, the City hereby grants a refundable new job creation credit equal to the Tax Credit Percentage of the City's income tax revenue derived from the wages of the Company's New Employees employed at the Project for the period from January 1, 2021, through December 31, 2025.
5. Commencing June 1, 2022, and then annually on or before June 1st, the City shall remit to the Company the Tax Credit amount for the prior fiscal year's income taxes with the last remittance under this agreement being made in 2026.
6. The City Tax Credit provided by subsection D2 hereof shall be received annually by Company. Should Company fail to create 65 new jobs with a corresponding minimum annualized payroll of \$6,000,000 by December 31, 2022, and maintain a total company payroll of at least \$32,200,000 until at

least December 31, 2025, the City may reduce the amount of the Tax Credit and/or reduce the Tax Credit Period.

If Company ceases operation within the City anytime during the Tax Credit Period, and the cessation in operation was due in part a general down turn in the economy, imposition of legislation, tariffs other regulatory burdens not contemplated at the time of the application, the inability of the Company to be able to hire or retain a workforce needed for the Project due to conditions in the City or surrounding area, or a sale or transfer of the business in Miamisburg to another entity, Company shall have the obligation to repay, to the City, an amount of the total Tax Credits received by Company on a pro-rata basis based on the portion of the job creation that did not occur.

7. Company understands that they are expected to remain in business within the City of Miamisburg for at least twice as long as the term of the tax credit. If Company ceases to operate in the City or fails to maintain at least \$30,500,000 in annual payroll any time between January 1, 2026 and December 31, 2030 the Company shall be responsible to repay, to City, as follows, except as otherwise provided herein:
 - a. If Company ceases to operate in the City or fails to maintain at least \$30,500,000 in annual payroll anytime in 2026, Company shall repay, to City, the lesser of an amount equal to 50% of the total Tax Credits

received by Company or the pro-rata amount based on the portion of the job creation that did not occur.

- b. If Company ceases to operate in the City or fails to maintain at least \$30,500,000 in annual payroll anytime in 2027, Company shall repay, to City, the lesser of an amount equal to 40% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- c. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2028, Company shall repay, to City, the lesser of an amount equal to 30% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- d. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2029, Company shall repay, to City, the lesser of an amount equal to 20% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- e. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 the lesser of in annual payroll anytime in 2030, Company shall repay, to City, an amount equal to 10% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.

8. The City and the Company agree to take any and all action necessary or appropriate to effect, claim, preserve and maintain the tax credits described in this Agreement, including without limitation, joining in the execution of all applications, agreements and other documents and providing any necessary certifications or designations required in connection with the Tax Credit.

E. **Conditions Precedent.**

Company's commitment to develop the Project is conditioned upon all the agreements contained in this Agreement being accomplished by all the parties hereto. If all the agreements contained in this Agreement are not accomplished, Company shall have no responsibility to develop the Project in the City and is free to develop the Project in any other location. Similarly, the City's commitments under this Agreement are conditional upon Company performing its obligations as described herein.

F. **Miscellaneous.**

1. **Covenants and Representations.** The City covenants and represents to the Company as follows:

a. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the City of any contract, agreement, understanding or instrument to which the City is a party or by which the City is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon

- them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;
- b. There is no pending litigation, investigation or claim which affects or which might affect the City's performance of this Agreement and to the best of the City's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the City's performance of this Agreement;
 - c. Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the City has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action that would prevent, limit, impede or render more costly the Company's undertaking of the project; and
 - d. The representations and agreements of the City made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by the City are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Company (except as expressly stated in this Agreement), the Company is placing complete reliance thereon and that such representations are to be treated as material to the Company in entering into this Agreement and the City further represents that no

representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

2. Company covenants and represents to the City as follows:

- a. Company intends make significant investments in their property located at 170 Monarch Lane.
- b. Company shall retain four hundred (415) Existing Employees in the City with an annualized payroll of not less than \$26,200,000.
- b. Company intends to create at least sixty-five (65) jobs at the Site with a minimum annualized payroll of \$6,000,000 by December 31, 2023;
- c. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by Company of any contract, agreement, understanding or instrument to which Company is a party or by which Company is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

- d. There is no material pending litigation, investigation or claim which affects or which might affect Company's performance of this Agreement and to the best of Company's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect Company's performance of this Agreement; and
- e. The representations and agreements of Company made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as containing representations and agreements and such representations made by Company are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the City (except as expressly stated in this Agreement), the City is placing complete reliance thereon and that such representations are to be treated as material to the City entering into this Agreement and Company further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

G. Inspection of Records. The City shall, in addition to any rights already existing, have the right to audit the books and records of Company during business hours and upon advance written notice of at least seven (7) business days. Any such inspection or audit shall be conducted in accordance with any published or

delivered terms and conditions in place at the site, including health, safety, environmental, confidentiality, treatment of employees and the like.

- H. Successors and Assigns. The terms and provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns (including successive as well as immediate successors and assigns).
- I. Governing Law. This Agreement shall be governed by and construed in accordance of the laws of the State of Ohio.
- J. Waiver. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or noncompliance with this Agreement shall be held to be a waiver of any other or subsequent breach or noncompliance.
- K. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.
- L. Provisions Severable. If any provision of this Agreement or the application or any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Agreement or the application of such provisions to any other person or circumstance, all of which other provisions shall remain in full force and effect; and, if any provision of this Agreement is capable of two constructions, one

of which would render the provisions invalid, then such provision shall have the meaning which renders it valid.

- M. Captions. The captions contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement.
- N. Assignment. Company shall have the right to assign this Agreement to any of its successors or assigns only after written approval of such assignment by City, unless Company is prohibited from notifying the City due to securities laws in which case Company shall notify the City as soon as reasonably practical.
- O. Notifications. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any part of this Agreement shall be made in writing, addressed as follows, and sent by registered or certified mail, return receipt requested, and also by fax:

If to the City, to: City Manager
10 North First Street
Miamisburg, OH 45342
Email: manager@cityofmiamisburg.com

If to Company to: Ryan Yost, General Manager
Avery Dennison Corp.
170 Monarch Lane
Miamsiburg, OH 45342
Email: ryan.yost@averydennison.com

With a copy to:

Group Counsel RBIS

Avery Dennison Corp.

8080 Norton Parkway

Mentor, OH 44060

Or at such address as may be specified by any party, from time to time, by
prior written notification.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representatives to be effective as of the date first above written.

THE CITY OF MIAMISBURG, OHIO

By: _____
Keith D. Johnson
City Manager

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of the City of Miamisburg, Ohio, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

[NOTARY SEAL]

AVERY DENNISON CORPORATION, ACTING
THROUGH ITS PRINTER SYSTEMS DIVISION,

By: _____
Ryan Yost
VP/GM Printer Systems Division

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____,
2021, by _____, the _____ of
Avery Dennison Corporation, a Delaware corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

[NOTARY SEAL]