

**DELHI CHARTER TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY MEETING**

**Meeting Location – Holt Community Center**

**4410 Holt Road, Holt, MI**

**Tuesday, November 26, 2019**

**7:00 p.m.**

**AGENDA**

**Call to Order**

**Pledge of Allegiance**

**Roll Call**

**Comments from the Public**

ANYONE WISHING TO COMMENT ON ANY MATTER NOT ON THE AGENDA MAY DO SO AT THIS TIME. PERSONS ADDRESSING THE BOARD MUST STATE THEIR NAME AND ADDRESS FOR THE RECORD AND WILL BE GIVEN FOUR (4) MINUTES.

**Set/Adjust Agenda**

**Approval of Minutes: Regular Meeting of October 29, 2019**

**Informational Meeting For Taxing Jurisdictions**

Pursuant to Recodified Tax Increment Financing Act 57 of 2018

Distribution, Review, and Discussion of 2019 Report

**Business**

1. Approve Hubbell, Roth & Clark, Inc. Proposal – Cedar Street & Delhi Commerce Drive Traffic Signal
2. Award Bid for Cedar Street Roundabout
3. Resolution No. 2019-002: Adopting Fiscal Year 2020 Downtown Development Authority Budgets
4. Resolution No. 2019-003: Sale of Property Located at Holloway Drive and Holt Road

**Late Agenda Item**

5.

**Reports**

6. Executive Director
7. Farmers Market
8. Marketing Committee
9. Planning Commission
10. Supervisor
11. Treasurer
12. Members

**Limited Comments**

MEMBERS OF THE PUBLIC MAY TAKE THE OPPORTUNITY TO ADDRESS THE BOARD REGARDING ANY ITEM ON THE AGENDA AT THE TIME SUCH ITEM IS OPEN FOR DISCUSSION BY THE BOARD. ANYONE WISHING TO COMMENT ON ANY MATTER NOT ON THE AGENDA MAY DO SO AT THIS TIME.

**Adjournment**

**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY BOARD  
MINUTES OF REGULAR MEETING HELD ON OCTOBER 29, 2019**

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The Downtown Development Authority met Tuesday, October 29, 2019 in a regular meeting at the Holt Community Center, 4410 Holt Road, Holt, Michigan. Chairperson Leighton called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

**MEMBERS PRESENT:** Harry Ammon, Rick Brown, Rita Craig, Tim Fauser, John Hayhoe, David Leighton, Sally Rae

**MEMBERS ABSENT:** Steven L. Marvin, Nanette Miller

**OTHERS PRESENT:** C. Howard Haas, DDA Executive Director, Lori Underhill, DDA Deputy Director

**PUBLIC COMMENT:** Chairperson Leighton welcomed the crowd and referred to the handout regarding the instructions for addressing the DDA Board.

Jan Kelly, 676 Waverly Road, spoke in opposition to the fence constructed on the corner of Cedar and North Streets.

Joy Monroe, 2189 Cedar Street, spoke in opposition to the fence constructed on the corner of Cedar and North Streets.

Amy Berry, 5221 Witherspoon Way, spoke in opposition to the fence constructed on the Farmers Market property.

**SET/ADJUST AGENDA** There were no adjustments to the agenda.

**APPROVAL OF MINUTES**

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**Fauser moved, Craig supported, to approve the regular meeting minutes of September 24, 2019.**

A Voice Poll Vote was recorded as follows: All Ayes

Absent: Marvin, Miller

**MOTION CARRIED**

**BUSINESS**

**PUBLIC HEARING – FY 2020 DOWNTOWN DEVELOPMENT AUTHORITY BUDGET**

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Public Hearing opened at 7:15 p.m.

Jayme Franklin, 5166 Nichols Road, questioned the cost of the fences that were constructed. She expressed concern about accessing the driveway to 2189 Cedar Street.

Nancy Romig, 4168 Watson, questioned the cost of operating the Holt Farmers Market. She suggested that alternative uses for the building be considered.

Joy Monroe, 2189 Cedar Street, questioned the cost of the glass doors being installed at the Market.

Demetrius Jackson, 4665 Holt Road, asked a question regarding sidewalks on Holt Road.

**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY BOARD  
MINUTES OF REGULAR MEETING HELD ON OCTOBER 29, 2019**

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Public Hearing closed at 7:24 p.m.

Nanette Miller entered the meeting at 7:24 p.m.

**APPROVE FISCAL YEAR 2020 DOWNTOWN DEVELOPMENT AUTHORITY BUDGET**

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**Ammon moved, Fauser supported, to approve the Fiscal Year 2020 Delhi Charter Township Downtown Development Authority Budget and to submit it to the Township Board of Trustees for approval.**

A Roll Call Vote was recorded as follows:

Ayes: Ammon, Brown, Craig, Fauser, Hayhoe, Leighton, Miller, Rae

Absent: Marvin

**MOTION CARRIED**

**APPROVAL 2020 BOARD MEETING DATE CALENDAR**

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**Craig moved, Fauser supported, to approve the Delhi Charter Township Downtown Development Authority meeting dates for 2020.**

A Roll Call Vote was recorded as follows:

Ayes: Ammon, Brown, Craig, Fauser, Hayhoe, Leighton, Miller, Rae

Absent: Marvin

**MOTION CARRIED**

**REPORTS**

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**Executive Director**

Mr. Haas reported that DDA staff met with the potential buyer for the Holt/Holloway Drive property at Lansing Economic Area Partnership (LEAP) to discuss details of the potential sale. If the two parties reach an agreement, the sale would be placed on the November DDA agenda. He is considering the installation of vehicle charging stations along the Cedar Street corridor. The majority of the costs are reimbursed by Consumers Energy. The fees paid by users are paid to the DDA as revenue.

**Farmer's Market**

Lori Underhill reported that the Market will be hosting an Open House the evening of the Township Tree Lighting Ceremony on Wednesday, December 4<sup>th</sup>.

**Advertising & Marketing Committee**

Mr. Leighton reported that the committee met today and discussed the Winter Issue of Our Town, reviewed metrics of social media sites, wayfinding signage for the Township, and the Delhi Trails website.

**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY BOARD  
MINUTES OF REGULAR MEETING HELD ON OCTOBER 29, 2019**

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**Planning Commission**

Ms. Craig reported that the Planning Commission approved the site plan for the Speedway station at 2765 Eaton Rapids Road. The current building will be completed razed and replaced.

**Supervisor**

Supervisor Hayhoe reported that the Holt Lions Club and Delhi Township Fire Department held their annual Halloween in the Park event on Sunday, October 27 and hosted over 500 children. Several ribbon cuttings for new businesses were held: Sticky's, Gravity Smokehouse, Triangles Salon. The Brush Drop-Off was successful. Another will be scheduled in December. The Holt Foodbank has a new director. Holt Public Schools saw an increase in school enrollment this past year.

**Treasurer**

There was no report.

**Members**

Mr. Leighton thanked the public for attending and encouraged attendance at future meetings.

**Limited Comments**

Mike Hamilton, 4541 Sycamore, spoke against the proposed refurbishment of the former tattoo parlor building at 2176 Cedar Street.

Nancy Romig, 4168 Watson, reported that there were several broken website links from the Township site to the DDA site. There appear to be issues accessing the Township website using the Mozilla browser.

**ADJOURNMENT**

The meeting was adjourned at 7:37 p.m.

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Nanette Miller, Secretary

/lau

SUBJECT TO APPROVAL

## **2019 Downtown Development Authority & Brownfield Redevelopment Authority Activities**

### **Informational Meeting for Taxing Jurisdictions**

#### **Pursuant to Recodified Tax Increment Financing Act 57 of 2018**

**November 26, 7:00 p.m.**

- Realize Cedar Project – identified two smaller projects for completion: work on the Cedar Street roundabout and installation of a traffic signal at Delhi Commerce Drive for pedestrian safety.
- Esker Landing Ribbon Cutting Ceremony took place August 28. Park is a popular destination for kayakers and for fishing.
- Michigan State University Federal Credit Union site construction continues.
- Esker Square construction commenced at the end of October.
- Planning and renovation of 2176 Cedar Street for potential tenant.
- Operation of Holt Farmers Market, one of the Township's most popular destinations – SNAP (EBT), Double Up Food Bucks, Senior and WIC Project FRESH coupons accepted
- Quarterly Newsletter focusing on Delhi Township businesses – Our Town
- Supported Township events: Music in the Garden, Holt Fest
- Housing Market Assessment



**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY**

4410 HOLT ROAD, HOLT, MI 48842

TELEPHONE (517) 699-3866

FACSIMILE (517) 699-3878

[www.delhidda.com](http://www.delhidda.com)

November 19, 2019

To: DDA Board Members

From: C. Howard Haas, Executive Director

Re: HRC Proposal – Cedar Street & Delhi Commerce Drive Traffic Signal

Discussions between Delhi Township, the Ingham County Road Department, and the DDA have identified the intersection of Cedar Street and Delhi Commerce Drive as a potential risk for pedestrians attempting to cross Cedar Street. It was suggested that a traffic signal and pedestrian crossing would help alleviate this risk. The signal would generally remain on green for Cedar Street traffic with actuation for entering side street vehicles and pedestrian crossings. We have asked Hubbell, Roth & Clark, Inc. to submit a proposal to conduct the necessary field work, prepare bid documents, apply for the signal timing permit, and construction administration.

I therefore offer the following motion:

**RECOMMENDED MOTION:**

**I move to approve the Proposal for Professional Engineering Services for Cedar Street and Delhi Commerce Drive Traffic Signal from Hubbell, Roth & Clark, Inc. in the amount of \$55,000.00.**

November 11, 2019

Delhi Charter Township Downtown Development Authority  
2045 Cedar St.  
Holt, Michigan 48842

Attn: Mr. Howard Haas, Executive Director

Re: Proposal for Professional Engineering Services  
Cedar Street & Delhi Commerce Drive Traffic Signal

HRC Job No. 20191088

Dear Mr. Haas:

Hubbell, Roth & Clark, Inc. appreciates the opportunity to provide professional engineering services for the installation of a traffic signal and pedestrian crossing at the intersection of Cedar Street and Delhi Commerce Drive. Based on information from the Ingham County Road Department (ICRD) and Delhi Charter Township, we understand the design and construction must include the following:

- ≡ All necessary pedestrian crosswalk markings, signals, ADA ramps (if not already in place) and any other necessary features including ADA compliant walk signal activated push buttons.
- ≡ Box span configuration with strain poles and equipment normally stocked by ICRD.
- ≡ Signal timing permit generally dwelling on green for Cedar, with actuation for entering side street vehicles and pedestrian crossings with minimum necessary side street vehicle clearance and pedestrian crossing times for when Cedar goes to the red phase.
- ≡ A GPS time clock for time base coordination progression with Cedar Street & Aurelius Road traffic signal.
- ≡ Timing permit shall have: AM Peak, PM Peak and Off Peak dials.
- ≡ Delhi Fire should be consulted about emergency vehicle preemption.
- ≡ Approved permit from the ICRD for signal installation by a qualified contractor.

HRC has provided a scope of services for three separate phases as described below with associated costs for each.

#### **Phase 1 – Design Engineering Services**

- ≡ Collect topographic survey
- ≡ Conduct one field meeting with the Township and ICRD to finalize layout
- ≡ Conduct one meeting with utility stakeholders, as needed
- ≡ Prepare signal plans
- ≡ Prepare plans for the sidewalks/ramps to accommodate pushbuttons (if necessary)
- ≡ Prepare specifications
- ≡ Prepare cost estimate
- ≡ Prepare bid documents and bid

#### **Phase 2 – Signal Timing Permit**

- ≡ Collect 24 hours of turning movement counts at the intersection, unless data is available
- ≡ Add to the Synchro 10 traffic model of the Cedar Street corridor previously used for the Realize Cedar project
- ≡ Develop optimized peak hour capacity analysis using techniques outlined in the Transportation Research Board Highway Capacity Manual for existing AM, Midday, and PM peak hours of the day
- ≡ Provide signal timing permits to ICRD for implementation during construction

Bloomfield Hills  
555 Hulet Drive  
Bloomfield Hills, MI 48302  
248-454-6300

Detroit  
535 Griswold St.  
Buhl Building, Ste 1650  
Detroit, MI 48226  
313-965-3330

Grand Rapids  
801 Broadway NW  
Suite 215  
Grand Rapids, MI 49504  
616-454-4286

Howell  
105 W. Grand River  
Howell, MI 48843  
517-552-9199

Jackson  
401 S. Mechanic St.  
Suite B  
Jackson, MI 49201  
517-292-1295

Kalamazoo  
834 King Highway  
Suite 107  
Kalamazoo, MI 49001  
269-665-2005

Lansing  
215 S. Washington SQ  
Suite D  
Lansing, MI 48933  
517-292-1488

- ≡ Review timing once implemented

**Phase 3 – Construction Engineering Services**

- ≡ Layout
- ≡ Materials Testing by SME
- ≡ Observation and Field Engineering
- ≡ Construction Engineering
- ≡ Construction Administration

The scope of work does NOT include the following:

- ≡ Street lighting design
- ≡ Soil borings

**Summary of Fees**

HRC is ready to begin upon approval. Based on the scope of work, we estimate the costs to be as shown below which would not be exceeded without prior authorization. We will invoice the DDA in accordance with the terms of our existing contract, and the final invoice amount will be based on actual time spent.

- ≡ Phase 1 – Preliminary Engineering Services - \$15,000
- ≡ Phase 2 – Signal Timing Permit - \$4,000
- ≡ Phase 3 – Construction Engineering Services - \$36,000 (approximately 13% of construction cost)

The construction cost is estimated to be \$280,000.00.

We look forward to the opportunity to be of continued service. Please feel free to contact Lia Michaels at (248) 454-6812 should you have any comments or questions on this proposal.

Very truly yours,

HUBBELL, ROTH & CLARK, INC.



Todd Sneathen, P.E.  
Vice President



Lia Michaels, PE, PTOE, RSP<sub>1</sub>  
Project Engineer

LFM/lfm

pc: Delhi; Tracy Miller  
HRC; K. Stickel, file

Accepted By:

Signature: \_\_\_\_\_

Written Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_





**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY**

4410 HOLT ROAD, HOLT, MI 48842

TELEPHONE (517) 699-3866

FACSIMILE (517) 699-3878

[www.delhidda.com](http://www.delhidda.com)

November 19, 2019

To: DDA Board Members

From: C. Howard Haas, Executive Director

Re: Bid Award – Cedar Street Roundabout Landscaping & Lighting

At the beginning of the Realize Cedar project, the roundabout located at Holbrook Drive was identified for landscaping and lighting improvements. At the time, we were unsure if funds would be available to complete this work. Now that the major construction is completed, we are in a position to move forward with this additional work. To that end, we asked Hubbell, Roth & Clark, Inc. (HRC) to design the improvements and put the project out for bid. Two contractors submitted bids and the bid summary is attached to this memorandum, along with HRC's recommendation.

I therefore offer the following motion:

**RECOMMENDED MOTION:**

**I move to award the bid for Cedar Street Roundabout Landscaping and Lighting to J. Ranck Electric, Inc. in the amount of \$110,952.00.**

November 19, 2019

Delhi Charter Township Downtown Development Authority  
4410 Holt Road  
Holt, Michigan 48842

Attn: Mr. Howard Haas, Executive Director

Re: Bid Results  
Proposed Cedar Street Roundabout Landscaping & Lighting

HRC Job No. 20161043

Dear Mr. Haas:

On Monday, November 18, 2019, the DDA received and opened bids for the Proposed Cedar Street Roundabout Landscaping and Lighting Project in Delhi Charter Township. A total of two (2) contractors submitted bids which ranged from a low of \$110,952.00 to a high of \$127,361.00. The low bid was submitted by J. Ranck Electric, Inc. of Mt. Pleasant, Michigan. Attached is one (1) copy of the bid tab for your records.

HRC understands that J. Ranck Electric, Inc. is a fair and reliable company. HRC recommends that the project be tentatively awarded to J. Ranck Electric, Inc. in the amount of \$110,952.00 subject to the Contractor supplying the requisite insurance certificates, bonds and other contract documents. Once these have been provided, HRC will provide all parties with executed contracts and issue a notice to proceed to the Contractor.

If you have any questions or require any additional information, please contact the undersigned.

Very truly yours,

HUBBELL, ROTH & CLARK, INC.



Lia Michaels, P.E., PTOE  
Project Engineer

LFM/lfm  
Attachment

pc: Delhi Township; T. Miller  
Delhi DDA; L. Underhill  
HRC; T. Sneathen, K. Stickel, File

BID TABULATION  
 PROPOSED CEDAR ST. ROUNDABOUT LANDSCAPING & LIGHTING  
 DELHI DDA  
 INGHAM COUNTY

Bids Due: Monday, November 18, 2019 at 2:00 p.m.  
 HRC Job # 20161043

**J. Ranck Electric, Inc.**  
 1993 Grover Parkway  
 Mt. Pleasant, MI | (989) 775-7393

**HTA Companies, Inc**  
 5855 N. Michigan Road  
 Dimondale, MI | (517) 482-2007

Item	Quantity	Unit	Unit Price	Total Cost	Unit Price	Total Cost
1. Mobilization, (Max 10%)	1	Lsum	\$10,000.00	\$10,000.00	\$12,800.00	\$12,800.00
2. Traffic Control	1	Lsum	\$13,000.00	\$13,000.00	\$6,000.00	\$6,000.00
3. Electrical Work	1	Lsum	\$4,000.00	\$4,000.00	\$16,700.00	\$16,700.00
4. Lighting Controller	1	Ea	\$3,500.00	\$3,500.00	\$3,920.00	\$3,920.00
5. Power/Data Module	1	Ea	\$8,400.00	\$8,400.00	\$1,250.00	\$1,250.00
6. Luminaire	4	Ea	\$2,500.00	\$10,000.00	\$2,500.00	\$10,000.00
7. Receptacle Pedestal	2	Ea	\$2,250.00	\$4,500.00	\$1,000.00	\$2,000.00
8. Hh, Plymer Conc	2	Ea	\$1,100.00	\$2,200.00	\$1,000.00	\$2,000.00
9. Conduit, Schedule 80 PVC, 1 inch	695	Lft	\$6.00	\$4,170.00	\$2.00	\$1,390.00
10. Conduit, Schedule 80 PVC, 3/4 inch	175	Lft	\$15.00	\$2,625.00	\$2.00	\$350.00
11. Conduit, Directional Bore, 2-1 inch	80	Lft	\$68.00	\$5,440.00	\$90.00	\$7,200.00
12. Conduit, Rigid Galv Steel, 1 inch	60	Lft	\$11.00	\$660.00	\$5.00	\$300.00
13. Db Cable, in conduit, 600V, 1/C#12	712	Lft	\$1.00	\$712.00	\$3.00	\$2,136.00
14. Cable, Equipment Grounding Wire, 1/C#12	65	Lft	\$1.00	\$65.00	\$5.00	\$325.00
15. Db Cable, in conduit, 600V, 1/C#10	940	Lft	\$1.25	\$1,175.00	\$3.00	\$2,820.00
16. Cable, Equipment Grounding Wire, 1/C#10	470	Lft	\$1.25	\$587.50	\$3.00	\$1,410.00
17. Db Cable, in conduit, 600V, 1/C#8	930	Lft	\$1.50	\$1,395.00	\$4.00	\$3,720.00
18. Cable, Equipment Grounding Wire, 1/C#8	465	Lft	\$1.50	\$697.50	\$4.00	\$1,860.00
19. CAT5 Cable	450	Lft	\$1.50	\$675.00	\$8.00	\$3,600.00
20. Fine Grade and Sodded Lawn	920	Syd	\$6.00	\$5,520.00	\$9.00	\$8,280.00
21. Plant Mix (for Spruce and Roses)	26	Cyd	\$48.00	\$1,248.00	\$70.00	\$1,820.00
22. Import Topsoil (for sloping sod areas)	100	Cyd	\$30.00	\$3,000.00	\$60.00	\$6,000.00
23. Import Clean Loam Soil (backfil to raise area behind ledge Wall)	30	Cyd	\$48.00	\$1,440.00	\$70.00	\$2,100.00
24. Shredded Hardwood Bark Mulch	12	Cyd	\$70.00	\$840.00	\$85.00	\$1,020.00
25. Abies concolor, White Fir, 18'-20' ht., spaded	1	Ea	\$3,950.00	\$3,950.00	\$4,500.00	\$4,500.00
26. Rosa "Coral Drift", Coral Drift Rose, 2.5 gal	52	Ea	\$51.00	\$2,652.00	\$55.00	\$2,860.00
27. 24" Height Dry Laid Ledge Stone Wall Complete, (including footing w/farbic, minimum 18" depth)	125	Lft	\$128.00	\$16,000.00	\$140.00	\$17,500.00
28. Soil Erosion Control	1	Ea	\$2,500.00	\$2,500.00	\$3,500.00	\$3,500.00
<b>TOTAL BID AMOUNT</b>				<b>\$110,952.00</b>		<b>\$127,361.00</b>

ENGINEER: Lia Michaels, P.E.  
 Hubbell, Roth & Clark, Inc.  
 555 Hulet Drive  
 Bloomfield Hills, MI 48303



**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY**

4410 HOLT ROAD, HOLT, MI 48842

TELEPHONE (517) 699-3866

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[www.delhidda.com](http://www.delhidda.com)

October 16, 2109

To: DDA Board Members

From: C. Howard Haas, Executive Director

Re: Approval of Fiscal Year 2020 Budget

The Fiscal Year 2020 Budget for the DDA has been prepared and its initial review took place at our regular September meeting. This budget was submitted to the Delhi Township Board of Trustees for a budget workshop held on September 10, 2019. At our September meeting, a public hearing was set for October 29<sup>th</sup>. The notice for the public hearing was published in the Holt Community News on Sunday, October 13<sup>th</sup>. The Township Board of Trustees will hold its public hearing on Wednesday, November 5<sup>th</sup>. Following our public hearing, it is my recommendation that the DDA Board formally approve the budget.

**RECOMMENDED MOTION:**

**I move to approve the Fiscal Year 2020 Delhi Charter Township Downtown Development Authority Budget and to submit it to the Township Board of Trustees for approval.**

**DELHI CHARTER TOWNSHIP**  
**DOWNTOWN DEVELOPMENT AUTHORITY**  
**RESOLUTION NO. 2019-002**  
**ADOPTING THE FISCAL YEAR ENDING DECEMBER 31, 2020**  
**DOWNTOWN DEVELOPMENT AUTHORITY BUDGETS**

At a regular meeting of the Downtown Development Authority of the Charter Township of Delhi, Ingham County, held at the Holt Community Center, 4410 Holt Road, Holt, MI., 48842, on Tuesday, November 26, 2019, at 7:00 P.M.

PRESENT:

ABSENT:

The following resolution was offered by \_\_\_\_\_ and supported by \_\_\_\_\_:

**WHEREAS**, Delhi Township Ordinance No. 80 established the Downtown Development Authority pursuant to Act 197, Public Acts of Michigan, 1975; and

**WHEREAS**, Section 10 (b) of Ordinance 80 requires that the Downtown Development Authority Board annually prepare a budget and submit same to the Township on the same date that the proposed budget for the Township is required to be submitted to the Township Board of Trustees; and

**WHEREAS**, the Downtown Development Authority Director submitted its proposed budgets on September 1, 2019 and discussed the DDA Budgets at the Township Budget Workshop held on September 10, 2019; and

**WHEREAS**, the Downtown Development Authority Board made a motion at its regular meeting held October 29, 2019 to submit the 2020 proposed budgets attached hereto as Exhibits A, B, C, and D to the Township Board for approval; and

**WHEREAS**, the Delhi Charter Township Board of Trustees approved the FY 2020 Downtown Development Authority Budget on November 5, 2019;

**NOW, THEREFORE, BE IT RESOLVED BY THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CHARTER TOWNSHIP OF DELHI, INGHAM COUNTY, MICHIGAN, as follows:**

1. The Downtown Development Authority Board approves the FY 2020 Downtown Development Authority Budget, the DDA 2016 Refunding Bonds, the 2016 DDA Development Bonds, and the 2017 Realize Cedar Bonds as itemized in the attached Exhibits A, B, C, and D.
2. This approval is for an "Activity" budget, and approval is made based on the total of the line items in each budget activity.
3. This budget shall be finally adopted by the Downtown Development Authority Board in accordance with the provisions of Michigan Public Act 2 of 1968, as amended, which requires an appropriations act adopting budgets for all Special Revenue Funds and requiring that responsibility for the budget be designated;
4. The Downtown Development Authority Director is designated as responsible for the DDA Budget and is hereby authorized to make budgetary transfers between activity budgets in amounts not to exceed \$10,000 per transfer, with said transfers to be reported to the Board at its next regular meeting.

Amendments made by the Downtown Development Authority Board and budget transfers made by the Authority's Director shall be promptly reported to the Township Accounting Department.

5. The Township shall approve subsequent amendments to this budget made by the Downtown Development Authority Board that make a net increase or decrease in 2020 Estimated Use of Fund Balance.
5. The following of accumulated surpluses is approved as outlined in Exhibit A:

**DOWNTOWN DEVELOPMENT AUTHORITY**

1-1-19	Fund Balance	\$ 3,824,396
2019	Projected Revenue & Other Sources	2,349,220
2019	Projected Expenditures & Other Uses	<u>(4,438,930)</u>
12-31-19	Projected Fund Balance	\$ 1,734,686
2020	Estimated Revenue & Other Sources	\$ 1,530,220
2020	Estimated Expenditures	<u>(1,986,190)</u>
12-31-20	Projected Fund Balance	\$ 1,278,716

AYES:

NAYS:

ABSENT:

**RESOLUTION DECLARED ADOPTED: 11/26/19**

\_\_\_\_\_  
Nanette Miller, Downtown Development Authority Secretary

STATE OF MICHIGAN )  
                                  ) ss  
COUNTY OF INGHAM )

I, the undersigned, the duly qualified and acting Secretary of the Downtown Development Authority for the Charter Township of Delhi, Ingham County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Downtown Development Authority of said Township at a regular meeting held on the 26th of November, 2019.

\_\_\_\_\_  
Nanette Miller, Downtown Development Authority Secretary

Attachments - Exhibits A, B, C, and D

**DOWNTOWN DEVELOPMENT AUTHORITY FUND SUMMARY**

<b>Description</b>	<b>2018 Actual</b>	<b>2019 Budget</b>	<b>2019 Projected</b>	<b>2020 Budget</b>
<b>Revenues</b>				
Property Taxes	\$ 1,623,300	\$ 1,497,800	\$ 1,502,800	\$ 1,497,800
Grants	3,000	304,000	304,000	-
Interest and rentals	133,024	21,000	51,000	21,000
Intergovernmental	-	480,000	480,000	-
Other	4,056	16,500	11,420	11,420
<b>Total Revenues</b>	<b>1,763,380</b>	<b>2,319,300</b>	<b>2,349,220</b>	<b>1,530,220</b>
<b>Expenditures</b>				
Community and Economic Dev				
Administration	127,722	137,130	137,860	138,990
Marketing & Promotion	169,491	174,760	183,150	181,790
Other Functions	166,311	170,080	166,630	165,540
Infrastructure Projects	12,264	40,000	59,610	40,000
Capital Outlay	319,539	990,000	1,345,920	135,000
Development Capital Outlay/Improvements	5,546,697	1,125,000	1,496,620	225,000
Debt Service	89,325	-	-	-
<b>Total Expenditures</b>	<b>6,431,349</b>	<b>2,636,970</b>	<b>3,389,790</b>	<b>886,320</b>
<b>Other Financing Sources (Uses)</b>				
Sale of Assets	30,920	-	45,000	-
Transfer to DDA Debt Service Funds	(1,010,677)	(1,094,140)	(1,094,140)	(1,099,870)
<b>Total Other Financing Sources (Uses)</b>	<b>(979,757)</b>	<b>(1,094,140)</b>	<b>(1,049,140)</b>	<b>(1,099,870)</b>
<b>Revenues over (under) expenditures</b>	<b>(5,647,726)</b>	<b>(1,411,810)</b>	<b>(2,089,710)</b>	<b>(455,970)</b>
<b>Fund Balance, Beginning</b>	<b>9,472,122</b>	<b>3,824,396</b>	<b>3,824,396</b>	<b>1,734,686</b>
<b>Fund Balance, Ending</b>	<b>\$ 3,824,396</b>	<b>\$ 2,412,586</b>	<b>\$ 1,734,686</b>	<b>\$ 1,278,716</b>

**DDA 2016 REFUNDING BOND DEBT SERVICE FUND SUMMARY (391)  
2017-2024 (8 YEARS)**

This bond was issued in 2016 to defease the callable portion of the 2008 DDA Bonds. The 2008 Bonds funded the following six projects in the DDA district: reconstruction of Cedar St. from Dallas to Holbrook, infrastructure for Cedar Hts. neighborhood, infrastructure for Delhi NE/Depot St. area, sidewalks and lighting along Holt Rd. from Thorburn to Aspen Lakes, construction of Senior Citizens' Center, and landscaping corner of Holt & Aurelius Rds. The revenue for 90% of the bond payments comes from the Downtown Development authority, with the remaining portion paid by the Sewer Fund.

	<b>2018 Actual</b>	<b>2019 Budget</b>	<b>2019 Projected</b>	<b>2020 Budget</b>
<b>Revenues</b>	\$ -	\$ -	\$ -	\$ -
<b>Expenditures</b>				
Debt Service	71,984	773,850	773,850	780,610
<b>Total Expenditures</b>	<b>71,984</b>	<b>773,850</b>	<b>773,850</b>	<b>780,610</b>
<b>Revenues over (under) expenditures</b>	<b>(71,984)</b>	<b>(773,850)</b>	<b>(773,850)</b>	<b>(780,610)</b>
<b>Other financing sources (uses)</b>				
Transfer from DDA	71,981	773,850	773,850	780,610
<b>Total other financing sources (uses)</b>	<b>71,981</b>	<b>773,850</b>	<b>773,850</b>	<b>780,610</b>
<b>Fund Balance, Beginning</b>	-	-	-	-
<b>Fund Balance, Ending</b>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>



**2016 DDA DEVELOPMENT BOND DEBT SERVICE FUND SUMMARY (395)  
2017-2035 (19 YEARS)**

This bond was issued in 2016 to fund various improvements to land, buildings, and infrastructure. The revenue for bond payments will come from DDA captured tax revenue.

	<b>2018 Actual</b>	<b>2019 Budget</b>	<b>2019 Projected</b>	<b>2020 Budget</b>
<b>Revenues</b>	\$ -	\$ -	\$ -	\$ -
<b>Expenditures</b>				
Debt Service	<u>108,026</u>	<u>107,240</u>	<u>107,240</u>	<u>106,210</u>
<b>Total Expenditures</b>	<b>108,026</b>	<b>107,240</b>	<b>107,240</b>	<b>106,210</b>
<b>Revenues over (under) expenditures</b>	<b>(108,026)</b>	<b>(107,240)</b>	<b>(107,240)</b>	<b>(106,210)</b>
<b>Other financing sources (uses)</b>				
Transfer from DDA	<u>108,026</u>	<u>107,240</u>	<u>107,240</u>	<u>106,210</u>
<b>Total other financing sources (uses)</b>	<b>108,026</b>	<b>107,240</b>	<b>107,240</b>	<b>106,210</b>
<b>Fund Balance, Beginning</b>	-	-	-	-
<b>Fund Balance, Ending</b>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>

**2017 DDA DEVELOPMENT BOND DEBT SERVICE FUND SUMMARY (397)**  
**2017-2035 (19 years)**

This bond was issued in 2017 to fund the implementation of the Realize Cedar Project. The revenue for bond payments will come from DDA captured tax revenue.

	<b>2018 Actual</b>	<b>2019 Budget</b>	<b>2019 Projected</b>	<b>2020 Budget</b>
<b>Revenues</b>	\$ -	\$ -	\$ -	\$ -
<b>Expenditures</b>				
Debt Service	<u>213,044</u>	<u>213,050</u>	<u>213,050</u>	<u>213,050</u>
<b>Total Expenditures</b>	<b>213,044</b>	<b>213,050</b>	<b>213,050</b>	<b>213,050</b>
<b>Revenues over (under) expenditures</b>	<b>(213,044)</b>	<b>(213,050)</b>	<b>(213,050)</b>	<b>(213,050)</b>
<b>Other financing sources (uses)</b>				
Transfer from DDA	<u>213,044</u>	<u>213,050</u>	<u>213,050</u>	<u>213,050</u>
<b>Total other financing sources (uses)</b>	<b>213,044</b>	<b>213,050</b>	<b>213,050</b>	<b>213,050</b>
<b>Fund Balance, Beginning</b>	-	-	-	-
<b>Fund Balance, Ending</b>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>



**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY**

4410 HOLT ROAD, HOLT, MI 48842

TELEPHONE (517) 699-3866

FACSIMILE (517) 699-3878

[www.delhidda.com](http://www.delhidda.com)

Date: November 20, 2019

To: Delhi Township DDA Board of Directors

From: C. Howard Haas, Executive Director

Re: Sale of Property Located at Holloway Drive and Holt Road

For the past 13 months, the DDA has been in discussion with representatives of Spring Valley Industries, LLC regarding the potential sale of our 37 acre property located at the southwest corner of Holloway Drive and Holt Road. The following is from the DDA attorney regarding the sale:

The purpose of this letter is to provide an update concerning the above-referenced matter. Pursuant to Section 7(h) of the Michigan Downtown Development Authority Act, MCL125.1657(h), the Board has the legal authority to enter into agreements for the sale or other transfer of real and personal property. As such, this Board has the legal authority to enter into the attached Agreement of Sale (the "Agreement") and must make a policy decision whether it is in the best interests of the DDA to sell the Property upon the terms and conditions contained in the Agreement.

With regards to same, we provide the following summary of the important terms and conditions:

1. The ultimate owner or user of the Property is a publicly held, Fortune 100 company in the healthcare industry. The proposed use is for an approximately 175,000 square foot distribution center.
2. The amount of property that would be sold is approximately 25 acres. This would leave the Township with approximately 12.7 acres of property. The property that would be retained by the DDA is for the most part wetlands, including a pond and is not developable. The sale of the Property would be contingent upon the buyer taking the necessary action to apply for and receive approval for a land division.
3. The purchase price is \$1,200,000.00. This amount will be paid to the DDA at closing.
4. The inspection and permitted periods will be ninety (90) days, with permitting being extended by sixty (60) days required to obtain all necessary permits.
5. The parties will enter into a Restrictive Covenant Agreement (attached as Exhibit "B" to the Agreement) which will restrict semi-trucks from exiting the Property turning left (*i.e.*, in a Westerly direction) on to Holt Road.
6. The inspection period will be ninety (90) days. Closing will then be held within thirty (30) days, except that in the event that the buyer has not received all required permits then the closing date will be extended by sixty (60) days.

7. The buyer will be responsible for all current, special and other assessments at the time of closing. This includes assessments in the total amount of \$16,214.20 and the amounts due for the street light assessment.
8. The buyer will pay the cost of any title insurance and survey work and other due diligence.
9. After the date of closing, the buyer shall not discharge or permit any storm water that exceeds the amount of natural flow of water from the Property on to the property that the DDA will be retaining. The Buyer agrees that water that flows on to the property retained by the DDA shall not contain any hazardous materials.
10. The other terms and conditions contained in the Agreement are those that are generally contained as part of the sale of a commercial property.

I therefore offer the following motion:

**I move to adopt Resolution No. 2019-003, a resolution for the sale of real property located at the southwest corner of Holloway Drive and Holt Road within the Charter Township of Delhi, Ingham County, Michigan, to Spring Valley Industries, LLC.**

**DELHI CHARTER TOWNSHIP  
DOWNTOWN DEVELOPMENT AUTHORITY**

**RESOLUTION NO. 2019-003**

**A RESOLUTION FOR THE SALE OF REAL PROPERTY  
LOCATED AT THE SOUTHWEST CORNER OF HOLLOWAY  
DRIVE AND HOLT ROAD WITHIN THE CHARTER  
TOWNSHIP OF DELHI, INGHAM COUNTY, MICHIGAN  
TO SPRING VALLEY INDUSTRIES, LLC**

At a regular meeting of the Delhi Charter Township Downtown Development Authority Board of Trustees (the "Board") held at the Holt Community Center, 4410 Holt Road, Holt, Michigan 48842 on the 26<sup>th</sup> day of November, 2019.

PRESENT:

ABSENT:

The following Preamble and Resolution were offered by \_\_\_\_\_ and supported by \_\_\_\_\_.

**WHEREAS**, the Delhi Charter Township Downtown Development Authority (the "Delhi DDA") owns real property located at the Southwest Corner of Holloway Drive and Holt Road (the "Holloway Drive Property"); and

**WHEREAS**, the Delhi DDA received an offer from Spring Valley Industries, LLC ("Spring Valley"), to purchase the Holloway Drive Property; and

**WHEREAS**, the Board has determined the Holloway Drive Property is no longer necessary for Delhi DDA purposes; and

**WHEREAS**, the Board has determined that it would be in the best interests of the Delhi DDA to sell the Holloway Drive Property to Spring Valley and to enter into an Agreement of Sale, a copy of which is attached hereto and made a part hereof as Attachment "1" (the "Purchase Agreement"); and

**WHEREAS**, the Board desires to authorize and direct C. Howard Haas, the Executive Director of the Delhi DDA, or his designee, to execute the Purchase Agreement and to take any other action necessary to sell the Holloway Drive Property to Spring Valley, subject to review and approval by the Delhi DDA's legal counsel.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Board authorizes and directs C. Howard Haas, the Executive Director of the Delhi DDA, or his designee, to execute the Purchase Agreement and to take any other action necessary to sell the Holloway Drive Property to Spring Valley, subject to review and approval by the Delhi DDA's legal counsel.

2. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

AYES:

NAYS:

ABSENT:

This Resolution is declared adopted this 26<sup>th</sup> day of November, 2019.

---

Nanette Miller, Secretary

**AGREEMENT OF SALE  
KEY PROVISIONS SUMMARY**

Effective Date:	The date this Agreement is executed by the last to sign of Buyer and Seller.	
Seller:	Delhi Charter Township Downtown Development Authority, a Michigan Downtown Development Authority organized and operating under the Downtown Development Authority Act, MCL 125.1651, <i>et seq.</i> , as amended.	
Buyer:	Spring Valley Industries, LLC, a Delaware limited liability company	
Property:	Approximately twenty-five (25) acres located southwest of the corner of Holloway Drive and Holt Road in Delhi Charter Township, Ingham County, Michigan, as depicted on <u>Exhibit A</u> , together with all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, and together with any improvements and fixtures located thereon except for the celltower parcel which is not being purchased by Buyer. As used in this Agreement, the term "Property" will refer to the real property described in this paragraph.	
Escrow Agent/ Title Company:	Old Republic National Title Insurance Company ( <u>Section 3</u> )	
Earnest Money:	-0- ( <u>Section 3</u> )	
Purchase Price:	\$1,200,000.00	
Inspection Period:	This is the period for Buyer's due diligence, which begins on the Effective Date and ends on the ninetieth (90th) day thereafter at 5:00 p.m. (local time at the Property).	
Permitting Period:	This is the period for Buyer to obtain all approvals deemed necessary by Buyer for its use of the Property which begins on the Effective Date and ends on the Closing Date at 5:00 p.m. (local time at the Property).	
Closing Date:	No later than the thirtieth (30th) day following the later to occur of (i) the last day of the Inspection Period or (ii) the last day of the Review Period (each as defined in <u>Section 7</u> ).	
Brokers:	CBRE, Inc., representing Buyer Seller not represented by broker	
Notices: ( <u>Section 15</u> )	<u>Seller:</u> Delhi Charter Township Downtown Development Authority Attn: C. Howard Haas, Executive Director 4410 Holt Road Holt, Michigan 48842	<u>Buyer:</u> Spring Valley Industries, LLC 103 Foulk Road Suite 202 Wilmington, DE 19803

	<p><u>With a copies to:</u>  Gordon W. VanWieren, Jr., Esq.  Thrun Law Firm, P.C.  2900 West Road, Suite 400  East Lansing, Michigan 48823</p> <p>David M. Revore, Esq.</p> <p>Revore Law Firm, PLC  836 Centennial Way, Suite 170  Lansing, Michigan 48917</p> <p>Delhi Charter Township Downtown  Development Authority  Attn: Lori Underhill  4410 Holt Road  Holt, Michigan 48842</p>	<p><u>With a copy to:</u>  CBRE  Attn: John Lenio, Executive Vice President  2575 E. Camelback Road, Suite 500  Phoenix, Arizona 85016</p>
Exhibits:	<p>Exhibit A – General Depiction of Property  Exhibit B – Restrictive Covenant Agreement</p>	

### **AGREEMENT OF SALE**

**THIS AGREEMENT OF SALE** (this "**Agreement**") is made as of the Effective Date (as set forth in the Key Provisions Summary) by and between Seller and Buyer.

#### **Recitals**

A. Seller is the owner in fee simple of the Property (as defined in the Key Provisions Summary).

B. Upon satisfaction (or waiver by Buyer) of the closing conditions set forth in this Agreement, Seller will sell to Buyer and Buyer will purchase from Seller the Property upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties mutually covenant and agree as follows:

#### **1. Key Provisions Summary; Enumeration of Exhibits.**

**1.1 Significance of Key Provisions Summary.** References in the body of this Agreement to a portion of the Key Provisions Summary (e.g., the defined terms in the left-hand column of the Key Provisions Summary) will be deemed and construed to incorporate all the terms provided under each such referenced portion of the Key Provisions Summary. References in the Key Provisions Summary to a portion of the body of this Agreement will be deemed and construed to incorporate all the terms provided under each such referenced portion of the body of the Agreement. Notwithstanding anything set forth above, if there is any inconsistency between the Key Provisions Summary and another portion of this Agreement, the terms of the Key Provisions Summary will control.

**1.2 Enumeration of Exhibits.** The Exhibits enumerated in the Key Provisions Summary and attached to this Agreement are incorporated in this Agreement by reference and are to be construed as a part of this Agreement. Each party will perform any obligations on its part as set forth in any and all such Exhibits.



**2. Agreement of Sale and Purchase.**

Upon satisfaction (or waiver by Buyer) of the closing conditions set forth in this Agreement, Seller will sell to Buyer, and Buyer will purchase from Seller, upon the terms and conditions set forth in this Agreement, the Property.

**3. Restrictive Covenant Agreement.** The parties agree that commencing on the Closing Date, Buyer, its successors and assigns, will not permit trucks exiting the Property to turn left (i.e, in a Westerly direction) on to Holt Road. At Closing, the Parties shall execute the Restrictive Covenant Agreement which is attached hereto and made a part hereof as Exhibit B.

**4. Purchase Price.**

**4.1 Payment.** The Purchase Price for the Property of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) will be payable and delivered to Seller at Closing (as defined below in Section 11) in United States cash, by bank or certified check or by wired funds available for immediate credit.

**4.2 Acreage.** Buyer, at its own expense, shall obtain a survey of the Property (the "Survey") suitable to Seller, Buyer and Escrow Agent, and certified to Seller, Buyer and Escrow Agent, acting also as the title company (the "Title Company"), containing the certification of the surveyor of the number of net and gross acres contained within the boundaries of the Property, which may be greater or less than the number of acres now thought by the parties to be contained within the boundaries of the Property. The Survey and any other survey work, shall comply with the requirements contained in Section 15, below.

**5. Costs and Prorations at Closing.**

**5.1 Transfer Taxes, Recording Fees and Other Fees.**

(a) **Seller Costs.** At Closing, Seller shall pay the following costs (collectively, the "Seller Closing Costs"):

(i) documentary transfer tax levied by the State of Michigan, Delhi Charter Township and/or County of Ingham in connection with the recording of the Deed;

(ii) one-half of the escrow fees to Escrow Agent;

(iii) one-half of the appraisal fees to the appraiser (the "Appraiser") engaged by Seller to determine the fair market value of the Property;

(iv) the attorney's fees of Seller; and

(v) all other costs and expenses incurred by Seller in closing and consummating the purchase and sale of the Property.

(b) **Buyer Costs.** At Closing, Buyer shall pay for the following costs (collectively, the "Buyer Closing Costs"):

(i) all title insurance premiums and endorsements;

- (ii) title examination fees;
- (iii) the attorney's fees of Buyer;
- (iv) the cost of the Survey;
- (v) the costs related to Buyer's due diligence;
- (vi) current and future special and other assessments described in Section 5.2, below;
- (vii) one-half of the escrow fees to Escrow Agent;
- (viii) one-half the fees of the Appraiser;
- (ix) all recording fees on all instruments of conveyance to be recorded in connection with the transaction; and
- (x) all other costs and expenses incurred by Buyer in the performance of Buyer's due diligence inspection of the Property.

**5.2 Property Taxes and Special Assessments.** The Property will be exempt from taxation (excluding special and other assessments) at the time of Closing. The Buyer understands that the Property shall be placed on the appropriate tax rolls as is customary after the date of Closing. Seller shall pay all real property taxes, if any, on the Property prior to the date of the Closing. Buyer shall be responsible for all real property taxes on Property which are assessed and become due on or after the date of the Closing. The parties acknowledge that there are currently drain assessments which constitute encumbrances on the Property, and Seller represents and warrants that such drain assessments total \$16,214.20 which amount is good through December 31, 2019. Also, the Property is located within a street light assessment district and there are ongoing street light assessments. At Closing, Seller shall pay all overdue amounts for the drain assessment and street light assessment related to the Property. From and after Closing, Buyer shall be responsible for such assessments.

**5.3 Utilities.** If any utility services are presently being provided to the Property, Seller will pay for such services through 11:59 pm on the day prior to Closing, but thereafter any such services in the name of Seller will be terminated.

**6. Conveyance of Title.**

Seller will convey title to the Property to Buyer at Closing by limited warranty deed, subject only to the Permitted Exceptions (defined below) (the "**Deed**").

**7. Inspection Period; Title and Survey Period.**

**7.1 Inspection Time Period.**

(a) Buyer will have the right for a period of ninety (90) days from and after the Effective Date (the "**Inspection Period**") within which to examine the Property, at its expense, and conduct a feasibility study of the Property to determine whether the Property is suitable to Buyer. Buyer's obligation to purchase the Property is conditioned upon Buyer's review and approval, prior to the expiration of the Inspection Period and in Buyer's sole discretion, of all matters pertaining to the physical, structural,

electrical, mechanical, soil, drainage, environmental, economic, tenancy, zoning, land use and other governmental compliance matters and conditions respecting the Property, including without limitation the Information (as defined below). If Buyer decides, in its sole and absolute discretion, that the Property is not suitable to Buyer, it shall deliver written notice of the termination of the Agreement to Seller on or before the end of the Inspection Period and, except as otherwise provided herein, the parties hereto shall have no further rights or obligations under this Agreement. If Buyer fails to deliver such termination notice to Seller by the end of the Inspection Period, then Buyer shall be deemed to have determined that the Property is suitable to Buyer. Seller discloses that there are extensive regulated wetlands on the Property. Buyer agrees to indemnify and hold harmless Seller from any and all personal injury and property damage arising out of or in any way related to any inspections by Buyer, its consultants and contractors. In the event the transaction contemplated in this Agreement is not closed because Buyer elects not to proceed with Closing, Buyer shall return the Property to the condition it was in prior to any inspections.

(b) **Extension of Inspection Period.** Buyer may extend the Inspection Period one (1) time for no more than thirty days (30) by providing written notice to Seller of Buyer's election of such right prior to the expiration of the initial Inspection Period.

**7.2 Title and Survey Review Period.** The Title Company shall, at Buyer's expense, provide Buyer with a commitment for an ALTA owner's title policy on the Property (the "**Commitment**"), and legible copies of all instrument shown by the Commitment as exceptions. At Closing, Seller shall pay and release all amounts secured by mortgages, deeds of trust or other liens on the Property ("**Monetary Liens**") and terminate all existing tenancies or rights to possession of the Property ("**Tenancy Rights**") whether or not Buyer objects to the same. Buyer will have the right for a period of thirty (30) days after receipt of the Commitment, Survey and legible copies of all documents constituting exceptions to title and survey (the "**Review Period**") within which to examine title to the Property and provide Seller with notice of any defects (the "**Objections**"). Seller will have the right, but not the obligation, to remove, correct and/or satisfy such Objections, and Seller will notify Buyer within five (5) days after the receipt of notice of title objections from Buyer as to whether or not Seller will seek to remove, correct and/or satisfy such defects and encumbrances prior to the Closing Date ("**Seller's Response**"). Seller's failure to tender a Seller's Response will be deemed to be Seller's election not to take any curative action with respect to the Objections. In the event Seller's Response indicates (or is deemed to indicate) that Seller will not cure one or more Objections, Buyer may either (i) waive such objection and proceed with the transaction, or (ii) terminate this Agreement upon written notice to Seller within five (5) days after Buyer's receipt (or deemed receipt) of Seller's Response, whereupon except for the confidentiality and indemnity provisions, this Agreement will be null and void and of no further force and effect whatsoever, and no party will have any further rights, duties, or obligations hereunder. Buyer's failure to timely terminate will be conclusively deemed to be Buyer's election to waive such objection and proceed with the transaction. Except for Monetary Liens, Tenancy Rights and matters to which Buyer objects, exceptions contained in the Commitment are the "**Permitted Exceptions**". If the Commitment is amended or supplemented after Buyer has submitted its objections to Seller, the same periods, procedures and notices for objections and clearance of title shall apply to matters disclosed thereby. In the event there remains at Closing any defects in or encumbrances upon Seller's title to the Property for which Buyer will have given notice and which Seller affirmatively agreed to cure, then Buyer may elect:

(a) To consummate the transaction contemplated hereby without regard to such defects and encumbrances, in which event, the Purchase Price will not be adjusted because of such defects and encumbrances; or

(b) To terminate this Agreement, whereupon except for the confidentiality and indemnity provisions, this Agreement will be null and void and of no further force and effect whatsoever, and no party will have any further rights, duties, or obligations hereunder.

If Buyer does not terminate this Agreement prior to the expiration of the Review Period, then all of the following will apply: (i) Buyer will no longer have any right to terminate this Agreement under this Section 7.2; (ii) Buyer will continue to be bound to proceed to Closing under and subject to the terms of this Agreement; and (iii) Buyer will be bound by all of its obligations under this Agreement, each of which will apply without condition or contingency.

**7.3 Pre-Closing Investigations.** Prior to Closing, Buyer shall have the right to update the Commitment and the Survey, and to conduct investigations of the Property, including but not limited to tests of structures, wells, septic tanks soil, geological hazards, utility lines and systems, detention facilities, and environmental hazards (the "**Pre-Closing Investigations**"). In the event of any change in title between the date of the Commitment and the Closing Date, or if any change in the items or matters shown on the Survey arises between the date of the Survey and the Completion Date, or if any change in the environmental condition of the Property arises between the date of the Phase I and the Completion Date (excepting in all cases, any such new matters arising as a result of the acts of Buyer or Buyer's contractors, employees, material providers, or other parties entering the Property on behalf of Buyer other than Seller and Buyer and their agents and their agents employees (the "**Buyer Parties**") pursuant to or in connection with the transactions contemplated in this Agreement), and Buyer objects to such new matters, Seller may, at its sole discretion, cure the specified objections to the satisfaction of Buyer, and if Seller determines not to cure the objections so specified or in the event Seller fails to do so within the allotted timeframe, Buyer may, in its sole discretion, and as its sole remedy, (i) accept the objections and close this transaction, or (ii) terminate this Agreement.

**7.4 Permitting, Tax Incentive Period and Utilities.** This Agreement is expressly conditioned on all approvals and incentives deemed necessary by Buyer for its use of the Property and for the construction of Buyer's planned facilities or otherwise required, including land division and storm water approval, subject only to conditions and stipulations acceptable to Buyer (the "**Governmental Approvals**"). If Contamination (as defined below) is present, Buyer may elect, in its sole discretion, for such Governmental Approvals to include the disclosure of Contamination information to governmental agencies in order to ascertain the extent of any remediation necessary and to obtain permits in connection with such remediation. Seller shall at no cost to Seller, reasonably cooperate with Buyer in the pursuit of the Governmental Approvals including, without limitation, executing any application necessary to obtain each and every Governmental Approval. Buyer shall pursue the applications and processing to completion and Seller shall execute all necessary and appropriate instruments prepared at Buyer's expense and reasonably requested by Buyer that are related to the same. "Final Approval" of the Governmental Approvals shall be the date when all of the Governmental Approvals have been reviewed and finally approved by the appropriate governmental agencies. If Buyer determines that the Final Approval cannot be obtained on or before the Closing Date, Buyer may, at its option, either (x) extend the Closing Date of up to sixty (60) days or (y) terminate this Agreement, or (z) waive some or all parts of this contingency and proceed with Closing. If Buyer extends the Closing Date as provided above and the Final Approval has not been obtained by the end of the sixty (60) day extension, Buyer may, upon written notice to Seller, choose either (y) or (z) above.

**7.5 Due Diligence Deliverables.** Seller will deliver to Buyer, within five (5) business days after the Effective Date, copies of all due diligence materials, if any, related to the Property in the possession or control of Seller. The materials will include, but are not limited to, environmental and soils reports, prior inspection reports, prior title policies, title exceptions, surveys, and the most recent property tax bills and assessments (collectively, "**Site Information**"). If Seller fails to deliver the Site Information within five (5) business days after the Effective Date, the Inspection Period will be extended, automatically, for each day of delay. Buyer acknowledges that Seller is providing the Site Information to Buyer. Seller makes no representations that any of the Site Information is accurate or correct. Seller expressly disclaims any liability with regards to the Site Information. Buyer agrees not to rely on any Site Information. Buyer

will undertake or cause to be undertaken such inspections and other due diligence it deems necessary to determine whether it is satisfied with the condition of the Property.

**8. Risk of Condemnation Pending Closing.**

Until Closing, Seller has the risk of loss or damage to the Property. If, prior to Closing, condemnation or eminent domain proceedings are commenced by any competent public authority against the Property, or any part thereof, Seller will give Buyer written notice thereof. Within five (5) days of Seller's notice of the commencement of such proceedings, Buyer will notify Seller in writing of Buyer's election of either: (i) accepting the Property subject to the proceedings, whereupon any awards will be paid or assigned to Buyer; or (ii) terminating this Agreement, whereupon except for the indemnity and confidentiality provisions, this Agreement will be void and of no further force or effect and the parties will have no further duties or obligations to one another hereunder. If Buyer does not make such election within such five (5) day period, then Buyer will be deemed to have elected the option (i) set forth above, time being of the essence.

**9. Representations and Warranties of Seller.**

**9.1 Representations.** For all of the following representations, Seller warrants to Buyer that to the best of Seller's knowledge (as defined below):

(a) Seller is a Downtown Development Authority that is organized and in good standing under the laws of the State of Michigan and is qualified to do business and in good standing under the laws of the State of Michigan.

(b) Seller has all necessary power and authority to enter into this Agreement and, upon the closing of the transaction to perform all of Seller's obligations hereunder.

(c) This Agreement has been duly and validly executed and delivered by Seller and this Agreement constitutes the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of legal and equitable remedies is subject to the discretion of the court before which any proceeding may be brought).

(d) Upon closing of this transaction, Buyer will own fee simple title to the Property free and clear of all liens, special assessments, easements, encroachments, reservations, restrictions and encumbrances, excepting only Monetary Liens to be removed by Seller at or prior to Closing, real property ad valorem taxes not yet due and payable and recorded general utility easements serving the Property.

(e) There are no actions, suits or proceedings of any kind pending or threatened against Seller, the Property, or other adjacent right-of-ways in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality. This includes, without limitation, any condemnation or eminent domain proceedings, widening, construction of acceleration/deceleration lanes, changes in or additions to existing or approved curb cuts, proposed or pending installation or removal of traffic lights or any other changes or proposed changes in traffic patterns or management of traffic flow.

(f) All actions required to authorize the execution and performance of this Agreement by Seller have been taken, and this Agreement constitutes a valid and binding agreement,

enforceable against Seller. No person or entity other than Seller has any right or option to lease, occupy or acquire the Property.

(g) There is no existing violation of any ordinance, code, law, rule, requirement or regulation applicable to the Land.

(h) The Property has never been used or operated by any other party for the storage, use, treatment, manufacture or disposal of any Hazardous Materials, and the Property is not contaminated with nor threatened with contamination from outside sources by any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority or which is known to pose a hazard to health and safety (collectively, "**Contamination**"). The term "**Hazardous Materials**" means and refers to any "hazardous waste" or "hazardous substance," as such terms are set forth in, under or pursuant to the Environmental Laws and Regulations, oil or petroleum products or their derivatives, polychlorinated biphenyls, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, explosive, contaminating or polluting materials which are now or in the future subject to governmental regulation. "**Environmental Laws and Regulations**" means any federal, state or local laws now or hereafter in effect relating to pollution or protection of the environment or emissions, discharges, spills, releases or threatened releases of any Hazardous Substance into the environment (including without limitation indoor air, ambient air, surface water, ground water or land), including without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, as amended, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601 *et seq.*, as amended, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, as amended, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, as amended, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, as amended, the Toxic Substance Control Act, 15 U.S.C. §§ 2601 *et seq.*, as amended, and any rules and regulations now or hereafter promulgated under any of such acts.

(i) Seller has provided Buyer with complete copies of all environmental site assessments, audits and similar reports, if any, covering the Property in Seller's possession or control.

(j) Seller has no knowledge of any pending, threatened or contemplated rezoning actions involving all or any portion of the Property, except for any such actions involving Buyer.

(k) There is no current or threatened litigation or condemnation proceedings involving Seller, the Property which (i) if determined adversely to Seller, the Property, materially and adversely affects the use or value of the Property or (ii) questions the validity of this Agreement or any action taken or to be taken pursuant hereto or (iii) involves the condemnation or eminent domain proceedings involving the Property or any portion thereof.

(l) Seller has not entered into or assumed any contract or agreement, or any amendment or modification thereof, with respect to the occupancy of the Property or any portion thereof that will be binding on Buyer after Closing.

(m) Seller has not filed, and has not retained anyone to file, notices of protests against, or to commence action to review, real property tax assessments against the Property.

(n) There are no leases, management agreements, brokerage agreements, leasing agreements or other agreements or instruments in force or effect that grant to any person or entity (other than Seller) any right, title, interest or benefit in and to all of any part of the Property, or any rights relating to the use, operation, management, maintenance or repair of all or any part of the Property which will survive the Closing or be binding upon Buyer other than those which Buyer has agreed in writing to

assume prior to the expiration of the Inspection Period or which are terminable upon thirty (30) days' notice without payment of premium or penalty.

(o) Seller has received no written notice alleging any violations of any reciprocal easement agreements, declarations of conditions, covenants and restrictions, master declarations, tenant in common agreement or other similar agreements affecting the Property where such violations remain outstanding.

(p) Seller has not made, and prior to Closing, will not make, any commitments to any governmental authorities, utility company, school board, church or other religious body, or any homeowner or homeowner's association or to any other organization, group or individual, relating to the Property which would impose any obligation on Buyer after Closing to make any contributions of money, dedications of land or grant of easements or rights-of-way, or to construct, install or maintain any improvements of a public or private nature on or off the Property.

(q) Other than those assessments identified in Section 5.2 above, there are no other pending assessments, special assessments, improvement taxes or special district taxes or other impositions which will constitute a lien upon the Property which would be imposed by any authority having the direct or indirect power to tax, including but not limited to, (i) any city, county, state or federal entity, (ii) any school, agricultural, lighting, drainage or other improvement or special assessment district, (iii) any governmental agency or (iv) any private entity having the authority to assess the Property.

(r) There are no facts concerning the Property that would adversely affect the ability of Buyer to develop and operate the Property as a warehouse and distribution facility following the Closing.

(s) Except to the extent this Agreement provides otherwise, the Property will remain in the condition existing as of the Effective Date until Closing.

As used in this Section 9.1 and its subsections, the term "Seller's knowledge" or "Seller has no knowledge" shall be limited to the actual knowledge of C. Howard Haas, Seller's Executive Director who is generally knowledgeable about the Property. The term "knowledge of Seller" or "to Seller's knowledge" shall not be construed, by imputation. Mr. Haas shall not be personally liable to Buyer for any disclosure or failure to disclose with regards to the Property or otherwise with regards to the transaction contemplated in this Agreement.

**9.2 Buyer's Representations.** Buyer represents to Seller as follows:

(a) Buyer is Delaware limited liability company that is organized and in good standing under the laws of the State of Delaware and is qualified to do business in and in good standing under the laws of the State of Michigan.

(b) Subject to approval by Buyer's real estate committee, Buyer has all necessary power and authority to enter into this Agreement and, upon the Closing of this transaction, to perform all of Buyer's obligations hereunder.

(c) This Agreement has been duly and validly executed and delivered by Buyer and this Agreement constitutes a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws.

(d) Upon the Closing of this transaction, Buyer agrees to take the Property in the same condition as exists on the Effective Date, subject to any rain, sun or other natural events, and to incur all of the costs of planning, design, construction and development of the Property, except as specifically set forth in this Agreement.

**9.3 Notice of Breach of Representation or Warranty.** Seller will take, or cause to be taken, all action necessary to cause its warranties and representations to remain true and correct, in all material respects, through the date of the Closing. Buyer's obligations to acquire the Property are conditioned upon the representations remaining true and correct, in all material respects, as of the date of the Closing. In the event that any of the representations and warranties become untrue or misleading in any material respect prior to the Closing, Seller will give prompt written notice to Buyer. In the event that such warranties or representations are not correct, Buyer may either waive such condition, in writing, or terminate this Agreement in which event neither Seller nor Buyer will have any further obligations under this Agreement. All of the representations and warranties will be reaffirmed by Seller as true and correct as of the date of the Closing.

**10. Seller Covenants.** Seller covenants to Buyer as follows:

(a) Except as contemplated by this Agreement, Seller shall, from and after the Effective Date through Closing or earlier termination of this Agreement, continue to operate the Property and the improvements and buildings thereon in a good and businesslike fashion consistent with Seller's past practices and in the condition that exists on the Effective Date, subject to ordinary wear and tear, casualty and condemnation.

(b) Seller shall not, from and after the Effective Date through Closing or earlier termination of this Agreement: (1) take any affirmative action which shall materially and adversely affect the status of title to the Property; (2) take any affirmative action to materially and adversely change the physical condition of the Property; or (3) enter into any agreements which would bind the Property after Buyer's acquisition of the Property.

(c) In the event that Seller receives between the Effective Date and Closing or earlier termination of this Agreement a written notice of any (1) violation of any Environmental Laws at the Property, (2) pending, threatened or contemplated rezoning actions involving all or any portion of the Property, except for any such actions involving Buyer, or (3) litigation or condemnation proceedings against Seller, or the Property, then Seller shall promptly notify Buyer of same.

(d) During the pendency of this Agreement, Seller shall, at Seller's expense, continue to maintain the liability and casualty insurance policies covering the improvements, if any, of Seller that are currently in force and effect.

(e) If applicable, Seller shall use good faith and commercially reasonable efforts (at no cost to Seller other than amounts for incidental expenses) to obtain and deliver to Buyer prior to Closing, estoppel certificates (collectively, the "**Association Estoppel Certificate**") from any and all associations under any declarations of covenants, conditions and restrictions, master declarations or similar agreements encumbering the Property, which shall be dated within thirty (30) days of Closing and provide that Seller has paid in full all assessments which are due and payable and is in good standing under such declarations, and containing such other matters as requested by Buyer. The form of the Association Estoppel Certificate shall be provided by Buyer to Seller at least fifteen (15) days prior to Closing.

(f) If applicable, Seller shall use good faith and commercially reasonable efforts (at no cost to Seller other than amounts for incidental expenses) to obtain and deliver to Buyer prior to Closing,



estoppel certificates (collectively, the "**Declarant Estoppel Certificate**") from any and all declarants under any declarations of covenants, conditions and restrictions, master declarations or similar agreements encumbering the Property, which shall be dated within thirty (30) days of Closing and provide that Seller has paid in full all assessments which are due and payable and is in good standing under such declarations, and containing such other matters as requested by Buyer. The form of the Declarant Estoppel Certificate shall be provided by Buyer to Seller at least fifteen (15) days prior to closing.

(g) Seller shall neither transfer nor remove any personal property or building equipment from the Property after the Effective Date except for the purposes of replacement thereof, in which case such replacements shall be promptly installed and shall be comparable in quality to the items being replaced.

## **11. Conditions; Other Contingencies.**

**11.1** The obligation of Buyer to consummate the transaction contemplated herein shall in all respects be conditioned upon the satisfaction of each of the following conditions prior to or simultaneously with the Closing (or at such earlier time as may be provided herein), any of which may be waived by Buyer in its sole discretion:

(a) All representations and warranties of Seller contained herein shall be true and correct in all material respects as of the respective dates made and re-made.

(b) As of the Closing Date, Seller shall have performed its covenants and obligations hereunder.

(c) An executed, original copy of the Association Estoppel Certificate shall have been delivered to Buyer.

(d) An executed, original copy of the Declarant Estoppel Certificate shall have been delivered to Buyer.

(e) The Title Company is prepared, upon payment by Buyer of the policy premium, to update Buyer's title commitment through the recording the Deed, to show all conditions as having been satisfied and delete all title exceptions not approved, deemed approved or waived by Buyer.

(f) All utility facilities are readily available and accessible at the Property line.

(g) All conditions and contingencies have been satisfied or waived by Buyer.

(h) Buyer has obtained the approval from its Real Estate Committee to proceed to Closing.

(i) Title Company is prepared to issue a title policy insuring the Property for the Purchase Price and issue all endorsements requested by Buyer.

**11.2 Failure of Buyer's Closing Conditions.** In the event that any of the Buyer Closing Conditions remains unsatisfied as of Closing, then Buyer may elect:

(i) To extend the Closing Date for up to thirty days;

(ii) consummate the transaction contemplated hereby without the contingencies being satisfied; or

(iii) To terminate this Agreement and, except for the indemnity provisions, this Agreement will be null and void and of no further force and effect whatsoever

## **12. Closing.**

**12.1 Closing Date.** The closing (the "**Closing**") of the acquisition will occur, if at all, at the Title Company. The date of the Closing will be a date mutually selected by Seller and Buyer on or before the date which is thirty (30) days after the later to occur of either (i) the Inspection Period, or (ii) the Review Period (such date, the "**Closing Date**").

**12.2 Possession.** Unless otherwise agreed, Seller will deliver possession of the Property at Closing.

### **12.3 Closing Documents.**

**12.3.1** At Closing, Seller shall deliver or cause to be delivered to Buyer, at Buyer's expense, the following (collectively, the "**Seller's Closing Documents**"):

(a) The Deed in a form acceptable to Buyer. The Deed shall specifically list the Permitted Exceptions on an exhibit. The legal description contained in the Deed shall be the legal description set forth in the Survey.

(b) An owner's affidavit from Seller to the Title Company stating that there are no known boundary disputes with respect to the Property, that there are no parties in possession of the Property, that any improvements or repairs made by or for the account of, or at the instance of, Seller to or with respect to the Property within ninety-five (95) days (or such longer period as may be required by the Title Company to comply with the lien laws of Michigan) prior to Closing have been paid for in full (or that adequate provision has been made therefor to the reasonable satisfaction of the Title Company), and including such other matters as may be reasonably requested by the Title Company;

(c) Evidence reasonably satisfactory to the Title Company that the person executing the closing documents on behalf of Seller has full right, power, and authority to do so;

(d) An original FIRPTA Certificate executed by Seller, providing Seller's U.S. taxpayer identification number and stating that Seller is not a "foreign person" as defined in 26 U.S.C. Section 1445;

(e) If required by the Title Company, a so called "Gap" affidavit, ALTA statement or other instrument in form and substance sufficient to permit the Title Company to issue the Owner Policy with no exceptions other than the Permitted Exceptions;

(f) Transfer declarations and transfer tax forms as may be required by the jurisdiction in which the Property is located (the "**Transfer Declaration**"), if applicable, or other real property transfer declarations required by the jurisdiction(s) in which the Property is located;

(g) A closing statement conforming to the prorations and other relevant provisions of this Agreement;

(h) The Restriction Agreement in the form and substance attached hereto as **Exhibit B**; and

(i) Such other instruments as are reasonably requested by Buyer or the Title Company to effectuate the conveyance of the Property.

**12.3.2** At Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(a) The Purchase Price, by delivery to the Seller in immediately available wire transferred funds, subject to adjustments and prorations as provided in this Agreement;

(b) Evidence reasonably satisfactory to Seller and the Title Company that the person executing the closing documents on behalf of Buyer has full right, power, and authority to do so;

(c) Executed original counterparts of the real property transfer declarations required by the jurisdiction(s) in which the Property is located;

(d) The Restriction Agreement in the form and substance attached hereto as **Exhibit B**; and

(e) Such other instruments as are reasonably necessary to effectuate the conveyance of the Property.

**13. Breach, Failure of Condition.**

**13.1 Breach by Buyer.** Notwithstanding anything to the contrary contained in this Agreement, in the event Buyer breaches this Agreement and such breach remains uncured as of the tenth (10<sup>th</sup>) day following Buyer's written notice thereof, the Seller may, as its sole and exclusive remedy, may terminate this Agreement.

**13.2 Breach by Seller.** Notwithstanding anything to the contrary contained in this Agreement, in the event Seller breaches this Agreement and such breach remains uncured as of the tenth (10<sup>th</sup>) day following Seller's receipt of written notice thereof, the Buyer may, as its sole and exclusive remedy terminate this Agreement .

**13.3 Failure of Title Condition.** If after the Inspection Period but prior to Closing, either:

(a) Seller discloses to Buyer in writing that title to the Property is subject to defects, limitations or encumbrances other than (a) the Permitted Exceptions, (b) any matter caused by Buyer or (c) any other matter that a commercially reasonable Buyer of substantially similar properties would not determine to be a material and adverse to Buyer's proposed development of the Property, or

(b) Any update or continuation of the Commitment or Survey reflects a defect, limitation or encumbrance to title to the Property that was not previously contained in the Commitment or Survey, then (in either such event), Buyer shall promptly give Seller written notice of its objection thereto. Such written notice shall specify such title defect in reasonable detail and notify Seller that the Agreement

may be terminated if such title defect is not removed or bonded or insured-over in a manner approved by Buyer and Title Company/Escrow Agent prior to the Closing Date. In such event, Seller or Buyer may elect to postpone the Closing for up to thirty (30) calendar days and attempt to cure such objection. If Buyer fails to waive any such objection within ten (10) business days after notice from Seller that Seller will not cure the objection, then, unless Buyer has extended the Closing Date as set forth above in order to have the title defect cured, this Agreement will terminate automatically and Seller shall promptly direct the Escrow Agent to return the Deposit to Buyer.

**14. 1031 Exchange.**

Buyer will have the right to cause the Closing to occur as part of a "like-kind" exchange pursuant to the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. Seller will cooperate with Buyer in effecting a qualifying like-kind exchange and to execute such documents as are necessary to effect such like-kind exchange; provided, however, that in no event shall Seller be required to incur any additional expense in connection therewith.

**15. Land Division.** Buyer acknowledges the Property is part of a parcel consisting of 37.738 acres. Buyer, at its sole expense, shall take any action which is required to obtain a land division for the Property, including without limitation a survey of the remaining parent parcel. Seller, at no cost to Seller, shall execute any documents necessary for Buyer to obtain a land division. Seller will transfer zero (0) land divisions to Buyer at closing.

**16. Notices.**

**16.1 Written Notice; Delivery Methods.** Each party giving or making any notice, request, demand, consent, approval, or other communication (each, a "**Notice**" (but sometimes "**notice**") pursuant to this Agreement will: (i) give the Notice in writing; (ii) cause the Notice to be signed by an authorized representative of the sending party; and (iii) use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: (a) personal delivery; (b) Registered or Certified Mail, in each case, return receipt requested and postage prepaid; (c) nationally recognized overnight courier, with all fees prepaid; or (d) facsimile (but only if a party's fax number is included in its notice address in the Key Provisions Summary and such notice is also delivered by one of the other methods permitted hereby).

**16.2 Addresses.** Each party giving a Notice will address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the addresses listed in the Notice Addresses section of the Key Provisions Summary or to another Addressee or at another address as designated by a party in a Notice pursuant to this Section 16.

**16.3 Effectiveness of a Notice.** Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with Sections 16.1 and 16.2 above and if the Addressee has received the Notice. A Notice is deemed to have been received as follows: (i) if a Notice is delivered in person, or sent by Registered or Certified Mail, or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; (ii) if a Notice is sent by facsimile, upon receipt by the party giving the Notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number; and (iii) if the Addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver the Notice.

**16.4 Delivery Time of Notice.** Notwithstanding the foregoing, if any Notice is received after 5:00 p.m. on a Business Day where the Addressee is located, or on a day that is not a Business Day

where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located. Each party's attorney is authorized to give any Notice pursuant to this Agreement on behalf of such attorney's client.

**17. Broker.**

Buyer discloses that it has retained CBRE, Inc. to represent it in this transaction and has not retained any other brokers. The Seller will not be responsible for any commission or other amounts owed to CBRE. Seller represents to Buyer that it has not dealt with any real estate broker or agent in connection with this transaction. To the extent permitted by law, each party will indemnify and hold the other harmless from any other claim or demand made by a broker or agent with respect to this transaction because of acts or omissions of such party.

**18. Additional Terms.**

**18.1 Applicable Law.** The laws of the state, commonwealth, or jurisdiction where the Property is located (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.

**18.2 Waiver.** The parties may waive any provision of this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Agreement, and no act, omission or course of dealing between the parties operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.

**18.3 Amendment.** The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

**18.4 Attorneys' Fees.** In the event of any litigation related to this Agreement, whether to enforce its terms, recover for default, or otherwise, if either party receives a judgment, settlement, or award in its favor (the "Receiving Party") against the other party (the "Paying Party") in such litigation, the Paying Party will pay upon demand all of the Receiving Party's costs, charges, and expenses (including but not limited to reasonable attorneys' fees actually incurred, court costs, and expert witness fees) arising out of such litigation (including the costs of any appeal related thereto); provided, however, that if prior to commencement of a trial in the litigation the Paying Party offers to pay an amount equal to or in excess of such judgment, settlement, or award, the Receiving Party will not be entitled to any such costs, charges, expenses, or attorneys' fees.

**18.5 Business Days.** "Business Day" (or "business day") means, as to any party, any day that is not a Saturday, Sunday, or other day on which national banks are authorized or required to close in the state, commonwealth, or jurisdiction where the Property is located. If the last day of any time period hereunder, or the last day for performance of any obligation, or for giving any notice, or for taking any other action hereunder falls on a day that is not a Business Day, then the last day of such time period will be extended to the first day thereafter that is a Business Day.

**18.6 Merger.** **THIS AGREEMENT ALONG WITH THE CONFIDENTIALITY AGREEMENT ENTERED INTO BY CERTAIN REPRESENTATIVES OF THE PARTIES PRIOR TO THE DATE OF THIS AGREEMENT CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES'**

AGREEMENT ON THE MATTERS CONTAINED IN THIS AGREEMENT. WITH THE EXCEPTION OF THE ACCESS AGREEMENT AND THE CONFIDENTIALITY AGREEMENT, ALL OTHER PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS AGREEMENT ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS AGREEMENT. THE PROVISIONS OF THIS AGREEMENT MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS AGREEMENT, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS AGREEMENT. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS AGREEMENT OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.

**18.7 Headings.** The descriptive headings of the sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

**18.8 Severability.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this Agreement remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**18.9 Counterparts; Electronic Signatures.** The parties may execute this Agreement in electronic format and in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or electronic mail is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

**18.10 Successors or Assigns.** The terms, conditions, covenants, and agreements of this Agreement extend to and are binding upon Seller, Buyer, and their respective heirs, administrators, executors, legal representatives, successors and assigns, if any, and upon any person or entity coming into ownership or possession of any interest in the Property by operation of law or otherwise. At the election of Buyer, this transaction will be closed in the name of and the deed delivered to its nominee or assigns.

**18.11 Third-Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person or legal entity other than the signatories.

**18.12 Consent.** Except where otherwise expressly provided for in this Agreement, any consent or approval required under this Agreement will not be unreasonably withheld, delayed, conditioned, denied, or otherwise refused in any manner.

**18.13 Time of the Essence.** Time is of the essence of this Agreement and in the performance of all conditions, covenants, requirements, obligations and warranties to be performed or satisfied by the parties hereto.

**18.14 Exclusivity.** Unless and until this Agreement is terminated in accordance with the terms thereof, Seller shall not solicit, make or accept any offers, or enter into any contracts or agreements, to sell all or any portion of the Property or any interest therein to any party other than Buyer.

**18.15 Waiver of Jury Trial.** TO THE EXTENT NOW OR HEREAFTER PERMITTED BY LAW, SELLER AND BUYER HEREBY MUTUALLY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED THERETO, OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED THERETO. SELLER AND BUYER ALSO WAIVE ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED, UNLESS THE RIGHT TO TRIAL BY JURY IS WAIVED IN THE RESULTING ACTION. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE, CONSTITUTES A KNOWING AND VOLUNTARY WAIVER AND SHALL BE SUBJECT TO NO EXCEPTIONS. SELLER AND BUYER HAVE IN NO WAY AGREED WITH OR REPRESENTED TO EACH OTHER OR TO ANY OTHER PERSON OR ENTITY THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT BE FULLY ENFORCED IN ALL INSTANCES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING AND ANY TERMINATION OF THIS AGREEMENT.

**19. Authority of Buyer.**

Buyer is a duly organized, validly existing entity and in good standing under the laws of the state in which the Property is located, is authorized to do business in the state in which the Property is located, has duly authorized the execution and performance of this Agreement, and such execution and performance will not violate any material term of its organizational documents.

**20. Publicity.** The parties agree that, prior to Closing, and except for disclosures required by law or governmental regulations applicable to such party, no party shall, with respect to this Agreement and the transactions contemplated hereby, conduct negotiations with public officials, make any public announcements or issue press releases regarding this Agreement or the transactions contemplated hereby to any third party without the prior written consent of the other party hereto. No party shall record this Agreement or notice hereof.

**21. No Discharge of Storm Water.** Subsequent to the transfer of the Property to Buyer, there shall be no storm water discharge that exceeds the amount that would naturally flow from the Property on to the property which Seller owns adjacent to the Property. This obligation of Buyer shall survive closing and run with the Property. The Seller may record an agreed upon document at Closing which evidences this restriction. The water that flows on to Seller's remaining property shall not contain any hazardous substances.

***[SIGNATURES APPEAR ON THE FOLLOWING PAGE]***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

**SELLER**

DELHI CHARTER TOWNSHIP DOWNTOWN  
DEVELOPMENT AUTHORITY, a Michigan downtown  
development authority

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

Print Name: C. Howard Haas

Title: Executive Director

Date: \_\_\_\_\_, 2019

**BUYER**

SPRING VALLEY INDUSTRIES, LLC,  
a Delaware limited liability company

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

Print Name: **Darryl E. Smith**

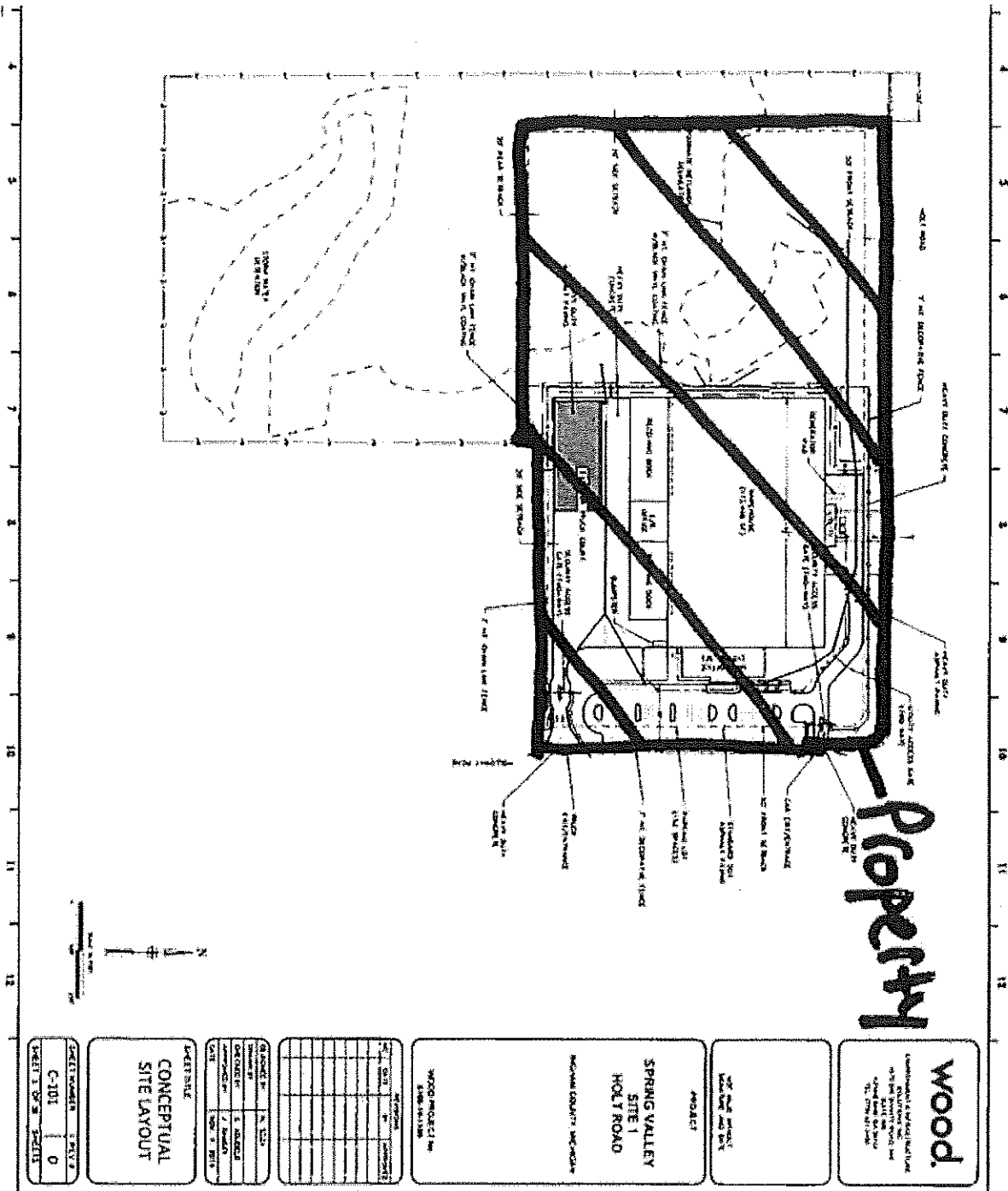
Title: *Manager and Assistant Secretary*

Date: \_\_\_\_\_, 2019



# EXHIBIT A

## GENERAL DEPICTION OF PROPERTY



## **EXHIBIT B**

### **FORM OF RESTRICTIVE COVENANT AGREEMENT**

#### **RESTRICTIVE COVENANT AGREEMENT**

THIS RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2019 to be effective upon execution (the "Effective Date"), by and between DELHI CHARTER TOWNSHIP DOWNTOWN DEVELOPMENT AUTHORITY, a Michigan Downtown Development Authority organized and operating under the Downtown Development Authority Act, MCL 125.1651, *et. seq.*, as amended ("DDA") to include the Delhi Charter Township, as successor to the DDA, and SPRING VALLEY INDUSTRIES, LLC, a Delaware limited liability company ("Developer") and its successor or assigns.

#### **BACKGROUND**

A. On the date hereof, DDA has conveyed to Developer certain unimproved land consisting of approximately \_\_\_\_ acres located southwest of the corner of Holloway Road and Holt Road in Delhi Charter Township, Ingham County, Michigan (the "Developer Parcel") upon which Developer intends to construct a distribution center.

B. The Developer Parcel is currently zoned for industrial use and no rezoning is necessary in connection with the development of the Developer Parcel for Developer's intended use.

C. Located approximately one mile east of the Developer Parcel is State Route 127, and approximately \_\_\_\_ miles to the west of the Developer Parcel is the Delhi Charter Township Community Activity Center (the "Community Activity Center"). Other commercial uses are adjacent to the Developer Parcel but the use changes to residential approximately .33 mile west of the Developer Parcel towards the Community Activity Center.

D. The DDA and Delhi Charter Township desire that the Community Activity Center remain community friendly and one of the ways to achieve that goal is to prohibit certain type of truck traffic from travelling through the Community Activity Center. To further that effort, the DDA is requiring that Developer agree to and be bound that those certain type of cargo semi-trucks and trailers as defined herein leaving the Developer Parcel will exit the Developer Parcel onto Holloway Drive and turn right onto Holt Road towards State Route 127. For purposes of this Agreement, the parties agree that "Semi-truck" shall mean a non-cargo-carrying power unit, with or without a cab area. Semi-truck and semitrailer combination means a semi-truck with a rectangular container or a trailer of at least 53' in length, or a combination of trailers that are at least 53' in length.

#### **AGREEMENT**

1. No Left Turn. Commencing on the Effective Date of this Agreement but effective as of the date of conveyance of the Developer Parcel from the DDA to Developer, Developer

covenants, on behalf of itself and its parent company, successors and assigns, that its company-owned Semi-trucks exiting the Developer Parcel will not turn left (i.e., in a westerly direction) on to Holt Road; rather, that such Semi-truck traffic will turn right on Holt Road and travel east towards State Route 127 at all times when travel on that stretch of road is open to travel.. Developer shall install signs which read "No left turn on to Holt Road for Semi-trucks" at the Holloway Drive entrances/exits to the Developer Parcel. Developer, its successors and assigns, shall make commercially reasonable efforts to advise in writing on a semi-annual basis, new or recurring third-parties that access the Developer Parcel with Semi-trucks for the delivery or pick-up products in bulk that Semi-trucks are permitted only right turns (i.e., in an easterly direction) on Holt Road.

2. Breach In the event of an alleged default, the non-defaulting party must give the defaulting party written notice thereof to the notice address set forth in this Agreement detailing the alleged default, along with evidence to support the claimed default. Thereafter, the parties must in good faith endeavor to resolve the disputes amicably, through dialog and cooperation. In the event a dispute or difference is not promptly resolved at operational levels of the two organizations, the parties will escalate it for a good faith effort to achieve an amicable resolution at a senior business management level. In the event that such dispute is not resolved on an informal basis within ninety (90) days from receipt of the written notice of a dispute, either party may, by written notice to the other, have such dispute referred to an unaffiliated third party for mediation jointly selected by the parties, who will attempt to resolve such dispute by negotiation and consultation for a thirty (30) day period following receipt of such written notice. If the dispute is not resolved in accordance with the foregoing process, either party may commence litigation proceedings.

3. Prevailing Party. In any litigation by either party to enforce the terms of this Agreement, the prevailing party is entitled to reimbursement of its reasonable out of pocket attorneys' fees and costs in bringing or defending the action. As used herein, prevailing party means the party that is afforded the greater relief (whether affirmatively or by means of a successful defense) with respect to claims having the greatest value or importance as determined by the court allowing for all of the claims, counterclaims, and defenses asserted under the contract. In claims for money damages, the total amount of recoverable attorneys' fees and costs shall not exceed the net monetary award of the prevailing party.

4. Notices. Any notice or other communication required or permitted to be given to a party under this Agreement shall be in writing and shall be deemed effective upon delivery (or refusal of delivery) when transmitted by one of the following methods to such party at the address set forth at the end of this Section 4: (a) via personal serviced; (b) via a nationally recognized overnight delivery service (such as FedEx or UPS); or by certified mail, postage prepaid, return receipt requested. Either party may change its address for notice by giving written notice thereof to the other party at least ten (10) business days prior to the effective date of such change of address. The address of each party for notice initially is as follows:

- (a) If intended for DDA, to:

Delhi Charter Township Downtown Development Authority

Attn: C. Howard Haas, Executive Director  
4410 Holt Road  
Holt, Michigan 48842

(b) If intended for Developer, to:

Spring Valley Industries, LLC  
103 Foulk Road, Suite 202  
Wilmington, DE 19803

5. Transfer of Property. Prior to the sale, transfer or lease by Developer, its successors and assigns of the Developer Parcel, the Developer, its successors and assigns shall provide a copy of this Agreement to the proposed transferee. Prior to the transfer, the transferee shall provide written confirmation to the DDA that it agrees to be bound by the terms and conditions contained in this Agreement.


6. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Michigan. This Agreement may be cancelled, changed, modified or amended in whole or in part only by written and recorded instrument executed by the parties. The section numbers and headings of this Agreement are inserted for convenience only and shall in no way limit or affect the interpretation of this Agreement. This Agreement shall be binding upon and inure to the parties' successors and assigns.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the date first above written.

DEVELOPER:

SPRING VALLEY INDUSTRIES, LLC,  
a Delaware limited liability company

By:   
Name: Darryl E. Smith  
Title: Manager & Asst. Secretary

DDA:

DELHI CHARTER TOWNSHIP  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_