

# **FOURTH AMENDMENT AND RESTATED DEVELOPMENT AGREEMENT**

**Between**

**THE CITY OF GREEN,  
DEHOFF DEVELOPMENT COMPANY  
and  
GREEN LAND TRUST, LTD.**

This Fourth Amendment and Restated Development Agreement (this “Fourth Amended Agreement”) is entered into as of this \_\_\_\_ day of May, 2018 between the City of Green, Ohio (the “City”), DeHoff Development Company (the “Developer”), and Green Land Trust, Ltd. (the “Owner”), under the following circumstances. Capitalized terms are used with the meanings given them in the Development Agreement and/or its Amendments (later defined) or as set forth in Schedule 1 hereof.

## **Recitals**

- A. The City, Developer and Owner entered into a Development Agreement dated October 24, 2003 (the “Agreement”). The City, Developer and Owner entered into the First Amendment to the Development Agreement dated April 11, 2006 (the “First Amendment”). The City, Developer and Owner entered into the Second Amendment to the Development Agreement dated May 4, 2006 (the “Second Amendment”). The City, Developer and Owner entered into the Third Amendment to the Development Agreement dated September 25, 2006 (the “Third Amendment”). For all purposes herein, the term “Agreement” shall be deemed to include the Agreement as amended by the First Amendment, Second Amendment and the Third Amendment without the need to refer to each Amendment.
- B. The City, Developer and Owner now desire to amend and restate the Agreement to clarify, modify and amend its terms with respect to several matters, including the zoning at the Spring Hill site, the retirement of the existing Tax Increment Financing Bonds for the Liberty Green Pump Station and the Arlington Road Trunk Sanitary Sewer, the release of the City of Green Grant Property and the City’s Mortgage on the Spring Hill site.
- C. In order to create and preserve jobs and employment opportunities within the jurisdiction of the Summit County Development Finance Authority (the “DFA”) and the City and to improve the economic welfare of the people of the City and the DFA, the City, the DFA, and the Developer entered into a Cooperative Agreement dated August 15, 2003, to develop and finance the Project.
- D. City Council adopted a TIF Ordinance No. 2003-12 on September 10, 2003 and Ordinance No. 2004-03 on February 10, 2004, in accordance with the Act and the TIF Program for the development and financing of the Project within the boundaries of the City.

- E. The City acquired, constructed, installed and paid the costs of the Public Improvements, which Public Improvements directly benefit and serve the Development Property and the people of the City in general. In order to provide the Public Improvements in connection with the Project, the DFA constructed the Sewer Improvement as the City's agent in accordance with Section 4582.431(A), Ohio Revised Code and the Cooperative Agreement. The Project, located within the boundaries of the City and within the jurisdiction of the DFA was subsequently fully and timely constructed to the satisfaction of the Parties.
- F. In order to carry out the public purpose and to comply with the requirements of the Act and the TIF Program, the City desires to enter into this Fourth Amendment and Restated Development Agreement to provide for tax increment financing for the New Construction of the Village of St. Edward project within the Development Property ("VSE Project"), which, along with Owner funds, will be used to pay-off the original "TIF Bonds" with a current outstanding aggregate balance of approximately \$2,663,000.00, and the City's obligations for the TIF Bonds. At the time of pay-off of the original TIF Bonds, the outstanding aggregate balance may be slightly higher or slightly lower than the outstanding aggregate balance as of the date of this Agreement. The Owner is willing to make the Service Payments for the VSE Project and to perform such other actions required by the Owner as described in this Fourth Amended Agreement.
- G. The City has determined that it is necessary and in the best interests of the City to provide for the making of Service Payments in lieu of taxes by the Owner, or its successor in the VSE Project with respect to the New Construction of the VSE Project, in accordance with the Act, the TIF Program, and the TIF Ordinance and, therefore, the City has declared that One Hundred Percent (100%) of the assessed value of the New Construction of the VSE Project is a public purpose and will be exempt from real property taxation for the Thirty (30) Year Exemption Period, with approximately Sixty Four Percent (64%) of the said Service Payments to be used to pay-off of the original TIF Bonds.
- H. The City has determined that the development of the New Construction by the Developer on the Development Property and fulfillment generally of the terms of this Agreement, are in the best interests of the City and the health, safety, morals and welfare of its residents.
- I. Subject to the following, the Board of Education of the Green Local School District passed a resolution waiving the right to approve exemptions from taxation under Section 5709.43, Revised Code, for any improvements declared to be a public purpose and for any TIF Agreements entered into under the TIF Program on the condition that a compensation agreement be negotiated in accordance with Section 5709.40, Revised Code and waiving any notice under Section 5709.83, Revised Code.
- J. The Board of Education of the Green Local School District, on November 17, 2003, entered into a compensation agreement with the City. The City and the Green Local School Board amended the Compensation Agreement effective January 1, 2006, and again on May 25, 2017, by a Second Amendment. As a result of the Second Amendment, the Green Local School District is required to receive a fourteen (14) day statutory notice under Ohio Revised Code 5709.83, from the City. The same has been provided by the City to the Green Local School District.

- K. The Board of Education of the Portage Lakes Career Center on October 16, 2003, passed a resolution waiving any notice under Section 5709.83, Revised Code.
- L. As part of carrying out the City's obligations, the City intends to provide funds for certain public improvements in an amount presently estimated at \$170,000, for the construction of a culvert under Arlington Road.
- M. Any and all terms and conditions in the Agreement and the First Amendment, the Second Amendment and the Third Amendment, not modified hereby shall remain in full force and effect not amended and restated herein shall remain in full force and effect subject to the terms and intent herein.

**The parties agree as follows:**

## **Article I The City**

### **Section 1.1. Representations.**

The City makes the following representations:

- (a) It is a political subdivision, duly organized, and validly existing under the laws of Ohio and its Charter.
- (b) It has performed all acts required of it as a condition to signing and delivering this Fourth Amended Agreement.
- (c) It is not in violation of any laws of Ohio or its Charter, to an extent that would impair its ability to carry out its obligations under this Fourth Amended Agreement.
- (d) It has the power to enter into and perform its obligations under this Fourth Amended Agreement.
- (e) Its City Council has duly authorized the signing, delivery, and performance of this Fourth Amended Agreement.
- (f) The parties hereto acknowledge and agree that the City has been required and may further be required to pass more than one ordinance or other measure to complete the legislation necessary to make and pay for the public improvements and other obligations under the Agreement as amended in the First Amendment, the Second Amendment, the Third Amendment to the Agreement and this Amended and Restated Agreement, for the proposed TIF transaction, zoning clarification and for the public road, utility, Storm Water Drainage Authority and

release of Grant Property and the Owner Mortgage, all as set forth in the Agreement and the Fourth Amended Agreement.

**Section 1.2. City Agreement to VSE TIF.**

Subject to the terms of this Agreement, the City agrees to the One Hundred Percent (100%) thirty (30) year TIF Plan for the VSE Project, in substantially the same form as set forth in the TIF Financing Plan attached hereto as “Exhibit A” (the “TIF Plan”), and as substantially set forth in the DFA Term Sheet attached hereto as “Exhibit B”. This TIF Plan will necessitate the Owner contributing +/- \$395,000, as set forth in the TIF Plan [the “Funding Gap(s)”] to the City for purposes of the payment of the original TIF Bonds. The City shall proceed to enact any and all required legislation necessary and consistent with this TIF Plan. This Funding Gap includes an amount equal to \$50,000.00, which is the approximate amount the Developer will incur to relocate the City’s temporary storm water detention basin associated with the City’s Soccer Complex located in Spring Hill, which the City is obligated to remove, as more fully set forth in Section 2.7 below. This amount shall be repaid to the Developer as provided under the TIF Plan and Term Sheet.

**Section 1.3. Construction of the Storm Sewer Culvert Improvement.** The City has authorized and funded the replacement and installation of a storm water culvert under Arlington Road to provide improved drainage from the existing drainage ponds in Spring Hill, pursuant to the Plans and Specifications prepared by Environmental Design Group as approved by the City and dated March 7, 2018, which the City shall complete prior to December 31, 2018. This work is necessary to complete the roadway extension and detention pond construction to be completed by the Owner as set forth herein.

**Section 1.4. City Approval of VSE Subdivision.** The City on or about May 16, 2018 approved the VSE subdivision off of Fortuna Drive as provided in the VSE Project Property subdivision plan dated May 8, 2018.

**Article II**  
**The Developer and the Owner**

**Section 2.1. Developer Representations.** The Developer makes the following representations:

- (a) It is a corporation duly organized, validly existing, and in good standing under the laws of Ohio.
- (b) It has performed all acts required of it as a condition to signing and delivering this Fourth Amended Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Fourth Amended Agreement.
- (d) It has the power to enter into and perform its obligations under this Fourth Amended Agreement.

- (e) Its board of directors has duly authorized the signing, delivery, and performance of this Fourth Amended Agreement.

**Section 2.2. Owner Representations.** The Owner makes the following representations:

- (a) It is a limited liability corporation duly organized, validly existing, and in full force and effect under the laws of Ohio.
- (b) It has performed all acts required of it as a condition to signing and delivering this Fourth Amended Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Fourth Amended Agreement.
- (d) It has the power to enter into and perform its obligations under this Fourth Amended Agreement.
- (e) Its members have duly authorized the signing, delivery, and performance of this Fourth Amended Agreement.

**Section 2.3. Owner and Developer Ratification and Agreement to Perform.** The Owner and Developer ratify, confirm and agree to perform any and all obligations of the Owner and the Developer arising under this Fourth Amended Agreement.

**Section 2.4. Services of Developer.** The Developer is responsible for providing all of the services to, and in connection with the Development Improvements, promptly within the time periods as set forth in this Fourth Amended Agreement or as necessary for the timely completion of the Development Improvements.

**Section 2.5. Acquisition of Development Property.** As of the date of this Fourth Amended Agreement, the Owner has acquired fee title to all of the Development Property, and has paid all costs associated with this acquisition of title. The legal description of the property is attached as “Exhibit C”. This Fourth Amended Agreement will be a covenant running with the land, regardless of lot splits or transfers, during the Exemption Period.

**Section 2.6. Developer Agreement to Construct the Development Improvements.** The Developer agrees to construct the Development Improvements as follows:

- (a) Plans. Subject to the terms of this Fourth Amended Agreement, the Developer agrees to construct the VSE Project Development Improvements on the VSE Project Property in accordance with the time schedule, value parameters, and improvement description provided in this Agreement and specifically in “Exhibit D”.

- (b) Submittals. The Developer agrees to prepare and submit to the City, the Improvement Plans, for review and approval by the appropriate governmental authorities in accordance with applicable laws. The Developer must make and submit any revisions as are required to obtain the applicable governmental authorities' approval for the Development Improvements.

**Section 2.7. Construction of the Fortuna Drive Storm Water Management Basin.**

The Owner/Developer and the City shall cooperate in the construction of a new storm water management basin to replace the temporary City storm water basin at the current terminus of Fortuna Drive. The City acknowledges and agrees that the City is responsible to pay any and all costs associated with the removal of the temporary City storm water basin at the current terminus of Fortuna Drive and will contribute one-half of the cost not to exceed \$25,000 for the construction of a new storm water management basin to replace the temporary City storm water basin. The Owner and the City shall cooperate to include the payment/repayment of this amount in the VSE TIF Plan or in a future TIF reimbursement plan as provided herein.

**Section 2.8. Agreement to Make Service Payments.** The Owner agrees to make Service Payments to the City as described in TIF Plan and the Term Sheet during the Exemption Period.

**Section 2.9. Restrictions on Use.** The Owner agrees for itself, and its successors and assigns, and every successor in interest to the Development Property or any part thereof, that until the end of the term of the Exemption Period, the Owner and any successors and assigns must use, develop, and redevelop the Development Property in accordance with this Fourth Amended Agreement, and further agrees for itself and its successors and assigns that this covenant will be a covenant running with the land and will be included in any future deed by the Owner conveying the Development Property or any part thereof and will be binding for the benefit and in favor of, and enforceable by the City, against the Owner, its successors and assigns. These covenants will be binding on the Owner, and on each successor in interest to the Development Property, and every part thereof, for the period as the Owner or its successor has title to or an interest in the Development Property or any part thereof during the Exemption Period. The Owner will take all actions, within its power, necessary to ensure that this covenant will have priority over any interest in the Development Property except for the Permitted Encumbrances. The Owner will cause this Fourth Amended Agreement, or a mutually acceptable Memorandum of Agreement to be recorded in the real estate records of the Fiscal Officer of Summit County, Ohio ("County").

**Section 2.10. Site Plan Approvals.** By entering into and the execution of this Fourth Amended Agreement, the Owner acknowledges that the City in no way waives or implies the approval of a site plan for the Development Property or requires the City to render an approval of any site plan submitted for the Development Property. The Owner agrees to follow the usual and customary process of site plan approval per the City's Land Development Code, including compliance with the zoning of the Development Property at the time of the construction of the Development Improvements, but subject to the zoning provisions agreed to herein, which shall take priority over any inconsistent provisions in the City's Land Development Code.

**Section 2.11. No Request for Reduction in Valuation of the Development Property.** Neither the Owner for itself, nor its successors and assigned and every successor in interest to the Development Property, or any part thereof, during the Exemption Period, shall seek a reduction in the County Fiscal Officer's appraised value of the Development Property which would result in a

Service Payment which is less than set forth in the TIF Plan or a subsequent approved TIF financing plan. Furthermore, the Owner agrees that the Service Payment obligations set forth herein shall continue notwithstanding that a subsequent Owner of the Development Property or the use of the Development Property may be by a non-profit entity exempt from the payment of real estate taxes.

### **Article III**

#### **Financing for the TIF Plan**

##### **Section 3.1. Financing for Retirement of TIF Bonds.**

The DFA shall provide its Bond Fund financing pursuant to the terms of the TIF Plan and attached DFA Term Sheet, which together with the Owner's payment of the Funding Gap, will allow for the retirement of the TIF Bonds.

##### **Section 3.2. Long-Term Financing of TIF Plan.**

The City, Owner and the DFA will cooperate in the long-term financing of the TIF Plan as provided herein and pursuant to a Cooperative Agreement between the Parties consistent with the TIF Plan and DFA Term Sheet. DFA will provide long-term financing for the TIF Plan through the issuance of TIF Bonds on the VSE Project. The DFA will issue the VSE TIF Bonds to provide proceeds to retire and repay the original TIF Bonds. Notwithstanding the foregoing, the City has not and is not agreeing to be responsible for any additional financial obligations under the TIF Plan.

##### **Section 3.3. Exemption of New Construction.**

The City hereby declares that the increase in assessed valuation of the VSE Project Development Improvements by reason of all New Construction is a public purpose and determines that One Hundred Percent (100%) of the assessed valuation of the New Construction is exempt from real property taxation by all political subdivisions and taxing districts. The exemption will commence separately for each portion of the New Construction, as of the first tax year that each and any portion of the value of the New Construction appears on the tax list and duplicate, or would appear on the tax list and duplicate but for the exemption, and will extend for the Exemption Period of thirty (30) years.

##### **Section 3.4. Service Payment.**

The Owner and any successor in interest of the land within the Development Property must make Service Payments to the City as follows:

- (a) During the Exemption Period, in accordance with the Act, the TIF Program, and the TIF Ordinance, as amended and supplemented, the Owner, for itself and any successors in interest to the VSE Project Property or any part thereof or interest therein, covenants and agrees to make (or cause to be made) semiannual Service Payments in lieu of real property taxes with respect to the VSE Project New Construction pursuant to and in accordance with the requirements of the Act, the TIF Program, and this Fourth Amended Agreement. The obligation to make Service

Payments will run with the land. The Service Payments must be made semiannually to the County, or to the designated agent of the County for collection of the Service Payments, on or before the date on which real property taxes would otherwise be due and payable for the New Construction. Any late Service Payments must include interest and penalties at the same rate and in the same amount and payable at the same time as delinquent real property taxes. Each semiannual Service Payment must be in an amount equal to the real property taxes that would have been charged and payable against the exempted portion of the New Construction if an exemption from real property taxation had not been granted, plus all interest and penalties thereon for nonpayment, and must otherwise be in accordance with the requirements of the Act.

- (b) It is intended and agreed, and it must be provided in any future deed conveying the Development Property, the VSE Project Property, or any portion thereof, to any person, that the covenants provided herein will be covenants running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by, the City, whether or not this Fourth Amended Agreement remains in effect and whether or not this provision is included in any succeeding deed of the Development Property, or any portion thereof. It is further intended and agreed that these agreements and covenants will remain in effect for the full Exemption Period permitted in accordance with the requirements of the Act, the TIF Program, the TIF Ordinance, and this Fourth Amended Agreement. The covenants running with the land will have priority over any other lien or encumbrance on the Development Property and the New Construction other than the Permitted Encumbrances. The parties agree to execute and record any and all instruments of record in Summit County, Ohio, including this Fourth Amended Agreement or an Affidavit of Agreement, as may be necessary to preserve and protect such covenants running with the land.
- (c) The Owner must prepare and file or cause to be prepared and filed in cooperation with the City, County or State any necessary applications and supporting documents to obtain the exemption from real property taxation for the New Construction to enable the City to collect Service Payments and to disburse these payments to or for the account of the City. The City will cooperate with the Owner in connection with the preparation and filing of any required exemption applications.
- (d) The Owner may sell, lease, or otherwise convey any portion of the VSE Project Property. If the transfer provides that the transferee assumes the obligations under this Agreement to make Service Payments with respect to the VSE Project New Construction on the portion of the VSE Project Property transferred, the Owner will be released from its obligations under this Agreement to make those Service Payments with respect to that VSE Project New Construction. The agreement to make Service Payments under this Agreement is a covenant running with the land. Subject to the foregoing and following substantial completion of the VSE Project, the obligations of the Owner to make the Service Payments will be absolute and



unconditional, and will not be terminated for any cause, and the Owner agrees that there will be no right to suspend or set off the Service Payments for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Improvements, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or by or under authority of the State of Ohio, or any failure of the City to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

- (e) The Owner and Developer represent to the City, and the City acknowledges that upon completion of the VSE Project, the expected appraised value for the VSE New Construction will be not less than \$15,000,000. The parties acknowledge that this is an estimate and that the failure to achieve that level of New Construction will not constitute a failure of either party to perform under this Fourth Amended Agreement. The City will not unreasonably withhold, delay, or condition the permits that the City issues or approves. Notwithstanding, the Owner and Developer, for themselves, their successors and assigns and every successor in interest to the Development Property or any part thereof, agree to make a guaranteed minimum Service Payment to the City in the amount of \$339,854.00 per year during the Exemption Period.

**Section 3.5. Release of City Grant Property.** Upon the full repayment of the TIF Bonds, the City shall immediately release any and all interest the City has in the Grant Property on the Development Property. This Grant Property is currently nine (9) acres. This release shall be automatically effectuated, and the City shall execute and deliver any reasonable release document offered by the Owner and or Developer to memorialize this purpose.

**Section 3.6. Release of Developer's and Owner's Guarantees.** Upon the full repayment of the TIF Bonds, the City shall immediately release any and all Developer and the Owner Guarantees and the Mortgage on the Development Property. This release shall be automatically effectuated, and the City shall execute and deliver any reasonable release document offered by the Owner and or Developer to memorialize this purpose.

## **Article IV**

### **Clarification and Confirmation of B-3 Zoning for Spring Hill Commercial Property**

**Section 4.1. Clarification and Confirmation of B-3 Zoning for Spring Hill Commercial Property.** The City hereby confirms its agreement to cooperate, support and facilitate the previously vested reclassification of the zoning of the Spring Hill site under the then-existing City Zoning and Land Development Code, including permitted retail uses, and as follows:

- Thirty (30) acres of B-3 Retail Zoning at the corner of Boettler and Arlington which specifically would allow a drug store retail use on the corner of Boettler and Arlington;
- The Owner agrees that this B-3 retail zoning on the thirty (30) acres shall include only one (1) permitted single-user retail building up to 100,000 square feet, with another 100,000 square feet of additional permitted retail

space, which may be included in up to two (2) additional buildings of up to 25,000 square feet together with a combination of other buildings up to 10,000 square feet. The total building square footage on the thirty (30) acres shall not exceed in total 200,000 square feet or 15.3% building lot coverage;

- The Owner agrees to a three hundred (300) foot buffer with no retail buildings/patios, but which may include office and parking uses, in the area to the east abutting residential lots in Spring Hill;
- The Owner/Developer agree to include integrated walking trails/sidewalks and appropriate landscaping and screening in the B-3 Retail Zoning;
- Three (3) acres of B-2 Office Zoning to the east of new B-3 Retail Zoning, west of the pond, to buffer the Spring Hill residential property; and
- R-3 PD zoning for the balance of the area of the former retail zone along Arlington Road.

**Section 4.2. City to Support Corner Access.** The City reaffirms its agreement to cooperate with the Owner/Developer to provide for a full-access turning movement on Boettler for or supporting an approximately one (1) acre parcel to be situated on the corner of Boettler and Arlington, subject to federal, state and local approvals that may be necessary. The parties acknowledge that access for this site on Arlington will be through a common access drive with the additional retail area to the north and will not be on the one (1) acre site.

## **Article V**

### **Reaffirmation of Drainage Authority and Release of Temporary Easements**

**Section 5.1. City to Participate in Drainage Authority for Spring Hill.** The Owner shall establish and maintain a Drainage Authority responsible for the ownership, construction, maintenance and operation of storm water retention, detention and water quality systems within the Spring Hill Developments. The Owner and City agree to participate, based upon the respective acreage percentage of drainage into the system, assuming reasonable runoff coefficients for the respective uses of each. This percentage allocation shall be applied to the cost of the land used for the storm water retention, detention and water quality systems within Spring Hill, as well as the cost of the construction, maintenance and operation of the storm water lines, pond(s) and related improvements.

**Section 5.2. City to Release Temporary Easements.** The City shall release and terminate any licenses and easements established for the temporary storm water detention basin as part of the storm water detention basin work contemplated in Section 2.7 above.

## **Article VI**

### **Future Construction and TIF Plan**

**Section 6.1. Owner/Developer Construction of Fortuna Drive and Southwood Extensions.** The Owner and Developer shall build the Fortuna Drive and Southwood Extensions, together with the construction of the new storm water management basins, as shown on the

development plan attached as “Exhibit E”, at an approximate cost of \$2,400,000, as shown in the TIF Plan. This work will be completed before December 31, 2021. All of the proceeds from the Service Payments, after payment to the Green Local School District under its Compensation with the City, a copy of which is attached hereto and incorporated herein as Exhibit “F”, shall be paid to the Owner/Developer to reimburse the Owner/Developer for any and all expenses associated with the Funding Gap and the construction of Fortuna Drive and Southwood Extensions. At such time as the Owner/ Development has been paid in full for all expenses identified in this Section 6.1 and 6.2 below, the additional Service Payments shall be retained in full by the City.

**Section 6.2. City to Phase 2 and Phase 3 TIF.** The City shall cooperate and impose a One Hundred Percent (100%) thirty (30) year TIF on any and all New Construction on the Development Property, all of the proceeds from which, after payment to the Green Local School District under its Compensation Agreement with the City, with approximately Sixty Four Percent (64%) of the said Service Payments to be paid to Owner/Developer to reimburse Owner/Developer for any and all expenses associated with its Funding Gaps under the Phase 1, Phase 2 and /or Phase 3 of the TIF Financing Plan attached as “Exhibit A”, together with any and all expenses of the City that the Owner/Developer advances at any time on behalf of the City. At such time as the Owner/ Developer have been paid in full for all expenses associated with its Funding Gaps under the Phase 1, Phase 2 and/or Phase 3 of the TIF Financing Plan, any additional Service Payments shall be retained in full by the City.

## **Article VII**

### **Events of Default**

**Section 7.1. Event of Default.** It will be an Event of Default by the Developer, the City, or the Owner, as applicable, under this Fourth Amended Agreement if:

- (a) The Owner and/or the Developer fails to observe or perform any of the material covenants and obligations of the Owner or Developer under this Agreement, and the failure continues for a period of thirty (30) days after receipt of written notice is provided, for default other than failure to pay Service Payments, and for a period of thirty (30) days, without any required written or other notice, for failure to pay Service Payments.
- (b) The City fails to observe or perform any of the material covenants and obligations of the City under this Fourth Amended Agreement, and the failure continues for a period of thirty (30) days after receipt of written notice.

**Section 7.2. Remedies in Event of Default.** During the continuance of an Event of Default, the City, the Developer, or the Owner will have available as a remedy all rights granted under law or equity. Pursuit of any of the remedies will not preclude pursuit of any other remedies provided in this Agreement, or by law or equity. Pursuit of any remedy by any party will not constitute a forfeiture or waiver of any damages accruing to a party by reason of the violation of any of the other party’s obligations under this Fourth Amended Agreement. Forbearance by a party to enforce one or more of the remedies provided upon the occurrence of an Event of Default will not be construed to constitute a waiver of the default.

## **Article VIII Miscellaneous**

**Section 8.1. Term of Agreement.** This Fourth Amended Agreement will be effective as of its date and will continue in full force and effect for the Exemption Period as set forth in this Fourth Amended Agreement. In the event that the VSE Project New Construction has not been completed by June 30, 2020, the minimum Service Payments to the City must commence immediately thereafter or the Fourth Amended Agreement may be terminated by the City upon a thirty (30) days written notice to the Owner.

**Section 8.2. Progress Reports.**

- (a) Until completion of all the Development Improvements as provided herein the Owner or Developer must make quarterly reports, in such detail as may reasonably be requested by the City, as to the actual progress of the Developer with respect to construction of the Development Improvements.
- (b) To the extent required under the Act and any other Applicable Law, the Owner or Developer must supply or cause to be supplied to the City from time to time such information as the City may reasonably request in connection with the preparation of reports required by the State of Ohio, the County, or any other public agency, under the Act and any other Applicable Law.

**Section 8.3. Discrimination Prohibited.** The Developer and the Owner must not, in the use and redevelopment, the sale or other transfer of the Development Property, discriminate against any person or group of persons based upon race, creed, sex, sexual orientation, religion, color, age, national origin or ancestry in the sale or other transfer of the Development Property, and must bind its successors by appropriate agreements and covenants running with the land enforceable by the City.

**Section 8.4. Force Majeure.** If the Owner or Developer is delayed or hindered in, or prevented from, the performance of any covenant or obligation of the Owner or Developer with respect to performance of the New Construction as a result of strikes, lockouts, shortages of labor, fuel or materials, acts of God, causes associated with unusual weather conditions, enemy acts, fire or other casualty, or other cause beyond the reasonable control of the Owner or Developer (including failure to obtain necessary governmental approvals after the Owner's or Developer's good faith efforts to obtain them), then the performance of the covenant or obligation will be excused for the period of the delay, hindrance or prevention and the period for the performance of the covenant or obligation will be extended by the number of days equivalent to the number of days of the delay, hindrance or prevention. The Owner's or Developer's right to this extension will only be permitted if the Owner or Developer provides written notice of the delay within thirty (30) days of the date the Owner or Developer obtains knowledge of the delay. In no event will any delay or hindrance in or prevention from the performance of any covenant or obligation described in this Section constitute a termination of this Fourth Amended Agreement.

**Section 8.5. Amendments and Waivers.** This Agreement will not be amended, supplemented, or modified except by an instrument in writing, signed by the City, the Developer, and the Owner.

**Section 8.6. Entire Agreement.** This Fourth Amended Agreement sets forth the entire agreement between the parties as to its subject matter, and merges and supersedes all previous discussions, and undertakings between the parties with respect to the subject matter of this Fourth Amended Agreement. In addition, the Green Local School District shall be an intended third-party beneficiary of this Fourth Amended Agreement and may specifically enforce the obligations of the Owner and/or the Developer herein for payment due the Green Local School District under its Compensation Agreement with the City. Notwithstanding the foregoing, any and all terms and conditions in the Agreement and the First Amendment, the Second Amendment and the Third Amendment, not modified hereby shall remain in full force and effect subject to the terms and intent herein.

**Section 8.7. Counterparts.** This Agreement may be signed in any number of counterparts, each of which constitute an original, but all of which constitute one agreement. Any party to this Fourth Amended Agreement may sign this Fourth Amended Agreement by signing any counterpart. Additionally, the parties agree that for purposes of facilitating the signing of this Fourth Amended Agreement: (a) the signature pages taken from the separate, individually executed counterparts of this Fourth Amended Agreement may be combined to form multiple fully signed counterparts; and (b) a facsimile transmission or .pdf file transmitted via electronic mail will be deemed to be an original signature for all purposes. All executed counterparts of this Fourth Amended Agreement will be deemed to be originals, but all counterparts taken together or collectively, as the case may be, will constitute one and the same agreement.

**Section 8.8. Notice.** All notices, communications, requests and demands between the parties required or permitted to be given under this Fourth Amended Agreement to be effective must be in writing (including without limitation by facsimile transmission or electronic mail), and, unless otherwise expressly provided, will be deemed to have been sufficiently given or made when physically delivered or mailed by U. S. registered or certified mail or, in the case of notice by facsimile transmission or electronic mail, when received and telephonically confirmed, addressed as follows, or to any address as may be notified in writing by the parties:

(a) Notices to the City:

City of Green  
Attention: Gerard Neugebauer, Mayor  
Attention: Law Director  
1755 Town Park Boulevard, P.O. Box 278  
Green, Ohio 44232-0278  
Phone: (330) 896-6602  
Facsimile: (330) 896-6606  
E-mail: [GNeugebauer@cityofgreen.org](mailto:GNeugebauer@cityofgreen.org)

(b) Notices to the Developer:

DeHoff Development Company  
Attention: Robert S. DeHoff, President  
821 S. Main Street  
North Canton, Ohio 44720  
Phone: (330) 499-8153  
Facsimile: (330) 433-6801  
E-mail: [bdehoff@dehoff.com](mailto:bdehoff@dehoff.com)

(c) Notices to the Owner:

Green Land Trust, Ltd.  
Attention: Robert S. DeHoff  
821 S. Main Street  
North Canton, Ohio 44720  
Phone: (330) 499-8153  
Facsimile: (330) 433-6801  
E-mail: [bdehoff@dehoff.com](mailto:bdehoff@dehoff.com)

**Section 8.9. Successors and Assigns.** This Fourth Amended Agreement will be binding upon and inure to the benefit of the City, the Developer, and the Owner, and their respective successors and assigns. Neither the Developer nor the Owner may assign this Fourth Amended Agreement or any of its rights or obligations in whole or in part to any person without the prior written consent of the City, which consent must not be unreasonably withheld.

**Section 8.10. Governing Law.** This Fourth Amended Agreement and the rights and obligations of the parties under this Fourth Amended Agreement will be governed by, and construed and interpreted in accordance with, the law of the State of Ohio without regard to conflict of laws principles.

**Section 8.11. Severability.** Any provision of this Fourth Amended Agreement that is prohibited or unenforceable in any jurisdiction will, as to the jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable the provision in any other jurisdiction.

**Section 8.12. Headings and Table of Contents.** The headings and table of contents contained in this Fourth Amended Agreement are for convenience of reference only and will not limit or otherwise affect the meaning.

**Section 8.13. Incorporation of Recitals and Exhibits.** The Recitals and Exhibits are incorporated in to the terms of this Agreement.

IN WITNESS WHEREOF, the City, the Developer, and the Owner have each caused this Amended and Restated Fourth Amended Agreement to be executed after due authorization as of the date aforesaid.

**CITY OF GREEN:**

By: \_\_\_\_\_  
Gerard Neugebauer, Mayor

**DEVELOPER:**

DeHoff Development Company

By: \_\_\_\_\_  
Robert J. DeHoff, President

**OWNER:**

Green Land Trust, Ltd.

By: DeHoff Development Company,  
its Managing Member,

By: \_\_\_\_\_  
Robert J. DeHoff, President

The legal form of the within instrument  
is hereby approved.

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

\_\_\_\_\_,  
Law Director

STATE OF OHIO                                 )  
                                                              ) SS:  
COUNTY OF SUMMIT                         )

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
2018, by Gerard Neugebauer, the Mayor of the City of Green, Ohio, an Ohio political subdivision,  
on behalf of the City.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



STATE OF OHIO )  
 ) SS:  
COUNTY OF STARK )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2018, by Robert DeHoff, President of DeHoff Development Company, an Ohio corporation, on behalf of the corporation.

[SEAL]

Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF STARK )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2018, on behalf of Green Land Trust, Ltd., an Ohio limited liability company, by Robert DeHoff, President of DeHoff Development Company, its Managing Member.

[SEAL]

Notary Public

My Commission Expires: \_\_\_\_\_

## **INDEX OF EXHIBITS**

EXHIBIT A – TIF FINANCING PLAN;

EXHIBIT B – DFA TERM SHEET;

EXHIBIT C – SPRING HILL DEVELOPMENT LEGAL DESCRIPTION;

EXHIBIT D – VSE PROJECT DEVELOPMENT PLAN;

EXHIBIT E – SPRING HILL DEVELOPMENT PLAN; and

EXHIBIT F – GREEN LOCAL SCHOOL COMPENSATION AGREEMENT.

### **Schedule 1 Definitions**

The following defined terms are used in the Development Agreement:

- (a) “Act” means Sections 5709.40, et seq., Revised Code.
- (b) “Agreement” means the Development Agreement, between the City and the Owner and Developer dated October 24, 2003). The City, Developer and Owner entered into the First Amendment to the Development Agreement dated April 11, 2006 (the “First Amendment”). The City, Developer and Owner entered into the Second Amendment to the Development Agreement dated May 4, 2006 (the “Second Amendment”). The City, Developer and Owner entered into the Third Amendment to the Development Agreement dated September 25, 2006 (the “Third Amendment”). For all purposes herein, the term “Agreement” shall be deemed to include the Agreement as amended by the First Amendment, Second Amendment and the Third Amendment without the need to refer to each Amendment.
- (c) “Applicable Laws” means all federal, state, and local laws, ordinances, resolutions, regulations, and codes, including the Act, governing the design, planning, construction, and installation of the Public Improvements.
- (d) “City” means the City of Green, Ohio.
- (e) “County” means Summit County, Ohio.
- (f) “Development Improvements” means the land acquisition, utility extensions, engineering and inspections, building construction, and other improvements to the Development Property described in Exhibits “C”, “D” and “E”.

- (g) “Development Property” means the real property identified and described in Exhibit “C”.
- (h) “Event of Default” means any of the events described in Section 7.1.
- (i) “Exemption Period” means the thirty (30) year period of abatement of real property taxes on New Construction established in the TIF Ordinance for each portion of the New Construction.
- (j) “Green Local School Board” means the Board of Education of the Green Local School District.
- (k) “Improvement Plans” means the plans, specifications, profiles, and cost estimates of the Development Improvements, prepared by or for the Owner, in accordance with the requirements of all applicable governmental authorities.
- (l) “Improvements” means collectively the Development Improvements and the Public Improvements.
- (m) “New Construction” means the buildings and other improvements constructed on the Development Property after the date of the Agreement during the Exemption Period, including the Development Improvements.
- (n) “Permitted Encumbrances” means the zoning resolutions, easements for utilities, and all other restrictions or conditions on title. The term does not include any mortgage lien, other liens, or title exceptions that are superior to or on a parity with the covenants running with the land contained in the Agreement, except liens for real property taxes and special assessments.
- (o) “Portage Lakes School Board” means the Board of Education of the Portage Lakes Career Center.
- (p) “Project” means the development and construction of the Improvements to the Development Property.
- (q) “Public Improvements” means the public infrastructure improvements to the land in connection with the development, including installation of storm water management facilities and improvements, development and construction of public facilities, road extensions, intersection upgrades and related public infrastructure improvements at Spring Hill.
- (r) “Service Payments” or “PILOTS” mean the payments in lieu of taxes paid by the Owner in accordance with Section 3.4 with respect to the Development Improvements and any other New Construction under this Development Agreement.
- (s) “TIF” means the tax increment financing by the City for the Development Improvements.
- (t) “TIF Ordinance” means Ordinance No. 2018-\_\_\_\_\_, adopted\_\_\_\_\_, 2018 by City Council declaring a portion of improvements to be a public purpose and approving an agreement for tax increment financing for public infrastructure improvements benefiting those parcels.
- (u) “TIF Program” means the program, approved by City Council through Ordinance No. 2003-12 on September 10, 2003 and Ordinance No. 2004-03 on February 10, 2004, establishing a Tax Increment Financing Program, authorizing the City to declare improvements to certain parcels of real property to be a public purpose, and authorizing the Mayor the option to negotiate agreements for tax increment financing.