

CITY OF

**PORTAGE**

*A Place for Opportunities to Grow*

**DOWNTOWN DEVELOPMENT  
AUTHORITY**

**June 29, 2011**

**CITY OF PORTAGE  
DOWNTOWN DEVELOPMENT AUTHORITY**

**A G E N D A**

June 29, 2011

**CALL TO ORDER:**

8:00 a.m., Portage City Hall, Conference Room #1, 7900 South Westnedge Avenue

**APPROVAL OF MINUTES:**

\* April 13, 2011

**BUSINESS:**

- \*1. Election of Officers
  - Member listing
  - Articles of Incorporation
  
- \*2. 2011 Amended Tax Increment Finance Plan/2011 Amended Development Plan
  - Resolution Approving Agreement to Implement the Amended Development Plan and Amended Tax Increment Financing Plan.
  - Resolution Approving the Development Agreement.

**STATEMENT OF CITIZENS:**

**ADJOURNMENT:**

**MATERIALS TRANSMITTED**

Star (\*) indicates printed material within the agenda packet.

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**DOWNTOWN DEVELOPMENT AUTHORITY**

Minutes of Meeting – Wednesday, April 13, 2011

The meeting of the Downtown Development Authority (DDA) was called to order at 8:00 a.m. in Conference Room #1, at Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan.

**MEMBERS PRESENT:**

Terry Patterson, Benjamin Boyer, Matthew Milks, James Huberty, Walter Hansen, Rich MacDonald, Ronald Dunlap, Jeff Chrystal and Maurice Evans.

**MEMBERS EXCUSED:**

None.

**IN ATTENDANCE:**

Jeffrey M. Erickson, Director of Community Development; John Axe, Bond Counsel; Daniel Foecking, Finance Director; Christopher Barnes, Director of Transportation and Utilities; Vicki Georgeau, Deputy Director of Neighborhood Services; and Christopher Forth, Deputy Director of Planning and Development Services.

**APPROVAL OF MINUTES:**

The minutes of the July 23, 2010 meeting were introduced for approval. A motion was offered by MacDonald and seconded by Evans to approve the meeting minutes as presented. The motion was unanimously approved.

**BUSINESS:****1. FY 2009-10 Annual Financial Report.**

Mr. Erickson reviewed the communication concerning the 2009-2010 annual report to the City Council and State Tax Commission. Mr. Erickson indicated the construction projects associated with the 2003 amended plan have been completed. A resolution has been prepared that approves and authorizes the transmission of the financial reports on the status of the tax increment finance plan. Attached to the resolution is appendix A, which summarizes the report and the applicable annual financial information as required by statute. There being no further discussion, a motion was offered by Boyer and seconded by MacDonald that the Resolution Approving and Authorizing the Transmission of The Financial Reports on The Status of The Tax Increment Financing Plan be approved. Upon a roll call vote, the motion was unanimously approved.

**2. 2011 Amended Tax Increment Finance Plan/2011 Amended Development Plan**

Mr. Erickson reviewed the April 6<sup>th</sup> communication concerning the 2011 Amended Plan that has been prepared to facilitate the development of private property along South Westnedge Avenue, north of I-94, within the City of Portage Downtown Development Authority district (DDA). Mr. Erickson noted there are two primary elements identified in the 2011 Amended Plan:

- Development of approximately 15 acres of land to accommodate a motel and office buildings, together with the potential for additional office and retail projects. To facilitate this private investment, improvements to South Westnedge, Trade Centre Way and West Fork Crossing are necessary at an estimated cost of \$1.34 million.

- Completion of the South Westnedge Avenue Projects (SWEPs), which will involve public infrastructure improvements to help ensure the continued success of the north portion of the South Westnedge Avenue Commercial Corridor within the DDA. Estimated cost of this part of the SWEPs program within the DDA is \$1.25 million.

Mr. Erickson also summarized the financing framework that includes the sale of municipal bonds and establishment of a special assessment district. With regards to the special assessment district, Mr. Erickson stated the plan includes an incentive to the developer. If development projects are promptly completed, during the twenty-year period of the special assessments that will be paid by the developer, the developer would receive a credit from the city of the amount of the increased tax increment revenue up to the amount of the annual special assessment payment for that particular year. Mr. Erickson also briefly summarized the City Council review process and anticipated dates of review/approval.

Mr. Dunlap asked about displacement of any existing residents. Mr. Erickson indicated the developers have purchased the remaining residential structures and the residents have relocated. Mr. Chrystal asked for clarification regarding permitted turning movements at the intersection of South Westnedge Avenue and Trade Centre Way. Mr. Erickson stated only the left turn movement from eastbound Trade Centre Way to northbound South Westnedge Avenue is prohibited.

There being no further discussion, a motion was offered by Chrystal and seconded by Boyer that the Resolution Approving and Authorizing Transmission of the 2011 Amended Development Plan and 2011 Amended Tax Increment Financing Plan to the City Council be approved. Upon a roll call vote, the motion was unanimously approved.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

There being no further business to come before the DDA, the meeting was adjourned at 8:40 a.m.

Respectfully submitted,

 **DRAFT**

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Jeffrey M. Erickson, AICP  
Director of Community Development

# DOWNTOWN DEVELOPMENT AUTHORITY BOARD MEMBER ROSTER

BOARD MEMBER	ADDRESS	HOME PHONE	WORK PHONE	FAX	E-MAIL	TERM
Walter Hansen	3027 Woodhams	323-1985	323-3315 599-4212(cell)	1-866-384-8548	<a href="mailto:wwrhansen@aol.com">wwrhansen@aol.com</a>	07/01/12
James Huberty, Treasurer	5347 Azalea	349-1408	217-1940		<a href="mailto:pm.jwhub@yahoo.com">pm.jwhub@yahoo.com</a>	07/01/12
Benjamin Boyer, Vice President	3524 East Shore Dr	329-2467			<a href="mailto:gusphupa@hotmail.com">gusphupa@hotmail.com</a>	07/01/13
Rich MacDonald	750 Trade Centre Way		342-8600		<a href="mailto:richm@hinmancompany.com">richm@hinmancompany.com</a>	07/01/13
Terryl Patterson, President	7950 Moorsbridge Rd.	217-1684	329-1808	323-8705	<a href="mailto:tpatterson@treystar.com">tpatterson@treystar.com</a>	07/01/14
Matt Milks, Secretary	5124 Mapleridge	383-8481	323-2441 217-1907(cell)		<a href="mailto:mmilks@mcweiner.com">mmilks@mcweiner.com</a>	07/01/14
Ron Dunlap	7826 Kilburnie Ct	324-2514	567-0533 (cell)		<a href="mailto:rcdunlap@aol.com">rcdunlap@aol.com</a>	07/01/15
Jeff Chrystal	1231 Cobblestone Lane	343-6928	207-5431 (cell)		<a href="mailto:jchrystal@signatureassociates.com">jchrystal@signatureassociates.com</a>	07/01/15
Maurice Evans	7900 S. Westmedge Ave		329-4400	329-4506	<a href="mailto:evansm@portagemi.gov">evansm@portagemi.gov</a>	N/A
Jeffrey Erickson, ex-officio	7900 S. Westmedge Ave		329-4477	329-4506	<a href="mailto:ericksoj@portagemi.gov">ericksoj@portagemi.gov</a>	N/A

\* Note: Board members serve until reappointed or another person is appointed.

CITY OF PORTAGE  
ORDINANCE NO. 98-14

AN ORDINANCE ENTITLED "AN ORDER TO ESTABLISH A DOWNTOWN DEVELOPMENT AUTHORITY IN THE CITY OF PORTAGE PURSUANT TO ACT 197 OF MICHIGAN, 1975, TO DETERMINE THE NECESSITY THEREOF; TO PROVIDE FOR THE CREATION OF THE AUTHORITY; TO DEFINE THE BOUNDARIES OF THE DOWNTOWN DEVELOPMENT DISTRICT; TO PROVIDE FOR THE ESTABLISHMENT OF THE BOARD OF DIRECTORS FOR THE AUTHORITY; TO PROVIDE FOR THE POWERS OF THE AUTHORITY; TO PROVIDE DEFINITIONS; TO PROVIDE FOR THE FISCAL YEAR OF THE AUTHORITY; TO PROVIDE FOR THE SEVERABILITY OF THE ORDINANCE; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR THE NOTICE AND EFFECTIVE DATE THEREOF"; TO PRESCRIBE ITS POWER AND DUTIES; TO CORRECT AND PREVENT DETERIORATION IN THE CENTRAL BUSINESS DISTRICT; TO AUTHORIZE THE ACQUISITION AND DISPOSAL OF REAL AND PERSONAL PROPERTY; TO AUTHORIZE THE CREATION AND IMPLEMENTATION OF DEVELOPMENT PLAN IN THE DISTRICT; TO PROMOTE THE ECONOMIC GROWTH IN THE DISTRICT; TO PROVIDE FOR A BOARD; TO PRESCRIBE ITS POLICIES AND DUTIES; TO AUTHORIZE, TO LEVY AND COLLECTION OF TAXES; TO AUTHORIZE THE ISSUANCE OF BONDS AND OTHER EVIDENCES OF INDEBTEDNESS; AND TO AUTHORIZE THE USE OF TAX INCREMENT FINANCING; TO PROVIDE FOR THE PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the City of Portage (the "City") has established a downtown development authority known as the Downtown Development Authority of the City of Portage (the "Authority") and has designated a downtown district (the "District") pursuant to Act No. 197 of the Public Acts of 1975, as amended, ("Act 197"); and

WHEREAS, pursuant to Act 197, a public hearing was held on April 21, 1998 which is a date prior to the adoption of the Ordinance.

THE CITY OF PORTAGE ORDAINS:

ARTICLE I  
INCORPORATION, BOUNDARIES, AND  
DETERMINATION OF NEED

Section 1. This Ordinance shall serve as the permanent Articles of Incorporation of the Downtown Development Authority of the City of Portage.

Section 2. Pursuant to Public Act No. 197 of the Michigan Public Acts of Michigan of 1975, as amended, (the "Act"), there is hereby established the Downtown Development Authority of the City of Portage.

Section 3. The boundaries of the Downtown District shall be as set forth in Appendix A.

Section 4. The following words shall have the meaning set forth, unless the context clearly indicates otherwise:

(a) "Authority" means the Downtown Development Authority of the City of Portage created by this Ordinance.

(b) "Board" or "Board of Directors" means the Board of Directors of the Authority, the governing body of the Authority.

(c) "Business District" means an area in the downtown of the City of Portage zoned and used principally for business.

(d) "The Chief Executive Officer" means the City Manager of the City.

(e) "Development Area" means that area to which a Development Plan is applicable.

(f) "Development Plan" means that information and those requirements for development as required by Act 197.

(g) "Development Program" means the implementation of the Development Plan.

(h) "Downtown District" means the area in the Business District described in Appendix A.

(i) "Governing Body" means the City Council of the City of Portage.

(j) "Operations" means office maintenance, including salaries and expenses of employees, office supplies, consultation fees, design costs, and other expenses incurred in the daily management of the Authority and its activities.

(k) "Public Facility" means a street, plaza, pedestrian mall, and any improvements thereto including street furniture and beautification, parks, parking facilities, recreational facilities, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, building and access routes to any of the foregoing, designed and dedicated to use by the public generally, or used by public agency.

(l) "City" means the City of Portage, Kalamazoo County, Michigan.

(m) "City Council" means the City Council of the City of Portage.

Section 5. The City Council hereby determines that it is necessary for the best interests of the City to halt property value deterioration and increase property tax valuation where possible in the business district of the City, to eliminate the causes of that deterioration and to promote economic growth by establishing a Downtown Development Authority pursuant to Act 197.

Section 6. Creation of Authority. There is hereby created pursuant to Act 197 a Downtown Development Authority for the City. The Authority shall be a public body corporate and shall be known and exercise its powers under the title of "Downtown Development Authority of the City of Portage." The Authority may adopt a seal, may sue and be sued in any court of this state and shall possess all of the powers necessary to carry out the purpose of its incorporation as provided by this Ordinance and Act 197.

## ARTICLE II THE BOARD

Section 1. Board of Directors. The Authority shall be under the supervision and control of the Board of Directors consisting of the chief executive of the City and not less than eight (8) or more than twelve (12) members as determined by the City Council. The members shall be appointed by the chief executive officer of the City, subject to the approval by the City Council. Not less than a majority of the members shall be persons having an interest in property located in the Downtown District. Not less than one of the members shall be a resident of the Downtown District, if the Downtown District has 100 or more persons residing with it. Of the members first appointed, an equal number, as near as is practical, shall be appointed for one year, two years, three years and four years. Members shall hold office until the members' successor is appointed. Thereafter, each member shall serve for a term of four years. An appointment to fill a vacancy shall be made by the chief executive officer of the City for the unexpired term only. Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses.

Section 2. The President of the Board of Directors shall be elected by the Board of Directors.

Section 3. Before assuming the duties of office, a member shall qualify by taking and subscribing to the Constitutional Oath of Office.

Section 4. The Officers of the Authority shall be as follows:

- a. A President
- b. A Vice President
- c. A Secretary
- d. A Treasurer

Section 5. The Board of Directors by resolution adopted by a majority of its members at a regular or special meeting shall elect the officers to terms of office set forth in the Resolution. The Board may elect one or more assistant secretaries and assistant treasurers of the Authority. Officers and members of the Board shall acknowledge their acceptance of the position by filing an acknowledgment thereof with the secretary of the Authority.

Section 6. The offices of Secretary and Treasurer may be vested in one person, if approved by the Board, in which event such person shall be the "Secretary-Treasurer."

### ARTICLE III MEETINGS

Section 1. The Board shall perform and conduct all business public meetings held in compliance with Act 267 of the Public Acts of 1976, being Sections 15.261 to 15.275 of the Michigan Compiled Laws Annotated, which is also known as the Open Meeting Act.

Section 2. The Board shall adopt any rules necessary governing its procedure and the holding of regular meetings subject to the approval of the governing body.

Section 3. Special Meetings may be held when called in the manner provided for in the Rules of the Board, as long as said meetings comply with the Open Meetings Act.

### ARTICLE IV FREEDOM OF INFORMATION ACT, EXPENSES AND FINANCIAL RECORDS

Section 1. All writings, items of records prepared, owned or used, in the possession of or retained by the Board in the performance of their official function shall be made available to the public in compliance with the Freedom of Information Act, Act 442 of the Public Acts of 1976, being Sections 15.231, 15.246 of Michigan Compiled Laws Annotated.

Section 2. All expense items of the authority shall be publicized monthly and the financial records will always be open to the public.

### ARTICLE V POWERS OF THE AUTHORITY

Section 1. The Authority shall have all the powers expressed granted or reasonably implied by Act 197 as presently in effect or as hereafter amended.

## ARTICLE VI

No enumeration of the powers granted to the Authority in this Ordinance shall be interpreted as a limitation of the powers granted to the Authority, it being the intention of this Ordinance to grant to the Authority all powers granted to a downtown development authority by Act 197.

## ARTICLE VII BOUNDARY AREA OF THE DOWNTOWN DISTRICT

The boundary of the Downtown District shall be as set forth in Appendix A.

## ARTICLE VIII BUDGET - FISCAL YEAR

Section 1. The fiscal year of the Authority shall begin on July 1 of each year and end on June 30 of the succeeding year, or such other fiscal year as may hereafter be adopted by the City.

Section 2. The Board of Directors shall annually prepare a budget and shall submit it to the City Council on the same date that the proposed budget for the City is required by law to be submitted to the City Council. The Board shall not finally adopt a budget for any fiscal year until the budget has been approved by the City Council. The Board may, however, temporarily adopt a budget in connection with the operation of any improvements which have been financed by revenue bonds where required to do so by the Ordinance authorizing the revenue bonds.

Section 3. The Authority shall submit financial reports to the City Council at the same time and on the same basis as departments of the City are required to submit reports. The Authority shall be audited annually by the same independent auditors auditing the City and copies of the Audit report shall be filed with the City Council.

## ARTICLE IX SECTION HEADINGS SEVERABILITY - REPAIR

Section headings are provided for convenience only and are not intended to be part of this Ordinance. If any portion of this Ordinance shall be held to be unlawful, the remaining portions shall remain in full force and effect. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

ARTICLE X  
DISSOLUTION OF AUTHORITY UPON COMPLETION  
OF PURPOSES; TITLE OF PROPERTY

Section 1. The Authority shall be dissolved by Ordinance of the City Council after it has completed the purposes for which it was organized.

Section 2. The property and assets of Authority remain and after the satisfaction of the Authority shall belong to the City.

ARTICLE XI  
PUBLICATION; EFFECTIVE DATE

Section 1. This Ordinance shall be published once after its adoption in full in the Kalamazoo Gazette, a newspaper of general circulation in the City and the City Clerk shall file a certified copy of the Ordinance with the Michigan Secretary of State promptly after its adoption.

Section 2. This Ordinance shall take effect immediately on the date of publication.

INTRODUCED: June 16, 1998

ADOPTED: July 7, 1998

EFFECTIVE: Upon Publication

PUBLISHED: July 11, 1998

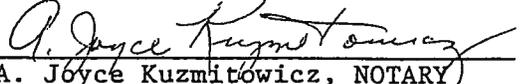
ORDINANCE NO. 98-14

CERTIFICATION

The foregoing ordinance is hereby certified to be the authentic record of the ordinance which was duly adopted by the City Council of the City of Portage on the 7<sup>th</sup> day of July, 1998 and published on the 11<sup>th</sup> day of July, 1998.

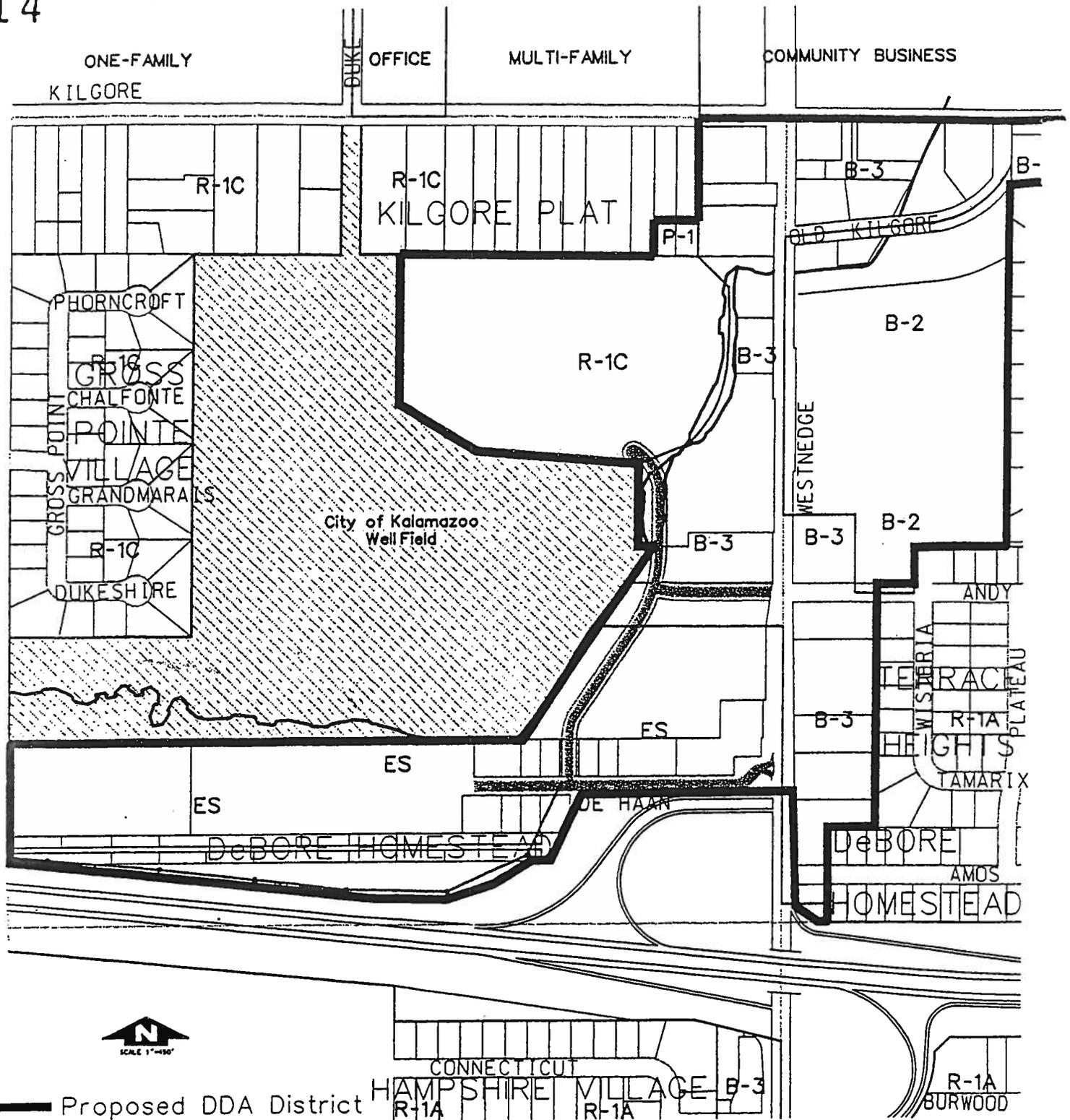
  
\_\_\_\_\_  
Mayor GARY P. BROWN  
  
\_\_\_\_\_  
Clerk JAMES R. HUDSON

Subscribed and sworn to before me this 7th day of July 1998.

  
\_\_\_\_\_  
A. Joyce Kuzmitowicz, NOTARY  
Kalamazoo County, Michigan  
My Commission Expires: 4-17-2000

A parcel of land located in the northwest quarter of section three and the northeast quarter of section four, township three south, range eleven west, more particularly described as follows:

Commencing at the west quarter post of said section three; thence east along the east-west quarter line of said section three 131.69 feet to a point 34.31 feet west of the southeast corner of lot 19 of the Assessor's Plat of DeBoer Homestead Acres and the place of beginning; thence northwesterly 100.00 feet to the northwest corner of said lot 19; thence northerly 66.00 feet along the west line of lot 18 of said Assessor's Plat to the northwest corner of said lot 18; thence northerly 66.00 feet along the west line extended of said lot 18 to the southwest corner of lot 17 of said Assessor's Plat; thence continuing northerly 264.00 feet more or less along the west line of lots 14, 15, 16, and 17 of said Assessor's Plat to the northwest corner of said lot 14; thence westerly 80.00 feet more or less to the intersection of the south right-of-way line of DeHaan Drive with the west right-of-way line of South Westnedge Avenue; thence westerly 590.00 feet more or less along the south right-of-way line of DeHaan Drive to the intersection of the south right-of-way line of DeHaan Drive with the east right-of-way line of Clara Drive; thence southwesterly 280.00 feet more or less along the east right-of-way line of Clara Drive; thence westerly 50.00 feet more or less to the southeast corner of lot 108 of said Assessor's Plat; thence westerly 63.40 feet more or less along the south line of said lot 108; thence south 58 degrees 3 minutes 8 seconds west, 119.84 feet; thence south 72 degrees 5 minutes 59 seconds west, 163.48 feet; thence north 89 degrees 2 minutes 44 seconds west, 250.80 feet; thence north 84 degrees 28 minutes 18 seconds west, 1,241.33 feet more or less to the south line of said Assessor's Plat; thence westerly 21.00 feet more or less along the south line of said Assessor's Plat to the southwest corner of lot 98 of said Assessor's Plat; thence north 0 degrees 20 minutes 0 seconds west, 419.30 feet along the north-south quarter line of said section four; thence easterly 1,763.82 feet to the northwest corner of lot 68 of said Assessor's Plat; thence northeasterly 481.00 feet more or less along the center line of the west branch of Portage Creek; thence northeasterly 188.00 feet more or less along said creek; thence northerly along said creek to a point on the east-west eighth line of said section four 458.64 feet west of the east line of said section four; thence westerly 50.00 feet along said east-west eighth line; thence northerly 289.06 feet parallel with the east line of said section four; thence north 85 degrees 16 minutes 20 seconds west, 549.72 feet; thence north 58 degrees 41 minutes 0 seconds west, 317.39 feet to the west line of the east half of the northeast quarter of said section four; thence north 0 degrees 0 minutes 3 seconds west, 527.79 feet along the west line of the east half of the northeast quarter of said section four to a point 480.37 feet south of the north line of said section four, said point also being in the south line of lot 17 of Kilgore Plat; thence east along the south line of Kilgore Plat 869.44 feet to the southwest corner of lot 5 of said plat; thence north along the west line of lot 5, 125.00 feet; thence east 154.00 feet to the east line of lot 4 of said plat; thence north 322.37 feet to the north line of section four; thence easterly 304.00 feet to the northeast corner of said section four, this point also being the northwest corner of said section three; thence continuing easterly 951.78 feet along the north line of the northwest quarter of said section three to the west line extended of lot 121 of Ridgebrook No. 1; thence southerly 50.00 feet along the west line extended of said lot 121 to the northwest corner of said lot 121; thence continuing southerly 157.09 feet along the west line of said lot 121 to the southwest corner of said lot 121; thence southwesterly 173.82 feet along the north line of lot 122 of Ridgebrook No. 1 to the northwest corner of said lot 122 and the easterly right-of-way line of Old Kilgore Road; thence southerly 1,255.74 feet along the westerly line and the westerly line extended of Ridgebrook No. 1 to a point in the north line of lot 64 of Terrace Heights; thence westerly 183.95 feet along the north line of lots 64, 65 and 66 of Terrace Heights to the northwest corner of said lot 66; thence southerly 132.00 feet along the west line of said lot 66 to the southwest corner of said lot 66 and the north right-of-way line of Andy Avenue; thence westerly 264.00 feet along the north right-of-way line of Andy Avenue to the west line of Terrace Heights; thence southerly 858.00 feet along the west line of Terrace Heights to the southwest corner of lot 9 of Terrace Heights and a point in the north line of lot 53 of said Assessor's Plat; thence westerly 165.00 feet along the north line of lots 53, 54 and 55 of said Assessor's Plat to the northwest corner of said lot 55; thence southerly 198.00 feet along the west line and the west line extended of said lot 55 to the northwest corner of lot 20 of said Assessor's Plat; thence continuing southerly 132.00 feet along the west line of said lot 20 to the southwest corner of said lot 20 and the southeast corner of said lot 19; thence westerly 34.31 feet along the east-west quarter line of said section three and along the south line of said lot 19 to the place of beginning.



Map 1: DDA District Map

(Map Shows Existing Zoning Districts)

**TO:** Downtown Development Authority Board of Directors      **DATE:** June 20, 2011  
**FROM:** Jeffrey M. Erickson, Authority Director  
**SUBJECT:** 2011 Downtown Development Authority (DDA) Project -- Recommendation

As advised and discussed with the Board of Directors at the April 13, 2011 meeting, additional actions would be scheduled in order to successfully implement the 2011 Downtown Development Authority Project. Following is information and a recommendation for consideration by the Board.

City Council formally received the 2011 Amended Plan on April 26, 2011 and established the required public hearing for May 24, 2011. The special assessment process was also initiated on April 26<sup>th</sup> with receipt by the City Council of the special assessment petition and the consideration of Resolution No. 1 for the Trade Centre Way Relocation Project #997-R. The required DDA public hearing on the 2011 Amended Plan and the required City of Portage special assessment process Hearing of Necessity were convened on May 24<sup>th</sup>. Final action on the 2011 Amended Plan and approval of the final Resolution No. 5 of special assessment process is scheduled to occur on June 28, 2011.

In anticipation of the upcoming favorable action by City Council on June 28<sup>th</sup>, the Board is requested to formally consider adoption of two necessary resolutions:

- Resolution Approving the Agreement to Implement the Amended Development Plan and Amended Tax Increment Financing Plan, and
- Resolution Approving the Development Agreement.

As further information for the Board, City Council will be considering adoption of similar resolutions to implement the 2011 Amended Plan and to approve the Development Agreement between the City of Portage and Trade Centre Holdings, LLC, and H&G 2, LLC, the principal property owners, at the July 12, 2011 City Council meeting.

Attached please find the first resolution, which has been prepared by Attorney John Axe, Bond Counsel for the city. The resolution formally specifies the terms that the city will acquire and construct the planned public facilities contained in the 2011 Amended Plan, will issue special assessment bonds and the DDA will pay to the city captured taxes to meet the annual principal and interest obligations on the bonds. The 2011 Amended Plan has been prepared consistent with the Michigan Downtown Development Authority Act. The document includes the actions taken to complete public improvements by the DDA and the City of Portage since the creation of the DDA in 1998.

As for the second resolution that has also been prepared by Attorney Axe, this resolution involves the Phase III Development Agreement (Agreement). The Agreement is between the city and Trade Centre Holdings, LLC, and H & G 2, LLC. The Agreement includes definitions, terms and references to the planned actions that are to be taken by the parties involving land acquisition and conveyances, the planned public improvements to South Westnedge Avenue, Trade Centre Way and West Fork Crossing, the method of financing, events of defaults and remedies, notices, miscellaneous provisions and related details. A financing framework that involves a petition received for a special assessment, which is consistent with Chapter 62, Special Assessments, of the City of Portage Code of Ordinances, together with tax increment

financing under the Michigan Downtown Development Authority Act, has been designed in consultation with Attorney Axe. The Agreement contains commitments by the city to construct the public improvements and by the developer including payment of the total amount of the annual special assessments and references that private investment in the form of an accommodations/motel and office building projects are in process. When the private investments are constructed, tax increment revenue from the projects in The Trade Centre area will be collected. As the incentive for the developer, the increased tax increment revenue from the completion of the planned projects in the DDA would be available in the form of a credit of up to the amount of the annual special assessment during the twenty-year period of the special assessments paid by the developer. In the event that the annual tax increment revenue amount exceeds the annual special assessment payment, the annual credit received by the developer can be applied against a future year special assessment payment.

It is recommended that the Board of Directors approve the above-explained resolutions that accompany this staff report. Staff will be present at the meeting to assist the Board of Directors. Subsequent to board action, the information will be forwarded to City Council for final action.

Attachments: April 6, 2011 Communication to the Board of Directors (without attachments)  
Resolution Approving Agreement to Implement the Amended Development Plan and  
Amended Tax Increment Financing Plan  
Resolution Approving the Development Agreement

**TO:** Downtown Development Authority Board of Directors      **DATE:** April 6, 2011  
**FROM:** Jeffrey M. Erickson, Authority Director  
**SUBJECT:** 2011 Amended Tax Increment Finance Plan / 2011 Amended Development Plan: Recommendation

The City Administration has been in the process of preparing an important economic initiative to foster new growth and development in the City of Portage Downtown Development Authority district (DDA). As the Board of Directors (board) will recall, the City Administration advised the board of ongoing planning and preparation for this additional DDA project and related activities at the July 23, 2010 board meeting. Additional progress has been made and it is now advised that this proposal be advanced, which is projected to provide immediate and longer term economic benefits in the form of new tax base and future employment opportunities within the City of Portage.

The 2011 Amended Tax Increment Finance Plan / 2011 Amended Development Plan (2011 Amended Plan) has been prepared to facilitate the development of private property along South Westnedge Avenue, north of I-94, within the DDA. There are two elements identified in the 2011 Amended Plan:

- In the immediate future, development of approximately 15 acres of land in The Trade Centre, which is situated along I-94, west of South Westnedge Avenue, is planned. Principal property owners of The Trade Centre area approached the City Administration with a proposal to develop accommodations/motel and office building projects, together with the potential for additional office and retail projects. To facilitate this private investment, South Westnedge, Trade Centre Way and West Fork Crossing construction, with property acquisition, storm drainage and related work are necessary, at an estimated cost of \$1.34 million.
- In the longer term, completion of the South Westnedge Avenue Projects (SWEPs) is anticipated, which will involve public infrastructure improvements to help ensure the continued success of the north portion of the South Westnedge Avenue Commercial Corridor within the DDA. Street widening and reconstruction activities, traffic signal upgrades, overhead utility relocation, access management activities along South Westnedge Avenue and other related improvements are planned. These public improvements were identified in the 2004 SWEPs program and were planned to be accomplished in conjunction with, or following, the reconstruction of I-94 including interchange exit 76 by the State of Michigan. The estimated cost of this part of the SWEPs program within the DDA is \$1.25 million, which is programmed in the FY2010-2020 City of Portage Capital Improvement Program (CIP) and is again shown in the proposed FY2011-2021 CIP.

The 2011 Amended Plan is required by the Downtown Development Authority Act (PA 197 of 1975, as amended) and is to be considered by the board and then submitted to the City Council for approval. The 2011 Amended Plan is formatted to provide the information required by statute and includes district boundaries, description of the area, public improvements to be constructed, various estimated schedules, estimated project costs, anticipated private development projects, explanation of the tax increment finance procedure, duration of the program, financial information and so forth. The 2011 Amended Plan has been prepared in consultation with Attorney John Axe, Bond Counsel.

After meetings with Mr. Roger Hinman and Mr. Joseph Gesmundo to discuss the public-private partnership that is needed to facilitate economically viable projects in The Trade Centre area, the public improvements have been scheduled and can be completed by the City of Portage during finalization of the I-94 and interchange project this year. The public improvements and the schedule for this first element, as summarized above, are explained in the accompanying 2011 Amended Plan. Furthermore, a new

development agreement with the principal property owners has also been prepared with the assistance of bond counsel that is similar to the September 24, 2003 Development Agreement executed with the City of Portage. The Phase III Development Agreement (Agreement) includes definitions, terms and references to the planned actions that are to be taken by the parties involving land acquisition and conveyances, the planned public improvements to South Westnedge Avenue, Trade Centre Way and West Fork Crossing, the method of financing, events of defaults and remedies, notices, miscellaneous provisions and related details. A financing framework involving a petition received for a special assessment from the principal property owners, which is consistent with Chapter 62, Special Assessments, of the City of Portage Code of Ordinances, together with tax increment financing under PA197 of 1975, has been designed in consultation with Attorney Axe. The Agreement contains commitments on the part of the developer to pay the total amount of the annual special assessment payments and references that private investment in the form of an accommodations/motel and office building projects are in process. Given the economic situation, the developer requires flexibility in programming the planned projects. When developed, tax increment revenue from the planned projects to be completed within The Trade Centre area will be annually collected. As an incentive for the developer to promptly complete planned projects in the DDA and generate increased tax increment revenue, during the twenty-year period of the special assessments that will be paid by the developer, the developer would receive a credit from the city of the amount of the increased tax increment revenue up to the amount of the annual special assessment payment for that particular year. In the event that the annual tax increment revenue amount exceeds the annual special assessment payment, the annual credit received by the developer can be applied against a future year special assessment payment.

With regard to the South Westnedge Enhancement Projects (SWEPS) program initiated in 2004, this important project will continue. The widening, reconstruction and improvement of South Westnedge Avenue between Old Kilgore Road and Trade Centre Way is essential to the ongoing success of businesses along this commercial corridor. The planned \$1.25 million public street and utility improvements, as summarized on page 1 of this communication, is projected to be financed using tax increment financing through the Portage Downtown Development Authority. The planned improvements are also explained in the accompanying 2011 Amended Plan together with financial details. When this next element of the 2011 Amended Plan is finalized and recommended for implementation, the board will be requested to formally review and recommend approval of the public improvements in this element.

As for process information, additional actions will be scheduled for review and approval of The Trade Centre element over the next several months. After approving and transmitting the 2011 Amended Plan, as recommended herein, City Council will formally receive the 2011 Amended Plan on April 26, 2011 and be requested to set the required public hearing for May 24, 2011. The special assessment process will also be initiated with consideration by City Council of Resolution No. 1 on April 26<sup>th</sup>. Final action on the 2011 Amended Plan and approval of the final Resolution No. 5 of special assessment process is tentatively scheduled to occur on June 28, 2011. The board and City Council will then adopt necessary resolutions approving the agreement to implement the 2011 Amended Plan and recommending/approving the Phase III Development Agreement for The Trade Centre public improvements not later than July 12, 2011.

This new economic initiative again provides an opportunity for a cooperative, public-private partnership to encourage development and redevelopment activities with accompanying tax base growth and job creation. With the continuing economic challenges in the State of Michigan and in the southwest Michigan region, this initiative to encourage private investment is essential and will benefit all of Kalamazoo County. The City Administration and Attorney Axe will be present at the upcoming meeting to assist the Board of Directors. Approval of the accompanying resolution is respectfully recommended. Subsequent to board action, the economic initiative will be referred to the City Council for favorable action.

Attachments: Resolution Approving and Authorizing Transmission of 2011 Amended Development Plan  
City of Portage DDA district Map

**DOWNTOWN DEVELOPMENT AUTHORITY  
CITY OF PORTAGE**

At a \_\_\_\_\_ meeting of the Board of the Downtown Development Authority of the City of Portage, Michigan held in the City Hall, in the City of Portage, Michigan on \_\_\_\_\_, 2011, at \_\_:\_\_ .m. Eastern Standard Time, there were:

PRESENT: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

The following preamble and resolution were offered by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**RESOLUTION APPROVING AGREEMENT  
TO IMPLEMENT THE AMENDED DEVELOPMENT PLAN  
AND AMENDED TAX INCREMENT FINANCING PLAN**

WHEREAS, the City Council of the City of Portage on June 28, 2011 adopted an ordinance approving an Amended Development Plan and Amended Tax Increment Financing Plan (together the "Plan") pursuant to Act 197 of the Public Acts of Michigan of 1975 (the "Act") which Plan becomes effective upon publication of the Ordinance Approving the Plan; and

WHEREAS, pursuant to the Plan, the public facilities (the "Public Facilities") to be acquired and constructed are described in Appendix A of the attached agreement; and

WHEREAS, in order to carry out its obligations as required by the Plan, the Downtown Development Authority of the City of Portage (the "Authority"), pending and after the issuance of special assessment bonds by the City, wishes to request the City of Portage to take all actions necessary to construct the Public Facilities as described in Appendix A of the Agreement to Implement the Amended Development Plan and Amended Tax Increment Financing Plan (the "Agreement") attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF PORTAGE, as follows:

1. The Agreement attached hereto is approved.
2. The President and the Secretary of the Authority are authorized to execute and deliver the Agreement on behalf of the Authority.

The results of a roll-call vote on the foregoing resolution were as follows:

YES: \_\_\_\_\_

NO: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

THE RESOLUTION WAS THEREUPON DECLARED ADOPTED.

\_\_\_\_\_  
Director, City of Portage  
Downtown Development Authority

**CERTIFICATE**

I hereby certify that the foregoing is a true and complete copy of a resolution adopted at a \_\_\_\_\_ meeting of the City of Portage Downtown Development Authority on the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Director, City of Portage  
Downtown Development Authority

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APPENDIX A

**AGREEMENT TO IMPLEMENT THE AMENDED DEVELOPMENT PLAN  
AND AMENDED TAX INCREMENT FINANCING PLAN**

WHEREAS, the Downtown Development Authority of the City of Portage (the "Authority") and the City of Portage (the "City") have approved an Amended Development Plan and Amended Tax Increment Financing Plan (together the "Plan") pursuant to Act No. 197 of the Public Acts of Michigan of 1975, as amended (the "Act") which Plan becomes effective upon the approval by the City Council of the City of the Ordinance Approving the Plan on \_\_\_\_\_, 2011 and thereafter the Ordinance's publication on \_\_\_\_\_, 2011; and

WHEREAS, pursuant to the Plan, the public facilities (the "Public Facilities") to be acquired and constructed are described in Appendix I attached hereto; and

WHEREAS, in order to carry out its obligation as required by the Plan, the Authority, pending and after the issuance of special assessment bonds by the City, wishes to have the City take all actions necessary to construct the Public Facilities as described in Appendix I attached hereto.

NOW THEREFORE IT IS AGREED TO BETWEEN THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF PORTAGE AND THE CITY OF PORTAGE as follows:

1. The City intends to acquire and construct the Public Facilities described in Appendix I attached hereto at a cost of not to exceed \$1,340,000 by causing the City of Portage Special Assessment Bonds, Series 2011 (the "Bonds") to be issued.

2. The City will provide to the Authority copies of all information on the design, bidding, award and actual construction of the Public Facilities as the Public Facilities are being constructed.

3. This Agreement will not take effect until:

- a. The Ordinance Approving the Plan takes effect;  
and
- b. The City issues the Bonds.

4. The Authority agrees that any captured taxes from the property described in Appendix II received in any years from the Authority by the City shall be paid to the City first to meet the annual principal and interest requirements on the Bonds in such years and that the City shall in any such year credit to the properties specially assessed for such public improvements (which properties are described in Appendix II the amount of the payments received by the City from the Authority as though such amounts has been paid as Special Assessments.

IN WITNESS WHEREOF the Downtown Development Authority of the City of Portage has caused this Agreement to be executed by its President and its Secretary and the City of Portage has caused this Agreement to be executed by its Mayor and its Clerk all as of the \_\_\_\_ day of \_\_\_\_\_, 2011.

DOWNTOWN DEVELOPMENT AUTHORITY  
OF THE CITY OF PORTAGE, a Public  
Corporation,

By: \_\_\_\_\_  
Its President

and

By: \_\_\_\_\_  
Its Secretary

CITY OF PORTAGE, a Michigan  
Municipal Corporation,

By: \_\_\_\_\_  
Its Mayor

and

By: \_\_\_\_\_  
Its Clerk

Dated as of \_\_\_\_\_, 2011

## APPENDIX I

1. Agreement to Purchase. The City agrees to purchase 8400 sq. ft. from the Developer to be used for public roadway purposes. Closing on the sale shall occur at a mutually agreeable time but not later than FY2011. At closing Developer agrees to provide City a Special Warranty Deed Conveying title to such property, a survey showing the location of such property and an owner's policy of title insurance in the amount of the purchase price of such property.

### 2. Trade Centre Way/West Fork Crossing/South Westnedge Avenue

(a) Trade Centre Way will be realigned and improved from South Westnedge Avenue west 900 feet to just west of West Fork Crossing. The realignment will include curb and gutter, storm sewer, utility relocation, boulevards, first class roadside landscaping, lighting, fencing and related construction.

(b) West Fork Crossing will be realigned and improved interest with realigned Trade Centre Way easterly of the existing street intersection. The realignment and improvement will match existing West Fork Crossing Street cross section characteristics. Private storm drainage work will be relocated to adjacent property.

(c) The Trade Centre Way and West Fork Crossing intersection will be reconstructed incorporating additional right-of-way from the State of Michigan. The intersection improvement will match existing Trade Centre Way and West Fork Crossing cross section characteristics. Excess public street right-of-way not necessary for reconstruction of Trade Centre Way and West Fork Crossing shall be vacated or disposed of by the City. Former State of Michigan right-of-way will be retained by the City for transportation purposes.

(d) A portion of South Westnedge Avenue south of Trade Centre Way will be reconstructed to facilitate left turn-in and right turn-in movements from South Westnedge Avenue to Trade Centre Way and right turn-out movements from Trade Centre Way to South Westnedge Avenue. The improvements will match existing South Westnedge Avenue cross section characteristics.

Acquisition Costs, Construction Costs and Financing Costs (including Capitalized Interest and Bond Discount)	\$1,340,000
--	-------------

## APPENDIX II

### LEGAL DESCRIPTION OF THE PROPERTY

Land situated in the City of Portage, County of Kalamazoo and State of Michigan, described as follows, to wit:

PART OF THE NORTHEAST QUARTER OF SECTION 4, TOWN 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE EAST QUARTER-POST OF SAID SECTION 4; THENCE NORTH 00 DEGREES 10' 32" EAST ON THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 656.43 FEET TO THE NORTH LINE OF THE ASSESSOR'S PLAT OF DEBOER HOMESTEAD ACRES; ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 14 OF PLATS, PAGE 6, KALAMAZOO COUNTY RECORDS, SAID NORTH LINE BEING PREVIOUSLY REFERRED TO AS THE NORTH LINE OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 4; THENCE NORTH 89 DEGREES 55' 00" WEST ON SAID NORTH PLAT LINE AND ON AN EXTENSION OF SAID NORTH PLAT LINE 1,051.22 FEET TO A POINT BEING 160.00 FEET NORTH 49 DEGREES 25' 00" WEST OF THE NORTHWEST CORNER OF LOT 68, SAID DEBOER HOMESTEAD ACRES, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 68 A DISTANCE OF 132.00 FEET; THENCE SOUTH 49 DEGREES 55' 00" EAST ON AN EXTENSION OF THE NORTH LINE OF DE HAAN DRIVE 160.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 68; THENCE SOUTH 66.00 FEET TO THE NORTHWEST CORNER OF LOT 69, SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH 89 DEGREES 55' 00" EAST ON THE SOUTH LINE OF SAID DE HAAN DRIVE 122.32 FEET; THENCE SOUTH 15 DEGREES 00' WEST 74.17 FEET; THENCE SOUTHWESTERLY 92.45 FEET ON A 124.00 FOOT RADIUS CURVE TO THE RIGHT WHOSE CHORD BEARS SOUTH 36 DEGREES 36' WEST 90.33 FEET; THENCE SOUTH 57 DEGREES 48' 12" WEST 163.83 FEET; THENCE SOUTHWESTERLY 243.48 FEET ON A 424.00 FOOT RADIUS CURVE TO THE RIGHT WHOSE CHORD BEARS SOUTH 74 DEGREES 15' 16" WEST 240.15 FEET; THENCE NORTH 89 DEGREES 17' 40" WEST 181.89 FEET; THENCE NORTH 24 DEGREES 43' 14" WEST 688.21 FEET; THENCE NORTH 05 DEGREES 51' 51" EAST 433.28 FEET TO THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH 89 DEGREES 55' 00" EAST ON SAID NORTH LINE EXTENDED 982.81 FEET TO THE POINT OF BEGINNING.

Also:

The South  $\frac{1}{4}$  of the now vacated DeHaan Drive which lies between the East line of Lot 67 of the Assessor's Plat of DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated); and the West line of Lot 68 of said DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated).

Also:

Land situated in the City of Portage, County of Kalamazoo and State of Michigan, described as follows, to wit:

Lot 67, Assessor's Plat of DeBoer Homestead Acres, according to the Plat thereof as recorded in Liber 14 of Plats on Page 6, Kalamazoo County Records. Lot 68 of Assessor's Plat of DeBoer Homestead Acres, according to the Plat thereof as recorded in Liber 14 of Plats on Page 6, Kalamazoo County Records. Beginning at a point on the Southwest corner of Lot 68 of Assessor's Plat of DeBoer Homestead Acres, thence West 160 feet along the extension of the Southerly line of Lot 68; thence North 132 feet on a line parallel with the Westerly line of Lot 68, thence East 160 feet to the Northwest corner of Lot 68, thence South along the Westerly line of Lot 68, 132 feet to the place of beginning.

Also:

The North  $\frac{1}{4}$  of the now vacated DeHaan Drive which lies between the East line of Lot 67 of the Assessor's Plat of DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated); and the West line of Lot 68 of said DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated).

Also:

Assessors Plat of Deboer Homestead Acres Lot 64 (226 Trade Centre Way)

Also:

Assessors Plat of Deboer Homestead Acres Lot 65 (230 Trade Centre Way)



**DOWNTOWN DEVELOPMENT AUTHORITY  
CITY OF PORTAGE**

At a \_\_\_\_\_ meeting of the Board of the Downtown Development Authority of the City of Portage, Michigan held in the City Hall, in the City of Portage, Michigan on \_\_\_\_\_, 2011, at \_\_:\_\_ .m. Eastern Standard Time, there were:

PRESENT: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

The following preamble and resolution were offered by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**RESOLUTION APPROVING  
THE DEVELOPMENT AGREEMENT**

WHEREAS, the City Council of the City of Portage (the "City") is in the process of adopting proceedings authorizing the issuance of the City of Portage Special Assessment Bonds, Series 2011 in a principal amount not exceeding \$1,340,000 (the "Bonds"); and

WHEREAS, it is necessary to approve a development agreement (the "Development Agreement") attached hereto between the City a Michigan Municipal Corporation, and Trade Center Holdings, LLC, owner, and H&G 2 LLC, all Michigan Limited Liability Companies, (the "Developer") in connection with the issuance of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF PORTAGE, as follows:

1. The Agreement attached hereto is approved.
2. The President and the Secretary of the Authority are authorized to execute and deliver the Agreement on behalf of the Authority.

The results of a roll-call vote on the foregoing resolution were as follows:

YES: \_\_\_\_\_

NO: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

THE RESOLUTION WAS THEREUPON DECLARED ADOPTED.

\_\_\_\_\_  
Director, City of Portage  
Downtown Development Authority

**CERTIFICATE**

I hereby certify that the foregoing is a true and complete copy of a resolution adopted at a \_\_\_\_\_ meeting of the City of Portage Downtown Development Authority on the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Director, City of Portage  
Downtown Development Authority

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### **PHASE III**

#### **DEVELOPMENT AGREEMENT**

**THIS PHASE III DEVELOPMENT AGREEMENT**, is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2011, by and among the CITY OF PORTAGE, (the "City"), a Michigan Municipal Corporation, and TRADE CENTRE HOLDINGS, LLC, owner, and H & G 2, LLC, all Michigan Limited Liability Companies, (the "Developer").

#### **RECITALS**

A. On August 18, 2003, Developer purchased a parcel of land consisting of approximately 32 acres which is described in attached Appendix A as the "Development Parcel." Developer has constructed 2 office buildings on a portion of the Development Parcel and intends to further develop the Development Parcel.

B. To facilitate further development of the "Development Parcel" necessary public street (curb and gutter, fencing, lighting, undergrounding of overhead utilities, landscaping), street realignment, street intersection, utility infrastructure improvements, storm water drainage and retention and other eligible public facility activities are to be carried out by the City of Portage.

C. The City and the Developer have entered into a Development Agreement dated September 24, 2003, as amended, (collectively the "Phase I and II Agreement") to facilitate the improvement of a portion of the "Development Parcel," which Agreement relates to other improvements in the Development Parcel and remains in effect. This Phase III Development Agreement is independent of and is not intended to amend the Phase I and II Agreement.

D. The City and Developer desire to document the terms and conditions of the continued development of the "Development Parcel" and surrounding land in the manner set forth herein.

## AGREEMENT

**NOW, THEREFORE**, for and in consideration of the agreement of the City to assist in this development and the mutual covenants and agreements of the Parties contained herein, the receipt, adequacy and sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

### **ARTICLE 1** **DEFINITIONS AND COVENANTS**

In addition to certain terms defined in other sections of this Agreement, the City and the Developer agree that the following definitions and covenants shall apply to this Development Agreement:

1.1 "City Ordinances" means all ordinances, enactments, rules, regulations and policies of the City, including, but not limited to, zoning and land use ordinances and requirements (specifically including the zoning ordinance for the Developmental Parcel); building codes, ordinances, uses and requirements; safety and health ordinances and requirements; site plan and building plan review and approval guidelines, procedures, requirements and conditions; ordinances, rules and regulations governing utilities, roads, curb cuts, site improvements, sidewalks, lighting and similar improvements; ordinances and rules for special assessments, assessing tap-in fees, connection charges, use fees, and any other fees, charges and expenses; and police, safety and traffic rules and regulations.

1.2 "Additional Development Site" means the portions of Parcels Q, R, S, and T to the extent they are not part of the New Projects Site or part of the Right of Way Parcel.

1.3 "New Projects Site" means the portion of the Development Parcel that is immediately east of the parcel known as 750 Trade Centre Way which is commonly referred to as 420 Trade Centre Way and consists of approximately 14.4 acres, together with 226 and 230 Trade Centre Way and is more particularly identified in attached Appendix B.

1.4 "Downtown Development Authority" or "DDA" means the City of Portage Downtown Development Authority, a public body corporate that was created by the City to assist the City in preventing deterioration of its business district; to create and implement development plans in order to promote economic growth of the downtown district, and

take other actions necessary to create and implement such development plans.

1.5 "Phase III Development Agreement" means this Development Agreement by and among the City and Developer.

1.6 "Effective Date" means \_\_\_\_\_ 2011.

1.7 "Baseline Taxable Value" means the Taxable Value of the New Projects Site and the Additional Development Site as of December 31, 2010 which is \$1,741,867.

1.7.A "Baseline Tax Increment Revenue" means the Tax Increment Revenue as calculated from the taxable value of the New Projects Site and the Additional Development Site by multiplying the Baseline Taxable Value by the millage that is captured for the year 2011, which is \$ 37,591.05.

1.8 "Parcels" shall refer to all of the following Parcels and each individual Parcel shall have the following respective meaning. Legal descriptions of the Parcels shall be established pursuant to a survey or drawing in accordance with Section 2.3 hereof and shall be finalized per Article 2:

"Parcel A" means Parcel A as shown in attached Appendix B-1.

"Parcel B" means Parcel B as shown in attached Appendix B-1.

"Parcel C" means Parcel C as shown in attached Appendix B-1.

"Parcel D" means Parcel D as shown in attached Appendix B-2.

"Parcel E" means Parcel E as shown in attached Appendix B-2.

"Parcel Q" means Parcel Q as shown in attached Appendix B-3.

"Parcel R" means Parcel R as shown in attached Appendix B-3.

"Parcel S" means Parcel S as shown in attached Appendix B-3.

"Parcel T" means Parcel T as shown in attached Appendix B-3.

"Parcel U" means Parcel U as shown in attached Appendix B-4.

“Right of Way Parcel” means Parcel D and Parcel U (including portions of Parcels A, C, S that are located within the boundaries of Parcel D or Parcel U).

1.9 “Storm Water Drainage Easement” means the Storm Water Drainage and Retention Easement to be executed and recorded upon closing of this Development Agreement wherein the City agrees to establish a storm water drainage and retention system (the “System”) on, over, under and across various portions of the Parcels and the Development Parcel and shall serve the parcels identified in such easement.

1.10 “Laws” means all laws, statutes, orders, ordinances, codes, rules, regulations or standards of any federal or state or similar governmental agency or authority having jurisdiction thereof, including, without limitation, building and use codes and requirements, Americans with Disabilities Act, handicap and similar legislation, safety and health laws and requirements, and environmental laws.

1.11 “Party” or “Parties” means either the City or Developer, individually, or the City and the Developer collectively which are the Parties to the Development Agreement.

1.12 “Person” means an individual, corporation, partnership (either general or limited), trust, limited liability company, limited liability partnership, entity or other form of organization, or one or more of them, as the context may require.

1.13 “Tax Increment Revenue” means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of applicable taxing jurisdictions upon the captured assessed value of real and personal property in the City of Portage Downtown Development Authority District, consistent with Public Act 197 of 1975.

1.14 “Increased Tax Increment Revenue” means the increase in the Tax Increment Revenue that may arise from the establishment of buildings or improvements on the New Projects Site and/or development of portions of the Additional Development Site. The amount of the increased Tax Increment Revenue shall be the difference between the Baseline Tax Increment Revenue of the New Projects Site and Additional Development Site and the Tax Increment Revenue produced by the New Projects Site and Additional Development Site in each succeeding calendar year. “Aggregate Increased Tax Increment Revenue” refers to the cumulative increase in Increased Tax Increment Revenue actually collected and retained by the DDA after any tax appeal for each calendar year applied against the Baseline Tax Increment Revenue. For example, if

the Baseline Tax Increment Revenue is \$10,000; additions to the New Projects Site and/or Additional Development Site create increase the Tax Increment Revenue in year 1 by \$5,000 (total tax increment revenue of \$15,000), in year 2 by \$15,000 (for total tax increment revenue of \$30,000) and in year 3 by \$10,000 (for total tax increment revenue of \$40,000); then the Aggregate Increased Tax Increment Revenue for year 1 would be \$5,000, year 2 would be \$20,000 and year 3 would be \$30,000.

1.15 "Transfer" means any sale, exchange, arrangement, conveyance, transfer or other disposition in one or more events, directly or indirectly of Developer's interest in the Development Parcel.

1.16 "Special Assessment Payments" means the amount of annual principal and interest to be paid on the Bonds as described in Article 8.

1.17 "Bonds" means the Special Assessment Bonds to be issued by the City as contemplated by Section 4.2 hereof.

## **ARTICLE 2**

### **PARCEL TRANSFERS AND EASEMENTS**

2.1 Subject to the terms and conditions herein, the parties shall make the following conveyances, grants and/or restrictions of the following respective Parcels at Closing:

A. Developer shall transfer Parcel A to the City. The portion of Parcel A that is located within Parcel E, if any, shall be subject to the Storm Water Drainage Easement and used exclusively for storm water drainage and retention purposes. The portion of Parcel A that is located within the Right of Way Parcel shall be used as a public right of way. Parcel C shall be purchased by the City from the Developer for a purchase price of \$191,623. Parcel C shall be used exclusively for public right of way purposes as more fully described in Article 5.

B. Parcel B shall be retained by the Developer, or transferred by the Developer to the abutting private property owner.

C. City shall acquire Parcel S from the Michigan Department of Transportation at the sole cost and expense of the City. The City shall develop Parcel S (with the exception of Parcel Q which is a part of Parcel S) as a public road. City acknowledges that all or portions of Parcel S are not part of the DDA or the downtown development district.

D. City shall transfer Parcel T to Developer.

E. City shall grant a perpetual exclusive easement to Developer on, over, under and across Parcel Q. The easement shall permit Developer to use, improve and possess Parcel Q for any purpose desired by Developer (including as a paved parking area and other transportation purposes) with the exception of the establishment of structures or buildings. The parties shall cooperate and work together in good faith to agree upon and draft the easement prior to Closing.

F. Parcel R shall be retained by the Developer.

G. City, Developer and any other parties to the Storm Water Drainage Easement shall execute, deliver and record the Storm Water Drainage Easement.

2.2 All of the foregoing transfers and transactions shall be made by covenant deeds or an easement as applicable. The Parcels conveyed shall include all improvements, fixtures and appurtenances thereon, and all easements, rights and except as otherwise provided herein, any other rights that benefit the Parcels; with the exception that none of the conveyances shall include any rights to divisions under the Michigan Land Division Act. The parties agree to obtain lot line adjustments or other approvals required by the Michigan Land Division Act, and City Ordinances and Laws that are necessary to establish and convey the Parcels.

2.3 After execution and delivery of this Agreement, the Developer shall provide to the City any existing environmental studies and either provide existing drawings or surveys of the respective Parcels to be delivered to City or cause drawings or surveys of the respective Parcels to be prepared and shall obtain title insurance commitments related to the Parcels. The parties shall also have the right to undertake any and all inspections and investigations desired by any party, at their sole expense, with regard to a Parcel being transferred to a party. The parties agree that such investigations may include a phase one environmental assessment; provided however that further environmental studies or assessments shall not be undertaken without the prior written consent of the transferring party. Each party shall have the right to terminate any parcel or easement transaction, transfer, and conveyance at any time prior to Closing by providing written notice to the other in the event a party determines in its sole discretion that any of the foregoing investigations, including without limitation, survey and title review, are not acceptable to the terminating party.

2.4 All of the foregoing transactions, transfers and conveyances shall occur at Closing. Closing shall be at a time and place agreed to by the parties but no later than 180 days from the date of this Agreement.

2.5 The transferor shall pay (i) all transfer and/or conveyance taxes, if any, assessed in connection with the conveyance of such Parcel, (ii) the premium for the Title Policy (excluding the cost of any endorsements) relating to the Parcel being transferred; (iii) the cost of the Survey applicable to the Parcel being transferred and (iv) one half (1/2) of Title Company's closing fee in connection with this transaction. The transferee with regard to each Parcel shall pay (i) all recording costs for recordation of the deed; (ii) one-half of the Title Company's closing fee in connection with this transaction; and (iii) the cost of any endorsements to the title insurance policy for the Parcel being transferred.

2.6 Each party shall be responsible for and pay all past due real estate taxes and assessments at or prior to Closing with regard to the property it is conveying. Taxes for the year of Closing shall be prorated as of the date of Closing based upon the amount of such year's taxes if the amount of such taxes is known at the time of Closing. To the extent the amount of such year's taxes are not known, the parties will use the most recently available information and shall prorate taxes as of Closing in accordance with the calendar year method. The parties agree that, upon receipt of the tax bill for the year of Closing, that such taxes will be re-prorated and readjusted at the request of either party. This obligation shall survive the Closing. Other regular and customary costs and expenses related to this transaction shall also be prorated based on the date of Closing.

### **ARTICLE 3**

#### **DEVELOPER AGREEMENTS**

3.1 Payment Obligation. The first special assessment payment obligation which shall be due and payable by the Developer shall be due and payable on August 31, 2013.

3.2 New Projects. The parties anticipate and expect the Developer to develop the New Projects Site and portions of the Additional Development Site with one or more new projects over the next several years. The parties have discussed the possibility of a hotel or hospitality project and/or an office building project on the New Projects Site. The parties acknowledge and agree that the Developer has not committed or obligated itself to any particular type of project other than new projects shall be in conformance with the Portage Zoning Code.

3.3 City Approvals. The parties acknowledge and agree that any project the Developer desires to establish shall be subject to and shall obtain all required approvals and entitlements pursuant to applicable Laws and City Ordinances.

3.4 Construction Quality and Construction Liens. The Developer shall construct all projects, if any, in a good and workmanlike manner employing a quality contractor, construction manager or design/builder ("General Contractor") possessing the requisite experience and competency to construct such Improvements. Each of the new projects shall be constructed free of all liens (with the exception of good faith disputes), except the lien of the Construction Lender, Permanent Lender, current taxes and special assessments ("Permitted Liens"). Any construction liens or other liens (other than Permitted Liens) shall be released or discharged by the Developer within thirty (30) days of the date filed by either recording a discharge of lien, filing a statutory bond for the removal of the lien, or insuring over the lien with the Title Company or otherwise addressed in a manner reasonably acceptable to the City.

3.5 Protection of Neighboring Properties. The Developer shall use its best efforts to conduct construction activities of new projects on the New Projects Site and/or Additional Development Site with minimal disruption to residents and owners of property neighboring the Project. Prior to commencing such construction, the Developer shall insure that the construction activities are reasonably screened from neighboring properties and the movement of wind-blown debris, dust and soil onto neighboring properties is minimized and controlled.

3.6 Indemnity. The Developer hereby indemnifies, defends and holds the City, the Downtown Development Authority, and their boards, commissions, authorities, council, council members, elected and appointed officials, employees and volunteers, attorneys, consultants and advisors, agents and representatives ("Indemnified Parties") harmless from and against any and all claims, causes of action, in law or in equity, suits, arbitrations, administrative or governmental proceedings, demands, rights, contracts, agreements, promises, liens, encumbrances, liabilities, personal injuries and deaths, damages, losses, costs or expenses of any nature whatsoever (collectively "Indemnified Claims") which may be imposed upon, incurred by or asserted against the Indemnified Parties arising out of the construction, ownership, maintenance and operation of any new projects on the New Projects Site or Additional Development Site by the Developer, any violations of Laws or City Ordinances by the Developer or any failure of the Developer to comply with the provisions of this Phase III Development Agreement. Notwithstanding the foregoing, this Indemnity shall not apply to Indemnified Claims resulting from the ultra vires acts of City or Downtown Development Authority officials and employees based on willful and intentional conduct, which is arbitrary and capricious and constitutes bad faith.

3.7 Survival. The Developer acknowledges and agrees that all of the obligations of the Developer under this Phase III Development Agreement shall be covenants running with the land and binding upon the Developer, its successors and assigns for the benefit of the City and their respective successors and assigns.

**ARTICLE 4**  
**FINANCING THE PROJECTS AND THE PUBLIC FACILITIES**

4.1 Funding Sources. The Developer shall finance the new projects on the New Projects Site and/or Additional Development Site through its own private sources.

4.2 Issuance of Bonds. The City expects to issue Special Assessment Bonds to finance the construction of the Public Improvements described herein (including Appendix C and Appendix D). The principal amount of the Bonds are not expected to exceed \$1,500,000; and are not expected to have an average interest rate of more than 5.5% per annum; and it is expected that the first four (4) years of payments shall be interest only. The principal amount of the Bonds shall be the actual costs to complete the Public Improvements described in the attached Appendix C and Appendix D.

**ARTICLE 5**  
**PUBLIC STREET AND RELATED FACILITIES**

5.1 City to Finance Public Street, Utilities and Storm Water Drainage System. The City expects to issue Special Assessment Bonds and to use the proceeds thereof to construct public facility improvements to facilitate the development of the New Projects Site and/or the Additional Development Site, to provide improved public street access and to establish the System referenced in the Storm Water Drainage Easement. The public facility improvements (the "Public Improvements") include the System, the reconstruction and realignment of Trade Centre Way, West Fork Crossing and South Westledge Avenue and associated utility and related public improvements. The right of way area shall be located on, over, under and across the Right of Way Parcel. The public facility right of way improvements are shown on the map in attached Appendix C and are described throughout this Agreement and in attached Appendix D. The road improvements, the relocation of the Trade Centre Way sign, the landscaping plan, the plans, drawings and engineering of the right of way and road improvements are set forth in accordance with attached Appendix C and Appendix D.

5.2 Intentionally Deleted.

5.3 Maintain Street Utilities and System. After construction of the roadways, storm water drainage system and related public facilities, the City shall maintain all of the Public Improvements. Notwithstanding the foregoing, Developer and City may enter an Enhanced Streetscape Maintenance Agreement or similar agreement that relates to the maintenance and repair of the right of way and/or the System.

5.4 Schedule. The City shall substantially complete the obligations set forth in Sections 5.1 hereof, no later than December 31, 2011.

## **ARTICLE 6** **REPRESENTATIONS AND AFFIRMATIVE COVENANTS**

6.1 City Representations and Warranties. The City hereby makes the following representations and warranties to the Developer, which representations and warranties shall be true and correct as of the date hereof:

6.1.1 Authority. It has authority to enter into this Development Agreement and to perform and carry out all obligations, covenants and provisions hereof. The authority of the City shall be evidenced by appropriate resolutions.

6.1.2 Lawsuits. There are no lawsuits pending or to the best of the knowledge of the City threatened against the City which will affect the transaction contemplated hereby, except as disclosed by written notice to the Developer.

6.1.3 Restraints. Neither the execution nor delivery by the City of this Development Agreement nor the consummation of the transaction contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, charter or governing documents, or any agreement to which the City is a party or by which the City is bound.

6.1.4 DDA. With the exception of portions of Parcel S, all of the Parcels, as defined in Section 1.8, are located within the City downtown development district are eligible to receive funding pursuant to the issuance of the Bonds by the DDA as contemplated herein.

6.2 City Actions. The City agrees to perform all of the duties as specified for the City set forth in this Agreement.

6.3 Developer Representations and Warranties. The Developer hereby makes the following representations and warranties to the City which representations and warranties shall be true and correct as of the date hereof and shall continue until all of the obligations of the Developer under this Development Agreement have been fully performed:

6.3.1 Organization. The Developer is duly organized and validly existing, in good standing under the laws of the State of Michigan, qualified to do business under the laws of the State of Michigan and has all requisite power and authority to own and operate its assets and properties, to carry on its business as now being conducted, and to enter into and perform the terms of the Development Agreement.

6.3.2 Authorization. The execution and delivery by the Developer of this Phase III Development Agreement and consummation of the transactions contemplated hereby have been duly authorized by all necessary action and a Consent Resolution (including Incumbency Certificate) evidencing such action being attached hereto as Exhibit E and made a part hereof.

6.3.3 Restraints. Neither the execution nor delivery of this Development Agreement, or the consummation of the transactions contemplated herein by the Developer is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, the Developer's Organizational Documents, or any agreement to which the Developer is a party, or by which it is bound.

6.3.4 Disclosure. No representation or warranty by the Developer, or any written statement or certificate furnished to the City pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or will omit to state any fact necessary to make the statements contained herein or therein not misleading.

6.3.5 Litigation. The Developer has no notice of and there is no pending or, to the best of the Developer's knowledge, threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau, agency or instrumentality thereof which would affect the Developer or its principals from carrying out the covenants and promises made herein.

6.3.6 Financial. To the best of Developer's knowledge, the Developer is financially able to complete the new project(s) at the time the Developer elects to commence the new projects. The Developer certifies that any and all financial information provided to the City is true and accurate in all material respects and does not omit any information which would cause such to be misleading or untrue in any material respect.

**ARTICLE 7**  
**EVENTS OF DEFAULT AND REMEDIES**

7.1 Default by Developer. Each of the following shall constitute an Event of Default of the Developer under this Development Agreement:

7.1.1 Failure to Comply. The Developer's failure to perform any of its obligations under this Phase III Development Agreement, which remain uncured for a period of thirty (30) days following written notice by the City, unless the default cannot be cured through the exercise of good faith and due diligence (including the expenditure of necessary funds), in which event the Developer shall be entitled to an additional period of time to cure as reasonably determined by the City, but in no event beyond ninety (90) days, provided and so long as the Developer has diligently commenced the cure within such thirty (30) day period, completion of the cure within the thirty (30) days was not avoidable by the exercise of due diligence, and the Developer continues to prosecute the cure with due diligence and in good faith.

7.1.2 Failure to Pay Taxes. The Developer fails to pay all real estate taxes involving the New Projects Site and/or Additional Development Site, if applicable.

7.1.3 Assignment or Transfer Violation. In the event the Developer makes any assignment or transfer in violation of Article 9.

7.1.4 Closure, Bankruptcy or Reorganization. The Developer ceases doing business, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or for reorganization, files an answer admitting the allegations in any creditor-filed petition for bankruptcy or reorganization, applies for or permits the appointment of a receiver, fails to have any bankruptcy, reorganization or liquidation proceedings instituted against it dismissed within sixty (60) days of filing, is unable to

meet its obligations as they become due or otherwise seeks the relief of any federal or state bankruptcy or insolvency laws.

7.2 Other Defaults. Upon an Event of Default by Developer, the City shall be entitled to the following remedies:

7.2.1. Enforce Obligations. Specifically enforce the obligations of the Developer under this Phase III Development Agreement.

7.2.2. Suspend Rights. Suspend the Developer's rights under this Phase III Development Agreement, without releasing the Developer of its obligations under this Development Agreement, until such Event of Default is cured.

7.2.3. Recover all Damages. Recover all damages resulting from the Developer's breach of this Phase III Development Agreement.

7.2.4. Withhold Performance of Obligations. Withhold the performance of any obligations of the City under this Phase III Development Agreement, including but not limited to, providing any authorizations, approvals or consents, issuing any building permits, certificates of occupancy, licenses, or similar certificates, making any inspections or taking any other actions required of the City under this Phase III Development Agreement, City Ordinances or Laws.

7.2.5. Other Remedies. Be entitled to all other remedies available at law or in equity.

7.3 Default Remedies of the Developer. If the City fails to timely perform any of its covenants or obligations under this Phase III Development Agreement, it shall be deemed in default. Upon an event of default, the Developer shall deliver written notice of default to the City. The City shall have thirty (30) days from receipt of the notice of default to cure the default, unless the nature of the default is such that it cannot be cured within this thirty (30) day period. In that event, if the City fails to commence to cure the default within this thirty (30) day period or fails to then diligently proceed to cure the default, the City shall be deemed in default. If the default is not so cured, the Developer shall be entitled to the following remedies, any or all of which it may elect, at its sole option: (1) the Developer may seek specific performance of this Phase III Development Agreement; (2) the Developer may perform the City's obligations and receive reimbursement from the City for all of its costs incurred to do so; (3) the Developer may recover all damages resulting

from the City's breach of this Phase III Development Agreement; (4) the Developer may withhold its performance of its obligations under this Phase III Development Agreement; and (5) the Developer may pursue any and all other remedies that may be available to it by law or in equity.

7.4 Non-Liability of City Officials and Employees. No City official, officer, employee, board member, council member, elected or appointed official, attorney, consultant, advisor, agent or representative, shall be personally liable to the Developer for any default or breach by the City of any obligation under this Phase III Development Agreement or in any manner arising out of the performance of this Phase III Development Agreement by any Party or any project referred to herein.

## **ARTICLE 8 SPECIAL ASSESSMENTS AND SPECIAL ASSESSMENT DISTRICT**

8.1 Creation of Special Assessment District. On February 9<sup>th</sup>, 2011 a petition was filed with the City of Portage requesting creation of a special assessment district in accordance with Chapter 62, Special Assessments, of the City Ordinances for purpose of paying for the construction of certain Public Improvements described in Appendix C and Appendix D, attached hereto.

8.1.1 The amount of the Special Assessment shall be the actual costs to complete the Public Improvements described in the attached Appendix C and Appendix D.

8.1.2. The accrued interest rate to be paid on the annual special assessment amount shall not exceed one percent above the average interest cost on the bonds sold to finance the Public Improvements as specified in Chapter 62, Special Assessments, of the City Ordinances.

8.2 Confirmation of Special Assessment Roll. On June 28, 2011 the City Council of the City of Portage approved a Special Assessment Roll (the "Roll") a copy of which is attached hereto as Appendix F. Pursuant to the Roll, owners of the real estate identified as the New Projects Site, described in Appendix B, attached hereto, and the Additional Development Site, are obligated to pay special assessments annually to cover the costs of the Public Improvements described in Appendix C and Appendix D.

8.3 DDA Revenue from Captured Value to be Applied Toward Special Assessments Due in Future Years. On June 28, 2011 the City of Portage approved an Amended Downtown Development Plan for the

Downtown Development Authority which plan anticipates the future capture of amounts of taxes resulting from development of properties on the New Projects Site and Additional Development Site owned by the Developer within the DDA.

8.4 DDA Has Agreed to Pay to the City Annually the Revenues from the Captured Taxes. On July 12, 2011 the City and the DDA entered into an Agreement whereby the DDA has agreed to pay to the City annually the amount collected in that year of the Tax Increment Revenue collected by the DDA from the New Projects Site and the Additional Development Site.

8.5 Increased Tax Increment Revenue Resulting from Developer's development of the New Projects Site and Additional Development Site Received by the City from the DDA will offset future Special Assessments. During the period in which the special assessment bonds are outstanding, in which the DDA pays an amount to the City from increased Tax Increment Revenues, the Developer or its assignees shall receive a credit from the City of the amount of the increased Tax Increment Revenues up to the amount of such annual special assessment payment for that particular year.

8.5.1 In the event that the annual increased Tax Increment Revenue amount exceeds the annual special assessment payment, the annual credit received by the Developer or its assignees shall be permitted to be applied against a future year special assessment payment.

8.5.2 The parties acknowledge and agree that any credit carried forward from a special assessment payment as contemplated in 8.5.1 shall continue on annual basis until the expiration of the Special Assessment.

## **ARTICLE 9**

### **TRANSFER, ASSIGNMENT OR MORTGAGE**

9.1 Transfer Restrictions. Developer shall have the right to transfer all or any portion of the New Projects Site and/or Additional Development Site at any time; provided however, the transferee of the New Projects Site and/or Additional Development Site shall affirmatively assume and accept all of Developer's obligations under this Phase III Development Agreement in a written instrument to be provided to the City in connection with any such transfer.

## **ARTICLE 10**

## NOTICES

10.1 All notices, consents, approvals, requests and other communications, herein collectively called "Notices," required or permitted under this Phase III Development Agreement shall be given in writing, signed by an authorized representative of the City or Developer and mailed by certified or registered mail, return receipt requested, personally delivered, sent by overnight courier or sent by facsimile transmission to a Party as follows:

To City: Maurice S. Evans, City Manager  
7900 South Westnedge Avenue  
Portage, MI 49024  
Phone 269-329-4400  
Facsimile 269-324-9244

With copies to: Jeffrey M. Erickson, Director  
Department of Community Development  
7900 South Westnedge Avenue  
Portage, MI 49024

To Developer: H & G 2, LLC  
Trade Center Holdings, LLC  
c/o Roger Hinman  
750 Trade Centre Way  
Portage, Michigan 49024  
ph. (269) 342-8600  
fx. (269) 342-1949

c/o Joseph L. Gesmundo  
4200 West Centre Avenue  
Portage, Michigan 49024  
ph. (269) 323-8360  
fx. (269) 327-3172

10.2 All such notices, certificates or other communications shall be deemed served upon the date of personal delivery, the day after delivery to a recognized overnight courier, the date of the transmission by facsimile or other electronic means is verified or two days after mailing by registered or certified mail. Any Party may by notice given under this Phase III Development Agreement designate any further or different addresses or recipients to which subsequent notices, certificates or communications hereunder shall be sent.

## ARTICLE 11

**ASSIGNMENT OF THE CITY'S RIGHTS TO THE DOWNTOWN  
DEVELOPMENT AUTHORITY**

11.1 The City shall have the right without the consent of the Developer to assign any of its rights under this Development Agreement to the City of Portage Downtown Development Authority. Any such transfer shall not relieve or release the City from any of its obligations under this Agreement.

11.2 The City may, without the consent of the Developer, request the City of Portage Downtown Development Authority to perform any act including the issuance of bonds for any purpose in order to carry out the City's obligations under this Development Agreement.

**ARTICLE 12  
MISCELLANEOUS**

12.1 Duration. This Phase III Development Agreement shall be effective upon execution by the City and Developer and shall continue in full force and effect with respect to the New Projects Site and the Additional Development Site and other agreements made herein with and unless terminated by mutual consent.

12.2 Entire Agreement. This Phase III Development Agreement (including the Recitals which are incorporated into this Agreement), the documents referenced herein and the attached exhibits set forth all of the covenants, agreements, stipulations, promises, conditions and understandings between the Developer and City concerning the new projects that may be established on the New Projects Site and/or Additional Development Site and the City obligations to establish certain improvements, to purchase certain Parcels and grant certain easements. The parties further acknowledge and agree that this Phase III Development Agreement is entirely independent of the Phase I and II Development Agreement and that a breach of one agreement shall not constitute a breach of the other agreement. The City nor any of their respective board and commission members, elected and appointed officials, employees and volunteers, attorneys, consultants, advisors, agents and representatives, and boards, commissions and authorities, have made any covenant, agreement, stipulation, promise, condition or understanding, warranty or representation, either oral or written, other than set forth herein. The Developer shall have no rights or remedies except as expressly set forth herein. The City shall have no rights or remedies except as expressly set forth herein .

12.3 Amendment. This Phase III Development Agreement shall not be modified, altered or amended except by written agreement duly executed by the Developer, City as authorized by the City Council.

12.4 Third-Party Beneficiaries. Except for the rights and obligations of Permitted Transferees, no term or provision of this Phase III Development Agreement is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder.

12.5 No Limitation on Other Projects. The terms of this Phase III Development Agreement are not intended to prevent the City from entering into other agreements as may be appropriate, and/or from approving other anticipated development projects with uses permitted by applicable ordinance within the Downtown Development Authority by other developers and property owners in the next five years, and/or from capturing tax increment revenue from other development projects for the purpose of financing public improvements, including the public improvements referenced in this agreement.

12.6 Invalidity of Particular Provision. The invalidity of any article, section, subsection, clause or provision of this Phase III Development Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof which shall remain valid and be enforced to the fullest extent permitted by law.

12.7 Captions. The captions in this Phase III Development Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Phase III Development Agreement nor in any way shall affect this Phase III Development Agreement or the construction of any provision hereof.

12.8 Waivers. A Party may not waive any default, condition, promise, obligation or requirement applicable to the other Party hereunder, unless such waiver is in writing signed by an authorized representative of such Party and expressly stated to constitute such waiver. Such waiver shall only apply to the extent given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation or requirement in any past or future instance. No failure by the City or Developer to insist upon strict performance of any covenant, agreement, term or condition of this Phase III Development Agreement or to the exercise any right or remedy in the event of default, shall constitute a waiver of any such default in such covenant, agreement, term or condition.

12.9 Conflicts. In the event of any conflict between this Phase III Development Agreement and any exhibit, or any other document

executed pursuant to or in furtherance of this Phase III Development Agreement, this Phase III Development Agreement shall control, unless such other agreement is signed by the City and expressly provides to the contrary.

12.10 Recording. This Phase III Development Agreement shall be recorded with the Kalamazoo County Register of Deeds.

12.11 Cumulative Remedies. Except as set forth in Article 7, the rights and remedies of the Parties set forth in this Phase III Development Agreement are not exclusive and are in addition to all other rights and remedies provided by law or in equity.

12.12 Time is of the Essence. Time is of the essence with respect to all time and notice deadlines set forth in this Phase III Development Agreement.

12.13 Governing Law. This Phase III Development Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Michigan. The Developer agrees, consents and submits to the personal jurisdiction of any competent court of jurisdiction in Kalamazoo County, Michigan, for any action brought against it arising out of this Phase III Development Agreement. The Developer also agrees that it will not commence any action against the City because of any matter whatsoever arising out of, or relating to, the validity, construction, interpretation and enforcement of this Phase III Development Agreement, in any courts other than those in the County of Kalamazoo, State of Michigan.

12.14 Successors and Assigns. The covenants, conditions and agreements in this Phase III Development Agreement shall be binding upon and inure to the benefit of the Developer, City their respective legal representatives, successors and assigns.

12.15 Legal Fees. In the event any Party commences litigation or other action to enforce such Party's rights or the other Party's obligations under this Phase III Development Agreement the Prevailing Party shall be entitled to recover reasonable attorneys fees, witness fees, expert fees, costs and expenses in connection therewith. Prevailing Party shall mean the Party who obtains an order of enforcement, similar remedy or a judgment or award against the other Party or in the event of a counterclaim or cross claim, a judgment which exceeds any claim, counterclaim, judgment or award of the other Party.

12.16 No Merger. None of the provisions of this Phase III Development Agreement shall be merged by reason of the execution and

delivery of the covenant deed by the City to the Developer and neither such deed nor the conveyance shall be deemed to affect, alter or impair the provisions of this Phase III Development Agreement.

12.17 Joint Drafting. This Phase III Development Agreement has been negotiated by the Parties and each Party has joined in and contributed to the drafting of this Phase III Development Agreement. Accordingly, there shall be no presumption favoring or burdening any one or more of the Parties hereto based upon draftsmanship.

12.18 Counterparts. This Phase III Development Agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same instrument.

12.19 Property Taxes. The parties acknowledge and agree that no provision contained herein shall be interpreted to limit, restrict, impair or release any right of Developer or other land owner to challenge, protest, object to or dispute any and all property taxes applicable to any portion of the Development Parcel, the New Projects Site, the Additional Development Site, or any other Parcel or property referenced herein. In addition, the parties further acknowledge and agree that nothing contained herein shall be interpreted to limit, restrict, impair or diminish the obligations of Developer to pay the Annual Special Assessments.

IN WITNESS WHEREOF, the City and the Developer by and through their duly authorized representatives, have executed this Development Agreement as of the day and year first above written.

In the Presence of:

**THE CITY OF PORTAGE,  
a Municipal Corporation**

\_\_\_\_\_  
\_\_\_\_\_

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

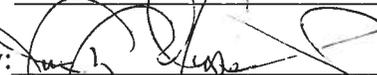
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**H & G 2, LLC  
a Michigan limited liability  
company**

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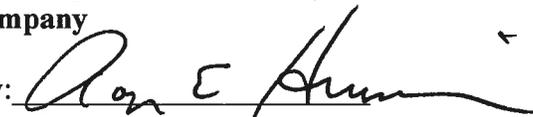
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By: 

Its: Member

**TRADE CENTRE HOLDINGS,  
LLC  
a Michigan limited liability  
company**

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\_\_\_\_\_

By: 

Its: Member

By: 

Its: Member

Appendix A

LEGAL DESCRIPTION OF "DEVELOPMENT PARCEL"  
(which is described as the entire 32 acres, including the former DeHaan St.)

PART OF THE NORTH HALF OF SECTION 4, TO 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS; COMMENCING AT THE EAST QUARTER POST OF SAID SECTION 4; THENCE NORTH 00 DEGREES 10' 32" EAST (RECORDED AS NORTH) ON THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 650.43 FEET (RECORDED AS 650.5 FEET) TO THE NORTH LINE OF THE ASSESSOR'S PLAT OF DEBOER HOMESTEAD ACRES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 14 OF PLATS, PAGE 06, KALAMAZOO COUNTY RECORDS, SAID NORTH LINE BEING PREVIOUSLY REFERRED TO AS THE NORTH LINE OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 4; THENCE NORTH 89 DEGREES 55' 00" WEST ON SAID NORTH PLAT LINE AND ON AN EXTENSION OF SAID NORTH PLAT LINE 1,051.22 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED, SAID POINT OF BEGINNING BEING 160.00 FEET NORTH 89 DEGREES 55' 00" WEST OF THE NORTHWEST CORNER OF LOT 68, SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 68 A DISTANCE OF 132.00 FEET; THENCE SOUTH 89 DEGREES 55' 00" EAST ON AN EXTENSION OF THE NORTH LINE OF DE HAAN DRIVE 160.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 68; THENCE SOUTH 66.00 FEET TO THE NORTHWEST CORNER OF LOT 69, SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH 89 DEGREES 55' 00" EAST ON THE SOUTH LINE OF SAID DE HAAN DRIVE 168.00 FEET TO A POINT THAT IS 30.00 FEET NORTH 89 DEGREES 55' 00" WEST OF THE NORTHEAST CORNER OF LOT 71, SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH 45.00 FEET TO THE NORTHERLY LIMITED ACCESS RIGHT-OF-WAY LINE OF HIGHWAY 1-94; THENCE SOUTH 24 DEGREES 25' 45" WEST ON SAID NORTHERLY RIGHT-OF-WAY LINE 139.40 FEET TO A POINT ON THE SOUTH LINE OF LOT 86, SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH 66 DEGREES 52' 47" WEST ON SAID NORTHERLY RIGHT-OF-WAY LINE 48.22 FEET TO THE NORTHEAST CORNER OF LOT 108, SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH ON THE EAST LINE OF SAID LOT 108 AND ON SAID NORTHERLY RIGHT-OF-WAY LINE 40.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 108; THENCE NORTH 89 DEGREES 55' 00" WEST ON THE SOUTH LINE OF SAID LOT 108 AND ON SAID NORTHERLY RIGHT-OF-WAY LINE 29.97 FEET (RECORDED AS 62.87 FEET); THENCE SOUTH 58 DEGREES 28' 33" WEST (RECORDED AS SOUTH 57 DEGREES 48' 12" WEST) ON SAID NORTHERLY RIGHT-OF-WAY LINE 158.85 FEET (RECORDED AS 119.84 FEET); THENCE SOUTH 72 DEGREES 31' 24" WEST (RECORDED AS SOUTH 71 DEGREES 51' 03" WEST) ON SAID NORTHERLY RIGHT-OF-WAY LINE 163.48 FEET; THENCE NORTH 88 DEGREES 37' 19" WEST (RECORDED AS NORTH 89 DEGREES 17' 40" WEST) ON SAID NORTHERLY RIGHT-OF-WAY LINE 250.80 FEET; THENCE NORTH 84 DEGREES 02' 53" WEST (RECORDED AS NORTH 84 DEGREES 43' 14" WEST) ON SAID NORTHERLY RIGHT-OF-WAY LINE 1,241.35 FEET TO A POINT ON THE SOUTH LINE OF LOT 98, SAID DEBOER HOMESTEAD ACRES; THENCE NORTH 89 DEGREES 55' 00" WEST ON THE SOUTH LINE OF SAID LOT 98 A DISTANCE OF 21.53 FEET TO THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION 4, SAID POINT BEING 218.22 FEET NORTH 00 DEGREES 07' 48" EAST OF THE CENTER OF SAID SECTION 4; THENCE NORTH 00 DEGREES 07' 48" EAST (RECORDED AS NORTH 00 DEGREES 36' 44" WEST) ON SAID QUARTER LINE 2.21 FEET TO THE NORTHERLY LIMITED ACCESS, RIGHT-OF-WAY LINE OF HIGHWAY 1-94; THENCE NORTH 34 DEGREES 02' 53" WEST (RECORDED AS NORTH 84 DEGREES 25' 45" WEST) ON SAID NORTHERLY RIGHT-OF-WAY LINE 327.19 FEET (RECORDED AS 327.73 FEET); THENCE NORTHWESTERLY 634.55 FEET ON AN 11,609.20 FOOT RADIUS CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 85 DEGREES 36' 50" WEST 634.48 FEET (RECORDED AS NORTH 85 DEGREES 59' 42" WEST 633.33 FEET) TO A POINT ON THE EAST LINE OF BALA CYNWYD NO.2, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 32 OF PLATS, PAGE 39, KALAMAZOO COUNTY RECORDS; THENCE NORTH 16 DEGREES 37' 32" EAST (RECORDED AS NORTH 16 DEGREES 05' 42" EAST AND NORTH 16 DEGREES 10' EAST) ON THE EAST LINE OF SAID BALA CYNWYD NO.2 A DISTANCE OF 638.16 FEET (RECORDED AS 639.77 FEET) TO A POINT DESCRIBED AS THE NORTHEAST CORNER OF BALA CYNWYD NO.2; THENCE SOUTH 63 DEGREES 47' 55" EAST ON A MEANDER LINE 200.00 FEET TO A MEANDER CORNER; THENCE SOUTH 80 DEGREES 54' 06" EAST 604.77 FEET TO A MEANDER CORNER ON THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION 4; THENCE SOUTH 00 DEGREES 07' 48" WEST (RECORDED AS SOUTH 00 DEGREES 18' 00" EAST) ON SAID QUARTER LINE 83.25 FEET; THENCE SOUTH 89 DEGREES 55' 00" EAST ON THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID DEBOER HOMESTEAD ACRES 1,601.25 FEET TO THE POINT OF BEGINNING, ALSO ALL THAT LAND LYING NORTH OF SAID MEANDER LINE, SOUTH OF THE CENTERLINE OF THE WEST BRANCH OF PORTAGE CREEK, WEST OF THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION 4 AND

EAST OF THE NORTHERLY EXTENSION OF THE EAST LINE OF SAID BALA CYNWYD NO.2 CONTAINING  
32 38 ACRES MORE OR LESS.

THIS SURVEY WAS PERFORMED WITH AN ERROR OF CLOSURE NO GREATER THAN 1 IN 10,000.

ASSUMED THE NORTH LINE OF SAID DEBOER HOMESTEAD ACRES TO BEAR NORTH 89 DEGREES 55' 00"  
WEST PER SAID RECORDED PLAT.



Appendix B

LEGAL DESCRIPTION OF THE PROPERTY

Land situated in the City of Portage, County of Kalamazoo and State of Michigan, described as follows, to wit:

PART OF THE NORTHEAST QUARTER OF SECTION 4, TOWN 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE EAST QUARTER-POST OF SAID SECTION 4; THENCE NORTH 00 DEGREES 10' 32" EAST ON THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 650.43 FEET TO THE NORTH LINE OF THE ASSESSOR'S PLAT OF DEBOER HOMESTEAD ACRES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 14 OF PLATS, PAGE 6, KALAMAZOO COUNTY RECORDS, SAID NORTH LINE BEING PREVIOUSLY REFERRED TO AS THE NORTH LINE OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 4; THENCE NORTH 89 DEGREES 55' 00" WEST ON SAID NORTH PLAT LINE AND ON AN EXTENSION OF SAID NORTH PLAT LINE 1,051.22 FEET TO A POINT BEING 160.00 FEET NORTH 89 DEGREES 55' 00" WEST OF THE NORTHWEST CORNER OF LOT 68, SAID DEBOER HOMESTEAD ACRES, SAID POINT ALSO BEING THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 68 A DISTANCE OF 132.00 FEET; THENCE SOUTH 89 DEGREES 55' 00" EAST ON AN EXTENSION OF THE NORTH LINE OF DE HAAN DRIVE 160.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 68; THENCE SOUTH 66.00 FEET TO THE NORTHWEST CORNER OF LOT 69, SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH 89 DEGREES 55' 00" EAST ON THE SOUTH LINE OF SAID DE HAAN DRIVE 22.82 FEET; THENCE SOUTH 15 DEGREES 05' 00" WEST 74.17 FEET, THENCE SOUTHWESTERLY 92.45 FEET ON A 124.00 FOOT RADIUS CURVE TO THE RIGHT WHOSE CHORD BEARS SOUTH 36 DEGREES 26' 36" WEST 90.33 FEET; THENCE SOUTH 57 DEGREES 48' 12" WEST 163.83 FEET; THENCE SOUTHWESTERLY 243.48 FEET ON A 424.00 FOOT RADIUS CURVE TO THE RIGHT WHOSE CHORD BEARS SOUTH 74 DEGREES 18' 16" WEST 240.15 FEET; THENCE NORTH 89 DEGREES 17' 40" WEST 181.89 FEET; THENCE NORTH 84 DEGREES 43' 14" WEST 688.21 FEET; THENCE NORTH 05 DEGREES 51' 51" EAST 433.28 FEET TO THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID DEBOER HOMESTEAD ACRES; THENCE SOUTH 89 DEGREES 55' 00" EAST ON SAID NORTH LINE EXTENDED 982.81 FEET TO THE POINT OF BEGINNING.

Also:

The South ½ of the now vacated DeHaan Drive which lies between the East line of Lot 67 of the Assessor's Plat of DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated); and the West line of Lot 68 of said DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated).

Also:

Land situated in the City of Portage, County of Kalamazoo and State of Michigan, described as follows, to wit:

Lot 67, Assessor's Plat of DeBoer Homestead Acres, according to the Plat thereof as recorded in Liber 14 of Plats on Page 6, Kalamazoo County Records. Lot 68 of Assessor's Plat of DeBoer Homestead Acres, according to the Plat thereof as recorded in Liber 14 of Plats on Page 6, Kalamazoo County Records. Beginning at a point on the Southwest corner of Lot 68 of Assessor's Plat of DeBoer Homestead Acres, thence West 160 feet along the extension of the Southerly line of Lot 68; thence North 132 feet on a line parallel with the Westerly line of Lot 68, thence East 160 feet to the Northwest corner of Lot 68, thence South along the Westerly line of Lot 68, 132 feet to the place of beginning.

Also:

The North ½ of the now vacated DeHaan Drive which lies between the East line of Lot 67 of the Assessor's Plat of DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated); and the West line of Lot 68 of said DeBoer Homestead Acres and its Southerly extension to the South line of said DeHaan Drive (vacated).

Also:

Assessors Plat of Deboer Homestead Acres Lot 64 (226 Trade Centre Way)

Also:

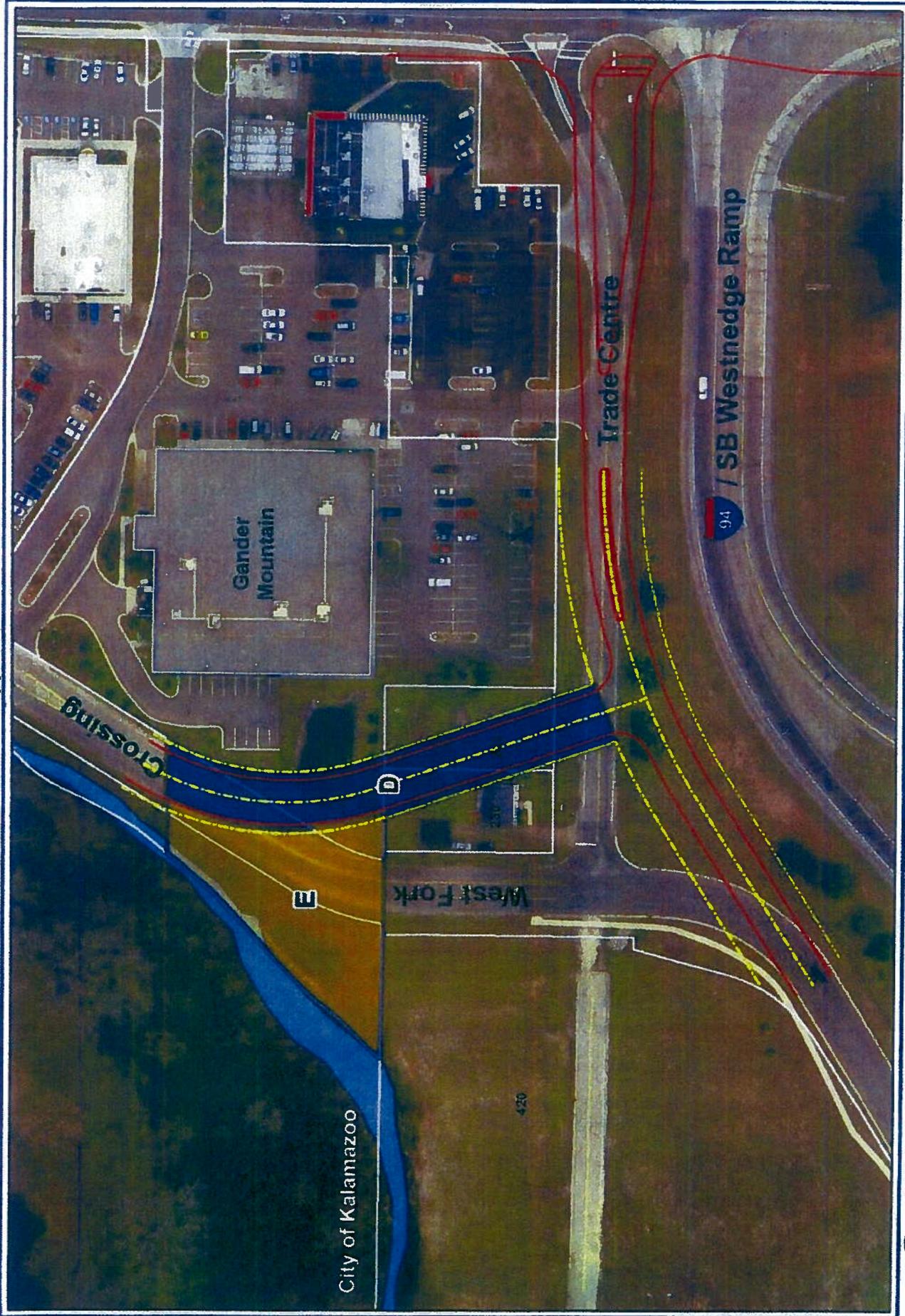
Assessors Plat of Deboer Homestead Acres Lot 65 (230 Trade Centre Way)



Vicinity Map 



Appendix B-2



City of Kalamazoo

420



1 inch = 100 feet

Article 2

Parcels, Transfers & Easements Map

Parcel "D"  
Parcel "E"

sh: R:\GIS\ADMIN\Projects\DEPT SICOM DEV\GDA-WESTNEDGE\Map\Appendix B-2\upl\map DL.mxd

Appendix B-3



1 inch = 100 feet

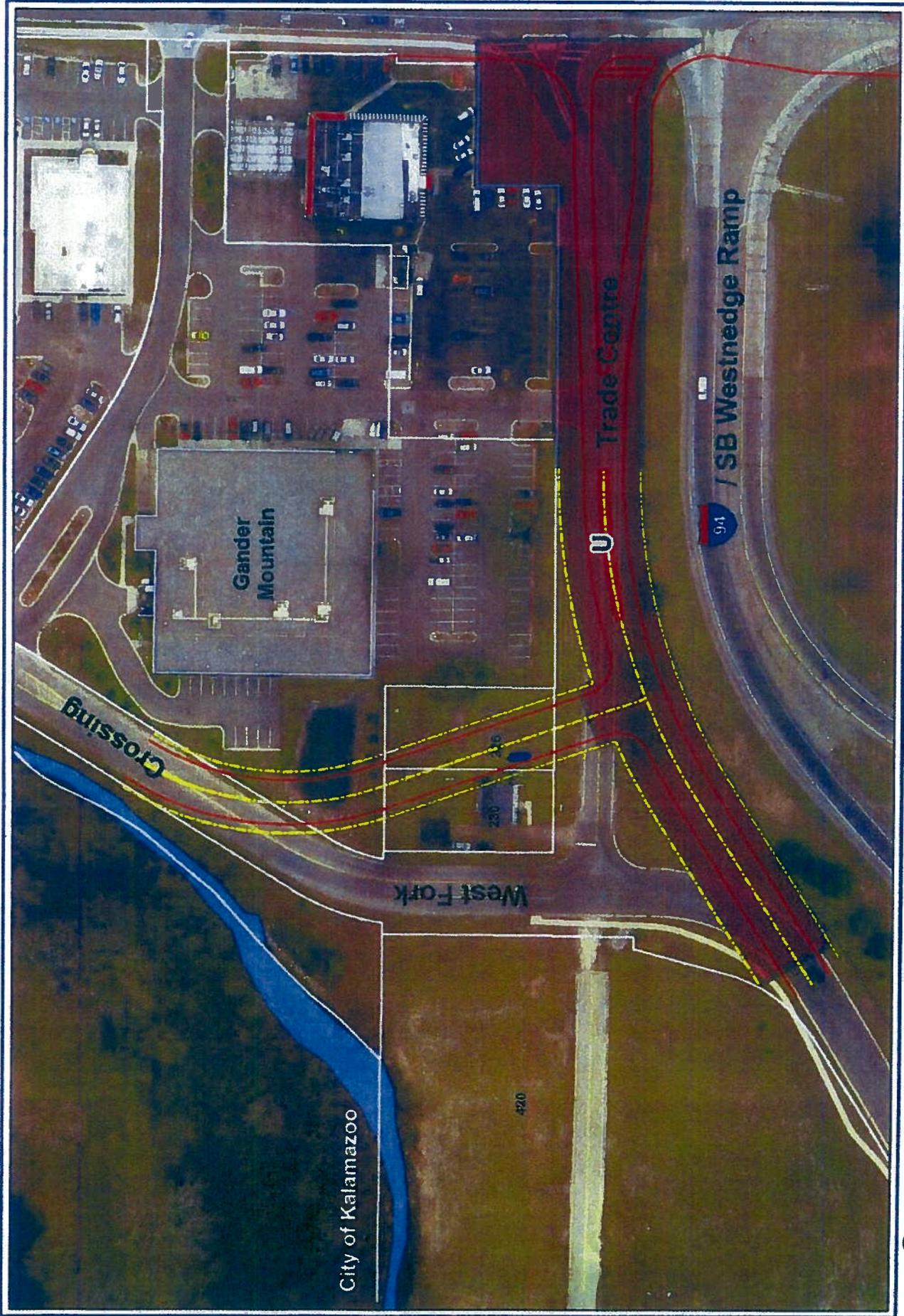
SR: R065A0M18kurfpreyosedePT8CC - DEV0DA-WESTNEDGEDEK planarapentir 1a-3- eplivem QP18 T 1msl

Article 2

Parcels, Transfers & Easements Map

	Parcel "Q"		Parcel "S"
	Parcel "R"		Parcel "T"

Appendix B-4



City of Kalamazoo

West Fork

Gander Mountain

Trade Centre

94 / SB Westnedge Ramp

Crossing

U



1 inch = 100 feet

Article 2

Parcels, Transfers & Easements Map



Parcel "U"

Map: R:\CUBA\GIS\Projects\05PTACOM\DEVELOP\WESTFORK\Map\_050809.mxd, photo: ppendet, b-4 - updates: 07/11/2011



# Public Facilities Improvement Map

1 inch = 100 feet



Path: R:\GISADMIN\projects\DEPTSCOM\_DEVIDD-A-WESTNEDGE\leda\plan\app\appendix-c.mxd

Appendix D

DESCRIPTION OF  
PUBLIC RIGHT OF WAY IMPROVEMENTS

<u>Improvements</u>	<u>Estimated Time Required</u>	<u>Estimated Cost for Completion</u>
<p>1. Agreement to Purchase. The City agrees to purchase 8400 sq. ft. from the Developer to be used for public roadway purposes. Closing on the sale shall occur at a mutually agreeable time but not later than FY2011. At closing Developer agrees to provide City a Special Warranty Deed Conveying title to such property, a survey showing the location of such property and an owner's policy of title insurance in the amount of the purchase price of such property.</p>	FY 2010/11	\$191,623
<p>2. Trade Centre Way/West Fork Crossing/South Westnedge Avenue</p>	FY 2011	\$1,148,377
<p>a) Trade Centre Way will be realigned and improved from South Westnedge Avenue west 900 feet to just west of West Fork Crossing. The realignment will include curb and gutter, storm sewer, utility relocation, boulevards, first class roadside landscaping, lighting, fencing and related construction.</p>		
<p>b) West Fork Crossing will be realigned and improved to intersect with realigned Trade Centre Way easterly of the existing street intersection. The realignment and improvement will match existing West Fork Crossing street cross section characteristics. Private storm drainage work will be relocated to adjacent property.</p>		
<p>c) The Trade Centre Way and West Fork Crossing intersection will be reconstructed incorporating additional right-of-way from the State of Michigan. The intersection improvement will match existing Trade Centre Way and West Fork Crossing cross section characteristics. Excess public street right-of-way not necessary for reconstruction of Trade Centre Way and West Fork Crossing shall be vacated or disposed of by the City. Former State of Michigan right-of-way will be retained by the city for transportation purposes.</p>		
<p>d) A portion of South Westnedge Avenue south of Trade Centre Way will be reconstructed to facilitate left turn-in and right turn-in movements from South Westnedge Avenue to Trade Centre Way and right turn-out movements from Trade Centre Way to South Westnedge Avenue. The improvements will match existing South Westnedge Avenue cross section characteristics.</p>		

Note: The Cost to be Paid by City of Portage table in the Appendix of this 2011 Plan Amendment is related to the Phase III Development Agreement with Trade Centre Holdings, LLC and H&G, LLC and includes a planned land purchase and Trade Centre Way/West Fork Crossing/South Westnedge Avenue improvements contemplated to facilitate private investment to be accomplished by Trade Centre Holdings, LLC and H&G, LLC.

**Appendix E**

**CONSENT RESOLUTION / INCUMBENCY CERTIFICATE**

Appendix F

SPECIAL ASSESSMENT ROLL