

STATE OF MICHIGAN
IN THE SUPREME COURT

* * * * *

PETERSEN FINANCIAL LLC,
Plaintiff-Appellee,
-vs-

Supreme Court No. 163072
Court of Appeals No. 350208
Kent County Circuit No. 16-11820-CH

CITY OF KENTWOOD,
Defendant-Appellant,

and

KENT COUNTY TREASURER,
Defendant.

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**APPENDIX TO
RESPONSE TO DEFENDANT/APPELLANT CITY OF KENTWOOD'S
SUPPLEMENTAL BRIEF ON APPEAL**

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

* * * * *

PETERSEN FINANCIAL LLC,
Plaintiff/Appellant,

-vs-

CITY OF KENTWOOD and
KENT COUNTY TREASURER,
Defendants/Appellees.

Court of Appeals Docket No. 339399
Kent County Circuit Court
Case No. 16-11820-CH

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Appellees assert that the Trial Court was correct in dismissing the case for lack of jurisdiction. However, Appellee's brief makes several statements which contradict their own position. A couple of Appellees' Admissions and Statement of Facts deserve review. On pages 3 and 4, Appellees make the following statements:

Because Ravines Capital Management and Shaffer became delinquent on base taxes and the special assessments owing on the Subject Property, **it was forfeited**, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer. Exhibit A, Complaint ¶ 22; Exhibit A-2, Notice of Judgment Foreclosure. Then, in June 2015, the County and City **entered into an agreement** entitled Amendment to Voluntary Special Assessment/Development Agreement, which specified that the Subject Property, now owned by the Kent County Treasurer, remained subject to the Voluntary Special Assessment/Development Agreement. Exhibit A-9, Amendment to Voluntary Special Assessment/Development Agreement. In the Amendment, in order to make the subject property more attractive to a potential buyer, the City, citing Section 2.(e) of the Voluntary Special Assessment/Development Agreement, agreed to extend into ten installments a balloon payment otherwise due on September 7, 2015. *Id.* The Amendment specified that it was not a reconfirmation of the District's special assessment roll, but simply the extension of the term of the pre-existing roll. *Id.*

(Appellees' Brief pages 3-4) (emphasis added).

... However, under paragraph 2.(e) of the Terms and Conditions section of the Voluntary Special Assessment/Development Agreement, which addressed terms for the special assessment, **the agreement** expressly reserved to the City the authority, through resolution, to establish final terms for the special assessment district "in its discretion" Exhibit A-6, Voluntary Special Assessment/Development Agreement, p 7.3 On July 15 2014, before the final installment was due on the special assessment, the City Commission adopted Resolution No. 50-14, extending the term of the special assessment for the Subject Property by an additional one year (or until September 7, 2015). Exhibit B, Resolution 50-14.

(Appellees' Brief pages 3)¹(emphasis added).

Notably, the resolution makes no reference to any statute allowing the contents contained in the resolution. The Appellees then go on to cite affirmatively from the ruling of the Trial Court:

The circuit court also rejected Petersen Financial's assertion that its suit did not seek a "direct review" of the City's final decision because the assessments were approved and

¹ As asserted in Appellant's Brief, this admission establishes a Resolution 50-14's foundation, or authority, was derived from contract and not from any statute relating to levying of special assessments. The same acknowledgement is made in the actual resolution itself: "The Agreement, at Section 2(e), provides, in part, that the "term of years" for the District's special assessment and similar matters are to be determined by resolution of the City Commission "in its discretion." "Resolution No. 50-14, Recitation I."

implemented years before Petersen Financial bought the Subject Property. Exhibit D, 7/7/17 Opinion, p 4. The court explained, “[t]he fact that Plaintiff had no interest in the property when the special assessments were imposed has no bearing on the MTT’s jurisdiction.” *Id.*, p 5.

The circuit court next ruled that under the General Property Tax Act, a foreclosure extinguishes all liens, including liens for unpaid taxes or special assessments, except future installments of special assessments. As the court observed, “[t]he Defendants have stated, both on the record and in brief form, that they are only pursuing collection of the Voluntary Special Assessment/Development Agreement installments referenced in Plaintiffs Count II. **This assessment was amended after the foreclosure.** Moreover, it addresses future installments that will be collected until 2024. Therefore, the foreclosure sale does not operate to extinguish the installments.”

Id. (emphasis added).

A. THE APPELLEES’ POSITION DOES NOT JIBE WITH THE DECISION OF THE TRIAL COURT.

Of course, this conclusion by the Circuit Court is contrary to the Appellees’ current position that the assessment was amended before the foreclosure. The two approaches require a different analysis and the differences have significant consequences.

1. If the assessment was amended after the foreclosure, as apparently believed by the Trial Court, it was clearly extinguished by the GPTA -- the foreclosure having occurred in March of 2015 and the actual asserted assessment having expired on September 7, 2014. The Trial Court’s approach missed a very critical part of its analysis. The assessment was extinguished before it was attempted to be amended. Even if the payment period could be amended post-foreclosure, the amount was still zero. Notably, the Appellees did not appeal this determination by the Trial Court.
2. On the other hand, the Appellees contention that the VSADA was amended before the tax foreclosure requires a different analysis. The initial question must be “Under what authority was the obligation amended?” That question of course is answered by the very admissions made by the Appellees and contained in the Appellee’s documents -- it was amended pursuant to the Voluntary Special Assessment/Development Agreement. That

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Kentwood passed a resolution is of no consequence -- since the City routinely passes resolutions approving contracts and relationships. But special assessments are different. There has to be a public hearing. There has to be publication, there has to be a new assessment roll. The very resolution referenced by the Appellees disclaims all of those. The Appellees failed to identify any statutory authority for their conclusion that this was an assessment when the very documentation says it is being accomplished pursuant to reserved rights under an agreement.

In what appears to be a weak effort to establish authority, the Appellees have attached a recently printed (March 13, 2018) exhibit asserting Kentwood ordinance is applicable to special assessments (see Appellees' Exhibit L).² A quick internet search discloses that the iteration attached to Appellees brief may not reflect the ordinance in existence in 2004.³ While citing Chapter 50 of Kentwood's Ordinances, the Appellees did not show how their 2014 and 2015 actions fall within the powers of City of Kentwood. Moreover, it fails to deal with any of the following requirements:

1. "...Such roll shall have the date of confirmation endorsed thereon and shall, from that date, be final and conclusive for the purpose of the improvement to which it applies, subject only to adjustment to conform to the actual cost of the improvement, as provided in section 50-14." (Appellees' Exhibit L, Section 50-10.) Section 50-15 requires ordinances for any additional steps or procedures if the current ordinances are insufficient. Section 50-16 allows reassessment, but only if following the entire procedure over again: "...all proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment."

The Appellees believe that the language "shall, from that date, be final and conclusive" really

² Appellees do not disclose where this document constitutes part of the Trial Court record and Appellant has been unable to locate any such disclosure.

³ A review of the resources available at "Municode" (Kentwood's designated source) only go back to September 28, 2011, but it is noted that there are already some differences between the 2011 version (see Exhibit A) and the version attached to Appellee's brief. But it is clear that both the 2011 version and the current version require(d) public hearings. While briefly referring to the ordinance, Appellees do not then show how the 2014 and 2015 actions were authorized by those ordinances. Rather, Appellees' arguments return to referencing the authority to amend reserved in the VSADA contract.

means something different to it that it is final and conclusive unless modified by contract or resolution later.

B. THE CASE BEFORE THE COURT WAS NOT A “PROCEEDING FOR DIRECT REVIEW OF A FINAL DECISION OF AN AGENCY RELATING TO SPECIAL ASSESSMENTS UNDER THE PROPERTY TAX LAWS OF THIS STATE.”

While Appellees admit that Michigan’s Circuit Courts are courts of general jurisdiction (Appellee’s Brief page 14), they then go on to cite the language of MCL 205.731 while ignoring the recited terms in their arguments. First of all, the Appellees ignore the first and last qualifying phrases of Subsection A. The obligation at issue, or at least the extension at issue, is not one “under the property tax laws of the state.” Rather, it was a decision made pursuant to contract. The agreement itself says so. The resolution itself says so. Despite ample opportunity, the Appellees did not identify at the Trial Court, and now at the Court of Appeals, any statutory authority for the one year extension. Rather, all of the documentations point to the fact that Kentwood drew on a contractual right. Appellees do not deal with the fact that the City recorded the original VSADA when state law does not provide for the recording of an assessment. (See *Attorney General Opinion #7110* (2002)). The City in recording the VSADA essentially recorded a mortgage – a contract. Thereafter, when amending the VSADA, Kentwood did so on contractual basis – piece meal by property and not as a modification of the entire purported assessment district – as would be the case if the VSADA was a true special assessment.

Moreover, there is a subtle statement made by the Appellees on page 17 of their brief that exposes a significant weakness of their position. The Appellees note that Kentwood meets the definition of an “agency” -- citing to *Edros Corp v City of Port Huron*, 78 Mich App 273; 259 NW2d 456 (1977) in support of its proposition without noting the distinction of that case versus the one in the case at bar. At first blush, the proposition seems appropriate. In *Edros*, the

question was whether the city in proposing a special assessment district was an “agency”. The Court noted that it was -- because it was subject to review by the Tax Tribunal. And that is the critical part of the definition -- is that the decision must be “...subject to review under the jurisdiction of the Tribunal...”. MCL 205.703. Yet, in another similar case (Kent County Circuit Court, Case No. 15-11405-CH), Kentwood has taken the position that the actions taken in 2014 and 2015 were not subject to review at the Tax Tribunal because the Tax Tribunal’s jurisdiction expired in 2004. Appellees have failed to identify in any fashion how the 2014 and 2015 determinations are subject to review under the jurisdiction of the Tax Tribunal. Indeed, if this Court looks at the strategies of the Defendants, they have painstakingly undertaken efforts to prevent any such opportunity for Tax Tribunal review from having occurred. In both the resolution and the amended VSADA, Kentwood inserted the terms “without re-confirming the District’s special assessment roll, City Commission has determined that extending the term of the special assessment for one year...”⁴ Therefore, Kentwood does not meet the definition of agency for purposes of this case -- because the purported extension was not subject to review by the Tax Tribunal.

C. APPELLEES’ EFFORTS TO BOOTSTRAP A CONTRACTUAL CLAIM INTO AN ASSESSMENT ARE UNAVAILING.

On page 21 of their brief, Appellees assert that the obligation at issue was not extinguished because it was a future installment of a special assessment and therefore fell within the exception to MCL 211.78(5)(C). Assuming for argument purposes that the 2004 actions

⁴ It is not insignificant to this issue that the purported “Roll A” of Resolution 50-14 continues to indicate that the term of the special assessment was 10 years: “Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.” It is also notable that the provisions for deferred installments was not changed “Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the “Agreement”).” In any event, whether the original assessment arose under the property tax laws of this state or not, clearly the amendment of the VSADA arose under contract.

constituted an assessment and not a contact, it is clear that the term of the assessment ended no later than September 7, 2014 -- in other words all installments were past due on the date of the tax foreclosure.⁵ In addition to the issues identified in the footnote, Appellees position is precluded by the admissions contained on page 3 of their brief:

Because Ravines Capital Management and Shaffer became delinquent on base taxes and the special assessments owing on the Subject Property, it was forfeited, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer...

Yes, the special assessments were delinquent (i.e., not future installments), the property was forfeited, and absolute title was vested in the County Treasurer. By the time Appellees get to page 21 of their brief, they have apparently forgotten what they said on page 3. Thus, Petersen believes that MCL 211.78(5)(e) is applicable. It extinguished the obligation. In June of 2015, the Appellees recognized that and attempted to subject the property to the obligation pursuant to contract. The difficulty is that the GPTA (MCL 211.78m(2)) requires the County Treasurer to sell the interest that the County Treasurer received (absolute fee title) and does not permit contractual obligations to be asserted against the property -- no matter who the contractual obligation is in favor of.⁶

On page 22 of its brief, Appellees chastised the use of testimony from Thomas Chase, the City's Finance Director ostensibly for the fact that the testimony was given in another case. It is nonetheless an admission of the City of Kentwood and admissible in this case under the Michigan Rules of Evidence. More importantly, it was presented to the Trial Court.

⁵ The Trial Court's premature decision precluded Appellant from developing additional facts showing that principal installments had been due prior to September 7, 2014. The obligation documents had triggered events prior to September 7, 2014, which triggered earlier payment. The "trigger" events are stated in the documents, but include when the subject properties were rezoned to PUD. That rezoning occurred in 2004.

Additionally, the documents establish that future payments were deferred only so long as the interest payments were made. Default occurred in 2011, thereby triggering payment of the entire principal.

⁶ In fact such efforts would be against the public policy of the GPTA which was attempting to maximize the amount that would be received at tax foreclosure sales for the benefit of the County's coffers.

Interestingly, while citing to a number of decisions involving valid Tax Tribunal jurisdiction, the Appellees failed to see something very common among those decisions. Almost all of the decisions involve issues having to do with the areas that the Tax Tribunal is uniquely competent to handle and, none of the cases involve a determination of the effect of forfeiture on existing assessments or contracts.

For example, *Richland Tp v State Tax Com'n*, 210 Mich App 328, 336; 533 NW2d 369 (1995) involved a factual determination of the accuracy of the assessment for general property taxes and the ability of the State Tax Commission to file an action. There was nothing about special assessments, contracts, or tax foreclosures involved in this case.

Michigan's Adventure, Inc v Dalton Tp, 287 Mich App 151; 782 NW2d 806 (2010) was really a question as to whether a taxpayer's property received any benefit and thus qualified for a special assessment district. It truly addressed what traditionally is known as the expertise of the Tax Tribunal. But a cautionary statement is here appropriate. The Court of Appeals had a second look at the matter in 2010 and it is clear from that decision that review of the authority for the asserted "assessment" is outcome determinative. See *Michigan's Adventure, Inc v Dalton Twp*, 290 Mich App 328; 802 NW2d 353 (2010).

Appellees then cite the unpublished case of *Kanefski v Alessi*, unpublished decision of the Michigan Court of Appeals dated July 23, 2009 (Case No 284258) (Exhibit E to Appellees' Brief) -- another case that at its heart had the challenge that the taxpayer's property was not seeing a benefit and therefore a special assessment district was inappropriate. As noted in many cases, this is the type of factual resolution that the Tax Tribunal is set up to determine:

"... Significantly, the Tax Tribunal's expertise "can be seen to relate primarily to questions concerning the factual underpinnings of taxes," thus making it suited to evaluate "whether the [special] assessments are levied according to the benefits received" and "other questions concerning the lawfulness of challenged special assessments," but

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not how any funds so collected may be used. *Romulus City Treasurer v. Wayne Co. Drain Cormier*, 413 Mich. 728, 37- 739, 322 N.W.2d 152 (1982).

Kanefski, *3.

Appellees also cite *Walton v Whitewater Tp*, unpublished decision of the Michigan Court of Appeals dated October 16, 2008 (Case No. 274969) (Exhibit F to Appellees' Brief). This case was a challenge to the validity of an assessment and disproportionality – actions typically seen as within the expertise of the Tax Tribunal. But the *Walton* court noted:

... Further, the Tax Tribunal does not have exclusive jurisdiction to resolve common-law tort or contract claims. *Highland—Howell Dev. Co., LLC v. Marion* 711,p., 469 Mich. 673, 678, 677 N.W.2d 810 (2004).

Walton, *2.

Appellees then cite *Rayment v Davison Tp*, unpublished decision of the Michigan Court of Appeals dated December 4, 2003 (Case No. 239880) (Exhibit G to Appellees' Brief), asserting that the case is similar to Petersen Financial's contention that the VSADA was extinguished by foreclosure. Despite an exhaustive search of that case, Appellant was unable to find any reference to foreclosure or the GPTA. However, the Court in *Rayment* did indicate that individual property owners could contest legality of tax bills they receive and that the Legislature intended such matters to be heard in the Tax Tribunal. That may be the closest that the case comes to the instant situation -- except that Petersen is attempting to clear his title not of tax bills, but of a recorded VSADA. The *Rayment* court did however pick up on the same argument that Petersen makes in this case – that an analysis must be made of whether the assessments were made under “property tax laws” or something else (in the *Rayment* case a claim that it was under police powers)⁷. In the instant case, the 2014 and 2015 actions were clearly not under “property tax laws”. Page limitations prevent a detailed response to each other cited case, but they all

⁷ “... “Taxes levied (or exemptions created), under the state's police powers do not fall within the realm of property tax laws and are thus not within the jurisdiction of the Tax Tribunal.” *Beattie v East China Charter Twp*, 157 Mich App 27, 35; 403 NW2d 490 (1987).” *Rayment*, *2.

address what are clearly direct contemporaneous reviews falling within the Tax Tribunal's expertise.

D. DUE PROCESS.

Appellees cite *Button Realty, LLC v Charter Tp of Commerce*, No. 297863, 2011 WL 4424413, (Mich Ct App September 22, 2011) (unpublished) for the proposition that due process would not be implicated simply because there was a present lack of jurisdiction in the Tax Tribunal. Again Appellees missed the point. They contend that the open period for jurisdiction in the Tax Tribunal expired in 2004. Yet, Appellees undertook actions in 2014 and 2015 affecting Petersen Financial's property. In short, the decisions made in 2014 and 2015 were never subjected to the Tax Tribunal -- and therefore the Circuit Court's dismissal creates a denial of due process. Moreover, Appellees missed the point that by their own construction, the 2014 and 2015 decisions made by Kentwood no longer fit within the definition of "agency" as that definition is mandated for Tax Tribunal jurisdiction. That is simply because those decisions were never reviewable by the Tax Tribunal. And Appellees similarly gloss over the impact of *Ashley Ann Arbor, LLC v Pittsfield Charter Tp*, 299 Mich App 138; 829 NW2d 299 (2012) which identifies the necessity to identify the basis by which a municipality claims authority for undertaking the action. Appellees simply wish for this Court to accept its premise that its 2014 and 2015 actions were undertaken pursuant to property tax laws of the state. *Ashley Ann Arbor* stands for the proposition that something that looks like an assessment but derives its authority from the drain code did not meet the definition. Similarly, something that looks like an assessment but is based upon contractual authority⁸ does not meet the definition.

⁸ Appellees assert that Petersen's brief made false assertions that no public hearings were held. (Appellees' Brief, page 2, footnote 2). However, Appellees provided no evidence of public hearings at the Trial Court or now at the Court of Appeals. Rather, they accuse Petersen of making a false statement apparently based upon the fact that a hearing was not necessary since the owner "agreed to waive notice and hearing". If anything, the footnote confirms

E. THE SLANDER CLAIM IS NOT SUBJECT TO IMMUNITY.

Appellee attempts to distinguish the County Treasurer's actions as one that is authorized by the General Property Tax Act and therefore subject to immunity protection. Appellees correctly cite MCL 211.78 for authorizing the Treasurer to sell all properties forfeited to the Treasurer. That is not the asserted issue. As admitted on page 3 of its brief, the County Treasurer received absolute title to the property. The GPTA not only authorizes, but also requires, the Treasurer to sell the property that it receives pursuant to foreclosure. See MCL 211.78m(2). Nothing within the Act authorizes the Treasurer to decrease the property of the value by agreeing to an encumbrance -- even if it is in the favor of a municipal authority. Appellees brief is notable for either its inability, or unwillingness, to cite any authority for entering into an agreement encumbering the property prior to its being sold at the foreclosure sale.

F. APPELLEES CANNOT PRESENT EVIDENCE ON APPEAL THAT WAS NOT PRESENTED AT THE TRIAL COURT.

Appellees have attached current Kentwood ordinances. In addition to not being the ordinances in place at the relevant times, they also were not presented to the trial court. Evidence not submitted to the trial court cannot be considered on appeal. *Garden City v Holland*, 331 Mich 566, 50 NW2d 158 (1951); *Dora v Lesinski*, 351 Mich 579, 88 NW2d 592 (1958). Appellees have similarly attempted to introduce evidence of a settlement at the Tax Tribunal between Kentwood and Petersen. In addition to being barred from consideration since it was not introduced at the trial court, Appellees' claims are an overt misrepresentation. Petersen is prepared to supplement the record if this Court wishes to address this issue.

that Appellant was correct in its assertion -- in that Kentwood simply thought they could avoid complying with the statute by getting a waiver. But more importantly, Appellees completely gloss over the necessity to have public hearings in 2014 and 2015 -- if Appellees truly believe those actions fall under Kentwood's special assessment ordinances.

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Dated: April 4, 2018

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EXHIBIT A

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Chapter 10 - ANIMALS

FOOTNOTE(S):

⁽²¹⁾ **Cross reference**— Environment, ch. 78.

ARTICLE 1. - IN GENERAL

Sec. 10-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal means a dog, cat, bird, reptile, mammal, fish or any other dumb creature.

Animal control officer means the agent of the county department of animal control and any other person designated for such duties by the Mayor.

Animal shelter means the county animal shelter or another facility designated by the City Commission.

Department means the county health department, division of animal control.

Director means the director of the county health department, division of animal control.

Impounded means any animal received into the custody of any animal shelter pursuant to this chapter or any state statute.

Kennel means any establishment which keeps or boards dogs or cats for profit, whether for breeding, sale, or sporting or grooming purposes.

Owner means, when applied to the proprietorship of an animal, every person having a right of property in the animal, and every person who keeps or harbors the animal or has it in his care, and every person who permits the animal to remain on or about any premises occupied by him. For the purposes of this chapter, any person keeping or harboring any animal for seven consecutive days shall be deemed the owner thereof within the meaning of this chapter.

(Comp. Ords. 1987, §§ 35.321—35.332)

Cross reference— Definitions generally, § 1-2.

EXHIBIT A-1

Sec. 10-2. - Construction.

It is deemed by the City that the ownership of an animal carries with it responsibilities to the City and its residents with regard to the care and custody of such animal. In interpretation and application, the provisions of this chapter shall be construed to impose a primary responsibility for compliance with the provisions of this chapter on the owner of such animal.

(Comp. Ords. 1987, § 35.311)

Sec. 10-3. - Enforcement responsibility.

Responsibility for enforcement of this chapter shall be vested in the county sheriff's department, City police department, state police and the county health department, division of animal control, its agents and employees. Primary responsibility for enforcement is vested in the on duty agent or employee of the county health department, division of animal control.

(Comp. Ords. 1987, § 35.313)

Sec. 10-4. - Care guidelines.

Every animal and pet owner, and every person who owns, conducts, manages or operates any animal establishment for which a license is required shall comply with each of the following conditions:

- (1) Housing facilities for animals shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals.
- (2) All animals shall be supplied with sufficient, good, wholesome food and water as often as the feeding habits of the respective animals require.
- (3) All animals and animal buildings or enclosures shall be maintained in a clean and sanitary condition.
- (4) No animal shall be without attention more than 24 consecutive hours. Whenever an animal is left unattended at a commercial animal facility, the name, address and telephone number of the responsible person shall be posted in a conspicuous place at the front of the property.
- (5) Every reasonable precaution shall be used to ensure that animals are not teased, abused, mistreated, annoyed, tormented or in any manner made to suffer by any person or means.

- (6) No condition shall be maintained or permitted that is or could be injurious to the animals.
- (7) All reasonable precautions shall be taken to protect the public from the animals and animals from the public.
- (8) Every animal establishment shall sufficiently isolate sick animals so as not to endanger the health of other animals.
- (9) Every building or enclosure wherein animals are maintained shall be constructed of easily cleaned materials, and shall be kept in a sanitary condition. The building shall be properly ventilated to prevent drafts and remove odors. Heating and cooling shall be provided as required, according to the physical need of the animals, with sufficient light to allow observation of animals and sanitation.
- (10) The owner or custodian shall take any animal to a veterinarian for examination and treatment if the director or his agent finds it necessary in order to maintain the health of the animal and orders such action.
- (11) All animal rooms, cages, kennels and runs shall be of sufficient size to provide adequate and proper accommodations for the animals kept therein.
- (12) Every violation of an applicable regulation shall be corrected within a reasonable time to be specified by the director.
- (13) Proper shelter and protection from the weather shall be provided at all times. This shall mean a minimum of a roofed, three-sided shelter of suitable size.
- (14) No person shall give an animal any alcoholic beverage, unless prescribed by a veterinarian.
- (15) No person shall allow animals which are natural enemies, temperamentally unsuited or otherwise incompatible to be quartered together or so near each other as to cause injury, fear or torment. If two or more animals are so trained that they can be placed together and do not attack each other or perform or attempt any hostile act to each other, such animals shall be deemed not to be natural enemies.
- (16) No person shall allow the use of any tack, equipment, device, substance or material that is, or could be, injurious or cause unnecessary cruelty to any animal.
- (17)

Working animals shall be given rest periods. Confined or restrained animals shall be given exercise proper for the individual animal under the particular conditions.

- (18) No person shall work, use or rent any animal which is overheated, weakened, exhausted, sick, injured, diseased, lame or otherwise unfit.
- (19) No person shall allow any animal which the animal shelter has suspended from use to be worked or used until such animal is released by the animal shelter.
- (20) No person shall allow any animal to constitute or cause a hazard or be a menace to the health, peace or safety of the community.
- (21) No person who has injured or killed any domestic animal or pet in a motor vehicle shall fail to notify the director or owner of the animal or the City police department.
- (22) No person having a female domestic animal or pet in heat shall permit such animal to be contained in such a fashion that stray animals have access to such animal, or that permits the animal to escape.
- (23) No person shall confine an animal on a chain for more than four hours unless the chain permits movement over at least 30 square feet and allows the animal free access to a suitable shelter.
- (24) No person shall keep any animal in a manner which creates a nuisance because of odor.

(Comp. Ords. 1987, § 35.371)

State law reference— Crimes relating to animals and birds, MCL 750.49 et seq.

Sec. 10-5. - Abuse.

A person shall not:

- (1) Sell, offer for sale, barter or give away as pets, toys, premiums or novelties any baby chickens, ducklings or other fowl under three months of age, or rabbits under two months of age.
- (2) Color, dye, stain or otherwise change the natural color of the fowl or rabbits described in subsection (1) of this section.
- (3) Bring or transport the fowl or rabbits described in subsection (1) of this

section into the City.

- (4) Molest, injure, kill or capture any wild bird, or molest or disturb any wild bird's nest, or the contents thereof, on either public or private property, with the exception of the legal hunting of game birds as permitted under state law.
- (5) Tease, abuse, mistreat, annoy, torment or in any manner make any animal suffer, except in the lawful hunting of such animal, or as otherwise provided under state or federal law.

(Comp. Ords. 1987, § 35.372)

State law reference— Crimes relating to animals and birds, MCL 750.49 et seq.; dying fowl or game, MCL 752.91.

Sec. 10-6. - Defecation on public and private property.

No person owning or having custody or control of an animal shall intentionally, or through failure to exercise due care, permit the animal to defecate on any public or private property, other than the property of such person, unless such person immediately collects and properly disposes of all such fecal matter.

(Comp. Ords. 1987, § 36.373)

Sec. 10-7. - Violations, penalties.

A violation or refusal to comply with any provision of sections 10-1 through 10-4, inclusive, or section 10-6 of Article 1, or a violation or refusal to comply with any provision of sections 10-41 through 10-104, inclusive, of Article 2 of this chapter, shall be deemed a municipal civil infraction and shall subject the violator to such fines, costs and other relief as provided for in section 1-7 of this Code.

(Ord. No. 14-05, § 1, 7-28-2005)

Secs. 10-8—10-40. - Reserved.

ARTICLE 2. - ADMINISTRATION AND ENFORCEMENT

FOOTNOTE(S):

⁽²²⁾ Cross reference— Administration, ch. 2.

DIVISION 1. - GENERALLY

Sec. 10-41. - Representative investigations.

Representatives of the county animal shelter, police department or other duly designated representatives may enter any premises where animals are maintained, for the purpose of investigation or inspection as to whether or not any portion of such premises, building, structure, enclosure, pen or cage is being used, kept or maintained in violation of this chapter or any other county ordinance. No person shall deny, prevent or obstruct, or attempt to deny, prevent or obstruct such access. This section does not permit any person to enter a private dwelling, except where necessary to rescue an animal. A search warrant shall be used, where required.

(Comp. Ords. 1987, § 35.374)

Secs. 10-42—10-60. - Reserved.

DIVISION 2. - IMPOUNDMENT

Sec. 10-61. - Generally.

Any animal which is in violation of the provisions of this chapter shall be subject to being impounded, and any animal which is so impounded shall be held at the county animal shelter and shall be cared for, released or disposed of as provided in the county animal control health regulations and the rules and regulations of the county for the operation of the county animal shelter.

(Comp. Ords. 1987, § 35.361)

Sec. 10-62. - Animals found by individuals.

Persons, other than animal control officers or police officers, taking up and impounding any animal, shall, within 12 working hours thereafter, give notice to the county animal shelter of the:

- (1) Fact that he has such animal in his possession.
- (2) Complete description of such animal.
- (3)

License number of such animal, if any, and the name of the county or municipal corporation which issued such license. If such animal has no license, he shall so state.

- (4) Place where such animal is confined and shall surrender such animal to the division of animal control, upon demand.

(Comp. Ords. 1987, § 35.362)

Sec. 10-63. - Fees for reclaiming animal.

If any person appears and reclaims any animal prior to the time disposition has been made of the animal, the animal shelter shall collect the fees set forth by the county board of commissioners.

(Comp. Ords. 1987, § 35.363)

Sec. 10-64. - Notification of owners.

When an animal wearing a current valid license tag issued by the county or any municipality within the county is impounded pursuant to this division, the director shall, within 12 working hours after receiving such animal, give written notice of the location of such animal to the person to whom the current license for such animal was issued.

(Comp. Ords. 1987, § 35.364)

Secs. 10-65—10-100. - Reserved.

ARTICLE 3. - DOGS

FOOTNOTE(S):

⁽²³⁾ **State Law reference**— Dog Law of 1919, MCL 287.261 et seq.

Sec. 10-101. - Licenses; tags.

- (a) All dogs within the City over the age of six months shall at all times be currently licensed in accordance with the requirements of state law and the county animal control health regulations.
- (b)

A license tag issued by the county shall be securely affixed to a collar, harness or other device which shall be worn by the dog at all times unless the dog is within the confines of the residence of the owner or of a dog run or other secure enclosure on the owner's premises.

(Comp. Ords. 1987, § 35.341)

State law reference— Dog licensing, MCL 287.262 et seq.

Sec. 10-102. - Kennel license.

Kennels may be permitted as governed by the City zoning ordinance (see appendix A) and by the requirements of the director of animal control of the county. Only under these circumstances will more than three dogs over six months old be permitted in one person's care, custody or control in the City.

(Comp. Ords. 1987, § 35.345)

State law reference— Kennel licenses, MCL 287.270b.

Sec. 10-103. - Barking, yelping and howling.

No person owning or having charge, care, custody or control of a dog shall permit such dog at any time, by loud, frequent or habitual barking, yelping or howling, to cause a nuisance or annoyance to the neighborhood.

(Comp. Ords. 1987, § 35.343)

Sec. 10-104. - Running at large.

No person owning or having charge, care, custody or control of any dog shall cause, permit or allow the dog to run at large or be upon any highway, street, lane, alley, court or other public place, or upon any private property or premises, except for hunters with the consent of the owner of such property and persons owning or having charge, care, custody or control of such dog within the City, unless such dog is restrained by a substantial chain or leash not exceeding six feet in length and is in the charge, care, custody or control of a person with the ability to restrain such dog.

(Comp. Ords. 1987, § 35.344)

Secs. 10-105—10-140. - Reserved.

ARTICLE 4. - CATS

Sec. 10-141. - Reserved.

Editor's note—

Ord. No. 12-04, § 1, adopted Dec. 7, 2004, repealed § 10-141, which pertained to licenses, rabies vaccinations, late fees, tags, and concealment and derived from § 35.352 of the Comp. Ords. 1987.

Sec. 10-142. - Nuisances.

A person having custody of a cat shall not permit such cat to create a nuisance by way of noise, odor or in any other manner.

(Comp. Ords. 1987, § 35.354)

Cross reference— Nuisances, ch. 30.

Sec. 10-143. - Reserved.

Editor's note—

Ord. No. 19-06, adopted Dec. 5, 2006, repealed § 10-143 in its entirety. Former § 10-143 pertained to running at large and derived from § 35.351 of the 1981 Comp. Ords.

Secs. 10-144—10-170. - Reserved.

ARTICLE 5. - VICIOUS ANIMALS

FOOTNOTE(S):

⁽²⁴⁾ **Cross reference—** Environment, ch. 78.

⁽²⁴⁾ **State Law reference—** Dangerous animals, MCL 287.321 et seq.; dogs attacking or biting persons, MCL 287.288, 287.351.

Sec. 10-171. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Vicious animal means any:

- (1) Animal that, when unprovoked, approaches, in a dangerous or terrorizing manner, any person in an apparent attitude of attack in any public place or upon any private property not occupied by the animal's owner;
- (2) Animal with a known propensity, tendency or disposition to attack when unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals;
- (3) Animal which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation, on public or private property; or
- (4) Dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for animal fighting.

(Comp. Ords. 1987, § 35.381)

Cross reference— Definitions generally, § 1-2.

Sec. 10-172. - Exceptions.

No animal shall be declared vicious pursuant to this article if the threat, injury or damage caused by such animal was sustained by a person who, at the time, was committing an assault, a criminal trespass or other crime upon the property occupied by the owner, harborer or keeper of the animal, or was physically abusing or assaulting the animal; nor shall any animal be declared vicious if it was responding to pain or injury, or was protecting itself, its kennels or its offspring.

(Comp. Ords. 1987, § 35.385)

Sec. 10-173. - Responsibility of parents and legal guardians.

If the owner or keeper of a vicious animal is a minor, any parent or legal guardian of such minor shall be liable for all injuries and property damage sustained by any person or domestic animal caused by an unprovoked attack by such vicious animal.

(Comp. Ords. 1987, § 35.386)

Sec. 10-174. - Enforcement responsibility.

(a)

If any law enforcement officer, animal control officer or county health department employee has probable cause to believe that a vicious animal is being harbored in violation of this article, the officer or employee may:

- (1) Order the violation immediately corrected and cite the owner, keeper or harborer to appear in court for the violation;
 - (2) If the violation cannot be immediately corrected and the animal is posing an imminent and serious threat to the safety of human beings or other domestic animals, the vicious animal may be seized and impounded at the owner's expense. The owner, harborer or keeper will be cited to appear in court for the violation.
- (b) The animal may be released to the owner only after payment of any fees and penalties, and upon presentation of proof that either the animal will now be kept in accordance with the restrictions of this article or will be permanently removed from the City.
 - (c) If the owner, harborer or keeper of an alleged vicious animal fails to appear or to either provide proof that the animal will now be kept in compliance with this article and if the animal cannot be adopted by a person providing proof that the animal will be kept restrained or confined as specified in this article, the animal will be humanely euthanized.
 - (d) Each day that a violation of this article continues shall be deemed a separate offense.
 - (e) In addition, any person who violates this article shall pay all expenses, including shelter, food, handling, veterinary care and testimony, necessitated by the enforcement of this article. Court costs, and legal and administrative expenses of the City for such action shall be taxed against the owner, keeper or harborer of the animal against whom the complaint was issued.

(Comp. Ords. 1987, § 35.384)

Sec. 10-175. - Determination of a vicious animal.

- (a) *Written complaint.* The Mayor shall have the authority to make a determination that an animal is vicious upon the written complaint of any person.
- (b) *Informal hearing/notice.* Prior to such a determination, the Mayor shall conduct an informal hearing, written notice of which shall be given to the complainant and the owner of the animal, where the owner's address can be reasonably ascertained by

the City. The hearing shall be held no less than ten days, nor more than 20 days after such notice is mailed, by first class mail, to the owner of the animal. At such hearing, all interested persons shall have the opportunity to present evidence on the issue of the animal's viciousness.

- (c) *Immediate impoundment.* If the animal in question has caused severe injury to any person, the Mayor or his designee, prior to the hearing, may order the immediate impoundment of the animal, at the owner's expense, pending the determination.
- (d) *Mandatory compliance or removal from City.* If, as a result of the hearing, the Mayor determines that the animal is vicious, the owner, at his expense, must, within ten calendar days, either comply with the requirements in section 10-176 or remove the animal from the City.

(Comp. Ords. 1987, § 35.382)

Sec. 10-176. - Leash and muzzle.

- (a) No person shall permit a vicious animal to go outside the owner's home, or its kennel or pen unless such animal is securely leashed with a leash that is of sufficient strength that the animal cannot break or tear it, and that is no more than four feet in length.
- (b) No person shall permit a vicious animal to be kept on a chain, rope or other type of leash unless a competent person, of adequate size and strength, is in physical control of the leash.
- (c) Vicious animals may not be chained, tethered, tied or otherwise leashed to inanimate objects, such as trees, posts, buildings, etc.
- (d) While outside the owner's home or the animal's kennel or pen, all vicious animals must be muzzled by a muzzling device sufficient to prevent the animal from biting persons or other animals.

(Comp. Ords. 1987, § 35.383(a))

Sec. 10-177. - Confinement outdoors.

- (a) Owners of vicious animals who maintain their animal out of doors must, within ten days of the effective date of a determination that such animal is a vicious animal, fence a portion of their property with a perimeter or area fence. Within the perimeter fence, the vicious animal must be humanely confined inside a pen or kennel, which shall be a minimum of five feet wide, ten feet long and five feet in

height above grade. The pen or kennel may not share common fencing with the area or perimeter fence. The kennel or pen must have secure sides and a secure top attached to all sides, which shall all be at least nine gauge chainlink fencing, with necessary steel supporting posts. The sides must be either buried two feet into the ground, sunken into a concrete pad or securely attached to a wire bottom. The gate to the pen or kennel must be of the same material as the fencing, fit closely and be securely locked with a key or combination lock when such animals are within the structure.

- (b) All pens or kennels erected to house such animals must comply with all zoning and building regulations of the City and must be adequately lighted, appropriately ventilated and kept in a clean and sanitary condition.

(Comp. Ords. 1987, § 35.383(b))

Sec. 10-178. - Confinement indoors.

Owners of vicious animals may maintain their animal indoors, provided that no vicious animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition.

(Comp. Ords. 1987, § 35.383(c))

Sec. 10-179. - Signs.

All owners, keepers or harborers of vicious animals within the City shall display in a prominent place on their premises a sign, easily readable by the public, using the following words:

"Beware of Vicious Animal."

In addition, a similar sign is required to be posted on the kennel or pen of such animal if the dog will not be confined exclusively indoors.

(Comp. Ords. 1987, § 35.383(d))

Sec. 10-180. - Insurance.

All owners, keepers or harborers of vicious animals must provide proof to the City of public liability insurance for a single incident amount of \$100,000.00 for bodily injury to, or death of, any person which may result from such animal. Such insurance policy shall provide that no cancellation of the policy will be made unless 30 days' written notice is first given to the City Clerk.

(Comp. Ords. 1987, § 35.383(e))

Sec. 10-181. - Identification photographs.

All owners, keepers or harborers of vicious animals must provide the City Clerk with two color photographs, clearly showing the color and approximate size of the animal.

(Comp. Ords. 1987, § 35.383(f))

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Chapter 50 - SPECIAL ASSESSMENTS

FOOTNOTE(S):

(45) **Charter reference**— Special assessments, § 10.1 et seq.

(45) **Cross reference**— Any ordinance levying or imposing any special assessment saved from repeal, § 1-11(10); administration, ch. 2; streets, sidewalks and other public places, ch. 54; planning and miscellaneous restrictions, ch. 86.

Sec. 50-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings provided in this section, except where the context clearly indicates a different meaning:

Cost includes, when referring to the cost of any local public improvement, the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction and legal fees and all other costs incidental to the making of such improvement, the special assessments and the financing.

Local public improvement means any public improvement which is of such a nature as to especially benefit any real property or properties within a district in the vicinity of such improvement.

(Comp. Ords. 1987, § 12.101)

Cross reference— Definitions generally, § 1-2.

Sec. 50-2. - Authority to assess.

The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter.

(Comp. Ords. 1987, § 12.102)

Sec. 50-3. - Project initiation.

Proceedings for the making of local public improvements within the City may be commenced by resolution of the City Commission. Such action may be requested by the filing with the City Clerk of a petition signed by at least 50 percent of the owners of the property to be assessed for

the improvement, requesting that the improvement be made and the cost be defrayed by special assessment upon the property benefitted, but such petition shall be advisory to the City Commission only.

(Comp. Ords. 1987, § 12.103)

Sec. 50-4. - Report of City Clerk.

Before the City Commission shall consider the making of any local public improvement, it shall be referred by resolution to the City Clerk, directing the City Clerk to prepare a report which shall include necessary plans, profiles, specifications and detailed estimates of costs, an estimate of the life of the improvement, a description of the assessment districts and such other pertinent information as will permit the City Commission to decide the costs, extent and necessity of the improvement proposed and what part, or proportion thereof, should be paid by special assessments upon the property especially benefitted and what part, if any, should be paid by the City at large. The City Commission shall not finally determine to proceed with the making of any local public improvement until such report of the City Clerk has been filed, nor until after a public hearing has been held by the City Commission for the purpose of hearing objections to the making of such improvement.

(Comp. Ords. 1987, § 12.104)

Sec. 50-5. - Determination; notice of hearing.

After the City Clerk has presented the report required in section 50-4 for making any local public improvement as requested in the resolution of the City Commission, and the City Commission has reviewed the report, a resolution may be tentatively passed, determining the necessity of the improvement, setting forth the nature thereof, prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefitted, a determination of benefits received by affected properties and what part, if any, shall be paid by the City at large, designating the limits of the special assessment district to be affected, designating whether it is to be assessed according to frontage or other benefits, placing the complete information on file in the office of the City Clerk, where it may be found for examination, and directing the City Clerk to give notice of a public hearing on the proposed improvement, at which time and place an opportunity will be given to interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the City and by first class mail addressed to each owner of, or person interested

in, the property to be assessed as shown by the last general tax assessment roll of the City. Such publication and mailing is to be made at least ten full days prior to the date of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the City Commission.

(Comp. Ords. 1987, § 12.105)

Sec. 50-6. - Hearing.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which, the City Commission may modify the scope of the local public improvement in such a manner as they shall deem to be in the best interest of the City as a whole, provided that, if the amount of work is increased or additions are made to the district, then another hearing shall be held pursuant to the notice prescribed in section 54-5. If the determination of the City Commission is to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications, assessment district and detailed estimates of cost, determining the probable useful life of the improvement, and directing the assessor to prepare a special assessment roll in accordance with the City Commission's determination and report the special assessment roll to the City Commission for confirmation; provided that, if, prior to the adoption of the resolution to proceed with the making of the public improvement, written objections thereto have been filed by the owners of property in the district, which, according to the City Clerk's report, will be required to bear more than 50 percent of the cost thereof, or by a majority of the owners of property to be assessed, no resolution determining to proceed with the improvement shall be adopted while such objections remain, except by the affirmative vote of five members of the City Commission.

(Comp. Ords. 1987, § 12.106)

Sec. 50-7. - Making special assessment roll.

The assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefitted by the proposed improvement and assess to each lot or parcel of land the proportionate amount benefitted thereby. The amount spread in each case shall be based upon the detailed estimate of the City Clerk as approved by the City Commission.

(Comp. Ords. 1987, § 12.107)

Sec. 50-8. - Filing assessment roll.

When the assessor shall have completed the assessment roll, he shall file it with the City Clerk for presentation to the City Commission for review and certification by the City Commission.

(Comp. Ords. 1987, § 12.108)

Sec. 50-9. - Meeting to review special assessment roll.

Upon receipt of the special assessment roll, the City Commission by resolution shall accept such assessment roll and order it to be filed in the office of the City Clerk for public examination, shall fix the time and place the City Commission will meet to review such special assessment roll, and direct the City Clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the City and by first class mail addressed to each owner of, or person interested in, property to be assessed as shown by the last general tax assessment roll of the City. Such publication and mailing is to be made at least ten full days prior to the date of such hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the City Commission. At such meeting, all interested persons or parties shall present, in writing, their objections, if any, to the assessments against them. The assessor shall be present at every meeting of the City Commission at which a special assessment is to be reviewed.

(Comp. Ords. 1987, § 12.109)

Sec. 50-10. - Changes and corrections in special assessment roll.

The City Commission shall meet at the time and place designated for the review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The City Commission may correct such roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein, or it may by resolution annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in the making of the new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the City Commission deems justified, the City Commission determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the clerk to attach his warrant to a certified copy thereof within ten days, therein commanding the assessor to spread, and the treasurer to collect, the various sums and amounts appearing thereon as directed by the City Commission. Such roll shall have the date

of confirmation endorsed thereon and shall, from that date, be final and conclusive for the purpose of the improvement to which it applies, subject only to adjustment to conform to the actual cost of the improvement, as provided in section 50-14.

(Comp. Ords. 1987, § 12.110)

Sec. 50-11. - Due date.

All special assessments, except such installments thereof as the City Commission shall make payable at a future time as provided in this chapter, shall be due and payable upon confirmation of the special assessment roll.

(Comp. Ords. 1987, § 12.111)

Sec. 50-12. - Payments.

- (a) The City Commission may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed 20 in number, and the first installment shall be due upon confirmation of the roll or on such date as the City Commission may determine.
- (b) Interest shall be charged on all deferred installments at a rate equal to the project bond interest rate, plus one percentage point; or in the case that a bond is not sold for the project, then, a rate equal to one percentage point over the prime rate in effect as stated in the Wall Street Journal on the date the roll is confirmed, commencing on the due date of the first installment and payable on the due date of the first installment and payable on the due date of each subsequent installment; the full amount of all or any deferred installments, with interest accrued thereon to the date of payment thereof.
- (c) If the full assessment or the first installment thereof shall be due upon confirmation, each property owner shall have 60 days from the date of confirmation to pay the full amount of such assessment or the full amount of any installments, without interest or penalty. Following the 60-day period, the assessment or first installment shall, if unpaid, be considered as delinquent and the same penalties shall be collected on such unpaid assessments or first installments as are provided in the City Charter to be collected on delinquent general City taxes.
- (d)

Deferred installments shall be collected without penalty until 60 days after the due date thereof, after which time, such installments shall be considered as delinquent and such penalties on such installments shall be collected as are provided in the City Charter to be collected on delinquent general City taxes.

- (e) After the City Commission has confirmed the roll, the City Treasurer shall notify by mail each property owner on such roll that such roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the City Treasurer to give such notice or of such owner to receive such notice shall not invalidate any special assessment roll of the City or any assessment, nor excuse the payment of interest or penalties.

(Comp. Ords. 1987, § 12.112)

Sec. 50-13. - Creation of lien.

Special assessments and all interest, penalties and charges thereon from the date of confirmation of the roll shall become a personal obligation to the City from the persons to whom they are assessed, and, until paid, shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for county and school taxes and by the City Charter for City taxes, and the lands upon which such amounts are a lien shall be subject to sale the same as are lands upon which delinquent City taxes constitute a lien. In addition to the procedures established in section 54-12 for the collection of special assessments levied against property, the City may recover such amounts in a suit in any court of competent jurisdiction. In any such suit, the confirmed special assessment roll upon which the special assessment concerned appears shall be prima facie evidence of the existence of the special assessment, of the regularity of the proceedings in making the special assessment and of the right of the City to recover judgment therefor.

(Comp. Ords. 1987, § 12.113)

Sec. 50-14. - Additional assessments; refunds.

The City Clerk shall, within 60 days after the completion of each local public improvement, compile the actual cost thereof and certify such cost to the City Commission. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the City Commission may make an additional pro rata assessment; provided, however, that no property shall be assessed in excess of benefits received. The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental

thereto may be placed in the general fund of the City if such excess is less than five percent of the total amount of the assessment roll, but should the assessment prove larger than such amount by five percent or more, the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of outstanding evidence of indebtedness secured, in whole or in part, by such special assessment.

(Comp. Ords. 1987, § 12.114)

Sec. 50-15. - Additional procedures.

In any case where the provisions of this chapter may prove to be insufficient to fully carry out the making of any special assessment, the City Commission shall provide by ordinance any additional steps or procedures required.

(Comp. Ords. 1987, § 12.115)

Sec. 50-16. - Reassessment for benefits.

Whenever the City Commission shall deem any special assessment invalid or defective for any reason whatsoever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatsoever, in whole or in part, the City Commission shall have the power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement, or any part thereof, has been completed and whether or not any part of the assessment has been collected. All proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment shall, to that extent, be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

(Comp. Ords. 1987, § 12.118)

Sec. 50-17. - Combination of projects.

The City Commission may combine several districts into one project for the purpose of effecting a savings in the costs; provided, however, that for each district, there shall be established separate funds and accounts to cover the cost thereof.

(Comp. Ords. 1987, § 12.119)

Sec. 50-18. - Postponement of payment due to impoverishment.

The City Commission may provide that any person who, in the opinion of the assessor and City Commission, by reason of poverty, is unable to contribute toward the cost of making a public improvement, by special assessment, may execute to the City an instrument creating a lien for the benefit of the City on all or any part of the real property owned by him and benefitted by any public improvement, which lien will mature and be effective from and after the execution of such instrument shall be recorded with the register of deeds of the county and shall not be discharged or released until the terms thereof are met in full. The City Commission shall establish the procedure for making this section effective.

(Comp. Ords. 1987, § 12.120)

Sec. 50-19. - Single lot special assessments.

- (a) *Report to commission.* When the City incurs an expense for or in respect to any single lot or parcel, which expense is chargeable against the lot or parcel pursuant to law and is not otherwise to be prorated among several lots or parcels in a special assessment district, the amount of labor and material, or any other applicable expense, with a description of the lot or parcel for which the expense was incurred, and the name of the owner, if known, shall be reported to the City Commission.
- (b) *Determination of City Commission.* After reviewing the report, the City Commission may determine by resolution what amount or part of such expense will be charged and the premises upon which the charge will be levied as a special assessment. By resolution, the City Commission will determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged, designate the premises upon which the special assessment may be levied and direct the preparation of a special assessment roll in accordance with the City Commission's determination. As the City Commission deems expedient, it may require that notice of the assessments be given to each owner of or party in interest in the property to be assessed whose name appears upon the last local tax assessment records, by mailing by first-class mail addressed to such owner or

party at the address shown on the tax records which notice shall also advise the owner(s) or party(ies) in interest of any hearing scheduled pursuant to subsection 50-19(d).

- (c) *Certificate of roll.* When the assessment roll has been completed, it shall be filed with the City Clerk who will present it to the City Commission.
- (d) *Resolution; notice of hearing.* After the special assessment roll is filed in the office of the City Clerk, the City Commission shall, by resolution, fix the time and place when it will review the roll, which meeting shall not be less than ten days after notice of the time and place has been mailed to the owner of or party in interest in the property to be assessed, whose name appears on the last City tax assessment records in accordance with state law.
- (e) *Objections to roll.* Any person deeming himself aggrieved by the special assessment roll may file his objections and protest in writing with the City Clerk at or prior to the time of hearing, which objections shall specify how he is aggrieved. If the objections are timely and properly filed, the objecting person's appearance in person is not required at the hearing.
- (f) *Review of roll.* The City Commission shall meet and review the special assessment roll at the time and place appointed or an adjourned date and shall consider any objections. The City Commission may correct the roll as to any assessment or description of any lot or parcel of land or other errors. Any changes made in the roll shall be noted in the minutes.
- (g) *Confirmation of roll.* After the hearing, the City Commission may confirm such special assessment roll, with any corrections that were made, and the City Clerk shall endorse the date of confirmation and, upon confirmation, the roll shall be final and conclusive.

(Ord. No. 5-08, § 1, 3-28-2008)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Case No. 16-11820-CH

Plaintiff,

HON. GEORGE JAY QUIST

-vs-

Circuit Court Judge

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

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RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

ISSUES PRESENTED BY KENTWOOD

The City of Kentwood ("City" or "Kentwood") asserts three contrived questions prior to the beginning of its Brief but then states in its "Introduction" that the three issues are:

- (1) Petersen lacks standing to challenge the agreement that created the special assessment district and the later amendment to that agreement;
- (2) Petersen's claims are otherwise barred by express waiver language in those agreements and the applicable statutes of limitations; and
- (3) in any event, Petersen has failed to state a claim upon which relief can be granted because the special assessment and subsequent amendment to the agreement are valid and the future installments of the special assessment were not extinguished by the foreclosure.

Plaintiff will respond to each of the arguments raised above in sequential order rather than the questions listed on page 2 of Kentwood's Brief.¹

COUNTER-STATEMENT OF FACTS

Plaintiff bought approximately 40 acres of land within the city of Kentwood from the Kent County Treasurer at a tax sale on November 4, 2015. The property had been foreclosed by the Kent County Treasurer pursuant to the General Property Tax Act by Order dated March 6, 2015 (see **Exhibit 2**). The General Property Tax Act provides that all obligations on the property as of the time of the foreclosure are extinguished, with a few exceptions -- the only one of which Kentwood appears to assert is that one of the asserted obligations is a future installment of a special assessment. While three separate asserted "assessments" are assailed in Plaintiff's Complaint, Kentwood's Motion for Summary Disposition addresses only the Voluntary Special Assessment District Agreement ("VSADA"). For starters, the terms "Voluntary" and "Agreement" is a pretty good indicator of the type of obligation that is involved in this case.

The VSADA had its genesis in a contract, and, just as the other obligations being challenged, the VSADA was also the subject of a resolution at the City of Kentwood. Each of the contracts/assessments had varying "deferment" terms that allowed deferment of payments until certain "triggering events," as discussed later. All of the contracts/assessments, however, had a mandatory end-date for payment in full -- often called a balloon payment. The VSADA's end-date was September 7, 2014 -- ten years after it was established.

The VSADA was implemented as a result of a joint effort between the owner/developer and the City. The developer could have put in the infrastructure for the 300 or so acres involved out of his own funds, or borrowed the funds from a conventional lending source, with a resulting

¹ Notably, Kentwood itself abandoned its stated "Questions" in favor of the list of question stated above -- see page 3 of Kentwood's Brief.

mortgage on the property. However, the City apparently desired the project enough that they were willing to be an accommodating party and act as the developer's financier. To bring it within the scope of what acts the municipality was permitted to do, that financing had to look like an assessment. Using a practice not unknown to other municipalities, the parties essentially contracted for a lien to be called an assessment. As the Court can well imagine, the practice, however, did not look like other assessments. There were no public hearings where concerned citizens expressed concern over the cost or apportionment. There were no expressed concerns over necessity, because everyone was on the same page.

What did not exist at that time, however, were the current provisions of the General Property Tax Act. In 2008, the Michigan Legislature overhauled how the State dealt with delinquent taxes. To make the new foreclosure process effective, the Legislature determined that it was necessary to strip off all interest from the property and vest the fee interest in the Kent County Treasurer upon the effective date of the foreclosure.² The new foreclosure process excepted only a couple of items from being stripped off or voided -- future installments of special assessments and certain liens related to the DEQ which are not relevant to this case.³ All past installments of special assessments were wiped out. Any lien having a contractual basis was also stripped from the property.⁴

The VSADA (**Exhibit 5**) was signed on September 7, 2004 and recorded on September 17, 2004. On September 7, 2004 the city commission passed Resolution 96-04 related to the Agreement declaring it to be an assessment in the form of **Exhibit 7**. The Resolution incorporates

² The foreclosure process vested absolute title in the county treasurer: "... the foreclosing governmental unit shall have absolute title to the property ...". MCL 211.78k(6) (emphasis added).

³ MCL 211.78k(5)(e).

⁴ MCL 211.78k(5)(e).

provisions of the VSADA agreement into its provisions for deferment. The Agreement also has various “trigger dates” which would initiate the principal payment to be due some time prior to the end of the term. Those trigger dates occurred prior to the 10-year maximum term, but are not relevant in this motion because the 10-year term itself is dispositive that the VSADA was extinguished by the foreclosure process in 2015.

Post-expiration Efforts to Salvage the VSADA.

In the end, the VSADA is a good example of why municipalities should not act as private financiers; the project did not take off as anticipated and the developer defaulted. While a couple areas of the proposed development did move slowly along, others (including the portion that Plaintiff bought at tax sale – known as parcel B-1) had absolutely zero activity.

The VSADA had a maximum term of 10 years (see paragraph 2(e)(2) of **Exhibit 5** and “Roll A,” paragraph “Term” of **Exhibit 7**). Both parties agree that the 10 years ran on September 7, 2014 -- that being the 10th anniversary of both the VSADA and the Resolution. As it pertains to at least one of the parcels affected by the VSADA (parcel B-2), the City signed an agreement to provide for later payments (**Exhibit 8**)⁵ on June 16, 2015. Another part of the original project (parcels B-3 and B-4) was foreclosed in March of 2014, and the City had a special resolution related to that Property (Resolution 49-14; **Exhibit 9**) (see also amendment by contract of another portion of the project as **Exhibit 13**). As to Plaintiff’s parcel, the City of Kentwood passed a Resolution in June of 2015 to extend the due date for the payments in the form of **Exhibit 10** – based upon the extinguished VSADA contract and signed a new contract (**Exhibit 11**) based upon the same extinguished VSADA contract in an effort to revive the amounts that had been extinguished by the tax foreclosure process . The City had previously attempted to get the property owner to sign an agreement. See **Exhibit 12**.

⁵ Complaint **Exhibit 9**.

When the project failed and the property owners failed to make their tax payments, Defendants started to treat this obligation very much as a contract and not an assessment. Instead of a singular unified assessment district, they treated it as a contract and piecemeal. First of all, the City made an agreement with Holland Home to extend the payments (see **Exhibit 8**). Kentwood felt free to renegotiate the contractual VSADA with property owners as illustrated by the correspondence (**Exhibit 12**) from Mr. Sluggett indicating that Holland Home restructured its payments and the City offered to do the same for the Plaintiff's predecessor in interest Mr. Damone. Then, on other parts of the project, they attempted to extend the due date also by contract (see attached deposition of Thomas Chase, City of Kentwood Finance Director, **Exhibit 14**). In contrast to the special assessment process which addresses a unified special assessment district, Mr. Tom Chase, Kentwood's Director of Finance, testified that Kentwood started handling parts of the original district differently:

Q: Was there an amendment to the deferred assessment agreement?

A: I believe there was, but I believe it only affected the parcel that Holland Home purchased.

...

Q: Is the Holland Home assessment part of the Pfieffer Woods Drive special assessment?

A: Only the portion – well, there are two. There were two resolutions adopted. One was the – related solely to Holland Home and the other was related to the Ravines parcels. And with the Holland Home purchasing a portion of one of the Ravines parcels, that's when that came into play. So, there's more than just Ravines.

Exhibit 14, page 83-85.

In regard to the Plaintiff's property, Defendants claim in their Brief, to have extended the payments on June 18, 2015.⁶ This clearly illustrates the contractual nature of what Defendants

⁶ While Defendants attempt to characterize this as an extension, Plaintiff's position is that it's an attempted resurrection since the assessment/contract had already been extinguished by law.

intermittently label as an assessment.⁷ This Court's July 7, 2017 Opinion clearly also states that the City's collection efforts were based upon contract: "The City then attempted to collect special assessment installment payments from Plaintiff pursuant to the June 18, 2015 City/County agreement." (Opinion page 2, emphasis added). Defendants even stated in their initial summary disposition brief that the Amended VSADA (or "AVSADA") was not a re-confirmation of the tax roll (Defendants' Brief, pg. 7). It was simply a contractual attempt to resurrect a document that had been extinguished by the tax foreclosure.⁸

Kentwood contends that it extended the assessment on the subject property by Resolution 50-14. Resolution 50-14 is notable for the fact that it addressed only one of five neighborhoods in the purported assessment district. The foundation for Resolution 50-14 is recited in the resolution itself -- that it was based in contract and not any special assessment statute: "The Agreement, as Section 2(e) provides ...". (see **Exhibit 10**, paragraph "I"). That the "amendment" of the VSADA ("AVSADA") was a contractual effort is exposed in some of the correspondence exchanged by Kentwood in preparation of the "extension" (**Exhibit 15**).

There is no evidence that the City attempted to comply with the publication requirements necessary for a special assessment in either 2014 or 2015. In fact, the Resolution even specifically disavows that it is an assessment: "Without modifying the confirmation date of the special assessment rolls ..." (**Exhibit 10**, section 4) and "Without re-confirming the District's special assessment roll ..." (**Exhibit 10**, paragraph J). Indeed, in addition to triggering publication requirements if the 2014 resolution was a special assessment, it would have triggered appropriate

⁷ Labeling a cow to be a horse does not make the animal a horse. Even if one should mount and ride the cow to town, it still does not become a horse. Similarly, Defendants' labels, while a detraction, are not conclusive as to the true nature of the obligation -- which is a contract.

⁸ This Court's July 7, 2017 Opinion states: "This assessment was amended after the foreclosure." (Opinion page 5).

challenges -- including jurisdiction of the Tax Tribunal.⁹ It would have also required that the entire "Assessment District" be involved rather than one isolated portion at a time.

Whatever the nature of the asserted obligation, it was past due.

Multiple factors point to the conclusion that the obligation in question is a contract. Those factors include the following: Defendants' initial summary disposition brief,¹⁰ Defendants' pleadings filed with the Court of Appeals,¹¹ the contractual amendments to the VSADA, and Kentwood's Resolution No. 50-14,¹² and the July 18, 2014 correspondence from attorney Jeff Sluggett (general counsel for the City of Kentwood) to Mr. Damone (the prior owner of the land at issue in this Appeal), all make it clear that the previous owner of the land became delinquent (i.e. **past due**) in paying the special assessments due and owing to City -- and that per the adopted special assessment roll confirmed on September 7, 2004 with the final installment (aka balloon payment) under the VSADA becoming due on September 7, 2014.¹³

⁹ As noted in the Argument portion of this brief, the Court of Appeals recognized the contractual nature of the obligation.

¹⁰ "Plaintiff's predecessors in title, Ravines Capital Management, LLC ("Ravines") and 44th/Shaffer Avenue, LLC became delinquent on the special assessments owing on the Subject Property, which they forfeited and a Judgment of Foreclosure was entered on March 31, 2014." (Kentwood's Brief in Support of Motion for Summary Disposition, page 2).

¹¹ "Because Ravines Capital Management and Shaffer became delinquent on base taxes and the special assessments owing on the Subject Property, it was forfeited, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer." (Kentwood's Brief on Appeal, page 3).

¹² "E. Subsequently, the owner of a large tract of real property (i.e., a neighborhood) within the District became delinquent in paying property taxes and special assessments due and owing on its property. As a result, the property is at risk of having a judgment of foreclosure entered." (Exhibit 10, paragraph E).

¹³ See Exhibit 10, paragraph H: "A balloon payment on the outstanding principal of \$403,620.00 and interest of \$22,199.10 (totaling \$425,819.10) attributable to the Property is due on September 7, 2014 under the terms set forth as part of the Agreement and accompanying special assessment roll."

The Foreclosure Process.

Defendants withheld the subject property from the 2014 foreclosure process. In March of 2015, after putting Resolution 50-14 in place, the subject property went to foreclosure. Plaintiff bought the property at tax sale on October 22, 2015.

Admittedly, when the City of Kentwood set up the VSADA in 2004, the current provisions of the GPTA were not in effect. In 2008, the Michigan Legislature made significant changes to the General Property Tax Act as it related to treatment of delinquent taxes. To make the new process effective, the Legislature determined that it was necessary to strip off virtually all interests from the property and vest the fee interest in the County Treasurer upon the effective date of the foreclosure. The new process provides for vesting the County Treasurer with absolute fee title. MCL 211.78k(6).¹⁴ The title was to be stripped free of contracts, (MCL 211.78k(5)(e)) and even assessments, with the exception of future installments of special assessments (MCL 211.78k(5)(c)). One of the purposes of such provisions was to raise as much money as possible.¹⁵ The Municipality is given the opportunity to take the property into its inventory in lieu of receipt of the taxes. MCL 211.78m. In this case, the City of Kentwood did not make such an election.

¹⁴ MCL 211.78k . . . (6) Except as otherwise provided in subsection (5)(c) and (e), fee simple title to property set forth in petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, shall vest absolutely in the foreclosing governmental unit, and **the foreclosing governmental unit shall have absolute title to the property, including all interests in oil or gas in that property except the interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease was recorded in the office of the register of deeds in the county in which the property is located before the date of filing the petition for foreclosure under section 78h, and interests preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291.** The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7) or (9). (emphasis added).

¹⁵ This objective was apparently not properly appreciated by the 6th Circuit Court of Appeals in *Wayside Church v Van Buren Cnty*, 847 F3d 812 (6th Cir) (2017) when the dissent made the following comment:

“In this case the defendant Van Buren County took property worth \$206,000 to satisfy a \$16,750 debt, and then refused to refund any of the difference. In some legal precincts that sort of behavior is called theft. But under the Michigan General Property Tax Act, apparently, that behavior is called tax collection. The question here is—or at least in my view should be—whether the County’s action is a taking under the federal Constitution.” *Id* at 824.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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Thereafter, the County Treasurer is then supposed to sell the property for the greatest price received at public auction. MCL 211.78m.¹⁶ In this instance, that sale took place in October 2015.¹⁷

The Trial Court made the following findings in its July 7, 2017 Opinion, which Kentwood did not appeal:

44th LLC became delinquent on base taxes and the special assessments. On March 6, 2015, Kent County foreclosed on the property pursuant to the General Property Tax Act ("GPTA"). The foreclosure became final on April 1, 2015. (Defendants' Exhibit 1).

On June 18, 2015, the City entered into an agreement with Kent County wherein the County, as owner of the foreclosed property, agreed to allow one of the delinquent special assessments - the Voluntary Special Assessment/Development Agreement initially imposed in 2004- to be repaid in ten installments due annually until 2024. (Defendants' Exhibit 8).

On November 4, 2015, Plaintiff purchased 40 acres of the subject property at a tax foreclosure sale (Plaintiffs Complaint, Exhibit 3). The City then attempted to collect special assessment installment payments from Plaintiff pursuant to the June 18, 2015 City/County agreement.

July 7, 2017 Opinion, page 2 [recited exhibits in quotation refer to Kentwood's exhibits as submitted with its Motion for Summary Disposition].

Kentwood now asserts that Kentwood extended the VSADA before the final installment was due. The July 7, 2017 Opinion of this Court clearly stated that the extension occurred after the foreclosure sale.¹⁸ While Petersen does not believe the distinction makes any difference to the outcome of this case, it is important to observe the formalities of recognizing the impact of law of

¹⁶ ... at 1 or more convenient locations at which property foreclosed by the judgment entered under section 78k shall be sold by auction sale, which may include an auction sale conducted via an internet website. ... Each sale shall be completed before the first Tuesday in November immediately succeeding the entry of judgment under section 78k vesting absolute title to the tax delinquent property in the foreclosing governmental unit. Except as provided in this subsection and subsection (5), property shall be sold to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid. MCL 211.78m(2).

¹⁷ The deed itself was not signed until November 4, 2015.

¹⁸ "This assessment was amended after the foreclosure." Opinion page 5.

the case principles. Kentwood did not appeal this aspect of the original decision and therefore binding in this case.

NATURE OF KENTWOOD'S LEGAL CHALLENGE

Semantics can sometimes have an interesting way of obfuscating issues. In this instance, the terminology used can, and has been, turned on its head at times by Kentwood to obfuscate the issues. To be clear, Petersen is not challenging the creation of the obligation. Rather, Petersen is asserting that the obligation, whatever its nature, was extinguished by the GPTA. To make the analysis of the obligation, it is necessary to determine whether the obligation is an assessment or a contract, because a different analysis is required based on the nature of the obligation. What is not permitted is to take the best features from a “contract” analysis and the best features from an “assessment” analysis and selectively use each feature whenever it suits one’s purpose. Kentwood does so repeatedly in its Motion and Brief.

DISCUSSION

I. THE COURT OF APPEALS STRONGLY SUGGESTED THAT PETERSEN HAS STANDING.

It might be suggested that “law of the case” controls resolution of Kentwood’s “standing” objection – again raised by Kentwood in its newest motion. The Court of Appeals stated:

“... any standing issue can certainly be entertained more fully and conclusively on remand. We do note that the special assessment based on the amended VSADA encumbers plaintiff’s property to the tune of over half a million dollars.” COA Opinion, page 9.

The Court of Appeals comments were not made in a vacuum. Michigan recognizes that a party has standing if there is a legal cause of action. Where there is not a cause of action provided at law, “if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large”. *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372; 792 NW2d 686 (2010).

But even if law of the case did not control, Kentwood's entire arguments are misdirected toward the proceedings in 2004. Both in oral argument at the Court of Appeals and in the Court of Appeals Opinion, it is clear that the Court of Appeals has already rejected this misdirection. Petersen's Complaint addresses the invalidation effect of the tax foreclosure provisions of the GPTA – events that occurred in 2015.

However, the allegations in Count IV of the complaint challenge the legal validity of the amended VSADA. If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce. (COA Opinion, page 9).

A. PETERSEN'S CLAIMS ARE NOT BARRED BY EXPRESS WAIVER.

On page 10 of its Brief, Kentwood claims that Petersen's claims are barred by waiver. In support of this schizophrenic argument,¹⁹ Kentwood reverts to asserting that the VSADA is a contract – claiming that the VSADA is somehow a “restrictive covenant” preserved by the GPTA (Kentwood's Brief, page 11). The foundation of this claim is Kentwood's assertion that the “normal rules of contract interpretation apply.”²⁰ The City then goes on to develop a rather detailed argument that might have had some relevance – if the GPTA had not extinguished the contract on March 31, 2015. Whether Kentwood does not get it, or simply feigns lack of comprehension, is unknown. The fact is that whatever the foundation for its waiver argument, Kentwood failed to comprehend what the Court of Appeals so clearly did – that such contractual obligations do not survive a tax foreclosure.

As alleged by plaintiff, Count IV presented a question of contract law, as shaped by the construction of provisions in the GPTA. Count IV does not require any

¹⁹ Plaintiff understands Kentwood's desire to force this approach in light of the Court of Appeals adverse ruling in this case. Yet, Plaintiff would request some intellectual honesty, because on pages 17 and 18 of its Brief, Kentwood reverts to asserting that the VSADA is an assessment because that was the result upheld in the *Damghani* unpublished decision.

²⁰ Kentwood's Brief, page 10.

findings of fact nor entail the factual underpinnings of taxes; rather, it concerns the construction of law—contract law and the GPTA. (COA Opinion, page 9.)

... If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce. (COA Opinion, page 9.)

MCL 211.78k(5) clearly addresses this extinguishment issue.²¹ Kentwood then makes an illogical leap of faith to cite the unpublished case of *Ferry Beubien LLC v Centurion Place on Ferry St Condo Assn.*²² *Ferry Beaubien* stands for the proposition that “restrictive covenants” in a master deed are not extinguished. Of course they are not. But then liens or mortgages are not restrictive covenants either. The VSADA never uses the term “restrictive covenant” or “use restriction.” What the VSADA uses is the term “lien” six times and the term “obligation(s)” thirteen times. Kentwood blurs over the question that it needs to answer is how the asserted VSADA is a restriction on use and not an assertion of amounts owed. Kentwood assumes that this Court does not understand the distinction. Kentwood would have this Court believe that a mortgage or lien is a “use restriction.”²³

But the terminology the GPTA uses is “private deed restrictions.” Kentwood glaringly glosses over the term. What makes the VSADA “private?” Certainly, neither Kentwood nor Kent County would meet that definition. Where is the deed that contains the restriction? Attached as **Exhibit 18** as an example is a restriction arising out of a deed -- a limitation written on a deed to restrict control, occupancy or property use. Black’s Law Dictionary Free Online 2nd Edition. Attached as **Exhibit 17** is a printout of an article written by Kentwood’s attorneys describing “deed restrictions.” Notably, the article does not describe a lien as being within the subset of items that

²¹ Plaintiff more fully develops the extinguishment of contract in its Motion for Summary Disposition.

²² *Ferry Beubien LLC v Centurion Place on Ferry St Condo Assn*, unpublished decision of the Michigan Court of Appeals on December 14, 2017 (Case No. 335571).

²³ Kentwood’s Brief page 12, analogy to *Ferry Beubien*.

fit the definition of a deed restriction. Resorting to a dictionary definition for what is meant by “deed restriction” was approved in *Ferry Beubien*, *supra*:

Black's Law Dictionary (10th ed) defines “restrictive covenant,” as the term pertains to real property, as “[a] private agreement, usu. in a deed or lease, that restricts the use or occupancy of real property, esp. by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put.”

Id. at 3-4.

The entire history of the origins of the VSADA make it clear that it was not intended to establish use restrictions or other deed restrictions, but was to place a lien on the property to secure an obligation. Stripping the property of obligations is the public policy of a tax foreclosure under the GPTA.

Kentwood then attempts to use the *Lakes of the N Ass'n v Twiga P'ship* decision to try to buttress its claim of “private deed restriction.” While citing *Twiga*, Kentwood omits the Court’s underlying determination as to the purpose of the GPTA foreclosure process:

. . . In the present case, the GPTA purpose for canceling past due taxes, assessments, and liens against foreclosed property is “to attract prospective buyers and ultimately restore the property to the tax rolls.” *Wayne Co Chief Executive v Mayor of Detroit*, 211 Mich. App. 243, 247; 535 N.W.2d 199 (1995).

Lakes of the N Ass'n v Twiga P'ship, 241 Mich App 91, 98; 614 NW2d 682 (2000).

It is clear that the *Twiga* Court recognized the public purpose in stripping off obligations to maximize sale value – a concept contradicted by Kentwood’s efforts of leaving a lien (or reinstating a lien that had been extinguished).

B. THE STATUTE OF LIMITATIONS IS A NON-ISSUE IN THIS CASE OR OPERATES IN FAVOR OF PETERSEN.

Before discussing where Kentwood’s statute of limitations argument goes off the rails, it is helpful to identify the assertions made by Kentwood, that Petersen agrees with:

1. Identifying the true nature of the claim is a necessary prerequisite to determining the correct statute of limitations (Kentwood Brief, page 12);
2. The VSADA was a development agreement – i.e. a contract (Kentwood Brief, page 12);
3. The amendment of the VSADA or “AVSADA” was also a contract (Kentwood Brief, page 12);
4. The applicable statute of limitations involved those concerning contract law (Kentwood Brief, page 13);
5. The period of limitations runs from the time the claim accrues (Kentwood Brief, page 13).
6. The tax foreclosure became effective in March 2015 (Kentwood Brief, page 5).
7. The amendment of the VSADA was entered into in June 2015 (Kentwood Brief, page 5).
8. Resolution 50-14 was passed July 15, 2014 (Kentwood Brief, pages 4-5).

Then, for some reason, Kentwood inexplicably jumps to the conclusion that the cause of action in this case arose in 2004. Resolution 50-14 was in July 2014, the tax foreclosure was in March 2015, and the AVSADA was entered into in June of 2015. The earliest of these dates is July of 2014. Plaintiff is not challenging anything in 2004. Either a contract or an assessment was created in 2004, a fact which is not being challenged by the Plaintiff.

While making its statute of limitations arguments, Kentwood again attempts to mislead the Court – and completely misses the point. Kentwood attempts to convince this Court that Petersen is “challenging the VSADA and a later amendment to that agreement.” (Kentwood’s Brief, page 12.) Petersen is not challenging the validity of the formation of the VSADA – it was validly a contract or assessment. Petersen’s claim has been: Look at the VSADA – it clearly is a contract.

However, Petersen’s core assertion is that the VSADA was, in the words of the GPTA, “extinguished.” The VSADA contract existed from the date it was signed in September of 2004 until it was extinguished by the GPTA in March of 2015. After it was extinguished, it no longer was a valid contract. The term “extinguish” is defined as “To put an end to...To put out, quench, stifle, as to extinguish a fire or flame...” *Black's Law Dictionary*, Fourth Edition West Publishing Company, 1968. The legal definition closely mirrors that used in common language: 1. “To put out (a fire, etc.) 2. To destroy.” *Webster's New World Dictionary*, Modern Desk Edition, Simon and Schuster. The noun version (“extinguishment”) is defined as “The destruction or cancellation of a right, power, contract, or estate. The annihilation of a collateral thing or subject in the subject itself out of which it is derived...” *Black's Law Dictionary*, Fourth Edition West Publishing Company, 1968.

In its futile effort to grasp at virtual straws, Kentwood then jockeys around with a number of different theories. First of all, Kentwood references MCL 205.735(a)(6)²⁴ and attempts to assert that Petersen’s original Complaint dealt with the tax year 2005. Kentwood again asserts that the jurisdiction for Petersen’s Complaint is the Tax Tribunal (with its short period of limitations). This argument can hardly be made in good faith and warrants sanctions as a frivolous pleading. Kentwood makes up its own facts. First of all, this statutory citation applies to appeals of assessments. Just two pages earlier in its Brief (page 12), the City admits the VSADA was a contract.²⁵ Again on page 13, Kentwood admits that contract law is applicable. Why the City

²⁴ Sec. 35a would not even apply based upon Kentwood’s 2005 theory:

(1) The provisions of this section apply to a proceeding before the tribunal that is commenced after December 31, 2006. (emphasis added)

...

(6) The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act ...

²⁵ An admission that is pretty well mandated by the Court of Appeals’ decision in this case.

even makes reference to this can only be justified as an effort to mislead the Court. The Court of Appeals in its Opinion stated:

Resolution of Counts I through III requires construction of the GPTA and the law of tax foreclosure, having nothing to do with the factual underpinnings of the special assessments. The proceedings, as framed by plaintiff's complaint, did not entail plaintiff seeking direct review of a final decision, finding, ruling, or determination by the city relating to special assessments under the property tax laws of this state. MCL 205.731(a). Instead, plaintiff sought review of various GPTA foreclosure provisions and application of those provisions *to the existing factual circumstances*, which is not within the wheelhouse of MTT's expertise.

COA Opinion, page 7, emphasis in original.

Besides being internally inconsistent, Kentwood's theory is barred by "law of the case."

Law of the case is a rather simple concept that once a decision has been reached on the issue, it is binding on the parties and courts in any subsequent proceeds – whether those proceedings are in the trial court upon remand or in an appellant court upon a later appeal.

Under the doctrine of the law of the case, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal question thus determined by the earlier appeal will not be differently determined on a subsequent appeal in the same case were the facts remain materially the same. The purpose of the law-of-the-case doctrine is primarily to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. *Locricchio v Evening News Ass'n*, 438 Mich 84, 109; 476 NW2d 112 (1991).

Bennett v Bennett, 197 Mich App 497, 499-500; 496 NW2d 353 (1992).

Next, Kentwood attempts to measure the statute of limitations under MCL 600.5807(9) – a six-year statute of limitations applicable to breach of contract cases. Again, Kentwood attempts to measure from 2004. The claim which accrued was the extinguishment of a contract by statute in 2015. Petersen filed this case in 2016. By any measurement, any date in 2016 falls within six years of any date in 2015. But again, Kentwood has thrown up an argument without thinking the theory through. It is Kentwood that is trying to enforce the contract, not Petersen. Petersen has asserted that the contract was extinguished, whereas Kentwood is claiming it can be enforced –

but now apparently hoisting itself with its own petard by claiming the statute of limitations on enforcement has expired.

Next, Kentwood jumps to MCL 600.5807(5) with a 10-year statute of limitation. Kentwood then recognizes that that section is applicable to actions “founded on a covenant in a deed or mortgage of real estate.” (Kentwood Brief, Page 15). Again, it appears as if Kentwood doesn’t seem to recognize that it is Kentwood, and not Petersen, that is attempting to enforce an obligation “founded on a covenant.” It would appear that Kentwood has a second time hoisted itself with its own petard – admitting that the obligation they seek to enforce is outside of its asserted 10-year statute of limitations. Kentwood’s argument should be called out for the silliness that it really is. This is not an action founded in a covenant in a deed or a mortgage, but rather Plaintiff’s claim that such document was extinguished in 2015.

II. KENTWOOD IS INCORRECT – PETERSEN HAS STATED A CLAIM AND KENTWOOD DID NOT HAVE “AMPLE AUTHORITY TO AMEND THE VSADA”.

Under its claim that Petersen has failed to state a claim, Kentwood advances a couple of somewhat vague sub-theories:

1. *The City had authority to create a special assessment district; and*
2. *The City had authority to Amend the VSADA and extend the terms.*

Petersen does not contest that Kentwood had authority to create a special assessment district. But the question has to be: Did it? However, Kentwood’s second assertion is, without question, false. The beginning of this analysis (both to the VSADA and the AVSADA) has to be the admission of Kentwood on pages 15 and 16 of its Brief:

“... Section 10.2 states that a detailed procedure for completing the special assessments is to be set by ordinance. (*Id.*) That ordinance is Chapter 50 of the City Code, which requires the City to provide notice and a public hearing, followed by a resolution "approving the necessary profiles, plans, specifications, assessment district, and detailed estimates of cost," and further "directing the 'treasurer to prepare a special assessment roll in accordance with

the city commission's determination and report the special assessment roll to the city commission for confirmation ... *"Id. ... "*

On the other hand, Petersen does challenge the validity of the AVSADA. The Court of Appeals also acknowledge that the challenge to the AVASDA was an entirely different matter.²⁶ The Court of Appeals clearly ruled that Petersen had stated a claim upon which relief can be granted,²⁷ yet Kentwood comes back to this rejected claim on page 15 of its Brief.

Kentwood then incorrectly claims that it had discretion to extend the assessment date and that it did so on July 15, 2014 *"before the final installment was due on the special assessment."* (Kentwood Brief, page 4 – emphasis in original). Kentwood attempts to blur the distinctions between the VSADA and the amendment to the VSADA, or "AVSADA." Kentwood's effort in this regard is purposeful to obfuscate the critical analysis needed when looking at each of these documents. Petersen does not challenge the VSADA – only requesting the court determine whether it is a contract or assessment and extinguished. The Court of Appeals acknowledged that.²⁸ But it does not suit Kentwood to acknowledge what is law of the case.

This Court should analyze Kentwood's assertions under both a contract theory and an assessment theory instead of allowing Kentwood to blur the theories -- plucking advantageous points from conflicting theories whenever it suits its purposes:

1. **Contract:** Kentwood's justification for its right to use its discretion is contained in the following sentence "However, under paragraph 2.(e) of the Terms and Conditions section of the VSADA, which address terms for the special assessment, the agreement expressly reserved to the City via authority, through resolution, to establish final terms for the special assessment district "in its discretion." (Kentwood Brief, page 4). The important part of this statement is Kentwood's agreement that "the agreement expressly reserved to the City

²⁶ "However, the allegations in Count IV of the complaint challenge the legal validity of the amended VSADA. If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce." COA Opinion, page 9.

²⁷ "The legal validity of the amended VSADA must be addressed and resolved on remand." COA Opinion, page 10.

²⁸ "Instead, plaintiff sought review of various GPTA foreclosure provisions and application of those provisions to the existing factual circumstances . . ." COA Opinion, page 7.

via authority....” Thus, Kentwood’s own pleadings establish that this is an extension relying on contract – and thus extinguished in the same form and fashion as the contract upon the tax foreclosure.

2. Assessment Analysis: Kentwood provides no assessment analysis, but a review of Kentwood’s Ordinances establishes that the change could not have occurred as an assessment. Section 50.10 concludes with the following statement “Such roll shall have the date of confirmation endorsed thereon and shall, from that date, be final and conclusive for the purpose of the improvement to which is applies, subject only to adjustment to conform to the actual cost of the improvement, as provided in Section 50-14.” A quick review of Section 50-14 illustrates its very limited application. Section 50-14 provides for additional assessment or refunds but mandates that such calculations be done “within 60 days after the completion of each local public improvement...”. Furthermore, the 2014 Resolutions expressly disclaim confirmation (re-confirmation) of the roll – obviously taking it outside of the assessment process specified in Kentwood’s own statutes.²⁹ Thus, it is clear that Kentwood’s resolution in 2014 was contractual. Being contractual,

the AVSADA was extinguished by the tax foreclosure in March of 2015. Further hampering Kentwood’s theory is that it did not appeal the following finding of the trial court:

The Defendants have stated, both on the record and in brief form, that they are only pursuing collection of the Voluntary Special Assessment/Development Agreement installments referenced in Plaintiff’s Count II. This assessment was amended after the foreclosure.

July 7, 2017 Opinion, page 5.

Kentwood further confuses its claim by discussing another case it was involved with. In doing so, on page 15 of its Brief, Kentwood again speaks out of both sides of its mouth.³⁰ It cites the unpublished case of *Damghami v City of Kentwood* which addressed completely different issues. In the *Damghami* decision, the Court was addressing a critically different factual situation where the foreclosure sale had occurred a year earlier – i.e. before the 10-year period of the

²⁹Should Kentwood attempt to argue that this project is a single lot special assessment under Section 50-19, the argument meets with a similar fate. Section 50-19(g) states as follows: “Confirmation of roll. After the hearing, the city commission may confirm such special assessment roll, with any corrections that were made, and the city clerk shall endorse the date of confirmation and, upon confirmation, the roll shall be final and conclusive.” Notably, for a single lot special assessment, there is no adjustment permitted under Section 50-14.

³⁰ While making its arguments supposedly based on contract, Kentwood suddenly attempts to reference the *Damghani* decision to suggest that the Court of Appeals panel that decided the Petersen appeal was wrong.

VSADA and any asserted special assessment had lapsed. In this case, the tax foreclosure occurred after the 10-year assessment had run. Additionally, *Damghami* is an unpublished decision. More importantly, Kentwood overtly misrepresents the finding of *Damghami*. The *Damghami* Court did not hold that the “City had ample authority – to enter into the VSADA and the amendment thereto.” (Kentwood Brief, page 15). Indeed, no amendment was even in play in the *Damghami* case. Then in a stroke of magic, Kentwood switches to an assertion of special assessments stating “thus the future installments of the valid special assessment were not extinguished by the foreclosure and remain valid” (Kentwood Brief, page 15) – apparently forgetting that Kentwood was arguing for the validity of the AVSADA as a contract in this case and not a special assessment.

Obviously, Kentwood relishes its partial success in the unpublished case of *Damghami*. Equally obviously, the case has no applicability because Petersen was not a participant in the *Damghami* litigation. However, more damaging to Kentwood’s attempt to draw anything from the *Damghami* decision is the fact that the Court of Appeals has ruled in this case. The published decision in this case is controlling on all other panels. More importantly, the doctrine of law of the case binds Kentwood to the decision made by the Court of Appeals in this case – and not in any other. Even if the facts were not different, law of the case binds the Defendants and this Court.

Kentwood then finishes its Brief by asserting that, in spite of the provisions of the GPTA, it was authorized to amend the VSADA. In support of its arguments that it was authorized to do the amendment, the City’s argument fails for two reasons:

1. Both the amendment of the VSADA and the City’s resolution expressly draws its authority from the contractual provisions of the VSADA – a document that was extinguished.
2. Kentwood willfully misquotes from the applicable City Code. Kentwood attaches as Exhibit 8 reference to what it refers to as relevant portions of the city charter and ordinances. Kentwood does this despite that its attention has previously been drawn to the fact that the cited

ordinances were not in existence at the time. In fact, it is known that Section 10-1 reads quite differently.³¹ The previous version of that Section is **Exhibit 16**.

Plaintiff does not question the authority of the City to create a special assessment district out of the Home Rule Cities Act but referencing the provisions of the City Code for initiating a valid special assessment district is, at best, a red herring. Kentwood references the current Section 50.12 ending its quotation on page 16 of its Brief. But Kentwood blurs the end of Section 50.12 which ends with the phrase “and report the special assessment roll to the city commission for confirmation” (emphasis added). Both the agreement and the 2015 resolutions specifically disavow confirmation or re-confirmation:

“Without modifying the confirmation date of the special assessment rolls ...”
(**Exhibit 10**, Section 4); and

“Without re-confirming the District’s special assessment roll ...” (**Exhibit 10**, paragraph J).

Interestingly, Kentwood references both resolution 50-14 and the amended agreement on page 17 of its Brief indicating that “County and City entered into the Amendment, which specified that the property remained subject to the VSADA.” That is a rather meaningless statement since the VSADA had been extinguished previously. As noted, Kentwood admits that this action occurred after the tax foreclosure in March of 2015.

If Plaintiff wished to avoid application of law of the case, it was obligated to seek further review by the Michigan Supreme Court – something it did not attempt to do. The tax foreclosure having occurred after the 10-year period set by either resolution in 2014 or contract in 2014, the obligation was extinguished by operation of law.

³¹ Chapter 10 in 2004 addressed “Animals” and not special assessments. However, Chapter 50 did address special assessments. See **Exhibit 16**.

SUMMARY

Plaintiff, not Defendants, are entitled to summary disposition. Pursuant to MCR 2.116(I), Plaintiff is entitled to summary disposition at this time.

Dated: July 11, 2019


VISSER AND ASSOCIATES, PLLC



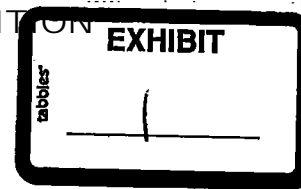
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PROOF OF SERVICE

A copy of this document was served upon all parties of record by delivery or U.S. Mail on July 12, 2019, pursuant to MCR 2.107(C).



Kelly A. Eefsting



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STATE OF MICHIGAN
COURT OF APPEALS

PETERSEN FINANCIAL LLC,

Plaintiff-Appellant,

FOR PUBLICATION
November 20, 2018
9:10 a.m.

v

CITY OF KENTWOOD and KENT COUNTY
TREASURER,

No. 339399
Kent Circuit Court
LC No. 16-011820-CH

Defendants-Appellees.

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

MURPHY, P.J.

Plaintiff appeals as of right the circuit court's order granting summary disposition in favor of defendants City of Kentwood (the city) and Kent County Treasurer (the county treasurer) in this action involving claims related to the impact of tax foreclosure proceedings on special assessment agreements entered into by the city, which assessments were payable in installments and had encumbered real property purchased by plaintiff at a tax foreclosure sale. Plaintiff maintained that the judgment of foreclosure extinguished all special assessments connected to the property. The circuit court determined that it lacked subject-matter jurisdiction with respect to four of the five counts in plaintiff's complaint, which sought declaratory relief regarding three of the underlying special assessment agreements, plus an amended version of one of those agreements. The court found that the Michigan Tax Tribunal (MTT) had exclusive jurisdiction over those four counts. The circuit court also summarily dismissed the fifth count of plaintiff's complaint that alleged slander of title predicated on special assessment liens and demands for payment that effectively clouded title. The court concluded that the city and the county treasurer were shielded by governmental immunity on the slander of title claim. We hold that the four counts dismissed for lack of subject-matter jurisdiction were within the jurisdiction of the circuit court, not the MTT, because they did not implicate the MTT's fact-finding purpose and expertise but solely presented questions of law. And, for reasons elaborated on below, we remand for entry of an order providing plaintiff with declaratory relief on two of the counts and

for further proceedings on the remaining two counts.¹ We further hold that plaintiff's argument that the circuit court erred in dismissing the slander of title count on the basis of governmental immunity is unavailing. Accordingly, we affirm in part and reverse and remand in part.

This case concerns real property located within the city. Starting in 2004, the city and the property owner, along with others, entered into various special assessment agreements relative to several infrastructure improvements that were to benefit the property for purposes of a planned unit development.² These agreements, which were recorded and involved the property owner making installment payments to the city, indicated that the contractual obligations contained therein constituted covenants that ran with the land and bound all successors in title. The city commission adopted multiple resolutions associated with the agreements and prepared and confirmed special assessment rolls for the improvements. Eventually, the property owner failed to pay the special assessments, a tax foreclosure action was commenced, a judgment of foreclosure was entered, the property owner failed to redeem the property or appeal the judgment, and title vested absolutely in the county treasurer, as the foreclosing governmental unit. Subsequently, at a tax foreclosure sale, the county treasurer conveyed the property to plaintiff pursuant to a quitclaim deed.

Over one year later, plaintiff filed its complaint against defendants, alleging that under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, its "purchase was free and clear from all liens except any future installments of special assessments." Plaintiff asserted that despite the fact that title by fee simple absolute was conveyed to plaintiff in the tax foreclosure sale, the city continued to cloud the property's title "by improperly attempting to revive past installments for special assessments as well as contractual obligations that were extinguished upon the final Judgment of Foreclosure." Plaintiff complained that defendants "wrongfully attempted to recoup past due special assessment installments and continue[d] to charge Plaintiff for the same." Plaintiff insisted that under the GPTA, all previously owed special assessment installments were extinguished by the judgment of foreclosure and that the county treasurer lacked the authority to deviate from the GPTA mandates.

As indicated earlier, the first four counts of plaintiff's complaint each sought declaratory relief with respect to a particular special assessment agreement. Count I pertained to a deferred assessment agreement, which, according to plaintiff, was scheduled to be paid off in full eight years prior to the tax foreclosure; therefore, any debt owed for unpaid installments was extinguished by the judgment of foreclosure. Count II concerned a voluntary special assessment/development agreement (VSADA), which plaintiff alleged was to be paid off within 10 years under the language of the special assessment roll, and which date had elapsed prior to the entry of the judgment of foreclosure. Therefore, any accrued debt for nonpayment was

¹ The latter two counts ultimately concern the single question regarding the enforceability of the special assessment arising out of the amended version of one of the special assessment agreements.

² The property consisted of 300 acres, only a portion of which was ultimately purchased by plaintiff at the tax foreclosure sale.

extinguished by the foreclosure judgment. Count III regarded a landscape/irrigation agreement, and plaintiff alleged that the termination date was eight years from the confirmation of the special assessment roll and that the last scheduled date for an installment payment date had passed before the tax foreclosure proceedings. Thus, according to plaintiff, the debt owed on the unpaid balance was extinguished by the judgment of foreclosure. Count IV pertained to an amended VSADA,³ presenting a somewhat different issue than that posed in the first three counts. The amended VSADA was not executed by the prior property owner, but was an agreement between the city and the county treasurer that was signed after title had vested with the county treasurer but before plaintiff acquired its interest. In Count IV, plaintiff alleged that “[t]here was no authority for the Defendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA.” Plaintiff claimed that this agreement was not supported by any consideration and that it was against public policy. Finally, in regard to Count V, plaintiff alleged a cause of action for slander of title, seeking money damages. Plaintiff contended that defendants had maliciously and falsely continued to “assert that substantial special assessments exist on the Subject Property.” Plaintiff maintained that defendants’ “assertions have been published, as the installments claimed owing on the special assessments appear in title work, the public tax records, and in instruments recorded with the Kent County Register of Deeds.” Plaintiff alleged that defendants’ misrepresentations had rendered the property “unmarketable for its true value.”

On competing motions for summary disposition, the circuit court, with respect to Counts I through IV, agreed with defendants’ position that plaintiff was challenging the nature and imposition of the special assessments and, therefore, the MTT had exclusive jurisdiction over those counts. We note that the city, as confirmed in defendants’ appellate brief, “was not seeking to collect the Deferred Assessment or the Landscape Irrigation Agreement⁴ with respect to the Subject Property.” The circuit court rejected all of plaintiff’s arguments regarding subject-matter jurisdiction. The circuit court also proceeded to rule:

Even if the court were persuaded that Plaintiff’s claims fall within the GPTA, Plaintiff’s position is fatally flawed. A foreclosure under the GPTA specifically states that it extinguishes all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments. MCL 211.78k(5)(c).⁵ The Defendants have stated, both on the

³ This was an amendment and extension of the agreement covered by Count II of plaintiff’s complaint.

⁴ These are the agreements referenced, respectively, in Counts I and III of plaintiff’s complaint.

⁵ We note that MCL 211.78k(5)(c) provides that a circuit court’s final judgment of foreclosure shall specify, in part, as follows:

That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties,

record and in brief form, that they are only pursuing collection of the Voluntary Special Assessment/Development Agreement installments referenced in Plaintiff's Count II. This assessment was amended after the foreclosure [see Count IV of plaintiff's complaint]. Moreover, it addresses future installments that will be collected until 2024. Therefore, the foreclosure sale does not operate to extinguish the installments.

The court is also not persuaded by Plaintiff's claims that the assessment is actually a contract. As more full[y] discussed in subsection "a" of this opinion, the issue of whether the assessment is actually a contract is for the MTT to determine. However, the court notes that Plaintiff is not a party to the assessment/contract and likely lacks standing to challenge it. Additionally, the forming document states "the parties agree that, **to the extent not otherwise prohibited by law**, the jurisdiction and venue for any such dispute shall be solely with the state courts located in Kent County, Michigan." . . . As discussed above, the MTT has exclusive jurisdiction over this matter. A contract cannot establish or alter jurisdiction.

In regard to Count V, slander of title, the circuit court ruled that the claim constitutes a tort that is covered by governmental immunity and that none of the statutory exceptions to immunity applied. Accordingly, the circuit court denied plaintiff's motion for summary disposition and granted defendants' summary disposition motion under MCR 2.116(C)(4) and (7).

We review de novo a circuit court's ruling on a motion for summary disposition. *Winkler v Marist Fathers of Detroit, Inc*, 500 Mich 327, 333; 901 NW2d 566 (2017). "We likewise review de novo questions of subject matter jurisdiction[.]" *Id.* "Further, the determination regarding the applicability of governmental immunity and a statutory exception to governmental immunity is a question of law that is also subject to review de novo." *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011). Under MCR 2.116(C)(4), summary disposition is warranted when "[t]he court lacks jurisdiction of the subject matter." See also *Winkler*, 500 Mich at 333. Under MCR 2.116(C)(7), summary disposition is appropriate when a claim is barred based on "immunity granted by law." See also *Snead*, 294 Mich App at 354.

Subject-matter jurisdiction concerns the right of an adjudicative body to exercise judicial power over a class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending. *Winkler*, 500 Mich at 333. The question of jurisdiction is not dependent on the truth or falsity of the allegations, but upon their nature. *Wayne Co v AFSCME Local 3317*, __ Mich App __, __; __ NW2d __ (2018); slip op at 11. The

and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

inquiry into subject-matter jurisdiction is determinable at the commencement of a case, not its conclusion. *Id.* There is a vast difference between want of jurisdiction, in which case a court has no power whatsoever to adjudicate the matter, and an error in the exercise of undoubted jurisdiction, in which case the court's action is not void, even though it may be subject to direct attack on appeal. *Id.*

“Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.” MCL 600.605; see also Const 1963, art 6, § 13 (“The circuit court shall have original jurisdiction in all matters not prohibited by law[.]”).⁶ With respect to the MTT, it has “exclusive and original jurisdiction” over “[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, *special assessments*, allocation, or equalization, under the property tax laws of this state.” MCL 205.731(a) (emphasis added). In *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 53; 832 NW2d 728 (2013), our Supreme Court extrapolated four elements from MCL 205.731(a), observing:

Thus, for the tribunal to have jurisdiction pursuant to MCL 205.731(a), four elements must be present: (1) a proceeding for direct review of a final decision, finding, ruling, determination, or order; (2) of an agency; (3) relating to an assessment, valuation, rate, special assessment, allocation, or equalization; (4) under the property tax laws. Where all such elements are present, the tribunal's jurisdiction is both original and exclusive.

“The divestiture of jurisdiction from the circuit court is an extreme undertaking[;]” however, “the Tax Tribunal Act[, MCL 205.701 *et seq.*] clearly evidences a legislative intention

⁶ MCL 600.601(1) provides:

The circuit court has the power and jurisdiction that is any of the following:

(a) Possessed by courts of record at the common law, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.

(b) Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.

(c) Prescribed by the rules of the supreme court.

that the circuit court not have jurisdiction over matters within the tribunal's exclusive jurisdiction." *Wikman v City of Novi*, 413 Mich 617, 645; 322 NW2d 103 (1982).

MCL 205.731(a) expressly references "special assessments," and a special assessment "is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." *Kadzban v City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993). "In contrast to a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes." *Id.* The Tax Tribunal Act grants the MTT "exclusive jurisdiction over . . . [a] proceeding seeking direct review of the governmental unit's decision concerning a special assessment for a public improvement." *Wikman*, 413 Mich at 626.

We conclude that the particular allegations in Counts I through III of plaintiff's complaint squarely presented a legal question regarding the effect of a tax foreclosure judgment on overdue special-assessment installment payments; it is a pure issue of statutory construction. In *Romulus City Treasurer v Wayne Co Drain Comm'r*, 413 Mich 728, 737-738; 322 NW2d 152 (1982), the Supreme Court described the composition of the MTT and the relevance of that composition, explaining:

The tribunal that was created to exercise such jurisdiction was labeled a "quasi-judicial agency," whose membership is to be comprised of persons with various specified qualifications. Of the seven members, two must be attorneys with experience either in property tax matters or in judicial or quasi-judicial office. One member must be a certified assessor; one, an experienced professional real estate appraiser; and one, a certified public accountant with experience in state-local tax matters. . . . [P]ersons who are not members of any of the enumerated disciplines are required to have experience in state or local tax matters.

The expertise of the tribunal members can be seen to relate primarily to questions concerning *the factual underpinnings of taxes*. In cases not involving special assessments, the tribunal's membership is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation and equalization. In special assessment cases, the tribunal is competent to ascertain whether the assessments are levied according to the benefits received. Although the tribunal, in making its determinations, will make conclusions of law, the matters within its jurisdiction under MCL 205.731 most clearly relate to the basis for a tax [Citations omitted; emphasis added.]

In *Joy Mgt Co v Detroit*, 176 Mich App 722, 728; 440 NW2d 654 (1989), overruled in part on other grounds by *Detroit v Walker*, 445 Mich 682, 697 n 20 (1994), this Court noted that the MTT's "primary functions are to find facts," where its expertise chiefly relates "to questions concerning the factual underpinnings of taxes." The *Joy Mgt Co* panel ruled:

In the instant case, plaintiff has not challenged a final decision regarding valuation, rates, allocation or assessment, nor is plaintiff asking for a refund or a redetermination of a tax. Rather, plaintiff has challenged the legality of

the *method* used by defendant to enforce collection of the property taxes. Resolution of this issue depends not on findings of fact, but on conclusions of law based upon the construction of [MCL 211.47]. This is clearly within the scope of the circuit court's jurisdiction. Thus, the trial court did not err by denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(4), lack of subject-matter jurisdiction. [*Joy Mgt Co*, 176 Mich App at 728-729.]

In *In re Petition of the Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 112-113; 777 NW2d 507 (2009), this Court indicated that when a “challenge does not require any findings of fact, but rather only construction of law—where no factual issues requiring the tribunal’s expertise are present—the circuit court has jurisdiction to consider the issue.” The Court observed that this “reasoning applies to any challenge to a tax assessment based not on the validity of the assessment per se, but on peripheral issues relevant to enforcing a tax assessment.” *Id.* at ¶13.

Here, our review of Counts I through III of plaintiff’s complaint reveals that plaintiff is not challenging the factual basis or the amount of the underlying assessments arising from the special assessment agreements; rather, plaintiff takes issue with the continuing enforceability of the assessments, at least in regard to outstanding past due installments, in light of the tax foreclosure, arguing that past debt was extinguished by the judgment of foreclosure. It is important to keep in mind that, even though plaintiff’s arguments at the summary disposition stage may have deviated somewhat from the allegations in its complaint, it is the nature of those allegations alone that govern our resolution of whether the circuit court has subject-matter jurisdiction. *Grubb Creek Action Comm v Shiawassee Co Drain Comm’r*, 218 Mich App 665, 668; 554 NW2d 612 (1996) (“A court’s subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint.”); see also *Reynolds v Robert Hasbany, MD PLLC*, 323 Mich App 426, 431; 917 NW2d 715 (2018); *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 586; 644 NW2d 54 (2002); *Luscombe v Shedd’s Food Prod Corp*, 212 Mich App 537, 541; 539 NW2d 210 (1995). Resolution of Counts I through III requires construction of the GPTA and the law of tax foreclosure, having nothing to do with the factual underpinnings of the special assessments. The proceedings, as framed by plaintiff’s complaint, did not entail plaintiff seeking direct review of a final decision, finding, ruling, or determination by the city relating to special assessments under the property tax laws of this state. MCL 205.731(a). Instead, plaintiff sought review of various GPTA foreclosure provisions and application of those provisions *to the existing factual circumstances*, which is not within the wheelhouse of MTT’s expertise. In Counts I through III, there is no allegation challenging the amount or the basis of a contractually-created special assessment, nor is there an allegation that an improvement did not benefit the property in correlation to the cost of the improvement. Counts I through III of plaintiff’s complaint did not trigger the MTT’s original and exclusive jurisdiction.

With respect to the deferred assessment agreement addressed in Count I and the landscape/irrigation agreement challenged in Count III, defendants, as recognized by the circuit court, maintained that the city does not seek to recover or hold plaintiff responsible for any amounts owing under those agreements/assessments. In light of this position, and given our ruling on subject-matter jurisdiction, we deem the appropriate course of action to be a remand to the circuit court for entry of declaratory relief in favor of plaintiff on those two counts, making

clear that plaintiff owes nothing in regard to those agreements/assessments, nor is plaintiff's property to be subject to any lien or encumbrance connected to the two agreements/assessments.

With respect to Count II and the VSADA and the amendment of the VSADA post-foreclosure judgment but pre-foreclosure sale, which amended agreement is addressed in Count IV of plaintiff's complaint, it is necessary to examine the record in more detail. The VSADA was entered into in 2004, and it provided that "[t]he term of the special assessment will not exceed ten (10) years." The VSADA further stated that it "shall be effective as of the date first written above and shall remain in effect until all the obligations of the Owner under this Agreement have been met." Additionally, the VSADA provided that "the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district for the Owner-Contracted Infrastructure Improvements will be determined by resolution of the City Commission *in its discretion*." (Emphasis added.)

A resolution adopted by the city on July 15, 2014, indicated that a balloon payment totaling \$403,620 was due on September 7, 2014, under the VSADA. The resolution, referring back to the city's right to exercise its discretion as stated in the VSADA, further provided:

Without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of the special assessment for one additional year [September 7, 2015] is in the public interest in order to allow the owner of the Property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the Property current, to make the Property more marketable, and to enhance economic development opportunities within the City.

On March 6, 2015, before the expiration of the one-year extension adopted by the city, the judgment of foreclosure was entered, vesting title in the county treasurer. The judgment became final and unappealable on April 1, 2015. In June 2015, the city and the county treasurer entered into the amended VSADA. The amended VSADA recited the history of the original VSADA, noted the foreclosure proceedings, referenced the language, quoted above, found in the city's resolution adopted in July 2014, acknowledged the balance of \$403,620, and set forth a payment structure requiring nine annual payments of \$54,000 starting on September 7, 2015, with a final payment of \$48,307 due on September 7, 2024. The amended VSADA also provided:

The parties acknowledge and agree that the City, consistent with the terms of the [VSADA] and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the [county treasurer], its successors and assigns as against the City.

The amended VSADA was recorded with the register of deeds on June 23, 2015. In November 2015, plaintiff purchased the property at the tax foreclosure sale for \$36,500.

We have already determined that the circuit court has subject-matter jurisdiction over Count II of the complaint concerning the VSADA, standing on its own. And we now hold that the circuit court also has subject-matter jurisdiction over Count IV of the complaint pertaining to the amended VSADA. With respect to Count IV, as stated earlier, plaintiff alleged that “[t]here was no authority for the [d]efendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA.” Plaintiff asserted that the amended VSADA was not supported by any consideration and that it was against public policy. Regardless of the substantive soundness of plaintiff’s argument, Count IV effectively alleged the creation or existence of a legally invalid contract that gave rise to a special assessment or the extension of a special assessment, resulting in an encumbrance on plaintiff’s property.

The MTT does not have subject-matter jurisdiction over contract disputes simply because the substance of the contract regards special assessments. In *Highland-Howell Dev Co, LLC v Marion Twp*, 469 Mich 673, 677-678; 677 NW2d 810 (2004), our Supreme Court, after citing and quoting the language from *Romulus City Treasurer* that we alluded to earlier, ruled:

While the Tax Tribunal's membership is particularly competent to resolve disputes related to the basis for and amounts of taxes, its membership is not qualified to resolve common-law tort or contract claims. Clearly, this supports our conclusion that the Legislature did not intend the Tax Tribunal's exclusive jurisdiction to encompass matters outside the realm of those tax matters specified in the statute.

As alleged by plaintiff, Count IV presented a question of contract law, as shaped by the construction of provisions in the GPTA. Count IV does not require any findings of fact nor entail the factual underpinnings of taxes; rather, it concerns the construction of law—contract law and the GPTA. Therefore, the circuit court and not the MTT has jurisdiction over Count IV.

That concluded, we must nonetheless continue our analysis, because the circuit court supplemented its jurisdictional ruling with a determination that plaintiff’s action was fatally flawed even if the court had subject-matter jurisdiction. The circuit court first found that the judgment of foreclosure was entered *before* the amended VSADA was executed. And therefore, pursuant to MCL 211.78k(5)(c), future installments of a special assessment are at issue, which necessarily could not have been extinguished by the foreclosure judgment. The court’s ruling assumes the soundness and validity of the amended VSADA from which the special assessment arose. However, the allegations in Count IV of the complaint challenge the legal validity of the amended VSADA. If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce.

The circuit court next observed that plaintiff was not a party to the amended VSADA and thus “likely lacks standing to challenge it.” We do not find this language to reflect a conclusive ruling on standing, and any standing issue can certainly be entertained more fully and conclusively on remand. We do note that the special assessment based on the amended VSADA encumbers plaintiff’s property to the tune of over half a million dollars. The circuit court did not address the allegations in Count IV of plaintiff’s complaint that the amended VSADA was

invalid because there was a lack of consideration and because it violated public policy. The legal validity of the amended VSADA must be addressed and resolved on remand.

Finally, with respect to Count V, the circuit court summarily dismissed the claim based on governmental immunity. In *Moraccini v City of Sterling Hts*, 296 Mich App 387, 391-392; 822 NW2d 799 (2012), this Court set forth the basic analytical framework concerning governmental immunity:

Except as otherwise provided, the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, broadly shields and grants to governmental agencies immunity from tort liability when an agency is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1); *Duffy v Dep't of Natural Resources*, 490 Mich 198, 204; 805 NW2d 399 (2011); *Grimes v Dep't of Transp*, 475 Mich 72, 76-77; 715 NW2d 275 (2006). "The existence and scope of governmental immunity was solely a creation of the courts until the Legislature enacted the GTLA in 1964, which codified several exceptions to governmental immunity that permit a plaintiff to pursue a claim against a governmental agency." *Duffy*, 490 Mich at 204. A governmental agency can be held liable under the GTLA only if a case falls into one of the enumerated statutory exceptions. *Grimes*, 475 Mich at 77; *Stanton v Battle Creek*, 466 Mich 611, 614-615; 647 NW2d 508 (2002). . . . This Court gives the term "governmental function" a broad interpretation, but the statutory exceptions must be narrowly construed. [Citation omitted.]

"[T]he burden . . . fall[s] on the governmental employee to raise and prove his entitlement to immunity as an affirmative defense." *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008). But "[a] plaintiff filing suit against a governmental agency must initially plead his claims in avoidance of governmental immunity." *Id.* at 478-479.

The sole argument posed by plaintiff on appeal is that defendants were not engaged in the exercise or discharge of a governmental function when attempting to collect an extinguished obligation. This argument lacks merit, failing to appreciate the difference between having the authority to generally engage in a particular governmental function and the negligent, improper, or wrongful performance of the authorized function. A "governmental function" is defined as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b).

A "city may in its charter provide . . . [f]or assessing and reassessing the costs, or a portion of the costs, of a public improvement to a special district." MCL 117.4d(1)(a). The Kentwood Code of Ordinances (KCO) grants the city authorization to impose special assessments. See KCO, § 10.1; KCO, § 50-2 ("The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter."). Furthermore, KCO, § 50-13 authorizes the creation of liens relative to special assessments, providing that "[s]pecial assessments . . . shall become a personal obligation to the city . . . and, until paid, shall be and remain a lien upon the property assessed" Indeed, MCL 211.78k(5)(c) (see footnote 5 of this opinion), which plaintiff cites in its complaint as supporting extinguishment of existing

special assessments, recognizes the authority of governmental entities to record liens against property for special assessments.

In light of the authorities, the city was plainly engaged in the exercise and discharge of a governmental function for purposes of MCL 691.1407(1) and governmental immunity with respect to the special assessments at issue, their collection, and the resulting recorded liens. Plaintiff's argument simply challenges the specific manner in which the city carried out the governmental functions, alleging that the city clouded plaintiff's title by improperly attempting to collect payment on special assessments, making payment demands, and allowing recorded instruments to remain in place, where the special assessments had been extinguished. In determining whether a governmental agency was engaged in the exercise of a governmental function, the focus must be on the general activity, not the particular conduct involved at the time the alleged tort was committed. *Tate v Grand Rapids*, 256 Mich App 656, 661; 671 NW2d 84 (2003). The improper performance of an activity authorized by law is, regardless of the impropriety, still authorized for purposes of the governmental function test. *Richardson v Jackson Co*, 432 Mich 377, 385; 443 NW2d 105 (1989). A governmental agency is not engaged in the exercise or discharge of a governmental function when it lacks the legal authority to perform the activity "in any manner." *Id.* at 387. Such is not the situation in the instant case. Plaintiff has not established that the circuit court erred in summarily dismissing plaintiff's claim for slander of title.

Affirmed in part, and reversed and remanded in part for further proceedings. We do not retain jurisdiction. No party having fully prevailed on appeal, we decline to award taxable costs under MCR 7.219.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Jane M. Beckering

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EXHIBIT
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Notice of Judgement of Foreclosure

Michigan Department of Treasury
2731 (2-04)

Required by section 78k(8) of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.78k(8).

On March 6, 2015, in Civil Action No. 14-05292-CZ, in the Circuit Court of Kent County, the Kent County Treasurer entered a Judgement of Foreclosure in the Matter of the Petition of the County Treasurer against the property described below, vesting absolute title to the real property in the County of Kent, by the Kent County Treasurer, as provided by Section 78k of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.78k, if not redeemed by April 1, 2015. Under the General Property Act, the Judgement of Foreclosure became final and unappealable on April 1, 2015.

Parcel No. 41-18-22-426-001	Property Forfeited to County Treasurer on March 3, 2014. Certificate of Forfeiture recorded on Instrument # 201404100028284
Property Address (if available): 4101 SHAFFER AVE SE KENTWOOD MI 49512	Owner: 44TH/SHAFFER AVENUE LLC
County: KENT COUNTY Local Unit Name: CITY OF KENTWOOD Local Unit Code: 65	
Legal Description of the Property: PART OF E 1/2 COM AT E 1/4 COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W 1/4 LINE SD PT BEING (CONTINUED)	
April 22, 2015	County Treasurer Signature <i>Kenneth D. Parnell</i>
Notary Public, State of Michigan, County of Kent My Commission Expires on October 5, 2018 Acting in the County of Kent Subscribed to and sworn before me on this 22nd day of April 2015 <i>Denise M. Terpstra</i> Denise M. Terpstra, Notary Public	Drafted by and when recorded, return to: County Treasurer for the County of Kent Address: 300 MONROE AVE NW PO BOX Y GRAND RAPIDS MI 49501

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION



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*** CONTINUATION OF LEGAL - Property ID No 41-18-22-426-001 ***
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Kent County MI Registrar SEPL

3 DEFERRED ASSESSMENT AGREEMENT

This Deferred Assessment Agreement (the "Agreement") is executed this 18th day of March, 2004, between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue SE, PO Box 8848, Kentwood, Michigan 49518-8848 (the "City"), Ravines Capital Management, LLC, a Michigan limited liability company, the address of which is 301 Douglas Avenue, Holland, Michigan 49424 ("RCM") and 44th/Shaffer Avenue, LLC, a Michigan limited liability company, the address of which is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC").

RECITALS

A. 44th LLC and RCM own approximately 300 acres of real property located at the northwest corner of 44th Street and Shaffer Avenue in the City of Kentwood, Kent County, Michigan (the "Property"), more specifically described on the attached Exhibit A, which is incorporated by reference.

B. In 1981, 1983, 1995 and 2000, special assessment districts were established by the City to finance certain public improvements benefiting particular properties in the City, including the Property. The special assessment rolls corresponding to the special assessment districts for the Property were confirmed by the City Commission.

C. In total, special assessments in the amount \$327,004.68, were assessed against the Property (the "Special Assessments"). The Special Assessments are a lien on the Property.

D. Under the terms of the rolls confirming the Special Assessments, collection of the Special Assessments was deferred until certain developments occurred on the Property.

E. The Property was formerly zoned R1-C, single family residential. 44th LLC sought and received approval from the City to develop the Property in phases having multiple uses including commercial and residential development of single family, townhouses and attached condominiums (the "Project"). To accomplish this, the Property was rezoned, at 44th LLC's request, to a R-PUD1 designation, high density residential Planned Unit Development District ("PUD"). A preliminary PUD site plan, as required by the City's Zoning Ordinance, depicting the Project is attached as Exhibit B and incorporated by reference.

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F. 44th LLC contemplates the sale of all or portions of the Property to third party builders ("Builder" or "Builders") who will succeed to and be responsible for complying with the obligations of 44th LLC as to that portion of the Property purchased from 44th LLC, and 44th LLC will have no further obligation with regard to the purchased Property. Wherever the term "44th LLC" is used, it shall mean during the period that 44th LLC remains the owner of the portion of the Property affected and thereafter it shall mean the Builder or Builders.

G. To facilitate development of the Property in an orderly fashion, the parties have agreed to enter into this Agreement with respect to treatment of the outstanding deferred Special Assessments.

AGREEMENT

For good and valuable consideration including, but not limited to, the covenants and pledges contained herein and the City's willingness to forego payment of all Special Assessments upon any development of the Property, the sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Acknowledgment of Lien. Notwithstanding the existence of the Agreement or any provision herein, 44th LLC and ECM acknowledge and agree that the deferred Special Assessments on the Property, in the total amount of \$327,004.68, confirmed pursuant to City of Kentwood Resolution Nos. 38-81, 68-83, and 28-00 are and shall remain valid and enforceable liens that run with the Property.

Section 2. Payment Schedule. 44th LLC has requested, consistent with the terms of the resolution confirming the rolls for the Special Assessments, that it or its successors be permitted to pay the Special Assessments in three (3) installments, subject to the terms and conditions of this Agreement, and the City has agreed to this request.

A. Initial Payment. Concurrent with the execution of this Agreement, 44th LLC shall pay to the City the sum of \$110,827.68, representing the portion of the deferred Special Assessments due and owing for certain sanitary sewer, watermain and detention pond improvements for approximately 1020 lineal feet of the Property along Shaffer Avenue, S.E., as shown on Exhibit B.

B. Remainder. The remainder of the outstanding deferred Special Assessment in the amount of \$216,177.00 (the "Remainder") shall be paid to the City in accordance with the following terms and conditions and consistent with the following schedule:

(1) Not less than 60 days following the execution of this Agreement, 44th LLC shall post with the City an irrevocable letter of credit in the amount of \$216,177.00, which letter of credit shall be in a form satisfactory to the City in its reasonable discretion. A combination of irrevocable letters of credit from qualified banks may be used by 44th LLC to satisfy this provision. The letter(s) of credit shall provide that the City may draw or demand for payment on the letter(s) of credit if an official designated by the City attests that payments for the Special Assessments due under the terms of this Agreement have not been made to the City as required herein. The letter(s) of credit shall further contain language providing that it (they) may not be revoked or rescinded without first providing the City with at least

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 Gary Hollinger Kent County HI Registrar
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thirty (30) days prior written notice. The letter(s) of credit shall be released only upon the satisfactory payment of the Special Assessments as provided for herein; provided, however, that the letter(s) of credit shall be released proportionately as the Special Assessment payments called for herein are made to the City. The parties acknowledge and agree that no foundation or building permits shall be issued for any portion of the Project unless and until the letter(s) of credit referred to herein are posted with the City.

(2) For purposes of this Agreement the PUD shall be divided into three (3) distinct component development areas, as separately shown and described on Exhibit C, incorporated by reference. Prior to the time any foundation or building permit is issued within any of the development areas in the PUD (i.e., the Commercial Corner, Bosgraaf Parcel or 44th/Shaffer Parcel), a payment in the amount shown for the relevant development area on Exhibit C, plus interest then due and owing as provided for herein, shall be paid to the City by 44th LLC or the successor Builder.

(3) Interest shall accrue on each component constituting the Remainder, as collectively identified on Exhibit C, at the rate of ten percent (10%) per annum from the date of the execution of this Agreement. Any component of the Remainder that remains unpaid shall continue to accrue interest at the rate of ten percent (10%) per annum.

(4) The parties acknowledge and agree that the construction of Pfeiffer Woods Drive, or any portion of the same, by 44th LLC or the Builders shall not be construed to require a payment under the terms of this Agreement, it being the parties' interpretation that development of Pfeiffer Woods Drive is not a development triggering an obligation to pay any part of the Special Assessments. Similarly, the parties acknowledge and agree that the demolition of any structures existing on the Property as of the date of this Agreement shall not be construed to require a payment under the terms of this Agreement.

(5) Regardless of the particular development schedule for the PUD pursued by 44th LLC or the Builders, any portion of the Special Assessment remaining unpaid as of December 31, 2006 shall be paid to the City with interest accrued to that date by 44th LLC or the Builders.

Section 3. Violation of Agreement. Nothing herein shall be deemed a waiver of the City's rights to seek enforcement of this Agreement or zoning approvals previously granted, to the extent otherwise authorized by law. Violations of the terms and conditions of this Agreement shall entitle the prevailing party, in the event of litigation to enforce this Agreement, to receive its reasonable attorney and consulting fees incurred.

Section 4. Amendment. Except as hereafter provided, this Agreement may only be amended in writing, signed by all parties. However, any amendment that only relates to a component development area shall not require the signature of the owners of the other properties unless such amendment has an effect on their property.

Section 5. Recording and Binding Effect. The obligations under this Agreement are covenants that run with the land, and shall bind all successors in title. It is the parties' intent that this Agreement shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Agreement.

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Section 6. Headings and Recitals. The parties acknowledge and agree that the headings and subheadings in this Agreement are for convenience only and shall have no bearing or effect. The parties further acknowledge and agree, however, that the Recitals hereto are and shall be considered an integral part of this Agreement proper to its correct understanding and interpretation.

Section 7. Miscellaneous.

A. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.

B. Notices. Any and all notices permitted or required to be given shall be in writing and sent either by mail or personal delivery to the address first above given.

C. Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

D. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof.

E. Authorization. The parties affirm that their representatives executing this Agreement on their behalf are authorized to do so and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved. The Developer further affirms that it is not in default under the terms of any land contract for all or part of the Property.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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The parties have executed this Agreement on the day and year first above written.

WITNESSES:

CITY OF KENTWOOD

Keith Van Beek
* Keith Van Beek

Richard Root
Richard Root, Mayor

Jeff Slaggett
* Jeff Slaggett

Dan Kasunic
Dan Kasunic, Clerk

STATE OF MICHIGAN)
) SS.
COUNTY OF KENT)

On this 12th day of March, 2004, before me a Notary Public, personally appeared Richard Root and Dan Kasunic, the Mayor and Clerk, respectively, of the City of Kentwood, a Michigan municipal corporation, who, being first duly sworn, did say they signed this document on behalf of the City.

Julie E. Connor
* Julie E. Connor
Notary Public, Kent County, Michigan
My Commission Expires: 10-2-05


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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

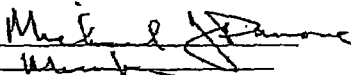
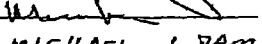
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44TH/SHAFFER AVENUE, LLC

WITNESSES:



Craig S. Wandrie
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By: 
Its: 
MICHAEL J DAMONE

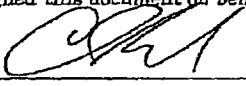


Craig S. Wandrie
*

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18 day of March, 2004, before me a Notary Public, personally appeared the Member of 44th/Shaffer Avenue, LLC a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

* Michael J. Damone



CRAIG S. WANDRIE Notary Public, Kent County, Michigan
NOTARY PUBLIC, BARRY COUNTY My Commission Expires: _____
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES
NOVEMBER 15, 2007

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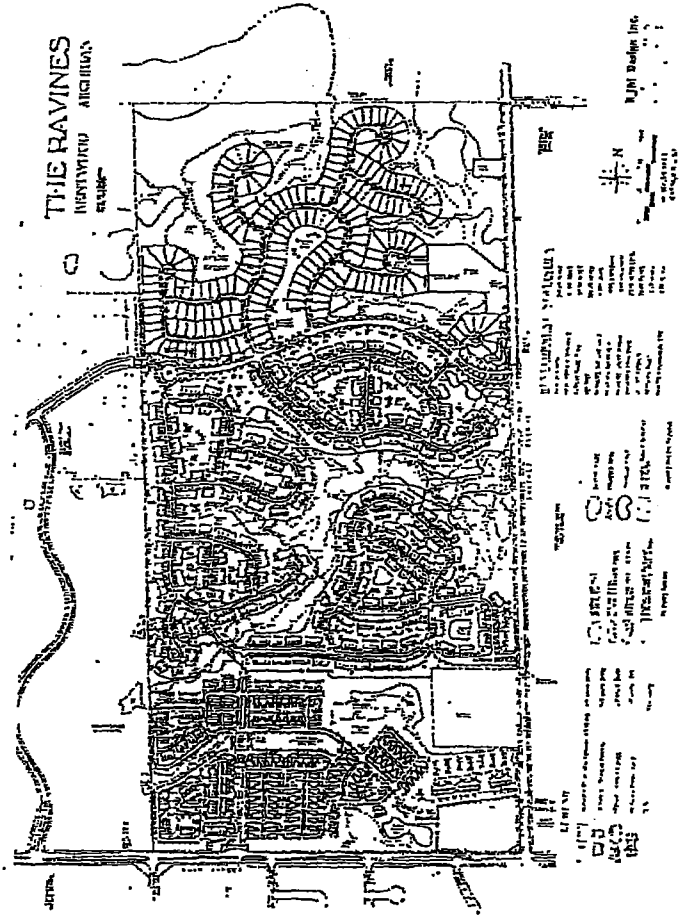
Exhibit A

Legal Description of Property

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said NE 1/4; thence S89°42'31"W 258.00 feet; thence S03°35'29"E 120.00 feet; thence N89°42'31"E 258.00 feet; thence S03°35'29"E 705.38 feet along the East line of said NE 1/4; thence N54°47'03"W 395.85 feet; thence S89°45'47"W 308.00 feet; thence S03°35'29"E 330.00 feet; thence N89°45'47"E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S03°35'29"E 153.00 feet; thence N89°45'47"E 193.00 feet; thence S03°35'29"E 273.18 feet along the East line of said NE 1/4; thence S86°24'31"W 40.00 feet; thence S03°35'29"E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S03°10'02"E 1324.40 feet along the West line of Shaffer Avenue; thence S89°54'32"W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S03°10'02"E 550.00 feet; thence N89°54'32"E 629.94 feet; thence S03°10'02"E 325.92 feet along the West line of Shaffer Avenue; thence S82°24'32"W 10.03 feet; thence S03°10'02"E 372.08 feet along said West line; thence S43°24'59"W 34.36 feet; thence S90°00'00"W 1908.53 feet along the North line of 44th Street; thence N03°04'04"W 40.00 feet and S90°00'00"W 180.00 feet and S03°04'04"E 40.00 feet and S90°00'00"W 481.20 feet along said North line; thence N03°02'05"W 2590.11 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N03°29'48"W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N89°42'31"E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. This parcel contains 299.85 acres.

EXHIBIT B


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EXHIBIT C - COMPONENT DEVELOPMENT AREAS

Commercial Corner Neighborhood

Legal Description

Part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: Commencing at the SE corner of Section 22; thence S 90°00'00"W 75.08 feet along the South line of said SE ¼; thence N03°10'02"W 50.08 feet to the North line of 44th Street and the PLACE OF BEGINNING of this description; thence S90°00'00"W 585.47 feet along said North line; thence N00°00'00"E 318.04 feet; thence N82°24'32"E 593.74 feet; thence S03°10'02"E 372.08 feet along the West line of Shaffer Avenue; thence S43°24'59"W 34.36 feet to the place of beginning. This parcel contains 4.92 acres.

Portion of Remainder: \$32,700.42

Bosgraaf Parcel Neighborhood

Legal Description

Part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: Commencing at the S ¼ corner of Section 22; thence N03°02'05"W 50.07 feet along the West line of said SE ¼ to the PLACE OF BEGINNING of this description; thence N03°02'05"W 1150.11 feet along said West line; thence N77°56'20"E 333.73 feet; thence N42°36'50"E 260.00 feet; thence S50°00'00"E 235.00 feet; thence N90°00'00"E 530.00 feet; thence S45°00'00"E 67.88 feet; thence N90°00'00"E 708.24 feet; thence S03°10'02"E 489.05 feet; thence N89°54'32"E 629.94 feet; thence S03°10'02"E 325.92 feet along the West line of Shaffer Avenue; thence S82°24'32"W 603.77 feet; thence S00°00'00"W 318.04 feet; thence S90°00'00"W 1323.06 feet along the North line of 44th Street; thence N03°04'04"W 40.00 feet and S90°00'00"W 180.00 feet and S03°04'04"E 40.00 feet and S90°00'00"W 481.20 feet along said North line to the place of beginning. This parcel contains 61.44 acres.

Portion of Remainder: \$75,210.97

44th/Shaffer Parcel Neighborhood

Legal Description

Part of the NE ¼ and part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said NE ¼; thence S89°42'31"W 258.00 feet; thence S03°35'29"E 120.00 feet; thence N89°42'31"E 258.00 feet; thence S03°35'29"E 705.38 feet along the East line of said NE ¼; thence N54°47'03"W 395.85 feet; thence S89°45'47"W 308.00 feet; thence S03°35'29"E 330.00 feet; thence N89°45'47"E 424.00 feet along the south line of the N ¼ of the NE ¼ of Section 22; thence S03°35'29"E 153.00 feet; thence N89°45'47"E 193.00 feet; thence S03°35'29"E 273.18 feet along the East line of said NE ¼; thence S86°24'31"W 40.00 feet; thence S03°35'29"E 891.81 feet along the West line of

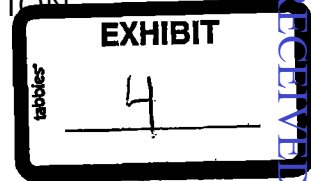
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Shaffer Avenue to the South line of said NE ¼; thence S03°10'02"E 1324.40 feet along the West line of Shaffer Avenue; thence S89°54'32"W 629.94 feet along the North line of the S ¼ of the SE ¼ of Section 22; thence S03°10'02"E 60.95 feet; thence S90°00'00"W 708.24 feet; thence N45°00'00"W 67.88 feet; thence S90°00'00"W 530.00 feet; thence N50°00'00"W 235.00 feet; thence S42°36'50"W 260.00 feet; thence S77°56'20"W 333.73 feet; thence N03°02'05"W 1440.00 feet along the West line of the SE ¼ of Section 22 to the center of said Section; thence N03°29'48"W 2635.49 feet along the West line of the NE ¼ of Section 22 to the N ¼ corner of said Section; thence N89°42'31"E 2633.71 feet along the North line of said NE ¼ to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

Portion of Remainder: \$108,265.19

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LANDSCAPE/IRRIGATION AGREEMENT

This Landscape/Irrigation Agreement is made as of this 26th day of October, 2005 between the City of Kentwood, a Michigan municipal corporation, whose address is 4900 Breton Avenue, SE, Kentwood, MI 49508 (the "City"), 44th/Shafter Avenue, L.L.C., a Michigan limited liability company, whose address is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC"), Holland Home, a Michigan non-profit corporation, the address of which is 2100 Raybrook Avenue, S.E., Grand Rapids, MI 49546 ("Holland Home") and Ravines North, L.L.C., a Michigan limited liability company, whose address is 960 West River Drive, Suite A, Comstock Park, MI 49321 ("Ravines North")(44th LLC, Holland Home and Ravines North are collectively referred to herein as "Owner" or "Owners").

RECITALS

- A. 44th LLC received approval from the City to rezone property it owned for a high-density residential planned unit development project. The property is legally described on attached Exhibit A, which is incorporated by reference (the "Property").
- B. 44th LLC and the City entered into a Voluntary Special Assessment/Development Agreement dated September 7, 2004 (the "Agreement") by which the City contracted with 44th LLC to construct certain designated public improvements, which improvements benefited the Property (the "Owner-Contracted Infrastructure Improvements"). The Agreement further provided that the Owner-Contracted Infrastructure Improvements would be financed through the establishment of a special assessment district. The Agreement was recorded with the Kent County Register of Deeds at 20040917-0125700.
- C. Subsequently, 44th LLC sold portions of the Property to Holland Home and Ravines North. As a result, an Amendment to Voluntary Special Assessment/Development Agreement dated March 15, 2005 was entered between the parties, which Amendment was recorded with the Kent County Register of Deeds at 20050405-0039643. Holland Home and Ravines North took their interests in the Property with knowledge of the Agreement and its provisions. As of the date first above written, 44th LLC, Holland Home and Ravines North are the owners of the Property.
- D. Pursuant to the Agreement, 44th LLC is to dedicate all of the Owner-Contracted Infrastructure Improvements to the City. Pursuant to Resolution 32-05, on March 15, 2005, the

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City accepted for dedication certain of the Owner-Contracted Infrastructure Improvements completed to that date for all public purposes.

E. The Agreement provides that the parties will enter into a separate maintenance/conveyance agreement for landscaping and irrigation system improvements, which improvements are part of the Owner-Contracted Infrastructure Improvements, and that the Owners or their successors will accept the conveyance of the irrigation system improvements upon the termination of the special assessment district. The parties desire to implement these obligations as set forth herein.

AGREEMENT

For good and valuable consideration including, but not limited to, the covenants and pledges contained herein, the sufficiency of which is acknowledged, the parties agree as follows:

1. Landscaping Improvements. The landscaping improvements referenced on the approved landscaping plan, attached as Exhibit B hereto and incorporated by reference, shall, upon completion, be dedicated and conveyed to the City along with any necessary easements consistent with the terms of the Agreement. Without limiting the foregoing, the parties agree that the on-going maintenance responsibility for those landscaping improvements in the parkway included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner or its successor(s) at the Owner or successor(s)'s sole cost and expense. The on-going maintenance obligations of the Owner or its successor(s) with respect to the landscaping improvements are generally described in attached Exhibit C hereto, and incorporated by reference. Nothing herein shall be construed or interpreted as granting the Owner or its successor(s) any interest in the landscaping after the landscaping is conveyed to the City, it being the parties' understanding that the City may remove or modify any landscaping within the public rights-of-way as the City deems necessary for the public health, safety and welfare and that the financing of these landscaping improvements by creation of a special assessment district shall not impact the City's rights. The City shall not require the removal or replacement of the initial landscaping if doing so will materially increase the Owner's burden to maintain the landscaping.

2. Irrigation Improvements. The irrigation system improvements referenced on the approved irrigation system plan, attached as Exhibit D hereto and incorporated by reference, shall, upon completion, be dedicated and conveyed to the City along with any necessary easements consistent with the terms of the Agreement. Without limiting the foregoing, the parties agree that the on-going maintenance responsibility for those irrigation system improvements included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner or its successor(s) at the Owner or successor(s)'s sole cost and expense. As used in this Section 2, "maintain" or "maintenance" shall mean inspecting, cleaning out, repairing, and replacing any and all pipes, leads, valves, mains, equipment and similar appurtenances of the irrigation system such that failure to maintain is likely to impede the functioning of the irrigation system. Nothing herein shall be construed or interpreted as granting the Owner or its successor(s) any interest in the irrigation system after the irrigation systems is conveyed to the City; provided, however, that the irrigation system will be conveyed by the City back to the Owner or its successor(s) for the sum of \$1.00, and shall be accepted by the Owner or its successor(s) on the termination of the special assessment district for the Owner-Contracted

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Infrastructure Improvements or on September 7, 2014, whichever is earlier. Conveyance of the irrigation system improvements by the City to the Owner or its successor(s) shall be effectuated by the City's execution of a bill of sale, and the Owner or its successor(s)'s acceptance of the same. The bill of sale utilized shall be substantially similar to the example, attached as Exhibit E hereto and incorporated by reference. The Owner or its successor(s) and the City shall execute any other documents reasonably necessary to effectuate the subsequent transfer and conveyance of the irrigation system improvements to the Owner or its successor(s).

3. Allocation of Costs. For purposes of allocating maintenance costs and other obligations among the parties (or their successors) to this Agreement, those costs and obligations shall be spread among Neighborhoods B-1 through B-4 of the Ravines, as defined in the Planned Unit Development Agreement, dated March 18, 2004, recorded at Instrument No. 20040402-0043209 with the Kent County Register of Deeds. The allocation of those costs and obligations by neighborhood shall be as follows:

Neighborhood	Cost/Obligation Allocation
B-1	24%
B-2	22%
B-3	33%
B-4	21%

4. Segment of Irrigation System. The City's temporary ownership of the irrigation system as described above in Section 2 shall extend only to the public side of the water meter, which water meter shall be installed within the public rights of way in such manner as approved by the City, all as designated on Exhibit D.

5. Indemnification. The Owner and its successor(s) shall indemnify and hold harmless the City and its officers and employees from any and all claims arising out of or related to the Owner or its successor(s)'s construction, operation or maintenance of the landscaping and irrigation systems that are included in the Owner-Contracted Infrastructure Improvements so long as the Owner or its successor(s) have obligations under the terms of this Landscape/Irrigation Agreement.

6. Miscellaneous.

(a) Interpretation. Each party had the advice of legal counsel and was able to participate in the creation of this agreement, so it shall be construed as mutually drafted. The captions are for convenience only. However, the recitals are deemed an integral part of this agreement. More than one copy may be signed, but it shall constitute only one agreement. It was drafted in Kent County, Michigan and is to be interpreted in accordance with Michigan law. The interpretation of this agreement shall not be affected by any course of dealing between the parties.

(b) Notices. All notices shall be complete when provided to the other party at the first address given above or such other address as a party shall request by notice. It may be made by personal delivery, express courier such as FedEx, by United States certified

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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mail, return receipt requested or by pre-paid United State first class mail. If made by first class mail, it shall be deemed completed 5 business days after mailing. Otherwise, it shall be deemed completed when actually delivered.

(c) Breach and Remedies

(1) The parties agree that damages and other legal remedies are inadequate relief. Only specific performance, injunctive or other equitable relief may be sufficient. The parties agree that any breach of this agreement will result in irreparable harm to the other party.

(2) All remedies are cumulative of all remedies available at law or in equity. The pursuit of one remedy does not foreclose the pursuit of other remedies. Available remedies may be exercised simultaneously or individually.

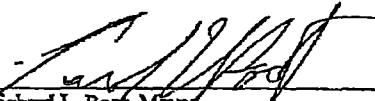
(3) In any dispute pursuant to this agreement, the parties agree that, to the extent not otherwise prohibited by law, the jurisdiction and venue for any such dispute shall be solely within the state courts located in Kent County, Michigan. The parties further agree that in any such dispute the prevailing party shall, in addition to any other relief to which it may be entitled, be awarded its actual cost, including, without limitation, filing fees, discovery costs, actual reasonable attorneys' fees, expert witness fees, and other costs incurred to bring, maintain or defend any such action from its first accrual or notice thereof through all appellate and collection proceedings.

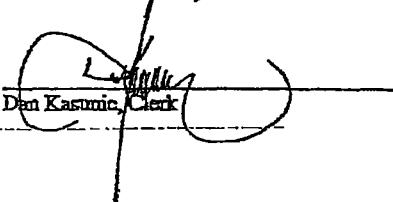
(d) Recording. The obligations under this agreement are covenants that run with the land, and shall bind all successors in title. This agreement shall be recorded with the Kent County Register of Deeds. 44th LLC shall be responsible for all costs associated with recording the agreement.

(e) Additional Documents. The parties agree to execute such other documents and any one of them may reasonably request to fully implement this agreement.

The parties have executed this Agreement on the day and year first above written.

CITY OF KENTWOOD, a Michigan home rule city


Richard L. Roof, Mayor


Dan Kasunic, Clerk

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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STATE OF MICHIGAN)
) SS.
COUNTY OF KENT)

On this 26th day of October, 2005, before me a Notary Public, personally appeared Richard L. Root and Dan Kasunic, the Mayor and Clerk, respectively of the City of Kentwood, a Michigan municipal corporation, who, being first duly sworn, did say they signed this document on behalf of the City.

Mary L. Bremer

Notary Public, State of Michigan, County of Kent
My Commission Expires: 8-9-10
Acting in the County of Kent

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2010

44TH/SHAFER AVENUE, LLC, a
Michigan limited liability company

Michael J. Damone
Michael J. Damone, Manager

STATE OF MICHIGAN)
 OAKLAND) ss
COUNTY OF ~~KENT~~)

On this 26th day of Oct, 2005, before me a Notary Public, personally appeared Michael J. Damone, the Manager of 44th/Shaffer Avenue, L.L.C., a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the Company.

Constance M. Valery

Notary Public, State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

CONSTANCE M. VALERY
NOTARY PUBLIC, MADISON COUNTY, MI
MY COMMISSION EXPIRES: NOV 3, 2007
KENTON, IN OAKLAND COUNTY, MI

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HOLLAND HOME, a Michigan Non-Profit Corporation

Robert R. Israels
Robert R. Israels
Its Vice Chair, Holland Home

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18th day of October, 2005, before me a Notary Public, personally appeared Robert R. Israels, the Vice Chair of Holland Home, a Michigan non-profit corporation, who, being first duly sworn, did say he signed this document on behalf of the corporation.

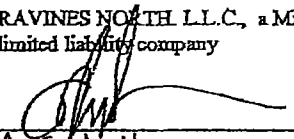
Robert A. Westerman
Notary Public, State of Michigan, County of Kent
My Commission Expires: 9-12-2011
Acting in the County of Kent

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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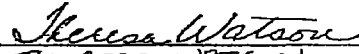
RAVINES NORTH L.L.C., a Michigan
limited liability company



A. Kurt Homersma
Its Member

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 21st day of October, 2005, before me a Notary Public, personally appeared A. Kurt Homersma a member of Ravines North, L.L.C., a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.



THERESA WATSON
Notary Public, State of Michigan, County of KENT
My Commission Expires: 3-11-08
Acting in the County of KENT

Drafted By/Return To:
Jeff Shugart
Law, Weathers & Richardson, PC
333 Bridge, NW, Suite 800
Grand Rapids, MI 49504



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EXHIBIT A

20050125-0010004 01/25/2006
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 Kent County MI Register SERL

LEGAL DESCRIPTION OF PROPERTY

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, Town 6 North, Range 11 West, City of Kentwood, Kent County, Michigan, described as follows: BEGINNING at the Northeast corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter; thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter; thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter; thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 200.80 feet along a 375.00 foot radius curve to the right, the long chord of which bears North 12°06'23" West 198.41 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the long chord of which bears North 15°38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the long chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the long chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the long chord of which bears North 52°42'11" West 57.93 feet; thence Westerly 60.54 feet along a 460.00 foot radius curve to the left, the long chord of which bears North 81°53'03" West 60.49 feet to the West line of the Northeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway Right-of-Way for Shaffer Avenue. This parcel contains 228.49 acres, including highway Right-of-Way.

EXHIBIT B

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APPROVED LANDSCAPING PLAN

Certain contract documents for Pfeiffer Woods Drive, Contract No. 3, prepared by Driesenga & Associates, Inc., dated April 12, 2005, drawings dated April 13, 2005, including, without limitation, Sheets L100 and L101.

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EXHIBIT C

LANDSCAPING MAINTENANCE

1. Spring Clean-Up:

- (a) All lawn and shrub beds are to be cleaned of accumulated late fall and winter debris by means of raking and/or mechanical sweeping. All debris is to be removed from the site.
- (b) Prune and remove any downed or damaged limbs and branches.
- (c) Remove all stakes and staking material from the trees and apply new layer of barkmulch throughout the project.

2. Mowing:

- (a) Mowing height shall be maintained not less than 2" nor more than 3". Grass shall be mowed when it attains approximately 1 1/3 of its maximum height.
- (b) The final cut shall leave the grass at 2 1/2 " height.
- (c) The contractor shall vary the mowing direction to prevent tracking of the turf.
- (d) All mowing equipment shall be maintained in order to provide a clean, sharp cut.
- (e) Clippings shall remain on the lawn, but must be of a size that no grass deposits can be seen lying on top of the lawn. Any grass that does accumulate on top of the lawns shall be removed and disposed of off site.
- (f) Mowing shall not occur when grass or subsoil is excessively wet.

3. Edging shall consist of the following:

- (a) All lawns adjacent to walks and curbs shall be edged at 3-4 week intervals with suitable mechanical edger.
- (b) All edging shall be done in a manner to leave a sharply defined edge.
- (c) All edging shall continue as required throughout the season to maintain a neat appearance.

4. Fertilization shall include the following:

- (a) Three (3) applications of lawn fertilizer with a preferred ratio of 2-1-1.
- (b) The applications shall take place around May 15th, July 15th and September 15th.
- (c) Application rate shall be one (1) pound of Nitrogen per 1,000 sq. ft.

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- (d) Fifty (50%) percent of the nitrogen is to be a slow release formulation.
- (e) The formulation and brand the contractor desires to use must be approved by the owner.

5. **Weed Control shall consist of the following:**

- (a) All lawn areas are to receive two (2) applications of broadleaf weed control at rates recommended by the manufacturer. The first application shall take place around May 15th and the second application around September 1st.
- (b) The weed control produce and label must be submitted to the owner for approval.
- (c) Complete weed control shall be the responsibility of the contractor.
- (d) Hand weeding will be necessary where chemical and/or mechanical means is not possible, especially in the groundcover, annual flower beds and in the perennials plantings in the parking lot islands.

- (e) All planting beds are to be kept free of weeds.

6. **Insecticide spraying shall consist of the following:**

- (a) All plant material, trees, shrubs and evergreens shall be inspected and monitored every other week for infestation of insects and/or diseases. Plant material, trees, shrubs and evergreens shall be sprayed as reasonably necessary to prevent or treat infestation and/or diseases.
- (b) The intent is to treat problems when they arise, and not to blanket spray to prevent a potential problem.

7. **Pruning and trimming shall consist of the following:**

- (a) All plantings shall be pruned and/or trimmed twice a year to encourage growth and to maintain proper shape.
- (b) Trimming and pruning shall be done in a manner that maintains the plants natural growth habit and appearance. Under to circumstance will plantings be sheared in ball or flat top shapes.
- (c) Evergreen trees and shrubs may be pruned any time it is deemed necessary after new growth has emerged. Flowering trees and shrubs should be pruned after the flowering is finished. Do not prune spring flowering shrubs in the fall.

8. **Irrigation and Watering:**

- (a) Trees, shrubs, groundcover and flowers and planters shall be monitored for adequate moisture for the plant material. Means shall be provided by the contractor to assure that the plant materials receive adequate watering.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

(b) Monitoring of the existing irrigation system for adequate watering of plants adjacent to the mall itself is also included.

9. Trash Removal:


(a) The grounds shall be walked at least once per week, and especially before the mowing of the lawns, and all accumulated trash shall be removed and disposed of from the lawns, planting beds and the parking lot islands.

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EXHIBIT D

IRRIGATION SYSTEM


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Certain contract documents for Pfeiffer Woods Drive, Contract No. 3, prepared by Driesenga & Associates, Inc., dated April 12, 2005, drawings dated April 13, 2005, including, without limitation, Sheets I100 and I101.

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EXHIBIT E

BILL OF SALE AND ASSIGNMENT

(IRRIGATION SYSTEM)

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of _____, 20__ by the City of Kentwood, a Michigan municipal corporation ("City") in favor of the _____ ("Owner").

RECITALS

WHEREAS, City and Owner are parties to a Landscape/Irrigation Agreement dated as of _____, 2005 (the "Landscape/Irrigation Agreement"); and

WHEREAS, in exchange for the consideration recited in the Landscape/Irrigation Agreement, City has agreed to convey to Owner City's right, title and interest in designated assets of the Irrigation System.

AGREEMENT

In consideration of the foregoing Recitals and for other good and valuable consideration, the sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1. DEFINED TERMS. The terms used in this Bill of Sale and not otherwise defined in this Bill of Sale shall have the meanings assigned thereto in the Landscape/Irrigation Agreement.

SECTION 2. ASSIGNMENT. City does hereby sell, assign, convey, transfer, set over and quit claim to Owner and its respective successors and assigns, all right, title and interest of City in and to the following (the "Assets"):

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- a. All components of the irrigation system improvements and its appurtenances as described or referenced in the Landscape/Irrigation Agreement;
- b. All record plans of the irrigation system improvements;
- c. All engineering and construction contracts entered into with respect to the design, construction and inspection of the irrigation system improvements; and
- d. Any and all of City's claims or rights against any third parties, relating to the acquisition, design, construction, ownership, operation or maintenance of the irrigation system improvements.

SECTION 3. WARRANTY. The irrigation system improvements are conveyed hereby as is without warranty or recourse.

SECTION 4. ENTIRE AGREEMENT. No alteration, amendment, change or addition to this Bill of Sale shall be binding upon Owner or City unless reduced to writing and signed by City and Owner or their lawful successors.

SECTION 5. CAPTIONS AND SECTION NUMBERS. The captions and section numbers appearing in this Bill of Sale are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Bill of Sale, nor in any way affect this Bill of Sale.

SECTION 6. FURTHER ASSURANCES. City, for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the request of Owner, City will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such other and further instruments and assurances as may be reasonably requested by Owner in order for Owner and its respective successors and assigns to enjoy the benefits of the irrigation system improvements.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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SECTION 7. EFFECTIVE DATE AND TIME. This Bill of Sale will be effective for all purposes as of 12:01 a.m., local time, on _____, 20__ (“Effective Date and Time”).

SECTION 8. BINDING. This Bill of Sale and all of its provisions shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the City and Owner.

IN WITNESS WHEREOF, City has duly signed this Bill of Sale as of the day and year first above written.

CITY OF KENTWOOD

By: _____

Its _____

And: _____

Its _____

OWNER

By: _____

Its _____

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VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT

This Voluntary Special Assessment/Development Agreement is made as of September 7, 2004 between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, MI 49508 (the "City") and 44th Shaffer Avenue, LLC, a Michigan limited liability company, the address of which is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC" or the "Owner").

RECITALS

- A. 44th LLC currently owns or controls an approximately 233 acre site generally located at the northwest corner of 44th Street and Shaffer Avenue in the City, more specifically described on the attached Exhibit A, which is incorporated by reference (the "44th LLC Property").
- B. The 44th LLC Property was formerly zoned R1-C, single family residential. 44th LLC sought and received approval from the City to rezone the 44th LLC Property as a phased high density residential Planned Unit Development project (the "Ravines"). A preliminary PUD site plan, as required by the City's Zoning Ordinance, depicting the Ravines is attached as Exhibit B and incorporated by reference.
- C. 44th LLC contemplates the sale of all or portions of the 44th LLC Property to third party developers and builders ("Builder" or "Builders") who will succeed to and be responsible for complying with the obligations of 44th LLC as to that portion of the Property purchased from 44th LLC, and 44th LLC will have no further obligation with regard to the purchased Property. Wherever the term "44th LLC" is used, it shall mean during the period that 44th LLC remains the owner of the portion of the Property affected and thereafter it shall mean the Builder or Builders.
- D. In order to develop the Ravines as approved, certain improvements must be made including, without limitation, certain public water, sanitary sewer and storm sewer/drainage improvements, streets, additional street lanes, curbs, gutters, sidewalks, and other public improvements to accommodate access and other needs. The City has no current plans to construct the improvements and has not budgeted funds for the same.
- E. Consistent with prior City policies, the owner of a project, as the benefiting party, is responsible to install and pay for the types of public Improvements outlined in Recital D, above. After such improvements are constructed and installed to City specifications, they are typically dedicated to the City or other governmental agency with appropriate jurisdiction.
- F. Where appropriate, the City may specially assess the costs of public improvements against the property(ies) especially benefited.
- G. The Owner concedes that the improvements outlined in Recital D, above, will benefit its parcels and represents that it owns more than fifty percent (50%) of the land proposed to be assessed for the public improvements as further described herein.

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H. The City has determined that construction of the street and road improvements associated with the Ravines, and particularly construction of Pfeiffer Woods Drive, will facilitate vehicular movement within this area of the City and constitutes the installation of a necessary collector roadway as specified in the City's master plan.

I. Because the Owner will have one or more contractors working on their parcels that may also be capable of constructing the improvements outlined in Recital D, above, the parties believe certain economies can be achieved by allowing the Owner to cause those contractors to construct some of the improvements.

J. The City has determined that entering into this Agreement is otherwise in the best interests of the public health, safety and general welfare and that special circumstances exist including, but not limited to, the ability to utilize on-site contractors and engineers and to expedite construction of a needed collector roadway.

TERMS AND CONDITIONS

NOW, THEREFORE, in exchange for the consideration in and referred to by this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

1. Owner-Contracted Infrastructure Improvements. The parties agree that for purposes of coordination of construction and for purposes of minimizing costs, the public will be best served if the portion of the public improvements detailed in the attached Exhibit C (the "Owner-Contracted Infrastructure Improvements") are made by contractors retained by the Owner. Such an arrangement is authorized pursuant to City ordinances and resolutions where special circumstances are found to exist. Having found that such circumstances exist, the Owner is hereby engaged by the City to design, construct and install the Owner-Contracted Infrastructure Improvements on behalf of the City subject to the terms of this Agreement.

(a) Construction Plans and Specifications. The Owner shall cause to be prepared final plans and specifications for the Owner-Contracted Infrastructure Improvements which comply with all applicable laws, ordinances, rules and regulations. Such plans and specifications shall be submitted to the City Engineer for review and approval. If changes are requested by the City Engineer in writing, such changes shall be made before approval of the final plans and specifications for the Owner-Contracted Infrastructure Improvements (the "Owner-Contracted Infrastructure Improvements Plans"). Any approval shall be effective when in writing signed by the City Engineer. All City reviews shall be completed on a timely basis.

Without limiting the foregoing, the parties acknowledge that the reviews conducted by the City as provided for herein shall be limited to a determination of compliance with City laws, ordinances, rules and regulations and that the plans and specifications must also be submitted for review and approval to other governmental entities with appropriate jurisdiction including the City of Grand Rapids relative to all utility matters.

The parties further agree that the Owner-Contracted Infrastructure Improvements must incorporate the following provisions:

- (1) No lift stations shall be utilized in the design of the sanitary sewer system.
- (2) The top course of any roadways shall be left off; it being the parties' intent that the City shall be solely responsible for the installation and all subsequent costs associated with installing the top course.

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- (3) Manholes shall be raised to the top of the leveling course.
- (4) Inlets shall be customized with the advance stormwater inlet at the low point.
- (5) Pre-treatment ponds and detention ponds must be constructed as required by the City.
- (6) Storm sewer outlets and inlets shall be constructed as part of the project as required by the City.
- (7) Easements shall be provided as reasonably requested by the City or other governmental entity with jurisdiction.
- (8) Sidewalks shall be installed concurrent with the installation of any streets.
- (9) The project shall be designed in full compliance with the City's adopted soil erosion laws, rules and regulations.
- (10) Sanitary stubs shall be extended to the next manhole subject to review and approval by the City of Grand Rapids.
- (11) The Owner shall coordinate its efforts in the design and construction of the Owner-Contracted Infrastructure Improvements with the adjoining property owner, Holland Home, and the City. To this end, representatives of both property owners shall attend mandatory biweekly progress meetings at City Hall until such time as the Owner-Contracted Infrastructure Improvements have been conveyed consistent with Section 1(h) herein.

(b) Construction Easements and Permits. Prior to beginning construction, the Owner shall, at its sole expense, obtain any construction and permanent easements, rights-of-way and permits needed to construct the Owner-Contracted Infrastructure Improvements. The City shall cooperate with the Owner's efforts to do so as reasonably necessary. All easements and rights-of-way shall be fully assignable to the City or other appropriate governmental entity upon the completion of the Owner-Contracted Infrastructure Improvements and copies of the easements, rights-of-way and permits shall be presented to the City for review and approval prior to beginning construction.

(c) Inspection. The City and its agents shall have the right, but not the obligation, to inspect and test all construction of the Owner-Contracted Infrastructure Improvements and be contacted before the water mains, sanitary or storm sewer mains, or any other portions of the Owner-Contracted Infrastructure Improvements are covered after being laid. The City will not, simply by making such inspection(s) or testing(s), or by failing to raise any objections, relieve the Owner or its contractors from any obligations they may have, or waive any warranties or guarantees covering the construction. All costs incurred by the City to have the inspections or tests performed shall be included in the special assessments referenced in Section 2, herein. The City shall be notified of all scheduled progress meetings conducted by the Owner's engineer or principal contractor during the construction period and shall be afforded a reasonable opportunity to attend and participate in all such meetings.

(d) Construction. The Owner shall assure that the Owner-Contracted Infrastructure Improvements are constructed by a contractor acceptable to and approved in writing by the City's Purchasing Agent. The Owner shall further require that the Owner-Contracted Infrastructure Improvements are constructed in accordance with the approved Owner-

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Contracted Infrastructure Improvements Plans. The Owner shall obtain bids via sealed bids or by an alternate bid process approved by the City's Purchasing Agent for such work based on the Owner-Contracted Infrastructure Improvement Plans and shall open and/or tabulate those bids in the presence of the City's Purchasing Agent. The Owner shall provide the bid tabulation and, if requested by the City, the bids to the City Purchasing Agent for review and comment prior to any bid award. Owner shall indemnify and hold harmless the City for any claims, damages or liabilities arising out of the bidding process or award for the Owner-Contracted Infrastructure Improvements; provided, however, that the Owner's obligations shall not be construed or interpreted as applying to claims, damages or liabilities caused by the City, its officers or employees. The City shall have the right to inspect and copy any documents related to the construction, pricing or administration of the Owner-Contracted Infrastructure Improvements in the possession of Owner or its agent(s). Construction of Pfeiffer Woods Drive on the 44th LLC Property will be in accordance with the approved preliminary PUD site plan for the Ravines. The parties agree that the Owner-Contracted Infrastructure Improvements shall be completed by the Owner within 14 months after the Owner-Contracted Infrastructure Improvements Plans are approved in writing by the City.

(e) Indemnification and Insurance. The Owner shall hold the City (including its officers and employees) harmless from, indemnify it for, and defend it (with legal counsel reasonably acceptable to the City) against any and all demands, claims, liabilities, obligations, damages, awards, judgments, administrative or criminal penalties or other losses or expenses the City may receive or incur arising out of the Owner's design, award, or construction of the Owner-Contracted Infrastructure Improvements provided, however, that the Owner's obligations shall be limited to claims made, or which could have been made, prior to the Owner's conveyance of the Owner-Contracted Infrastructure Improvements as provided for in Section 1(h) herein. During construction and until construction is completed, the land is restored and the City has accepted the Owner-Contracted Infrastructure Improvements, the Owner shall obtain and maintain a general liability insurance policy naming the City, its officers and employees as insureds and certificate holders with coverages of at least \$5,000,000 per occurrence. Such general liability insurance policy shall provide that it may not be canceled, modified or terminated without at least 30 days prior written notice to the City. During construction and until construction is completed, the land is restored and the City has accepted the Owner-Contracted Infrastructure Improvements, the Owner shall obtain and maintain an owner and contractor protective liability insurance policy, which policy names the City, its officers and employees as insureds with coverages of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such owner and contractor protective liability insurance policy shall provide that it may not be canceled, modified or terminated without at least 10 days prior written notice to the City. A copy of the certificate(s) and policy(ies) of insurance shall be provided to the City Public Works Director prior to the commencement of construction. In addition, the Owner shall assure that all necessary or required workers' disability compensation, unemployment compensation and other insurance has been obtained by its subcontractors.

(f) Liens and Encumbrances. The Owner shall use reasonable commercial efforts to keep the Owner-Contracted Infrastructure Improvements and all City property free of any and all liens and encumbrances including, without limitation, contractors', mechanics' or material supplier's liens. The Owner may dispute and bond off any liens so filed.

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(g) ~~Construction Bonds~~ Prior to the commencement of construction, the Owner shall post with the City: (1) a performance bond in an amount not less than 25% of the total value of the Owner-Contracted Infrastructure Improvements and (2) a payment bond in the amount of 100% of the total value of the Owner-Contracted Infrastructure Improvements. The bonds shall be in a form approved in advance by the City.

(h) Conveyance and Warranty. Upon completion of the Owner-Contracted Infrastructure Improvements and the written opinion of the City Engineer that they have been completed in accordance with Owner-Contracted Infrastructure Improvements Plans and all applicable laws, ordinances, regulations and rules, the Owner shall convey and dedicate for public use the Owner-Contracted Infrastructure Improvements to the City or other appropriate governmental entity, together with all easements, rights-of-way, contractual guarantees and warranties, operations or other manuals and other information, all with such documentation in a form reasonably acceptable to the City. Owner and its agent(s) shall execute all documents reasonably requested by the City to effectuate the conveyance of the Owner-Contracted Infrastructure Improvements to the City or other appropriate governmental entity. The City shall then, within a reasonable time period, by resolution of the City Commission, accept such conveyance and dedication. The Owner shall, for a period of one (1) year after the City Commission's adoption of a resolution of conveyance and dedication, warrant and guarantee the construction and use of materials in the Owner-Contracted Infrastructure Improvements; provided, however, that the foregoing Owner's warranties and guarantees shall not apply to the leveling course or top course of any roadway. Within this one (1) year period, Owner will repair or replace, as reasonably determined in advance by the City in writing, any materials incorporated in the Owner-Contracted Infrastructure Improvements which may be defective. Owner further warrants and guarantees that the construction of the Owner-Contracted Infrastructure Improvements will be performed in a good and workmanlike manner, and that the Owner will repair any defects resulting from faulty workmanship. While the warranties referenced herein are in effect, the Owner shall post with the City a performance bond for the same, in a form satisfactory to the City, in the amount of two percent (2%) of the total cost of the Owner-Contracted Infrastructure Improvements.

(i) "As Built". The Owner shall also provide the City with "as built" drawings, certified by a licensed engineer, showing the exact location of the Owner-Contracted Infrastructure Improvements and any deviations from the Owner-Contracted Infrastructure Improvements Plans. Such drawings shall be provided to the City prior to the conveyance and dedication required by the preceding subsection (h) and before the City accepts that conveyance and dedication.

(j) Payment. The City shall pay to the Owner the cost of constructing the Owner-Contracted Infrastructure Improvements as provided in this subsection.

(1) ~~Payments will be made solely by the City in anticipation of special assessments levied against the 440-110 Property. The City shall have no obligation for any payment of funds until after the conclusion of the special assessment proceedings referenced in Section 2 hereina and the expiration of the period for appealing any special assessments. Any payments made by the City shall not effect the Owner's waiver and release of claims challenging the validity or enforceability of the special assessments provided for herein.~~

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(2) Progress payments will be made during construction to reimburse the Owner for payments it has already made to its contractors and subcontractors. Such payments shall be made not more frequently than monthly and shall require City approval. Accordingly, it may take 30 or more days to process a reimbursement payment request, however, the City shall timely and diligently process such requests for payment.

(3) All requests for payment shall include statements from the Owner and its engineers that the work for which payment is sought has been completed in accordance with the Owner-Contracted Infrastructure Improvements Plans and waivers of liens from all contractors, subcontractors and suppliers are supplied. They shall be reviewed by the City Engineer before processing for payment and, if the City's inspectors have viewed the work, such payment requests shall also be subject to the approval of the City's inspectors.

(4) For up to one year after substantial completion of the Owner-Contracted Infrastructure Improvements, the City shall have the right to inspect, audit and copy all invoices, financial records, books, expense sheets, billing statements, contracts or similar documents in the possession of the Owner or its agent(s) related to the construction of and payment for the Owner-Contracted Infrastructure Improvements.

(5) Reimbursement payments to the Owner shall be made within 10 days after approval by the City.

~~Special Assessments. The City shall specially assess the costs of the Owner-Contracted Infrastructure Improvements against the 44th LLC Property.~~

(a) Defined. The costs of the Owner-Contracted Infrastructure Improvements shall include design, construction, installation, construction engineering, inspection, financing, insurance, administrative and all other costs incurred in connection with the construction, including all costs and fees incurred by the City relating to the establishment of a special assessment district and those costs associated with the inspection, review, approval, construction or acceptance of the Owner-Contracted Infrastructure Improvements incurred by the City.

(b) Agreed Value Enhancement and Waiver. The Owner represents, covenants and agrees that the 44th LLC Property will benefit and be enhanced in value by at least the amount to be specially assessed against the 44th LLC Property.

(c) Consent. The Owner consents to the levy of the special assessments and agrees to execute and deliver to the City such other consents, releases and waivers regarding the notice, hearing and levies associated with the special assessment as the City may reasonably request as it proceeds to levy the special assessments as provided for in this section.

(d) Notice of Conveyance. If the Owner conveys any interest in any of its real property to any other party prior to the conclusion of the special assessment

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proceedings, the Owner shall provide the City a written copy of the conveying documents within 3 days of their execution.

(e) Terms for Special Assessment. Consistent with City Ordinance No. 4-67, as amended, the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district for the Owner-Contracted Infrastructure Improvements will be determined by resolution of the City Commission in its discretion. Without limiting the foregoing, it is the parties' Intent that the special assessments will be consistent with the following guidelines:

- (1) The public improvements will only be those identified in Exhibit C.
- (2) The term of the special assessment will not exceed ten (10) years.
- (3) The interest rate charged will be a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended.
- (4) The following components of the Owner-Contracted Infrastructure Improvements will be paid for by the City at large as part of the special assessment
 - (a) Difference in the cross section and unit costs between the standard 30-foot street residential cross section and the cross section as constructed to meet City requirements for the Ravines;
 - (b) Oversizing the watermain from eight (8) inches to twelve (12) inches; and
 - (c) Ten percent (10%) of the subcontractors' total costs for items 2(e)(4)(a) and 2(e)(4)(b), above; which figure represents the City's proportional share of administrative, engineering and similar fees associated with the project.

~~(5) The City's willingness to proceed with the establishment of a special assessment district is in reliance on the Owner's request for the same and agreement to waive any challenges to the special assessment and special assessment roll.~~

(6) The special assessment roll shall be modified so as not to exceed the actual costs reimbursed to the property owner pursuant to this Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

(f) Valuation. The City's obligation to establish a special assessment district for the Owner-Contracted Infrastructure Improvements shall be contingent on the City's receipt of information, in a form and of a type reasonably satisfactory to the City, from the Owner confirming that the fair market value of the 44th LLC Property will support the anticipated special assessment liens in the event of a subsequent default. The Owner shall submit such information with thirty (30) days from the date hereof. The City will promptly review such submissions.

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(g) Allocation. Allocation of the special assessment shall be structured as follows:

(1) Except as otherwise provided herein, annual installment payments shall be interest only until the end of the term of the special assessment. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) The principal shall be allocated among the various approved phases for Neighborhoods B-1 through B-4 of the Ravines as defined in a certain Planned Unit Development Agreement, dated March 18, 2004, recorded as Instrument No. 20040402-0043209 with the Kent County Register of Deeds. The fixed allocation of the special assessment district ("SAD") costs by neighborhood shall be as follows:

Neighborhood	Fixed SAD Cost Allocation
B-1	24%
B-2	22%
B-3	33%
B-4	21%

The fixed SAD costs by neighborhood may not be changed except by written amendment to this Agreement. The City has agreed to allow the SAD costs to be further apportioned to a maximum number of construction phases within each neighborhood as follows:

Neighborhood	Max. # of Phases
B-1	2
B-2	2
B-3	4
B-4	2

The number of phases within each neighborhood may not be changed except by written amendment to this Agreement. The process by which the SAD costs will be apportioned to each phase is as follows:

(a) Unless otherwise agreed to by the City, the Owner shall have one opportunity per neighborhood to apportion the SAD costs among the construction phases as described herein; provided, however, that any apportionment must equal the total fixed SAD costs for the relevant neighborhood.

(b) At the time Owner files the first application for final zoning approval for any land within a neighborhood, the Owner will also file an amended phasing plan for the entire neighborhood. The phasing plan will include the total housing

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units expected to be constructed within the neighborhood and within each phase up to the maximum number of units and phases allowed for that neighborhood.

(c) The Owner will prepare, for the City's review and approval, a proposed apportionment of the SAD costs among the individual construction phases. The following example shows how the costs will be apportioned assuming a \$1.6 Million total SAD cost:

[1] Allocate the costs to each neighborhood by multiplying the total SAD costs by the fixed allocation percentages:

Total SAD	Neighborhood	Fixed SAD % Allocation	SAD \$ Allocation
\$1,600,000	B-1	24%	\$384,000
	B-2	22%	\$352,000
	B-3	33%	\$528,000
	B-4	21%	\$336,000

[2] Determine the final number of housing units in each neighborhood and within each construction phase:

Neighborhood	Final # of Units	# of Units in Each Phase			
		1	2	3	4
B-1	248	124	124	N/A	N/A
B-2	190	95	95	N/A	N/A
B-3	210	57	59	47	47
B-4	178	100	78	N/A	N/A

[3] Calculate the percentage of housing units in each phase of a neighborhood relative to the total number of housing units in that neighborhood as determined in Section 2.(g)(2)(c)[2] above:

Neighborhood	% of Units in Each Phase			
	1	2	3	4
B-1	50%	50%	N/A	N/A
B-2	50%	50%	N/A	N/A
B-3	27%	28%	22%	22%
B-4	56%	44%	N/A	N/A

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[4] Calculate the SAD costs to be apportioned among each construction phase by multiplying the percentages calculated in the table in 2.(g)(2)(c)[3] above by the total SAD costs allocated to the neighborhood as calculated in 2.(g)(2)(c)[1] above.

Neighborhood	\$ to be Allocated to Each Phase			
	1	2	3	4
B-1	\$192,000	\$192,000	N/A	N/A
B-2	\$176,000	\$176,000	N/A	N/A
B-3	\$143,314	\$148,343	\$118,171	\$118,171
B-4	\$188,764	\$147,236	N/A	N/A

(d) Principal payments, with interest thereon accrued on a pro rata basis, shall be due within 180 days of final zoning approval for a phase or upon the City's issuance of a soil erosion permit for the phase, whichever is earlier.

(3) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments for the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the roll for the Owner-Contracted Infrastructure Improvements.

3. The Ravines. The Owner represents and covenants that the Owner-Contracted Infrastructure Improvement costs incurred in the Ravines when completed will be at least \$1,200,000.00, not including the value of the land. ~~The Owner estimates the construction of the Owner-Contracted Infrastructure Improvements will be completed by December 31, 2005.~~

4. Other Rates, Fees and Charges. This Agreement shall not affect any rates, fees or charges for any City services. Accordingly, the Owner, the Builders or their successors in interest to portions of the 44th LLC Property who shall seek or require such connections or services, shall pay on a timely basis all rates, fees and charges due under City ordinances, rules, regulations, policies and permit requirements, including without limitation those for:

- (a) Utilities. Connection to or use of the City's water or sanitary sewer systems.
- (b) Construction Permits. Building, electrical, plumbing, mechanical, foundation, site preparation, occupancy and other construction permits and approvals.
- (c) Inspections. Inspection, approval and acceptance of the Owner-Contracted Infrastructure Improvements.
- (d) On-going Maintenance. Except as noted herein, the City or other appropriate governmental entity will be responsible for on-going maintenance after dedication of the ~~Owner-Contracted Infrastructure Improvements and the Owner will be responsible for~~

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on-going maintenance for the portion of the Owner-Contracted Infrastructure Improvements located on its property prior to dedication. The parties acknowledge and agree that prior to the dedication of the Owner-Contracted Infrastructure Improvements, the parties shall enter into a separate agreement which incorporates the following provisions:

(1) On-going maintenance responsibility for landscaping improvements in the parkway included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner at the Owner's sole cost and expense. Nothing herein shall be construed or interpreted as granting the Owner any property interest in the landscaping, it being the parties' understanding that the City may remove or modify any landscaping within the public rights of way as the City deems necessary for the public health, safety and welfare and that payment for these improvements by special assessment shall not impact the City's rights. ~~The City shall not require the removal or replacement of the initial landscaping if doing so will materially increase the Owner's burden to maintain.~~

(2) On-going maintenance responsibility for the irrigation system improvements included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner at the Owner's sole cost and expense. Nothing herein shall be construed or interpreted as granting the Owner any immediate property interest in the irrigation system; provided, however, that the agreement shall further require that the irrigation system will be conveyed by the City to the Owner or its successor(s) and shall be accepted by the Owner or its successor(s) on the termination of the special assessment district for the Owner-Contracted Infrastructure Improvements.

(3) The City's ownership of the irrigation system shall extend only to the public side of the water meter, which water meter shall be installed within the public rights of way in such manner as approved in advance by the City.

(4) The Owner and its successor(s) shall indemnify and hold harmless the City and its officers and employees from any and all claims arising out of or related to the Owner's construction, operation or maintenance of the landscaping and irrigation systems that are included in the Owner-Contracted Infrastructure Improvements so long as the Owner's obligations remain.

5. Costs. Within 28 days of the City's invoice to the Owner therefore, 44th LLC shall reimburse the City for all costs incurred by the City related to the preparation of this Agreement.

6. Term and Termination. This Agreement shall be effective as of the date first written above and shall remain in effect until all the obligations of the Owner under this Agreement have been met.

7. Miscellaneous.

(a) Interpretation. This is the entire agreement between the parties with respect to its subject matter. It supersedes and replaces all other agreements, whether express or implied, written or verbal. There are no other agreements. Each party had the advice of legal counsel and was able to participate in its creation, so it shall be construed as mutually drafted. The captions are for convenience only. However, the recitals are deemed an integral part of this Agreement. More than one copy may be signed, but it shall constitute only one agreement. It was drafted in Kent County, Michigan and is to

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be interpreted in accordance with Michigan law. The interpretation of this Agreement shall not be affected by any course of dealing between the parties.

(b) Notices. All notices shall be complete when provided to the other party at the first address given above or such other address as a party shall request by notice. It may be made by personal delivery, express courier such as FedEx, by United States certified mail, return receipt requested or by pre-paid United State first class mail. If made by first class mail, it shall be deemed completed 5 business days after mailing. Otherwise, it shall be deemed completed when actually delivered.

(c) Breach and Remedies.

(1) The parties agree that damages and other legal remedies are inadequate relief. Only specific performance, injunctive or other equitable relief may be sufficient. The parties agree that any breach of this Agreement will result in irreparable harm to the other party.

(2) All remedies are cumulative of all remedies available at law or in equity. The pursuit of one remedy does not foreclose the pursuit of other remedies. Available remedies may be exercised simultaneously or individually.

(3) In any dispute pursuant to this Agreement, the parties agree that, to the extent not otherwise prohibited by law, the jurisdiction and venue for any such dispute shall be solely within the state courts located in Kent County, Michigan. The parties further agree that in any such dispute the prevailing party shall, in addition to any other relief to which it may be entitled, be awarded its actual cost, including, without limitation, filing fees, discovery costs, actual reasonable attorneys' fees, expert witness fees, and other costs incurred to bring, maintain or defend any such action from its first accrual or notice thereof through all appellate and collection proceedings.

(d) Assignment. Except as provided in Recital C, neither party may assign any of its interests in or rights, duties or obligations under this agreement without the prior written consent of the other party.

(e) Recording. ~~The obligations under this Agreement are covenants that run with the land and shall bind all successors in title.~~ This Agreement shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Agreement.

(f) Additional Documents. The parties agree to execute such other documents and any one of them may reasonably request to fully implement this Agreement.

(g) No Other Beneficiaries. No other party is intended as a beneficiary of this Agreement.

(h) Meaning of 44th LLC. The term "44th LLC" as used in this Agreement so far as the covenants, agreements, stipulations or obligations on the part of 44th LLC are concerned is limited to mean and include only the owner of the 44th LLC Property or portion thereof effected at the time in question. In the event of any sale, transfer or conveyance of the title to such fee, 44th LLC will automatically be freed and relieved from and after the date of such sale, transfer or conveyance of all personal liability for the performance of any covenants or obligations on the part of 44th LLC contained in this Agreement thereafter to be performed as to the portion of the 44th LLC Property thereof sold, transferred or conveyed and 44th LLC's successor shall assume all commitments.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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with respect to said covenants, agreements, stipulations or obligations as to the portion of the 44th LLC Property acquired from 44th LLC.

THE PARTIES have caused this Agreement to be executed as of the date first written above.

CITY OF KENTWOOD

By: [Signature]
Richard L. Root, Mayor
By: [Signature]
Dan Kasunic, Clerk

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on September 7, 2004, by Richard L. Root and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of that entity.

[Signature]
Notary Public, Kent County, MI
Acting in Kent County
My commission expires: 10/20/2004

44TH/SHAFFER AVENUE, LLC

By: [Signature]
Michael J. Demone

STATE OF MICHIGAN
COUNTY OF KENT


Acknowledged before me in Kent County, Michigan on September 7, 2004, by Michael J. Demone, member of 44th/Shaffer Avenue, LLC, a Michigan limited liability company, for the company.

[Signature]
Notary Public, Kent County, MI
Acting in Kent County
My commission expires: 10/20/2004

Drafted by:
Jeff Sluggett
LAW, WEATHERS & RICHARDSON, P.C.
Bridgewater Place, Suite 800
333 Bridge St. NW
Grand Rapids, MI 49504

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-8848

NO TRANSFER TAX IS OWED BECAUSE THIS AGREEMENT DOES NOT CONVEY ANY REAL PROPERTY.

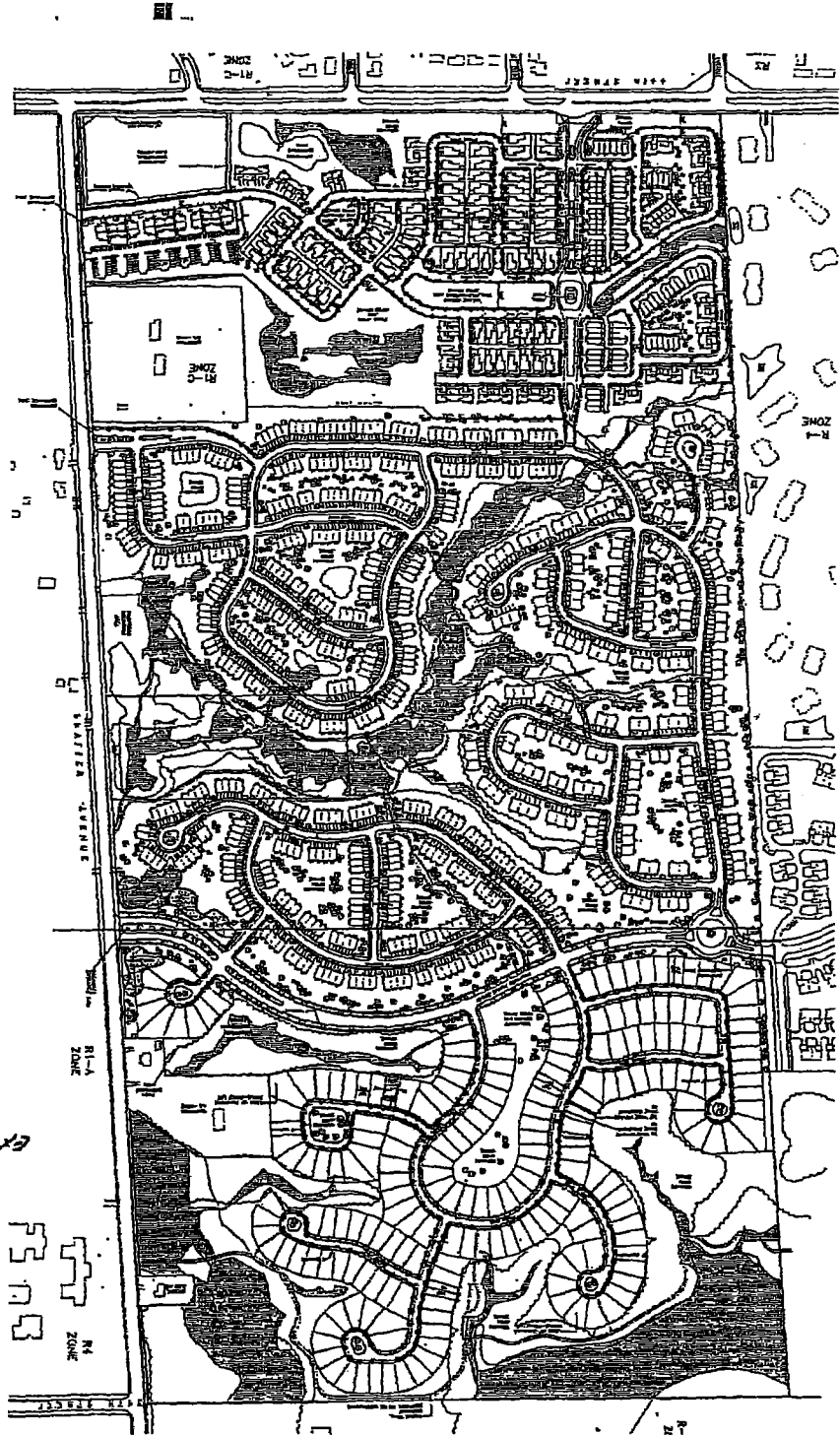


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EXHIBIT A

LEGAL DESCRIPTION OF 44TH/SHAFFER AVENUE LLC PROPERTY

Part of the NE ¼ and part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE ¼; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE ¼; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N ½ of the NE ¼ of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE ¼; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE ¼; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S ½ of the SE ¼ of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE ¼ of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE ¼ of Section 22 to the N ¼ corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE ¼ to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.



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EXHIBIT B

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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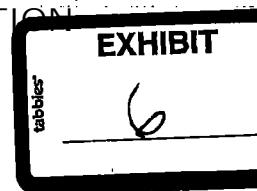
EXHIBIT C

OWNER-CONTRACTED INFRASTRUCTURE IMPROVEMENTS

- Pfeiffer Woods Roadway
- Sanitary Sewer
- Water Main
- Streetlighting
- Landscaping
- Irrigation System
- Project Management
- Liability Insurance
- Design and Inspection Fees
- Permits and Fees
- City Legal and Other
- Project Contingency

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CITY OF KENTWOOD

PFEIFFER WOODS DRIVE LANDSCAPING MAINTENANCE SPECIAL ASSESSMENT DISTRICT

(Ravines)

RESOLUTION NO. 8-06
(Resolution No. 5)

A RESOLUTION TO CONFIRM THE SPECIAL ASSESSMENT ROLL

Minutes of the regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the City on January 17, 2006 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Brown, Clanton, Raha and Mayor Root.

ABSENT: COMMISSIONERS: Coughlin and Cummings.

The following preamble and resolution were offered by Commissioner Brinks, and supported by Commissioner Clanton:

WHEREAS, consistent with City of Kentwood Ordinance No. 4-67 a special assessment roll has been prepared for the purpose of specially assessing that portion of the cost of the public improvements more particularly hereafter described to the properties specially benefited by the public improvements; and

WHEREAS, a copy of the special assessment roll is attached to this resolution as "Roll A" and is incorporated by reference; and

WHEREAS, the special assessment roll has been presented to the City Commission by the City Clerk; and

WHEREAS, the City Commission has held a public hearing to consider objections to the confirmation of the special assessment roll, which hearing was noticed in accordance with state and local law; and

WHEREAS, no objections having been made to the City either before or during the hearing, and the City Commission having otherwise fully reviewed proposed special assessment roll and finding it proper; and

WHEREAS, the City Commission also finds that due to the nature of the present and planned use and development of the premises within the district that it will be fair and equitable if the special assessment roll is confirmed as hereinafter provided which will contain the properties within the district as identified on "Roll A."

THEREFORE BE IT RESOLVED THAT:

- 1. The Special Assessment Roll marked as "Roll A," shall be designated as follows: Pfeiffer

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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Woods Drive Landscaping Maintenance Special Assessment District, Special Assessment District No. 808.051.145.

2. The special assessment roll in the amount of \$160,899.15, as prepared and reported to the City Commission be and the same is hereby confirmed, containing the assessments shown on "Roll A" and associated attachments, which is attached to and made part of this Resolution, and is found to contain assessments proportional to the benefits received.

3. The special assessment roll shall be applied consistent with the terms of the Voluntary Special Assessment/Development Agreement dated December 6, 2005, between the City of Kentwood, 44th/Shaffer Avenue, LLC, Holland Home and Ravines North, LLC (the "Agreement").

4. Interest shall be paid on any unpaid balance of the special assessment roll at the rate of 8.25%.

5. The special assessment roll shall be filed in the office of the City Clerk and shall have the date of confirmation endorsed thereon. The date of the confirmation shall be January 17, 2006.

6. The assessments made in the special assessment roll as confirmed shall be deemed a lien on the property described and are hereby ordered and directed to be collected consistent with the terms thereof and the Agreement, and the City Clerk shall deliver a certified copy of the special assessment roll to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessments therein in accordance with the directions of the City Commission with the respect thereto, and the Treasurer is directed to collect the amounts assessed as the same above become due.

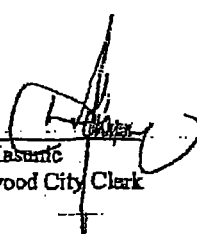
7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: Commissioners: Brinks, Brown, Clanton, Raha and Mayor Root.

NAYS: None.

ABSENT: Commissioners Coughlin and Cummings.

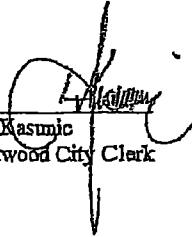
RESOLUTION NO. 8-06 DECLARED ADOPTED.


Dan Kasunic
Kentwood City Clerk

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

CERTIFICATION

The foregoing resolution was adopted at a regular meeting of the Kentwood City Commission held on January 17, 2006.



Dan Kasunic
Kentwood City Clerk

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ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE LANDSCAPING MAINTENANCE SPECIAL ASSESSMENT DISTRICT
(Ravines)

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: January 17, 2006

Subject Property:

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

<u>Estimated Public Improvement Costs</u>	<u>Total Costs</u>	<u>Property Owners' Portion</u>	<u>City's Share</u>
Pfeiffer Woods Drive Landscaping	150,130.15	150,130.15	0.00
Escrow Fee	250.00	250.00	0.00
Total Project Costs	150,380.15	150,380.15	0.00
Total Project Contingency/Inflation (5%)	7,519.00	7,519.00	0.00
City Legal and Administrative	3,000	3,000	0.00
SAD Total Costs	160,899.15	160,899.15	0.00

Owners of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company, Holland Home, a Michigan non-profit corporation and Ravines North, LLC, a Michigan limited liability company.

Term: 8 years from confirmation of roll.

Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of January 17, 2006, this aggregate interest rate is 8.25%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, January 17, 2007, January 17, 2008, January 17, 2009, etc.) in an amount equivalent to the simple interest on any unpaid principal amount.

C. Installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

D. Anticipated allocations: See Voluntary Special Assessment/Development Agreement dated December 6, 2005, the terms of which are incorporated by reference.

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CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND
WATERMAIN
SPECIAL ASSESSMENT DISTRICT.

RESOLUTION NO. 96 -04
(Resolution No. 5)

A RESOLUTION TO CONFIRM THE SPECIAL ASSESSMENT ROLL

Minutes of a regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the Justice Center Community Room, 4742 Walma Avenue, S.E., in said City on September 7, 2004 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Clanton, Coughlin, Cummings, McGookey and Mayor Root.

ABSENT: COMMISSIONERS: Brown.

The following preamble and resolution were offered by Commissioner McGookey and supported by Commissioner Coughlin

WHEREAS, consistent with City of Kentwood Ordinance No. 4-67 a special assessment roll has been prepared for the purpose of specially assessing that portion of the cost of the public improvements more particularly hereafter described to the properties specially benefited by the public improvements; and

WHEREAS, a copy of the special assessment roll is attached to this resolution as "Roll A" and is incorporated herein by reference; and

WHEREAS, the special assessment roll has been presented to the City Commission by the City Clerk; and

WHEREAS, the City Commission has held a public hearing to consider objections to the confirmation of the special assessment roll, which hearing was noticed in accordance with state and local law; and

WHEREAS, no objections having been made to the City either before or during the hearing, and the City Commission having otherwise fully reviewed said proposed special assessment roll and finding it proper; and

WHEREAS, the City Commission also finds that due to the nature of the present and planned use and development of the premises within the district that it will be fair and equitable if the special assessment roll is confirmed as hereinafter provided which will contain the properties within the district as identified on "Roll A."

THEREFORE BE IT RESOLVED THAT:

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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1. The Special Assessment Roll marked as "Roll A," shall be designated as follows: Pfeiffer Woods Drive Construction, Ravines Special Assessment District, Special Assessment District No. 808.051.141

2. The special assessment roll in the amount of \$1,942,070.00, as heretofore prepared and reported to the City Commission be and the same is hereby confirmed, containing the assessments shown on "Roll A" and associated attachments, which is attached to and made part of this Resolution, and is found to contain assessments proportional to the benefits received.

3. The special assessment roll shall be deferred consistent with the terms of the Voluntary Special Assessment/Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement"); provided that annual payments equivalent to the simple interest on any unpaid balance shall be due and payable on the anniversary date of the confirmation of this special assessment roll.

4. Interest shall be paid on any unpaid balance of the special assessment roll at the rate of .55%.

5. The special assessment roll shall be filed in the office of the City Clerk and shall have the date of confirmation endorsed thereon. The date of the confirmation shall be September 7, 2004.

6. The assessments made in the special assessment roll as confirmed shall be deemed a lien on the property described and are hereby ordered and directed to be collected consistent with the terms thereof and the Agreement, and the City Clerk shall deliver a certified copy of the special assessment roll to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessments therein in accordance with the directions of the City Commission with the respect thereto, and the Treasurer is directed to collect the amounts assessed as the same above become due.

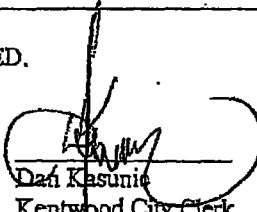
7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

Commissioners: Brinks, Clanton, Coughlin, Cummings, McGooksey
YEAS: _____ and Mayor Root.

NAYS: None.

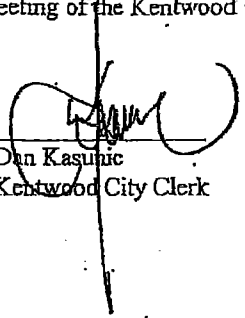
ABSENT: Commissioners: Brown.

RESOLUTION NO. 96-04 DECLARED ADOPTED.


Dana Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was adopted at a regular meeting of the Kentwood City Commission held on September 7, 2004.



Dan Kasunic
Kentwood City Clerk

243403.02

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
 (Ravines Special Assessment District)
 STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND
 WATERMAIN
 SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004

Subject Property:

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

Estimated Public Improvement

<u>Costs</u>	<u>Total Costs</u>	<u>LLC Portion</u>	<u>City's Share</u>
Pfeiffer Woods Roadway (22A)	475,000.00	360,000.00	115,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	<u>55,000.00</u>	<u>55,000.00</u>	<u>0.00</u>
Total Subcontractor Costs	1,191,000.00	1,016,000.00	175,000.00
Project Management (10%)	119,100.00	101,600.00	17,500.00
Liability Insurance	8,800.00	8,800.00	0.00

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	<u>25,000.00</u>	<u>25,000.00</u>	<u>0.00</u>
Total Project Costs	1,493,900.00	1,301,400.00	192,500.00
Total Project Contingency/Inflation (30%)	448,170.00	448,170.00	0.00
SAD Total Costs	1,942,070.00	1,749,570.00	192,500.00

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007; etc.) in an amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
Special Assessment Roll

Allocation per Neighborhood

	Fixed Cost Allocation	Fixed Cost Amount	Principal Portion of SAD for each Phase			
			1	2	3	4
B-1	24.00%	419,896.80	209,948.40	209,948.40	0.00	0.00
B-2	22.00%	384,905.40	192,452.70	192,452.70	0.00	0.00
B-3	33.00%	577,358.10	156,711.48	162,210.13	129,218.24	129,218.24
B-4	21.00%	367,409.70	206,409.94	160,999.76	0.00	0.00
		1,749,570.00	765,523.53	725,612.99	129,221.24	129,222.24

Neighborhood B-1, Phase 1

Amount of SA Principal allocated to this Phase C 209,948.40
 Effective Date of Special Assessment 9/7/2004
 1% over the WSJ Prime Rate on Effective Date 5.50%
 Assumed days per year 360

Interest Only Payment due 9/7 each year 11,547.16
 (in effect until Trigger occurs and sets
 due date for Phase Payment)

Due Date Triggers

Final Zoning Approval for Phase 8/1/2007

180 days from Final Zoning Approval for Phase 1/28/2008

-OR-

Erosion Permit for a Phase issued 9/7/2014

Computed Final Date for Phase payment 1/28/2008

Date Last Interest Payment Made 9/7/2007

Interest from Last Interest Payment Date
 To-Due Date of Phase A 4,586.79

OR

Date Phase Payment Actually Made 11/15/2007
 (If prior to Due Date)

Date of last interest payment prior to this date 9/7/2007

Interest from Last Interest Payment Date
 To Date of Actual Payment B 2,213.21

Total Due is the sum of either A or B plus C

For Example

A+C: If paid on the Final Date for Phase Payment 214,535.19
 B+C: If payment made on earlier date shown above 212,161.61

*NOTE: All dates are for demonstration only.
 When actual dates are inserted, the interest is automatically recalculated.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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CITY OF KENTWOOD

44/Schaffer - Pfeiffer Woods Drive

City's and LLC's share of costs for Owner-Contracted Infrastructure Improvements

<u>Subcontractor Costs</u>	<u>Total Costs</u>	<u>LLC Portion</u>	<u>City's Share</u>
Pfeiffer Woods Roadway (22A)	475,000.00	360,000.00	115,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,191,000.00	1,016,000.00	175,000.00
Project Management (10%)	119,100.00	101,600.00	17,500.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,493,900.00	1,301,400.00	192,500.00
Project Contingency/Inflation (30%)	448,170.00	448,170.00	0.00
SAD Total Costs	1,942,070.00	1,749,570.00	192,500.00

CITY OF KENTWOOD
 44/Schaffer - Pfeiffer Woods Drive
 Allocation of Special Assessments against 44th LLC Property

Allocation of Units

Neighborhood	Max. no. Phases	Total No. of Units	No. of Units in Each Phase				Percent of Units in each Phase			
			1	2	3	4	1	2	3	4
B-1	2	248	124	124	N/A	N/A	50.00%	50.00%		
B-2	2	190	95	95	N/A	N/A	50.00%	50.00%		
B-3	4	210	57	59	47	47	27.14%	28.10%	22.38%	22.38%
B-4	2	178	100	78	N/A	N/A	56.18%	43.82%		

Amounts per Phase

Neighborhood	Fixed Cost Allocation	Fixed Cost Amount	Principal Portion of SAID for each Phase			
			1	2	3	4
B-1	24%	419,896.80	209,948.40	209,948.40	0.00	0.00
B-2	22%	384,905.40	192,452.70	192,452.70	0.00	0.00
B-3	33%	577,858.10	156,711.48	162,210.13	129,218.24	129,218.24
B-4	21%	367,409.70	208,409.94	160,899.76	0.00	0.00
		1,749,670.00	765,523.53	725,512.99	129,221.24	129,222.24

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

CITY OF KENTWOOD

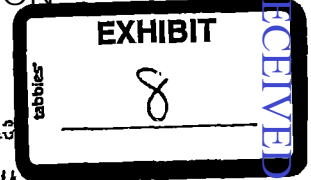
44/Schaffer - Pfeiffer Woods Drive

WSJ Prime Rate for date Special Assessment Roll is confirmed

<u>Date</u>	<u>Prime Rate</u>	<u>Prime Rate plus 1%</u>
9/7/2004	4.50%	5.50%

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REC'D KENT COUNTY, MI REG
2014 JUL 31 AM 9: 24

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Mary Hollinrake P 1/10 11 47AM
Kent Cnty MI Registr 08/13/2014 SEAL

5/13/10

**AMENDMENT TO VOLUNTARY SPECIAL
ASSESSMENT/DEVELOPMENT AGREEMENT
(RAVINES NEIGHBORHOOD B2 [A AND B])**

This Amendment to Voluntary Special Assessment/Development Agreement is dated July 15, 2014 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and Holland Home, a Michigan non-profit corporation, the address of which is 2100 Raybrook Avenue, SE, Grand Rapids, Michigan 49546 ("Holland Home" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in recognition of Holland Home's purchase of additional real property. The real property owned by Holland Home and which remains subject to the Agreement, as amended, is legally described on attached Exhibit A, which is incorporated by reference ("Property").

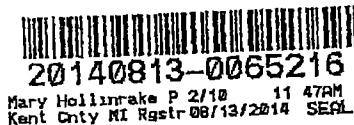
C. The obligations set forth in the Agreement were covenants running with the land, and which bind all successors in title. Holland Home is the successor in title to 44th/Shaffer of the Property.

D. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

E. In accordance with its adopted ordinance and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll"). Holland Home has made the payments attributable to the Property and required under the terms of the Roll to the date of this Amendment.

STATE OF MICHIGAN }
COUNTY OF KENT } ss
I certify that the foregoing is a true copy of the record on file in the office of the Register of Deeds of said County. In Testimony Whereof, I have hereunto set my hand, and official seal of the City of Grand Rapids, MI, this 20th day of August, 2014.
Lisa Posthumus Lyons, Register of Deeds

By *[Signature]*



F. A balloon payment on the outstanding principal of \$369,985.09 and interest of \$12,990.02 attributable to the Property in the total amount of \$382,975.11 is due on September 7, 2014 under the terms set forth as part of the Roll and the Agreement.

G. By letter dated June 9, 2014, Holland Home has requested that the City, without changing the original confirmation date or amount of the Roll, as amended, extend the term of years for payment of the remaining principal and interest. A copy of the letter is attached as **Exhibit B** and incorporated by reference (“Letter”).

H. In reliance on Holland Home’s representations as set forth in the Letter, and as permitted under Section 2(e) of the Agreement, the parties acknowledge that the City may extend the term of years for payment of the outstanding principal and interest on the Roll.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments shall be made in accordance with the schedule attached as **Exhibit C** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of the Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

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3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to the special assessment or Roll are released and waived by Holland Home, its successors and assigns as against the City. Without limiting the foregoing, Holland Home, on behalf of itself, its successors and assigns, waives and releases any claim it may have against the City predicated upon the existence of other resolutions, amendments, etc. impacting the special assessment or Roll.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations under this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. Holland Home shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: Stephen Kepley
Stephen Kepley, Mayor

By: Dan Kasunic
Dan Kasunic, City Clerk

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on July 16, 2014, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer

*
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 8-9-2016

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION



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Mary Hollinrake P 4/10 11 47AM
Kent Cnty MI Restr 08/13/2014 SEAL

HOLLAND HOME

By: *H. David Claus*
H. David Claus, President
and Chief Executive Officer

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County,
Michigan on July 28, 2014, by H.
David Claus, the President and Chief
Executive Officer of Holland Home, a
Michigan non-profit corporation, for the
corporation.

Jack A. Siebers
Jack A. Siebers
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 11/12/2017

*Name must be typed or printed in black ink
beneath signature

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY
ANY REAL PROPERTY.

28933 02

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Mary Hollinrake P 5/10 11 47AM
Kent Cnty MI Rstr 08/19/2014 SEAL

EXHIBIT A
REAL PROPERTY LEGAL DESCRIPTION

Parcel B2-A: 41-18-22-401-002

PART OF E ¼ OF SEC COM 1290.96 FT N 87D 18M 56S W ALONG E&W 1/4 LINE FROM E ¼ COR TH S 27D 55M 52S W 281.40 FT TH S 8D 10M 02S E 245.78 FT TH S 11D 39M 11S W 226.61 FT TH S 44D 38M 41S W 334.95 FT TH S 79D 59M 47S W 307.02 FT TH S 47D 10M 33S W 199.74 FT TH S 45D 28M 52S W 260.0 FT TH S 80D 48M 22S W 333.73 FT TO N&S ¼ LINE TH N 0D 10M 03S W ALONG N&S ¼ LINE 1258.70 FT TH N 89D 49M 57S E 180.0 FT TH N 76D 55M 11S E 197.47 FT TH S 83D 25M 40S E 50.0 FT TH NELY 38.06 FT ALONG A 225 FT RAD CURVE TO RT/LONG CHORD BEARS N 11D 25M 06S E 38.01 FT/TH NLY 213.22 FT ALONG A 275 FT RAD CURVE TO LT/LONG CHORD BEARS N 5D 56M 52S W 207.92 FT/TH N 28D 09M 35S W 415.77 FT TH NLY 112.19 FT ALONG A 183.30 FT RAD CURVE TO RT/LONG CHORD BEARS N 10D 37M 31S W 110.45 FT/TH N 6D 54M 33S E 46.65 FT TH NELY 38.51 FT ALONG A 50.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 28D 45M 18S E 37.58 FT/TH N 50D 36M 02S E 11.60 FT TH NELY 21.81 FT ALONG A 52.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 62D 30M 13S E 21.66 FT/TH NELY 88.04 FT ALONG A 777.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 77D 39M 01S E 87.99 FT/TH N 80D 55M 19S E 199.94 FT TH NELY 102.72 FT ALONG A 840 FT RAD CURVE TO LT/LONG CHORD BEARS N 77D 25M 08S E 102.66 FT/TH S 27D 42M 09S E 393.92 FT TH S 61D 37M 23S E 183.51 FT TH S 51D 02M 19S E 346.87 FT TH S 33D 47M 53S E 187.39 FT TO BEG*SEC 22 T6N R11W 41.91 A.

and

Parcel B2-B: 41-18-22-178-003

PART OF N ½ & SE ¼ COM 1849.27 FT S 0D 37M 46S E ALONG N&S ¼ LINE FROM N ¼ COR TH ELY 60.54 FT ALONG A 460 FT RAD CURVE TO RT/LONG CHORD BEARS S 79D 01M 01S E 60.49 FT/TH SELY 59.87 FT ALONG A 67.50 FT RAD CURVE TO RT/LONG CHORD BEARS S 49D 50M 09S E 57.93 FT/TH S 24D 25M 30S E 13.47 FT TH SELY 16.28 FT ALONG A 47.50 FT RAD CURVE TO RT/LONG CHORD BEARS S 14D 36M 13S E 16.20 FT/TH S 4D 46M 56S E 121.91 FT TH S 88D 16M 36S E 78.13 FT TH S 6D 54M 33S W 8.19 FT TH SLY 112.19 FT ALONG A 183.30 FT RAD CURVE TO LT/LONG CHORD BEARS S 10D 37M 31S E 110.45 FT/TH S 28D 09M 35S E 415.77 FT TH SLY 213.22 FT ALONG A 275 FT RAD CURVE TO RT/LONG CHORD BEARS S 5D 56M 52S E 207.92 FT/TH SWLY 38.06 FT ALONG A 225 FT RAD CURVE TO LT/LONG CHORD BEARS S 11D 25M 06S W 38.01 FT/TH N 83D 25M 40S W 50.0 FT TH S 76D 55M 11S W 197.47 FT TH S 89D 49M 57S W 180.0 FT TO N&S ¼ LINE TH N 0D 10M 03S W ALONG N&S ¼ LINE 181.30 FT TO E&W ¼ LINE TH N 87D 21M 58S W ALONG E&W ¼ LINE 711.66 FT TH NWLY 115.53 FT ALONG A 333 FT RAD CURVE TO LT/LONG CHORD BEARS N 35D 54M 55S W 114.95 FT/TH N 45D 51M 17S W 122.41 FT TH NWLY 59.26 FT ALONG A 267 FT RAD CURVE TO RT/LONG CHORD BEARS N 39D 29M 47S W 59.14 FT/TH N 33D 08M 18S W 63.38 FT TH N 56D 51M 42S E 741.25 FT TH NELY 323.85 FT ALONG A 460 FT RAD CURVE TO RT/LONG CHORD BEARS N 77D 01M 50S E 317.20 FT/TO BEG*SEC 22 T6N R11W 18.00A.



Barcode with number 20140813-0065216 and registration information: Mary Hollinrake P 7/10 11 47AM Kent City MI Restr 08/13/2014 SEAL

June 9, 2014

Stephen C.N. Kepley, Mayor
City of Kentwood
4900 Breton Avenue, SE
Kentwood, Michigan 49508

Re: INDUCEMENT AND INDEMNITY AGREEMENT
Pfeiffer Woods Drive Special Assessment District

To: Mayor Kepley

Holland Home®
Corporate Office
2100 Raybrook Street SE
Suite 300
Grand Rapids, MI 49546
Phone 616 235 5000
Fax 616 235 5680
www.hollandhome.org

Holland Home Development

Breton Woods Campus
Breton Homes
Breton Rehabilitation
& Living Centre
Breton Ridge®
Breton Terrace

Fulton Campus
Fulton Manor

Raybrook Campus
Raybrook Estates
Raybrook Homes
Raybrook Manor

Faith Hospice®
Faith Hospice in community
www.faithhospicecare.org

Trillium Woods®
Faith Hospice residence

HomeCare of Holland Home
homecareofhollandhome.org

Helpers of Holland Home
helpersofhollandhome.org

Admissions
Phone 616 235 5113

We have this day filed with the City of Kentwood ("City") a request to modify the payment terms of a pre-existing special assessment district, better known as the Pfeiffer Woods Drive Construction (Breton North Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer, and Watermain Special Assessment District ("District"). The District was finally established and confirmed by Resolution of the City Commission on September 7, 2004 ("Resolution").

As an inducement to the City to review and favorably consider and approve the request and to adopt such resolutions and take such other actions as are herein contemplated, and whether or not all or any part of the District's pre-existing payment terms are modified, the undersigned, on behalf of Holland Home ("Holland Home") and its officers, directors, employees, agents and successors of any kind, irrevocably agrees that it will:

- (a) Pay all special assessments heretofore levied pursuant to the Resolution, on such terms and at such times as determined by the City Commission without further notice, hearing or appeal.
- (b) At all times indemnify and hold harmless the City and its officers and employees against all losses, costs, damages, expenses and liabilities of whatsoever nature or kind (including, but not limited to attorney's fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgment) directly or indirectly resulting from, arising out of or related to the acceptance, consideration and approval or disapproval of such request by Holland Home as aforesaid or the approval, adoption, issuance, or execution of any resolution, motion, contract or other action by which the City adjusts the terms of the pre-existing special assessment for the District and the property owner's on-going obligation to pay for the benefits received.

In fulfilling God's calling to serve others, we will serve with love and compassion, commit to excellence, and follow Christ's teaching and example in all we do

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It is understood and agreed that this Inducement and Indemnity Agreement shall be continuing and shall survive and continue to be effective after any approval or disapproval of the request and the modification or failure to modify any such special assessment, special assessment term or similar matter. It is also understood that additional indemnity agreements may be required by the City from others such as guarantors, prior to the final approval of the request.

This Inducement and Indemnity Agreement shall be effective upon execution by Holland Home where indicated below as of the date hereof.


Sincerely,

HOLLAND HOME

By: 
H. David Claus
President & CEO – Holland Home

Approved, accepted and agreed to this 12TH day of JUNE, 2014.

CITY OF KENTWOOD

By: 
Stephen C.N. Kepley, Mayor

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Kent Cnty MI Rstr 08/13/2014 SEAL

EXHIBIT C

PAYMENT SCHEDULE

Attached

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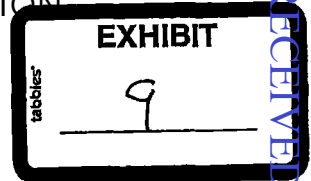
Mary Hollinrake P 10/10 11 47AM
Kent Only MI Rgstr 08/13/2014 SEAL

**Holland Home
Special Assessment District
Proposed Principal & Interest Payments**

7/9/2014

Ravines PUD Neighborhood B2 (22%)				
	Initial principal balance	\$	369,985.09	
	Interest rate		5.50%	
	# of days in year		365	
	Calculate initial interest from		1/17/2014	
	Target annual payment amount	\$	48,232.90	
Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				\$ 369,985.09
9/7/2014	\$ 12,990.02	\$ 7,234.93	\$ 20,224.95	\$ 362,750.16
9/7/2015	\$ 19,951.26	\$ 28,281.64	\$ 48,232.90	\$ 334,468.52
9/7/2016	\$ 18,446.17	\$ 29,786.73	\$ 48,232.90	\$ 304,681.79
9/7/2017	\$ 16,757.50	\$ 31,475.40	\$ 48,232.90	\$ 273,206.39
9/7/2018	\$ 15,026.35	\$ 33,206.55	\$ 48,232.90	\$ 239,999.84
9/7/2019	\$ 13,199.99	\$ 35,032.91	\$ 48,232.90	\$ 204,966.93
9/7/2020	\$ 11,304.07	\$ 36,928.83	\$ 48,232.90	\$ 168,038.10
9/7/2021	\$ 9,242.10	\$ 38,990.80	\$ 48,232.90	\$ 129,047.30
9/7/2022	\$ 7,097.60	\$ 41,135.30	\$ 48,232.90	\$ 87,912.00
9/7/2023	\$ 4,835.16	\$ 43,397.74	\$ 48,232.90	\$ 44,514.26
9/7/2024	\$ 2,448.28	\$ 44,514.26	\$ 46,962.54	\$ -
	<u>\$ 131,298.50</u>	<u>\$ 369,985.09</u>	<u>\$ 501,283.59</u>	

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CITY OF KENTWOOD
KENT COUNTY, MICHIGAN

Motion by Brinks, seconded by Coughlin, to adopt the following resolution:

RESOLUTION NO. 49-14

A RESOLUTION TO EXTEND PAYMENT TERMS
FOR A CONFIRMED SPECIAL ASSESSMENT DISTRICT
(RAVINES NEIGHBORHOOD B3-B AND B4)

RECITALS

- A. Pursuant to City of Kentwood Resolution No. 96-04 entitled "Pfeiffer Woods Drive Construction (Ravines Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer and Watermain Special Assessment District," as amended ("Resolution"), the Pfeiffer Woods Drive Construction, Ravines Special Assessment District was established ("District").
- B. The Resolution was adopted to finance certain public improvements benefitting the property located within the District.
- C. The Resolution included a special assessment roll for the District, which special assessment roll was confirmed on September 7, 2004. The amount of the special assessment as reflected in the roll, by law, became a lien on the property comprising the District.
- D. The Resolution was subsequently amended by the City with respect to the amount of the total special assessment (Resolution No. 108-04), and to reduce the area subject to the special assessment terms (Resolution No. 28-05).
- E. Subsequently, the owners of two large tracts (i.e., neighborhoods) of real property within the District became delinquent in paying property taxes and special assessments due and owing on their respective properties. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the properties were forfeited and judgment of foreclosure was entered with respect to each of the properties on March 31, 2014. As a result of the foreclosure, the properties are now titled to the Kent County Treasurer. (The real properties owned by the Kent County Treasurer within the District are identified herein, collectively, as the "Property".)
- F. The Property is and remains subject to a lien for the portion of the special assessment set forth in the Resolution, as amended. The Property is legally described on the attached Exhibit A, which is incorporated by reference.
- G. The District was established, in part, pursuant to a Voluntary Special Assessment/Development Agreement between the City and the owner of the Property dated September 7, 2004 and recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004 ("Agreement").

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H. The Agreement, at Section 2(e), provides, in part, that the "term of years" for the District's special assessment and similar matters are to be determined by resolution of the City Commission "in its discretion."

I. As further authorized by the Agreement, and without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of years for payment of the District's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable at public auction by the foreclosing governmental unit, enhancing economic development opportunities within the City, and facilitating private investment to increase the tax base.

NOW, THEREFORE, IT IS RESOLVED THAT:

1. The City affirms that the Recitals above are correct, form an integral part of this Resolution, and are incorporated herein by reference.
2. The special assessment roll attached to the Resolution as amended, and identified as "Roll A", is attached as Exhibit B and incorporated herein by reference ("Roll A").
3. A revised schedule of payment terms for the portion of the District's special assessment roll attributable to the Property, identified as "Roll A Supplemental", is attached as Exhibit C and incorporated herein by reference ("Roll A Supplemental").
4. Without modifying the confirmation date of the special assessment roll as amended, Roll A Supplemental shall hereby amend, supersede and replace any term or provision in Roll A to the contrary; to the extent of a conflict between Roll A and Roll A Supplemental, the provisions of Roll A Supplemental shall control. All remaining terms and provisions in Roll A not in conflict with Roll A Supplemental shall be and remain in effect.
5. Except as provided for herein, the Resolution and its terms are and shall remain binding and in effect. This resolution shall not be interpreted or construed to extend the period in which to challenge the underlying special assessment, which period has expired.
6. The Mayor, City Clerk and administrative officers of the City are hereby ordered and directed to take all actions reasonably necessary to effectuate this resolution including, without limitation, execution of the Amendment to Voluntary Special Assessment/Development Agreement dated July 15, 2014.
7. The City Clerk shall deliver a certified copy of this resolution and accompanying exhibits to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessment therein in accordance with the directions of the City Commission and the Treasurer is directed to collect the amounts assessed as the same become due.
8. All prior resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, hereby repealed.

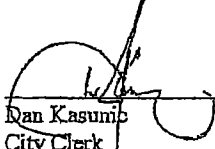
RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

YEAS: Commissioners: Artz, Brinks, Brown, Coughlin, DeMaagd, Haas and Mayor Kepley.

NAY: None.

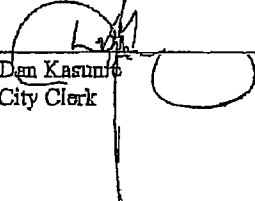
ABSENT: None.

RESOLUTION NO. 49-14 ADOPTED.



Dan Kasunic
City Clerk

The foregoing resolution was adopted at a regular meeting of the City Commission of the City of Kentwood on July 15, 2014.



Dan Kasunic
City Clerk

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

Parcel B3-B: 41-18-22-201-001

PART OF NE ¼ COM AT NE COR OF SEC TH S 3D 35M 29S E ALONG E SEC LINE 395.0 FT TH S 89D 42M 31S W 258.0 FT TH S 3D 35M 29S E 120.0 FT TH N 89D 42M 31S E 258.0 FT TH S 3D 35M 29S E 705.38 FT TH N 54D 47M 03S W 395.85 FT TH S 89D 45M 47S W 308.0 FT TH N 48D 05M 08S W 57.70 FT TH NWLY 85.19 FT ALONG A 185 FT RAD CURVE TO LT/LONG CHORD BEARS N 61D 16M 42S W 84.44 FT TH NWLY 317.79 FT ALONG A 726.68 FT RAD CURVE TO LT/LONG CHORD BEARS N 86D 59M 57S W 315.27 FT/TH N 6D 29M 36S W 3.24 FT TH NLY 24.30 ALONG A 345 FT RAD CURVE TO LT/LONG CHORD BEARS N 8D 46M 49S W 24.29 FT/TH N 10D 47M 53S W 144.99 FT TH NWLY 31.28 FT ALONG 444.86 FT RAD CURVE TO RT/LONG CHORD BEARS N 57D 59M 27S W 31.27 FT/TH N 55D 58M 35S W 154.50 FT TH N 64D 32M 33S W 11.03 FT TH N 71D 23M 21S W 59.08 FT TH NWLY 82.21 FT ALONG A 522.84 FT RAD CURVE TO LT/LONG CHORD BEARS N 76D 45M 27S W 82.13 FT/TH S 8D 30M 37S W 110.0 FT TH NWLY 60.08 FT ALONG A 320.0 RAD CURVE TO LT/LONG CHORD BEARS N 86D 52M 07S W 60.0 FT/TH S 2D 14M 52S E 60.0 FT TH S 5D 37M 05S E 120.40 FT TH S 21D 10M 34S W 454.76 FT TH S 0D 45M 27S E 325.54 FT TH S 64D 51M 03S W 319.71 FT TH SWLY 215.67 FT ALONG A 760 FT RAD CURVE TO RT/LONG CHORD BEARS S 72D 58M 49S W 214.94 FT/TH S 81D 06M 35S W 155.45 FT TH NWLY 31.99 FT ALONG A 47.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 79D 35M 41S W 31.39 FT/TH NELY 42.22 FT ALONG A 177.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 53D 29M 04S W 42.12 FT/TH NWLY 79.46 FT ALONG A 92.5 FT RAD CURVE TO LT/LONG CHORD BEARS N 71D 16M 48S W 77.04 FT/TH NWLY 128.57 FT ALONG A 452.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 87D 45M 01S W 128.14 FT/TH NWLY 67.97 FT ALONG A 540 FT RAD CURVE TO LT/LONG CHORD BEARS N 83D 12M 58S W 67.92 FT/TO N&S ¼ LINE TH N 3D 29M 48S W ALONG N&S ¼ LINE 1768.48 FT TO N ¼ COR TH N 89D 42M 31S E N 89D 42M 31S E 2633.71 FT TO BEG*SEC 22 T6N R11W 74.11 A.

and

Parcel B4: 41-18-22-276-001

PART OF E ¼ COM AT NE COR OF SEC TH S 3D 35M 29S E 1980.57 FT ALONG E SEC LINE TH S 89D 49M 02S W 40.07 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 35M 29S E ALONG W LINE OF SD AVE 660.18 FT TO E&W ¼ LINE TH N 89D 49M 02S E ALONG E&W ¼ LINE 0.02 FT TH S 3D 10M 02S E 61.23 FT TH S 88D 09M 27S W 467.76 FT TH N 69D 14M 04S W 227.04 FT TH N 75D 46M 26S W 333.65 FT TH S 70D 13M 01S W 266.80 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 36D 39M 55S W 187.39 FT TH N 53D 54M 21S W 346.87 FT TH N 64D 29M 25S W 183.51 FT TH N 30D 34M 11S W 393.92 FT TO S LINE OF PFEIFFER WOODS DR TH NELY 90.86 FT ALONG 840 FT RAD CURVE TO LT/LONG CHORD BEARS N 67D 56M 59S E 90.82 FT/TH N 64D 51M 03S E 368.73 FT TH ELY 1119.01 FT ALONG A 960 FT RAD CURVE TO RT/LONG CHORD BEARS S 81D 45M 22S E 1056.72 FT/TH S 41D 54M 24S W 17.75 FT TH S 47D 02M 47S E 91.85 FT TH SELY 208.54 FT ALONG A 277 FT RAD CURVE TO LT/LONG CHORD BEARS S 68D 36M 53S E 203.65/N 89D 49M 02S E 258.88 FT TO BEG*SEC 22 T6N R11W 34.57 A.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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EXHIBIT B
ROLL A

Attached

11:11

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ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
 (Ravines Special Assessment District)
 STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND
 WATERMAIN
 SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004; amended October 19, 2004 and March 15, 2005

Subject Property:

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: COMMENCING at the Northeast corner of Section 22 and the POINT OF BEGINNING of this description; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter, thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter, thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter, thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 17.84 feet along a 375.00 foot radius curve to the right, the chord of which bears North 26°04'58" West 17.84 feet; thence Northerly 182.95 feet along a 375.00 foot radius curve to the right, the chord of which bears North 10°44'36" West 181.15 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the chord of which bears North 15°38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the chord of which bears North 52°42'11" West 57.93 feet; thence Westarily 60.54 feet along a 460.00 foot radius curve to the left, the chord of which bears North 81°53'03" West 60.49 feet to the West line of the Southeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 228.49 acres, including highway R.O.W.

<u>Estimated Public Improvement Costs</u>	<u>Total Costs</u>	<u>LLC Portion</u>	<u>City's Share</u>
Pfeiffer Woods Roadway (22A)	500,000.00	360,000.00	140,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	<u>55,000.00</u>	<u>55,000.00</u>	<u>0.00</u>
Total Subcontractor Costs	1,216,000.00	1,016,000.00	200,000.00
Project Management (10%)	121,600.00	101,600.00	20,000.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	<u>25,000.00</u>	<u>25,000.00</u>	<u>0.00</u>
Total Project Costs	1,521,400.00	1,301,400.00	220,000.00
Total Project Contingency/Inflation (25%)	380,350.00	380,350.00	0.00
SAD Total Costs	1,901,750.00	1,681,750.00	220,000.00

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an

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amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

EXHIBIT C

ROLL A SUPPLEMENTAL

Extended Term: Until September 7, 2024.

Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate was in effect on the date the roll was confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate was 5.5%.

B. A payment shall be due annually on the anniversary date of the original confirmation of the roll for the remaining term of the roll (e.g., September 7, 2014, September 7, 2015, etc.), consistent with the schedule of principal and interest payments set forth on the payment schedule, attached as Exhibit C and incorporated by reference.

C. Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

Payment Schedules: Attached

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Pfeiffer Woods Drive
 Special Assessment District
 Proposed Principal & Interest Payments

7/9/2014

Ravines PUD Neighborhood B3-B				
Initial principal balance		\$	396,795.51	
Interest rate		5.50%		
# of days in year		365		
Calculate initial interest from		1/17/2014		
Target annual payment amount		\$	50,000.00	
Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				\$ 396,795.51
9/7/2014	\$ 13,931.33	\$ 21,068.67	\$ 35,000.00	\$ 375,726.84
9/7/2015	\$ 20,664.98	\$ 29,335.02	\$ 50,000.00	\$ 346,391.82
9/7/2016	\$ 19,103.75	\$ 30,896.25	\$ 50,000.00	\$ 315,495.57
9/7/2017	\$ 17,352.26	\$ 32,647.74	\$ 50,000.00	\$ 282,847.83
9/7/2018	\$ 15,556.63	\$ 34,443.37	\$ 50,000.00	\$ 248,404.46
9/7/2019	\$ 13,662.25	\$ 36,337.75	\$ 50,000.00	\$ 212,066.71
9/7/2020	\$ 11,695.62	\$ 38,304.38	\$ 50,000.00	\$ 173,762.33
9/7/2021	\$ 9,556.93	\$ 40,443.07	\$ 50,000.00	\$ 133,319.26
9/7/2022	\$ 7,332.56	\$ 42,667.44	\$ 50,000.00	\$ 90,651.82
9/7/2023	\$ 4,985.85	\$ 45,014.15	\$ 50,000.00	\$ 45,637.67
9/7/2024	\$ 2,510.07	\$ 45,637.67	\$ 48,147.74	\$ -
	<u>\$ 136,352.23</u>	<u>\$ 396,795.51</u>	<u>\$ 533,147.74</u>	

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Pfeiffer Woods Drive
 Special Assessment District
 Proposed Principal & Interest Payments

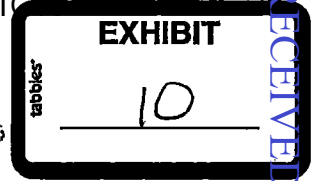
7/9/2014

Ravines PUD Neighborhood B4					
		Initial principal balance		\$	353,167.50
		Interest rate			5.50%
		# of days in year			365
		Calculate initial interest from			1/17/2014
		Target annual payment amount		\$	45,000.00
Payment Date	Interest Payment	Principal Payment	Total Payment		Outstanding Principal
1/17/2014				\$	353,167.50
9/7/2014	\$ 12,399.57	\$ 17,600.43	\$ 30,000.00	\$	335,567.07
9/7/2015	\$ 18,456.19	\$ 26,543.81	\$ 45,000.00	\$	309,023.26
9/7/2016	\$ 17,042.84	\$ 27,957.16	\$ 45,000.00	\$	281,066.10
9/7/2017	\$ 15,458.64	\$ 29,541.36	\$ 45,000.00	\$	251,524.74
9/7/2018	\$ 13,833.86	\$ 31,166.14	\$ 45,000.00	\$	220,358.60
9/7/2019	\$ 12,119.72	\$ 32,880.28	\$ 45,000.00	\$	187,478.32
9/7/2020	\$ 10,339.56	\$ 34,660.44	\$ 45,000.00	\$	152,817.88
9/7/2021	\$ 8,404.98	\$ 36,595.02	\$ 45,000.00	\$	116,222.86
9/7/2022	\$ 6,392.26	\$ 38,607.74	\$ 45,000.00	\$	77,615.12
9/7/2023	\$ 4,268.83	\$ 40,731.17	\$ 45,000.00	\$	36,883.95
9/7/2024	\$ 2,028.62	\$ 36,883.95	\$ 38,912.57	\$	-
	\$ 120,745.07	\$ 353,167.50	\$ 473,912.57		

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Kent Cnty MI Regstr 06/23/2015 SEAL

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**AMENDMENT TO VOLUNTARY SPECIAL
ASSESSMENT/DEVELOPMENT AGREEMENT
(RAVINES NEIGHBORHOOD B1)**

This Amendment to Voluntary Special Assessment/Development Agreement is dated June 16, 2015 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the conveyance of certain real property.

C. Subsequently, the owner of a tract of real property (i.e., neighborhood) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on its property. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the property was forfeited and a judgment of foreclosure was entered with respect to the property on March 31, 2015. As a result of the foreclosure, the property is now titled to the KCT.

D. The real property owned by the KCT remains subject to the terms of the Agreement, as amended, is legally described on attached Exhibit A, which is incorporated by reference ("Property").

E. The obligations set forth in the Agreement were covenants running with the land which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.



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Kent Cnty MI Regstr 06/23/2015 SEAL

F. In accordance with its adopted ordinances and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").

G. A balloon payment in the principal amount of \$403,620 plus accrued interest is due on September 7, 2015 under the terms set forth as part of the Roll and the Agreement.

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable, enhancing economic development opportunities within the City, and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be payable in accordance with the schedule attached as Exhibit B to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.



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Kent Cnty MI Rgstr 06/23/2015 SEAL

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, the KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, agreements, special assessments, etc. which impact the special assessment or Roll as amended herein.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations and pledges contained in this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: [Signature]
Stephen Kepley, Mayor

By: [Signature]
Dan Kasunic, City Clerk

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on JUNE 18, 2015, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

[Signature]
* MARY L. BREMER
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 08-09-2016

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

KENT COUNTY TREASURER

STATE OF MICHIGAN

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION



20150623-0053765

Mary Hollihrake P:4/7 2:08PM
Kent Cnty MI Restr 06/23/2015 SEAL

KENT COUNTY TREASURER

By: Kenneth D. Parrish
Kenneth Parrish

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County,
Michigan on June 23, 2015, by Kenneth
Parrish, the Treasurer of Kent County,
Michigan, for that office.

Rose Heys
*
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 5/26/2020

*Name must be typed or printed in black in
beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
e 15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY
ANY REAL PROPERTY.

RECEIVED by MSC 6/13/2022 11:00:48 AM



20150623-0053765
Mary Hollinrake P:5/7 2:03PM
Kent Dnty MI Restr 06/23/2015 SEAL

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A.

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20150623-0053765
Mary Hollinrake P:6/7 2:03PM
Kent Cnty RI Rgstr 06/23/2015 SEAL

EXHIBIT B

PAYMENT SCHEDULE

Attached

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20150623-0053765

Mary Hollinrake P:777 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

**Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments**

Ravines PUD Neighborhood B1

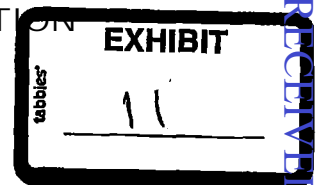
Initial principal balance \$ 403,620.00
Interest rate 5.50%
of days in year 365
Calculate initial interest from 9/7/2014
Target annual payment amount \$ 54,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
9/7/2014				\$ 403,620.00
9/7/2015	\$ 22,199.10	\$ 31,800.90	\$ 54,000.00	\$ 371,819.10
9/7/2016	\$ 20,506.08	\$ 33,493.92	\$ 54,000.00	\$ 338,325.18
9/7/2017	\$ 18,607.88	\$ 35,392.12	\$ 54,000.00	\$ 302,933.06
9/7/2018	\$ 16,661.32	\$ 37,338.68	\$ 54,000.00	\$ 265,594.38
9/7/2019	\$ 14,607.69	\$ 39,392.31	\$ 54,000.00	\$ 226,202.07
9/7/2020	\$ 12,475.20	\$ 41,524.80	\$ 54,000.00	\$ 184,677.27
9/7/2021	\$ 10,157.25	\$ 43,842.75	\$ 54,000.00	\$ 140,834.52
9/7/2022	\$ 7,745.90	\$ 46,254.10	\$ 54,000.00	\$ 94,580.42
9/7/2023	\$ 5,201.92	\$ 48,798.08	\$ 54,000.00	\$ 45,782.34
9/7/2024	\$ 2,524.93	\$ 45,782.34	\$ 48,307.27	\$ -
	<u>\$ 130,687.27</u>	<u>\$ 403,620.00</u>	<u>\$ 534,307.27</u>	

2064.xlsx

6/2/2015

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CITY OF KENTWOOD
KENT COUNTY, MICHIGAN

Motion by Brinks, seconded by Coughlin, to adopt the following resolution:

RESOLUTION NO. 50-14

A RESOLUTION TO EXTEND PAYMENT TERMS
 FOR A CONFIRMED SPECIAL ASSESSMENT DISTRICT
 (RAVINES NEIGHBORHOOD B1)

RECITALS

- A. Pursuant to City of Kentwood Resolution No. 96-04 entitled "Pfeiffer Woods Drive Construction (Ravines Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer and Watermain Special Assessment District," as amended ("Resolution"), the Pfeiffer Woods Drive Construction, Ravines Special Assessment District was established ("District").
- B. The Resolution was adopted to finance certain public improvements benefitting the property located within the District.
- C. The Resolution included a special assessment roll for the District, which special assessment roll was confirmed on September 7, 2004. The amount of the special assessment as reflected in the roll, by law, became a lien on the property comprising the District.
- D. The Resolution was subsequently amended by the City with respect to the amount of the total special assessment (Resolution No. 108-04), and to reduce the area subject to the special assessment terms (Resolution No. 28-05).
- E. Subsequently, the owner of a large tract of real property (i.e., a neighborhood) within the District became delinquent in paying property taxes and special assessments due and owing on its property. As a result, the property is at risk of having a judgment of foreclosure entered. (The subject real property referred to as the "Property".)
- F. The Property is and remains liable for a portion of the special assessment set forth in the Resolution, as amended. The Property is legally described on the attached Exhibit A, which is incorporated by reference.
- G. The District was established, in part, pursuant to a Voluntary Special Assessment/Development Agreement between the City and the owner of the Property dated September 7, 2004 and recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004 ("Agreement").
- H. A balloon payment on the outstanding principal of \$403,620.00 and interest of \$22,199.10 (totaling \$425,819.10) attributable to the Property is due on September 7, 2014 under the terms set forth as part of the Agreement and accompanying special assessment roll.

{06939-004-00029460.1}

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I. The Agreement, at Section 2(e), provides, in part, that the "term of years" for the District's special assessment and similar matters are to be determined by resolution of the City Commission "in its discretion."

J. Without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of the special assessment for one additional year is in the public interest in order to allow the owner of the Property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the Property current, to make the Property more marketable, and to enhance economic development opportunities within the City.

NOW, THEREFORE, IT IS RESOLVED THAT:

1. The City affirms that the Recitals above are correct, form an integral part of this resolution, and are incorporated herein by reference.
2. The special assessment roll attached to the Resolution as amended, and identified as "Roll A", is attached as Exhibit B and incorporated herein by reference ("Roll A").
3. A revised schedule of payment terms for the portion of the District's special assessment roll attributable to the Property, identified as "Roll A Supplemental", is attached as Exhibit C and incorporated herein by reference ("Roll A Supplemental").
4. Without modifying the confirmation date of the special assessment roll as amended, Roll A Supplemental shall hereby amend, supersede and replace any term or provision in Roll A to the contrary; to the extent of a conflict between Roll A and Roll A Supplemental, the provisions of Roll A Supplemental shall control. All remaining terms and provisions in Roll A not in conflict with Roll A Supplemental shall be and remain in effect.
5. Except as provided for herein, the Resolution and its terms are and shall remain binding and in effect. This resolution shall not be interpreted or construed to extend the period in which to challenge the underlying special assessment, which period has expired.
6. The Mayor, City Clerk and administrative officers of the City are hereby ordered and directed to take all actions reasonably necessary and authorized by law to effectuate this resolution and to provide notice of its passage to the Property's owner.
7. The City Clerk shall deliver a certified copy of this resolution and accompanying exhibits to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessment therein in accordance with the directions of the City Commission and the Treasurer is directed to collect the amounts assessed as the same become due.
8. All prior resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, hereby repealed.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

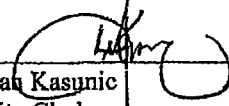
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YEAS: Commissioners: Artz, Brinks, Brown, Coughlin, DeMaagd, Haas and Mayor Kepley

NAY: None

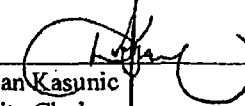
ABSENT: None

RESOLUTION NO. 50-14 ADOPTED.



Dan Kasunic
City Clerk

The foregoing resolution was adopted at a regular meeting of the City Commission of the City of Kentwood on July 15, 2014.



Dan Kasunic
City Clerk

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EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT B

ROLL A

Attached

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ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
 (Ravines Special Assessment District)
 STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND
 WATERMAIN
 SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004; amended October 19, 2004 and March 15, 2005

Subject Property:

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: COMMENCING at the Northeast corner of Section 22 and the POINT OF BEGINNING of this description; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter, thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter; thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter; thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 17.84 feet along a 375.00 foot radius curve to the right, the chord of which bears North 26°04'58" West 17.84 feet; thence Northerly 182.95 feet along a 375.00 foot radius curve to the right, the chord of which bears North 10°44'36" West 181.15 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the chord of which bears North 15°38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the chord of which bears North 52°42'11" West 57.93 feet; thence Westerly 60.54 feet along a 460.00 foot radius curve to the left, the chord of which bears North 81°53'03" West 60.49 feet to the West line of the Southeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 228.49 acres, including highway R.O.W.

Estimated Public Improvement

<u>Costs</u>	<u>Total Costs</u>	<u>LLC Portion</u>	<u>City's Share</u>
Pfeiffer Woods Roadway (22A)	500,000.00	360,000.00	140,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	<u>55,000.00</u>	<u>55,000.00</u>	<u>0.00</u>
Total Subcontractor Costs	1,216,000.00	1,016,000.00	200,000.00
Project Management (10%)	121,600.00	101,600.00	20,000.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	<u>25,000.00</u>	<u>25,000.00</u>	<u>0.00</u>
Total Project Costs	1,521,400.00	1,301,400.00	220,000.00
Total Project Contingency/Inflation (25%)	380,350.00	380,350.00	0.00
SAD Total Costs	1,901,750.00	1,681,750.00	220,000.00

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

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EXHIBIT
12

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Jeffrey V.H. Sluggett
Direct Dial (616) 965-9342
Direct Fax (616) 965-9352
jsluggett@bsmlawpc.com

July 18, 2014

Mr. Michael J. Damone, President
The Damone Group, LLC
850 Stephenson, Suite 200
Troy, Michigan 48083

Re: City of Kentwood / 44th/Shaffer Avenue, LLC
Ravines Neighborhood B1 Special Assessment District

Dear Mr. Damone:

As you are aware, we are general counsel to the City of Kentwood. As I believe you also know the City, several months ago, received a request from Holland Home asking that the City extend for an additional ten-year period the installment payments due on the portion of the captioned special assessment district for which Holland Home is the owner. This past Tuesday the City Commission adopted a resolution granting that request and extending until 2024 the payment schedule for Holland Home.

We spoke with you several weeks ago to determine if 44th/Shaffer Avenue, LLC ("44th/Shaffer") wished to receive a similar extension of payment terms on neighborhood B1, which is still owned, we understand, by your company. At the conclusion of our discussion we understood that 44th/Shaffer did not wish to expend any further time on the special assessment process.

Nonetheless, to provide 44th/Shaffer with additional time to analyze its options, the City Commission also adopted at last Tuesday night's meeting a copy of the enclosed resolution. The resolution extends the balloon payment on the special assessment for the B1 Neighborhood for an additional one year (see Exhibit C). Should 44th/Shaffer have any interest in extending the balloon payment out beyond the one year period, we would be glad to discuss that matter with you.

Please contact us should there be any questions.

Very truly yours,

Jeffrey V.H. Sluggett

Enclosure

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DAMGHANI v. CITY OF KENTWOOD, ET AL

TOM CHASE

November 29, 2016

Prepared by

Network Reporting
— STATEWIDE COURT REPORTERS —

depos@networkreporting.com
Phone: 800.632.2720
Fax: 800.968.8653
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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MAJID DAMGHANI,

Plaintiff,

v

File No. 15-11405-CH

HON. DONALD A. JOHNSTON

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

DEPOSITION OF TOM CHASE

Taken by the Plaintiff on the 29th day of November, 2016, at
4900 Breton Avenue, SE, Grand Rapids, Michigan, at 9:30 a.m.

APPEARANCES:

For the Plaintiff:

MR. DONALD R. VISSER (P27961)
MR. DONOVAN J. VISSER (P70847)
And
MR. JEREMY J. VOORHEES (P80872)
Visser & Associates PLLC
2480 44th Street, SE, Suite 150
Kentwood, Michigan 49512
(616) 531-9860

For the Defendant
City of Kentwood:

MR. DAVID K. OTIS (P31627)
Plunkett Cooney
325 East Grand River Avenue, Suite 250
East Lansing, Michigan 48823
(517) 324-5612

RECORDED BY:

Marie de la Vega, CER 7614
Certified Electronic Recorder
Network Reporting Corporation
Firm Registration Number 8151
1-800-632-2720

1 TABLE OF CONTENTS

2 PAGE

3

4 Examination by Mr. Donald Visser 3

5

6 EXHIBIT INDEX

7 PAGE

8 Deposition Exhibit 1 marked 3

9 (Defendant City of Kentwood's Answers to Plaintiff's

10 First Interrogatories)

11 Deposition Exhibit 2 marked 12

12 (7-16-14 Amendment to Voluntary Special

13 Assessment/Development Agreement)

14 Deposition Exhibit 3 marked 17

15 (7-15-14 City of Kentwood Resolution No. 49-14)

16 Deposition Exhibit 4 marked 32

17 (1-17-06 City of Kentwood Resolution No. 8-06)

18 Deposition Exhibit 5 marked 34

19 (9-7-04 City of Kentwood Resolution No. 96-04)

20 Deposition Exhibit 6 marked 48

21 (B-4 Phase 2 Spreadsheet)

22 Deposition Exhibit 7 marked 51

23 (B-4 Phase 1 Spreadsheet)

24 Deposition Exhibit 8 marked 54

25 (9-7-04 Voluntary Special Assessment/Development

Agreement)

Deposition Exhibit 9 marked 74

(Spreadsheets)

Deposition Exhibit 10 marked 74

(Trial Balance Report 2004 through 2007)

Deposition Exhibit 11 marked 83

(3-23-05 City of Kentwood Resolution No. 31-05)

Deposition Exhibit 12 marked 95

(9-20-11 and 9-20-12 Special Assessment Billing

Invoices)

Deposition Exhibit 13 marked 105

(Tax Billing and Payment History for Neighborhoods B-1,

B-2 and B-3)

Deposition Exhibit 14 marked 105

(Trial Balance History Report for Special Assessment)

Page 2

1 Q And you've shed yourself of both credit and responsibility

2 for their -- for whatever they do now?

3 A They're now a direct report to the mayor.

4 Q Can you tell me a little bit about your background? First

5 of all, your residential address?

6 A I live in Grand Rapids Township, 3154 Wild Ridge Drive,

7 northeast.

8 Q And how long have you resided there?

9 A 29 years.

10 Q Reside there with anyone?

11 A My wife.

12 Q What about your educational background?

13 A I graduated in 1978 from Northwood University, at the time

14 called Northwood Institute, with an accounting degree and

15 a -- that was my major, accounting.

16 Q Was that a bachelor's?

17 A Yes.

18 Q At that time where was Northwood Institute located?

19 A Midland, Michigan.

20 Q Did you get your degree by in-residence courses or

21 correspondence?

22 A Residence.

23 Q That was a bachelor's degree I assume?

24 A Correct.

25 Q After that have you had any additional education?

Page 4

1 Kentwood, Michigan

2 Tuesday, November 29, 2016 - 9:48 a.m.

3 (Deposition Exhibit 1 marked)

4 REPORTER: Do you solemnly swear or affirm that

5 the testimony you're about to give will be the whole truth?

6 MR. CHASE: Yes.

7 TOM CHASE

8 having been called by the Plaintiff and sworn:

9 EXAMINATION

10 BY MR. DONALD VISSER:

11 Q Mr. Chase, can you simply tell me a bit -- little bit about

12 your history with the city?

13 A I started with the city in 1993 as the finance director and

14 I've been serving in that role since then.

15 Q Have you had any other roles at all during that time?

16 A Under the finance director role I supervised information

17 technology and I currently supervise purchasing. Those are

18 the only things that were added in the interim and since --

19 until just recently when IT was split off as a separate

20 department.

21 Q So you had -- didn't start with IT, but you ended up with IT

22 for awhile and now --

23 A 16 years, yup.

24 Q -- and now it's off on its own?

25 A Yes, it is.

Page 3

1 A No.

2 Q So you had roughly 15 years in between when you graduated

3 and when you started here at Kentwood as a financing --

4 finance director?

5 A Yup. I worked for two CPA firms, the first one in Bay City,

6 Michigan and the second one in Grand Rapids.

7 Q And who was the one in Grand Rapids?

8 A BDO.

9 Q And who was in Bay City?

10 A Weinlander Fitzhugh. Actually it was a longer name at the

11 time but that's what it's been shortened to now.

12 Q And what did you do for Weinlander?

13 A I did during the busy season -- well, I should say

14 predominantly I worked on government and not-for-profit

15 audits. I did do some manufacturing audits. And then of

16 course during the winter with a small firm you do tax

17 returns and things of that sort, but most of the year I was

18 working on government and nonprofit -- not-for-profit

19 audits.

20 Q And for BDO Seidman?

21 A It ended up that because of my background at the local firm

22 I was -- ended up being hired and they -- I specialized in

23 government auditing and not-for- -- not so much

24 not-for-profit, mostly governmental auditing.

25 Q So mostly auditing there?

Page 5

1 A Yes.
 2 Q Tell me --
 3 A And I was certified as a CPA in 1981.
 4 Q So tell me, what does the job of financing director at the
 5 city of Kentwood entail?
 6 A Finance director oversees the accounting operation, which
 7 includes budgeting, auditing -- or the annual financial
 8 audit; but also includes payroll, accounts payable, cash and
 9 investments; a number of different areas. Risk management
 10 is another area that we work with.
 11 Q Anything else that you can think of at least right now?
 12 A Well, budget and audit take up a lot of the year, but the
 13 rest of it -- I used to do some human-resource-type stuff,
 14 but we now have a human resources director. I do -- oh.
 15 Another big one is the pension administration; defined
 16 benefit -- closed defined benefit plan and a defined
 17 contribution pension plan; both.
 18 Q Does that include, like, the police department and so forth?
 19 A Uh-huh (affirmative).
 20 REPORTER: Is that a "yes"?
 21 A Includes all city employees.
 22 REPORTER: I need you to say "yes" instead of
 23 "uh-huh."
 24 A Oh. I'm sorry. Yes. These are general plans for all city
 25 employees, so we don't differentiate. Yup.

Page 6

1 the department. And then we have a person that does the
 2 general ledger and payroll functions, and another that
 3 does -- or another two that do work on accounts payable and
 4 other functions.
 5 Q And who's the deputy finance director?
 6 A Lorna Nenciarini, N-e-n-c-i-a-r-i-n-i. I've had to spell it
 7 before.
 8 Q You have? And your buyer, who's that?
 9 A Carla Kane, C-a-n-e -- or I mean K-a-n-e. I'm sorry.
 10 Q And who does your general ledger payroll functions?
 11 A Susan Strong.
 12 Q And accounts payable?
 13 A Patty Smith and Ann Nickels, N-i-c-k-e-l-s.
 14 Q The English spelling not the Dutch spelling.
 15 A Uh-huh (affirmative).
 16 Q Now I'd like you to look at a document that I've given to
 17 you. I've had it marked as Deposition Exhibit 1. And it's
 18 the Answers to First Interrogatories. And I think it lists
 19 you as being a signatory. Have you seen these before?
 20 A I have.
 21 Q Did you provide the answers?
 22 A I did not. One of my staff members did.
 23 Q Who was that?
 24 A Lorna Nenciarini, deputy finance director.
 25 Q So she provided all of the answers?

Page 8

1 Q So is this -- these functions other than less human
 2 resources now than what you did at one time, has that pretty
 3 well been a steady course of responsibilities during your
 4 employ as finance director?
 5 A Yes. And I should say -- I mentioned earlier about -- that
 6 purchasing came under --
 7 Q Yes.
 8 A -- finance, centralized under finance, also, so that is a
 9 big one. But there's two people that work on that
 10 specifically.
 11 Q And who do you -- who are you responsible to or who do you
 12 account to?
 13 A Directly to the mayor, but I serve at the pleasure of the
 14 mayor and the city commission. The mayor makes --
 15 recommends appointments of my sort and then the city
 16 commission confirms.
 17 Q But you're directly account to the mayor?
 18 A That is correct.
 19 Q Do you have anyone that accounts to you?
 20 A Yes.
 21 Q And who would that be?
 22 A I have five staff members presently.
 23 Q Who are they?
 24 A A deputy finance director and purchasing agent. She handles
 25 two tasks as well as risk management. The buyer is also in

Page 7

1 A I would say she provided the answers that required documents
 2 to be provided.
 3 Q What about the ones that did not have documents to be
 4 provided, just simply -- go ahead.
 5 A Those were developed jointly, I believe, amongst our group.
 6 (Mr. Donovan Visser and Mr. Jeremy Voorhees enter
 7 deposition)
 8 MR. DONALD VISSER: If you want, for the record
 9 Donovan Visser and Jeremy Voorhees are present.
 10 Q Well, there's a spot there for your signature but it's not
 11 signed. Do you know why that is?
 12 A I'm not sure why. I do remember signing some of the
 13 documents, but I don't know whether this one was one.
 14 Q You either reviewed or provided the answers that are
 15 contained here?
 16 A I reviewed the document.
 17 Q The documents that were provided -- before I go there, the
 18 answers that are included are the -- when you reviewed them
 19 or either provided them, were they true?
 20 A Yes.
 21 Q You were aware that in 2014 the property that's currently
 22 owned by Mr. Damghani went to tax sale?
 23 A Yes.
 24 Q Were you involved at all in any events leading up to that
 25 tax sale?

Page 9

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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DEPOSITION OF TOM CHASE

1 A ~~No.~~
2 Q You weren't involved with transferring, making demand on the
3 county for payment of the taxes or --
4 A ~~That would be our city treasurer or the Kent County~~
5 ~~treasurer, I believe.~~
6 Q Right. But you just -- you weren't one that was involved in
7 that process? It usually is from the treasurer to the
8 county treasurer?
9 A ~~That is correct. I was not involved.~~
10 Q Did you become involved after the tax -- I'm sorry -- after
11 the foreclosure with any efforts to put an agreement
12 together between the city of Kentwood and the county of
13 Kent?
14 A Yes.
15 Q How did you become involved in that?
16 A ~~I was asked to look at initially a request for payment -- a~~
17 ~~revision to the payment schedule for Holland Home. And then~~
18 ~~with that, we ended up applying that similar -- a similar~~
19 ~~approach to the other properties in the Ravines area.~~
20 Q Who was it at Holland Home that made the request?
21 A Dave Tiesenga.
22 Q And did he make it to you?
23 A I don't recall if -- where he made his first request.
24 Q So tell me, within the city who brought it -- who was the
25 first person that brought it to your attention that there

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1 A Jeff Sluggett.
2 Q And who would have been the treasurer?
3 A I believe Laurie Sheldon. We've had some turnover in the
4 positions. The mayor in 2014 would have been Stephen
5 Kopley. He's been the mayor for three years now.
6 Q Is it your testimony that -- let me have this marked.
7 (Deposition Exhibit 2 marked)
8 Q I'm showing you now what's been marked as Exhibit Number 2.
9 Is that the document that ultimately resulted from those
10 discussions?
11 (Witness reviews exhibit)
12 A I believe so, yes. The part that I had in it was the
13 payment schedules at the end.
14 Q At the end. That would have been your role in reviewing
15 those?
16 A Correct.
17 Q Now, is it your testimony, then, that that was initiated by
18 Holland Home and not by somebody within the city government?
19 A No, it is not. What I said is the genesis of the approach
20 to revising the payment schedule started with the Breton
21 North payment schedule. But it was found that -- I believe
22 either the Kent County treasurer or somebody within our
23 organization felt that that would be a good approach to take
24 with the others as well.
25 Q When did the discussions begin on the Breton North repayment

Page 12

1 was a request being made?
2 A I don't recall. I know that I was brought in, but I don't
3 recall exact -- who the first person was.
4 Q Why were you brought in?
5 A To look at the payment schedule, to check it for accuracy
6 and make suggestions, if there needed to be any.
7 Q Who asked you to check for accuracy?
8 A Dave Tiesenga sent it to us, so that was the -- again, that
9 was the Holland Home repayment schedule. I don't recall
10 exactly who asked me. It came to me. I believe we had a --
11 possibly the conversation with the mayor, possibly, but I
12 don't recall for sure.
13 Q Who all was involved with the process?
14 A ~~Would have been the mayor, the city attorney are the ones~~
15 ~~that I --~~
16 Q Anyone else?
17 A ~~Possibly treasurer.~~
18 Q So that we just simply have names for the record, the mayor
19 at that time was?
20 A I'm trying to remember. There's been some turnover
21 recently.
22 MR. OTIS: 2014.
23 A '14 would have been two years ago, so it would have been
24 Stephen Kopley.
25 Q Who was the city attorney?

Page 11

1 schedule?
2 A I don't recall.
3 Q Did it begin before or after the tax sale?
4 A ~~It would have been before.~~
5 Q And when I talk about the tax sale, I'm talking about the
6 Damghani parcel?
7 A Uh-huh (affirmative).
8 Q "Yes"?
9 A Yes. Sorry.
10 Q If I ever catch you, again, just say that I'm not trying to
11 be --
12 A Not at all.
13 Q -- disrespectful to you --
14 A Not at all.
15 Q -- or anything else. Okay?
16 A Nope, I understand. Yup.
17 Q How much before the tax sale would those discussion have
18 been going on with Mr. Tiesenga?
19 A ~~Probably at least half a year. But they -- the Holland Home~~
20 ~~property wasn't going through tax sale. That was~~
21 ~~independent of the other properties, the special assessments~~
22 ~~on the other properties.~~
23 Q Did you have a partial pay agreement in place for the
24 Tiesenga parcel?
25 A What do you mean about partial pay?

Page 13

4 (Pages 10 to 13)

1 Q Did you have -- well, maybe I'd just back up. Tell me the
 2 genesis of why there were discussions with Mr. Tiesenga
 3 regarding his parcel.
 4 A **The Holland Home parcel?**
 5 Q The Holland Home parcel, yes.
 6 A **That, I believe that they were looking at refinancing or**
 7 **possibly some other financial decisions that they needed to**
 8 **make and they asked for an extension of the payment terms**
 9 **beyond the balloon payment that would have been due in**
 10 **September of 2014.**
 11 Q **And did the city give them an extension prior or payment**
 12 **schedule prior to Exhibit 2 being assigned?**
 13 A **I believe so. I believe it happened before.**
 14 Q And what was the agreement made at that time with Holland
 15 Home?
 16 A **A payment schedule very similar to the last two pages in the**
 17 **exhibit.**
 18 Q Was there a separate agreement then written with Mr.
 19 Tiesenga for --
 20 A **Yes.**
 21 Q -- Holland Home?
 22 A **Holland Home is separate, was entered in -- the agreement**
 23 **was entered into separately originally and for the extension**
 24 **or the revision to the payment terms.**
 25 Q So we could expect to find somewhere a document somewhat

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1 Q **But if you had the -- If you had a balloon immediately after**
 2 **the sale you thought that would have a negative impact on**
 3 **potential buyers?**
 4 A **I believe that's what the thought process was.**
 5 Q How many parcels did the assessments involve? How many
 6 parcels did they cover?
 7 A **Three or four.**
 8 Q Does Exhibit 2 cover the Holland Home?
 9 A **No. There's Holland Home and then there's the Ravines**
 10 **subdivision, so the other -- the parcel that's in question**
 11 **that we're discussing is separate from the Holland Home.**
 12 Q So we have the Holland Home parcel and we had the Ravines
 13 parcel?
 14 A **Parcels.**
 15 Q Parcels. And do you know how many there were?
 16 A **I think there were five ultimately. Holland Home bought one**
 17 **of them. I think that one of them was split actually and**
 18 **Holland Home bought it. So Holland Home actually owns one**
 19 **portion -- one parcel in the Ravines now. They did not**
 20 **originally.**
 21 Q **Did they buy that after or before Exhibit 2 was signed?**
 22 A **Well before.**
 23 Q So they bought that before?
 24 A **Yes.**
 25 Q So what is your understanding as to the parcels or

Page 16

1 similar to --
 2 A **Yes.**
 3 Q -- Exhibit 2 for affecting the Holland Home parcel?
 4 A **Yes.**
 5 Q At that point, so you had a discussion and actually an
 6 agreement with Holland Home as to their parcel. What was it
 7 that was then -- made the city or the county decide to go
 8 ahead and execute or develop and execute Exhibit B?
 9 MR. OTIS: Exhibit 2?
 10 MR. DONALD VISSER: Exhibit 2. I'm so sorry. I
 11 can't read my own writing. Exhibit 2.
 12 Q As they were approaching -- as we were approaching the tax
 13 sale, one of the things that was considered is that --
 14 whether or not the parcels would be attractive to purchasers
 15 through the tax sale. And by extending the payment timing
 16 it was felt that it would be more attractive as a purchase
 17 through tax sale rather than having a balloon that would
 18 come due in September, the September following the tax sale.
 19 Q So if you had a balloon after the tax sale there was a
 20 thought that it would have a negative effect on buyers
 21 interest because of the huge burden?
 22 A **In the tax sale it would be the same burden, but it would be**
 23 **spread out over a longer period of time.**
 24 Q **And therefore possibly more palatable to more buyers?**
 25 A **Correct.**

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1 properties that are affected by Exhibit 2?
 2 A **My understanding is this is -- this was entered into with**
 3 **Kent County to put into place payment terms that were**
 4 **different than originally agreed to in the voluntary special**
 5 **assessment agreement.**
 6 **(Deposition Exhibit 3 marked)**
 7 Q Showing you what's been marked now as Exhibit Number 3.
 8 It's a document that I believe is related to this, but
 9 that's why I'm here to ask you questions. Is that document
 10 related to Exhibit Number 2?
 11 **(Witness reviews exhibit)**
 12 A **Yes.**
 13 Q How is it related?
 14 A **In order to enter into the agreement that is Exhibit 2 the**
 15 **city commission would have had to adopt the resolution first**
 16 **and this is the resolution that adopted the -- or that the**
 17 **city commission adopted.**
 18 Q So if we look at sequencing that, Exhibit 3 would come
 19 before Exhibit 2?
 20 A **That is correct.**
 21 Q But it wouldn't have come before basically the contents of
 22 Exhibit 2 had essentially been agreed to; right?
 23 A **I would say the general contents certainly it was agreed to**
 24 **before, and probably the agreement was drafted as part of**
 25 **the package of documents related to the resolution.**

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1 Q Who negotiated the Exhibit Number 2 on behalf of the county?
 2 A I believe Ken Parrish, county treasurer.
 3 Q Did you ever have any discussions with him over the
 4 substance of the document?
 5 A No.
 6 Q Do you know anybody that had any discussions with him over
 7 the substance of the document?
 8 A I mean, I know there were people that talked with him about
 9 it, but I'm not sure who.
 10 MR. OTIS: Did you mean from the city of Kentwood.
 11 Q People from the city of Kentwood having negotiations with
 12 the county?
 13 A I don't recall who it would have been.
 14 Q Would it be a fair characterization to say that the county
 15 of -- Kent County simply was willing to sign anything that
 16 the city of Kentwood wanted in regards to this parcel?
 17 A No.
 18 Q Tell me what, then, was the city of -- I'm sorry -- the
 19 county's position relative to this particular amendment as
 20 it's called?
 21 A They were interested in -- it's my understanding at least
 22 they were interested in having the parcels be as attractive
 23 as possible during tax sale.
 24 Q And did they have any advice as to how to make them
 25 attractive?

Page 18

1 A My guess is -- this is speculation, but I believe city
 2 attorneys, Jeff Sluggett, was involved in the specifics
 3 because that would -- it involved drafting documents for the
 4 resolution and the agreements.
 5 Q But who was the one -- who in the city was the initiating --
 6 A Probably Mayor Kepley.
 7 Q Mayor Kepley? Okay. That would -- from what you know, and
 8 that would be direct or hearsay basically that -- indirect
 9 knowledge?
 10 A Indirect knowledge.
 11 Q Anyone else that your knowledge of the city functioning and
 12 so forth here that you might say could have had a lead role
 13 in negotiating Exhibit 2?
 14 A No, not that I'm aware of. Well, let me see. I'm not sure.
 15 We have a deputy administrator position, so there may --
 16 that deputy administrator may have been involved in some of
 17 the conversations, but I don't know that that's -- to
 18 what --
 19 Q And who would that be?
 20 A At the time his name was Rich Houtteman, H-o-u-t-t-e-m-a-n.
 21 But I don't believe he was the driver on it. He might have
 22 been involved in some of the conversations.
 23 Q From your knowledge of how this developed did Mayor Kepley
 24 have an interest in amending this (indicating)? Did that
 25 start before or after the tax sale?

Page 20

1 A I don't know if -- where it might have come from, but
 2 certainly there were discussions with the county is my
 3 understanding.
 4 Q Who initiated discussions over this document? Was it the
 5 city of Kentwood or --
 6 MR. OTIS: Which document? Exhibit 2?
 7 MR. DONALD VISSER: Exhibit 2.
 8 A I'm not sure.
 9 Q You don't know that anyone from the county initiated
 10 anything on this, do you?
 11 A I do not.
 12 Q Were you the driving factor behind this from the city of
 13 Kentwood's perspective?
 14 A I expressed support for the change, but not -- I wouldn't
 15 call myself the driving force.
 16 Q So you weren't the person that initiated the discussion.
 17 You were there as a supportive -- in the supportive role.
 18 You reviewed the payments schedule?
 19 A Uh-huh (affirmative). I shared what conver- -- or
 20 what involve -- what was involved with the Holland Home. So
 21 when they approached us originally, that I shared with
 22 others. And so that started the thought process.
 23 Q So who was on the city's behalf is your understanding that
 24 was involved? If you were only supportive, who was the
 25 lead?

Page 19

1 A Before.
 2 Q So before the tax sale he was -- who was he talking to to
 3 your knowledge about this?
 4 A I would say city attorney, Jeff Sluggett, and -- again, I
 5 don't know whether he had conversations directly with County
 6 Treasurer Parrish or not.
 7 Q What is it that makes you think that that occurred before
 8 the tax sale?
 9 A Because the documents were approved by the city commission
 10 before the tax sale, if I recall.
 11 Q Any other reason that you would think that?
 12 A No; no, wait a minute. Wait a minute.
 13 MR. OTIS: To clarify the record, what is the date
 14 of the tax sale in reference to the questions that you're
 15 asking about the tax sale?
 16 Q I think the tax sale was in September. So do you know if it
 17 was before or after the tax sale, the discussions?
 18 MR. OTIS: Well, the documents have --
 19 A Documents have a date on it.
 20 MR. OTIS: The documents have dates on them, Mr.
 21 Visser. This -- an empirical question.
 22 MR. DONALD VISSER: Well, I'm talking from his
 23 memory.
 24 Q Do you want to look --
 25 (Counsel hands documents to witness)

Page 21

1 A At whatever point the county took possession as part of the
2 tax sale, that's --
3 Q Is that when the discussions started?
4 A That's when the action was taken. I believe the discussions
5 were started in advance of that, and so it would have been
6 before the tax sale.
7 Q So before the tax sale. What about before the tax
8 foreclosure order?
9 A I don't know.
10 Q Before the property was foreclosed on for failure to pay
11 taxes?
12 A Again, I'm not familiar with the exact process of -- the
13 order of the process. What I do know is the county assumed
14 ownership at some point. Whether that was before or after
15 the foreclosure step or not, I'm not sure, because I'm not
16 familiar with that process.
17 Q What I'm trying to figure out was whether the discussions
18 with the county treasurer began in anticipation of the
19 county taking ownership through the tax foreclosure process
20 or only after the county had taken possession.
21 A I'm not sure, but I --
22 Q How would we ferret that out?
23 MR. OTIS: Ferret? Ferret what out?
24 Q The date when first discussions began.
25 A I'm not sure.

Page 22

1 Q Were there documents, memos or e-mails that were exchanged
2 over the issue?
3 A There may have been. I don't know.
4 Q Did you send any?
5 A I sent information regarding the payment schedules.
6 Q Like what would you have sent?
7 A I used the Holland Home payment schedule as the starting
8 point and adapted it to the information related to the other
9 Ravines properties.
10 Q When you say "adapted it," meaning adjusted it for different
11 numbers, that type of thing?
12 A Yes.
13 Q But then how would you communicate that? Would you walk
14 down the hallway and give a presentation to the mayor or
15 would you send it in an e-mail or what?
16 A I probably would have sent it in an e-mail but also had
17 conversations about it.
18 Q Do you recall who it was that first initiated you to the
19 idea that you might have to do some work on reviewing a
20 proposed amendment?
21 A I don't recall who initiated it.
22 Q Were there ever any discussions that you recall about
23 concern that the taxes would be foreclosed by the
24 foreclosure -- or the past due taxes would be foreclosed by
25 the tax foreclosure process?

Page 23

1 A I'm not sure what --
2 Q Thank you. That's probably another good rule. If you don't
3 understand the question, don't try to answer it.
4 A Right.
5 Q Because we could be --
6 A Right.
7 Q In regards to the special assessments that were involved,
8 were there ever any discussions concerning the fact that
9 without an amendment that some of those special assessments
10 might be terminated through the tax foreclosure sale?
11 A No.
12 Q Never had that discussion with anyone?
13 A No, because the balloon payment was due after the
14 foreclosure process.
15 Q What do you understand about balloon payments? Have you
16 ever been involved with a mortgage that has a certain
17 amortization schedule but it has an earlier balloon?
18 A Yes.
19 Q So balloon payments don't necessarily always mean or define
20 the amortization schedule?
21 A They may be a part of it.
22 Q Have you ever seen land contracts with a payment schedule
23 amortized out but the last one has all remaining payments
24 become due on the --
25 A Not a land contract. Other loans, EDC loan -- Economic

Page 24

1 Development Corporation loans.
2 Q Where there's a amortization schedule and the last
3 payment --
4 A Yes.
5 Q -- is whatever else is due, right?
6 A That's correct, yes.
7 Q And that doesn't mean that everything is deferred until the
8 last payment?
9 A If it's set up with monthly payments or annual payments or
10 it could be interest-only payments. It could be any number
11 of things that -- there's a number of ways to do an
12 amortization schedule.
13 Q You would understand, then, a balloon payment, then, as I do
14 to be whatever --
15 A Whatever the remainder is.
16 Q -- whatever the remainder is?
17 A Uh-huh; yes.
18 Q Exhibit 3, you didn't understand that to be a new
19 assessment, did you?
20 A No.
21 Q You just understood it to be approval of a contract?
22 A It was a revision to the payment terms for an existing
23 assessment.
24 Q And that was being done by contract with the county
25 treasurer?

Page 25

1 A ~~Being the successor owner, yes~~

2 A There wasn't notice being sent out to the property owners

3 and following the normal process for completing an

4 assessment, was there; a special assessment?

5 A You mean a notice other than talking to the only owner?

6 Q Correct. There wasn't a public notice?

7 A I don't recall whether there was public notice or whether

8 there was a hearing or not on this particular item.

9 Q You're not aware that there was a public notice and you're

10 not -- first of all; right?

11 A Yes.

12 Q And you're not aware that there was a public hearing on it;

13 right?

14 A Right. I just am not aware of it.

15 Q Did you have anything to do with whether -- with determining

16 whether the city had any authority to enter into Exhibit 37

17 A My understanding is that the payment terms were developed

18 under the voluntary special assessment agreement originally

19 with the balloon payment in September of 2014 and that that

20 voluntary agreement could be amended.

21 Q Because it was an agreement?

22 A Yes. That's my understanding of it.

23 Q And where did you get that understanding?

24 A Through reading drafts of the documents.

25 Q So you thought that the city had authority to sign this

Page 26

1 Q Would that have included, then, the mayor in that

2 discussion?

3 A City attorney as well. The mayor and city attorney.

4 Q Now, relative to this property there were a number -- at

5 least it appears to me to be a number of different

6 assessments or charges.

7 MR. OTIS: Speaking of the Damghani property?

8 MR. DONALD VISSER: The Damghani property.

9 Q Is that your understanding as well?

10 A I believe there were more than the street and other

11 improvements that were assessed at some point in the past.

12 Q Can you tell me -- so that I get these probably in a better

13 vernacular than what I have -- what assessments or what

14 charges eventually became special assessments or labeled

15 special assessments?

16 A You mean as far as related to the present special

17 assessment?

18 Q No, to any of the --

19 A Or any?

20 Q -- yeah -- any of them that were in place, because I see

21 that there appear to be a number of them related to this

22 property. I know we have labeled them in various ways, but

23 that might not be the best way to proceed today.

24 MR. OTIS: We're talking about in place in 2014?

25 MR. DONALD VISSER: Yes.

Page 28

1 because it was just an amendment of a previous agreement?

2 Is that what I understood?

3 A No. It referred to the voluntary special assessment

4 agreement. I don't recall whether I reviewed the document

5 at that time.

6 Q Do you know if anybody did an analysis of whether the county

7 treasurer had any authority to sign this document?

8 A I believe so because the -- he -- the county treasurer of

9 the county was the successor owner and I believe the

10 voluntary special assessment agreement applied to any

11 successor owners.

12 Q So by virtue of the agreement you -- since it was an

13 agreement, the original was an agreement, that the county as

14 a successor would have the ability to modify that agreement?

15 A Yes, I believe so.

16 Q Now, is that -- is just -- is that your analysis or the

17 discussion that was over here at the city or where is it --

18 where's your understanding coming from?

19 A I'm thinking it was part of discussions, but I don't know

20 ex -- I can't attribute it to one particular discussion.

21 Q So it's not just something that you came up with yourself,

22 it's part of a collective discussion --

23 A Yes.

24 Q -- that occurred here at the city?

25 A Yes.

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1 A Seems to me that in 2014 the properties -- any past special

2 assessments had been added to the tax roll already, so it

3 would have been -- but I'm not as familiar with the -- I can

4 tell you by the type of assessment there might have been.

5 Q Why don't we do that? And then I'm going to try to match my

6 terminology to yours.

7 A Okay. Well, Shaffer Avenue, of course, is adjoining the

8 property. And so at some point they probably put sidewalk,

9 water and sewer, other improvements in that area. So again,

10 not being familiar with the exact special assessments that

11 would have been, but that is probably where the other

12 special assessments were, what types they might have been.

13 Q In 2014 were there more than --

14 A I don't believe there were -- well --

15 Q -- one special assessment that was due?

16 A There was a landscaping special assessment that was directly

17 related to the Pfeiffer Woods Drive area. All the others

18 that I described a moment ago were, I believe, earlier --

19 from an earlier time period; not related to the construction

20 of Pfeiffer Woods Drive.

21 Q So when we talked about the Shaffer Avenue sidewalk, sewer

22 and so forth, were there any amounts due and owing --

23 A I don't believe so.

24 Q -- in 2014 at --

25 A I don't believe there were because I believe they were added

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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DAMGHANI v. CITY OF KENTWOOD, ET AL

DEPOSITION OF TOM CHASE

1 to taxes at an earlier point.
 2 Q So there were none -- so that would not then be a charge
 3 currently against -- currently or in the future against the
 4 Damghani property for the -- what you call the Shaffer
 5 Avenue Improvements?
 6 A That's correct.
 7 Q Now, there's landscaping. Would that have had some amounts
 8 due and owing on it in 2014?
 9 A I believe it came due -- seems to me it came due before the
 10 tax sale.
 11 Q And do you know -- okay. Any other ones?
 12 A Not that I'm aware of.
 13 Q I'm going to try to match up what -- then what we have and
 14 use your terms. We had something listed which we called
 15 a -- came due by resolution, I think, 8-06, originally about
 16 \$160,899.15. Do you know, would that be that -- what you
 17 call the landscaping special assessment?
 18 A No; no. The landscaping was in the -- about the \$35,000
 19 range.
 20 Q About 35,000?
 21 A Something in that range.
 22 Q That's close enough. All right. So you had a -- that one
 23 was due prior to 2014 or in 2014, you're not sure?
 24 A I don't recall exactly.
 25 Q Were there any other special assessments that you're aware

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1 Q Other than the Damghani parcel does this cover any other
 2 parcels?
 3 A It does. It covers -- I'm not sure which parcel it is, but
 4 it's B-3, I believe. We designated the neighborhoods by B
 5 and then a number following.
 6 Q So simply for the record, what would the Damghani parcel be
 7 referred to in Exhibit 2?
 8 A B-4. Ravines neighborhood B-4.
 9 Q Other than that special assessment are you aware that there
 10 are any other special assessments due by -- due and payable
 11 against or by the Damghani parcel?
 12 A Currently?
 13 Q Yes.
 14 A At the current date?
 15 Q At the current date.
 16 A The only one that I'm aware of is this Pfeiffer Woods
 17 construction -- Drive construction special assessment,
 18 (Deposition Exhibit 4 marked)
 19 Q Let me show you number -- Exhibit Number 4; may make some of
 20 my questions a lot shorter. That's Resolution 8-06, I
 21 believe, with what we call -- what we have referred to as
 22 the landscaping special assessment. I'm not sure if it's
 23 the same one that you called landscaping special assessment.
 24 A I believe this relates to the landscaping special
 25 assessment.

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1 of?
 2 A Other than the street and landscaping for Pfeiffer Woods and
 3 the earlier special assessments, no.
 4 Q What did Exhibit 2 -- what was that intended to apply to?
 5 A Just the construction special assessment.
 6 Q So there is a construction special assessment.
 7 A Right.
 8 Q Is that one of those that you've been talking about before?
 9 A That's what I referred to when I talked about Pfeiffer Woods
 10 Drive, the construction of Pfeiffer Woods Drive.
 11 Q So we call that Pfeiffer --
 12 A Pfeiffer Woods Drive.
 13 Q -- Woods Drive special assessment, is that --
 14 A That would be a reasonable description of it.
 15 Q And that's what Exhibit 2 is intended to apply to?
 16 A That's correct. Just the construction.
 17 Q And do you know roughly how much the original assessment
 18 was?
 19 A The original assessment was exactly what was due and payable
 20 at the time that this schedule was put in place. For the
 21 property that we're talking about it was the outstanding
 22 principal, \$353,167.50.
 23 Q Now, that was the portion that had been attributed to the
 24 Damghani parcel?
 25 A That's correct.

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1 Q So that's the one that you indicated there's nothing owing
 2 on it anymore by this parcel?
 3 A It was added to taxes and I believe it was on the tax -- in
 4 the tax -- well, I believe it's not due and payable anymore,
 5 but I guess I would need to look at it further.
 6 Q When you say it was added to the taxes, is that part of the
 7 before or after the foreclosure?
 8 A I'd have to check on it, I guess, at this point.
 9 Q How would you check on it?
 10 A I would check with the treasurer, city treasurer to get
 11 specific dates.
 12 Q So you believe it was added to the taxes but not sure when
 13 it was added to the taxes?
 14 A Correct.
 15 Q Why was it added to the taxes?
 16 A Because it was not paid.
 17 Q For this special assessment reflected by Exhibit Number 4,
 18 was that done by agreement, also?
 19 A I'm not sure.
 20 Q Were you involved with the process?
 21 A No.
 22 Q Were you involved in making any payment schedules?
 23 A There was only a balloon payment for this, I believe.
 24 Q When was that balloon due?
 25 A I would have to check record -- I would have to check back

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9 (Pages 30 to 33)



0178b

1 in my notes. I don't have any notes with me.
 2 Q You don't?
 3 A No.
 4 Q Are they in your office?
 5 A I do have some documents in my office, yes.
 6 Q Because probably then maybe when you take a break we can
 7 figure that out then.
 8 A Uh-huh (affirmative). Okay.
 9 Q Was this supposed to be an interest-only assessment as well?
 10 A I believe so, but I'd have to look at that as well.
 11 Q Where would that be in this particular document that --
 12 MR. OTIS: Talking about Exhibit 4?
 13 MR. DONALD VISSER: Exhibit 4, yes.
 14 A Well, it's not interest-only, but there is an interest rate
 15 attributable to the special assessment role. Item number 4
 16 on page 2 -- or 3 I guess it would be. 8.25 percent. So
 17 I'm not sure what the timing of the payments was for the
 18 interest.
 19 (Deposition Exhibit 5 marked)
 20 MR. OTIS: Are those two-sided documents?
 21 MR. DONALD VISSER: Yes, they are.
 22 MR. OTIS: It looks to me like you've got two
 23 copies of the same document there, but that's just from
 24 eyeballing them across the table.
 25 MR. VOORHEES: Yeah.

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1 Q Did you know about it?
 2 A I was aware of it, but not involved in the creation of it.
 3 Q Did you do any accounting for it?
 4 A Only following the special assessment roll being levied.
 5 Q So up to that time you had no involvement with the numbers
 6 associated with the special assessment at all?
 7 A That's correct.
 8 Q You weren't involved in negotiating the underlying contract
 9 with the property owners?
 10 A No.
 11 Q You're aware that this was passed?
 12 A Yes.
 13 Q When did you first become aware that it was passed?
 14 A When a special assessment, the resolution 5 is adopted, then
 15 that's my trigger to record the financial information on the
 16 city's financial records, basically the dollar amount in the
 17 general ledger. So that would be following -- I would have
 18 found out about it following --
 19 Q So sometime --
 20 A -- adoption.
 21 Q Sometime, probably a reasonably short time period after
 22 passing, you would have been aware that this resolution
 23 passed? Certainly within a matter of weeks, maybe a matter
 24 of days?
 25 A Well, again, I attend all city commission -- basically most

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1 MR. DONALD VISSER: Seriously?
 2 MR. OTIS: Yeah. I think you have one document
 3 starting at the top and the copy of it starting from the
 4 bottom, but that's -- I'm just looking across the table.
 5 MR. VOORHEES: No, that's the start of the next
 6 one.
 7 MR. DONALD VISSER: We may have to --
 8 MR. OTIS: Which document -- or do you have there
 9 9604?
 10 MR. VOORHEES: Yup.
 11 MR. DONALD VISSER: Why do we have this on the
 12 back page?
 13 MR. VOORHEES: That's the start of the next --
 14 MR. DONALD VISSER: Let's go off the record a
 15 second.
 16 MR. OTIS: All right.
 17 (Off the record)
 18 Q Showing you what's been marked as Exhibit Number 5.
 19 A Yes.
 20 Q And simply for the record here, it appear -- these are
 21 double-sided pages. And the last page appears to be a
 22 different resolution, so I have put a line through that and
 23 as that's not part of this exhibit as I at least understand
 24 it. So were you involved in the passing of this resolution?
 25 A No.

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1 of the city commission meetings, so I'm aware of the
 2 documents working their way through the process, but I did
 3 not have a hand in preparing them.
 4 Q So you were aware that this was ongoing from attending city
 5 commission meetings?
 6 A Yes.
 7 Q And you were aware that there were negotiations with some
 8 property owners for doing some improvements and reaching
 9 agreement on them and then passing a special assessment
 10 roll?
 11 A Yes.
 12 Q Then you say that you -- after this occurs that you do
 13 something with the city's books?
 14 A I record the receivable on the city's books.
 15 Q And how is that recorded? Just simply as a receivable?
 16 A We set up a separate account for this and we recorded it in
 17 that account on the general ledger.
 18 Q Where does it show up on the city's balance sheet then?
 19 A It shows up in the special assessment revolving fund as an
 20 asset of that fund.
 21 Q And that's simply one line item?
 22 A Yes.
 23 Q And if somebody wanted to know what was in that revolving
 24 fund and needed to know details, what would they need to
 25 have or what would they need to ask you for?

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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DAMGHANI v. CITY OF KENTWOOD, ET AL

DEPOSITION OF TOM CHASE

1 A On the actual record they would just ask -- have to ask for
 2 a trial balance.
 3 Q So that'd be a trial balance of all of the accounts or just
 4 the special assessment revolving fund account?
 5 A You would get it just from the special assessment revolving
 6 fund trial balance. It wouldn't be in any of the other
 7 documents or any of the other funds.
 8 Q And that would show there as to what total amounts were due
 9 or just grosses or would it be by parcel or how would you
 10 record that?
 11 A It would just be the gross amount due for all parcels.
 12 Q Where would the information be recorded as to the gross
 13 amount due for each parcel?
 14 A I believe that would be in the treasurer's office.
 15 Q And how would that be recorded there to your knowledge?
 16 A At the time it was manual records or in spreadsheets.
 17 Q Would the spreadsheet have also been manual at that time?
 18 A I'm assuming so. I'm not sure. I mean, it wouldn't have
 19 been generated from an accounting system.
 20 Q Well, I know under Excel and so forth we can do spreadsheets
 21 and so forth, so --
 22 A Right; right.
 23 Q -- It's tough to know, when you say a spreadsheet, if that
 24 was different than manual. So you believed at that point
 25 that would be a manual --

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1 Q If to your knowledge, and again going over what you recall
 2 about the treasurer's office, if there were multiple phases
 3 would there be a separate record, then, for each phase?
 4 A There were not separate phases. The whole street was put in
 5 all at once.
 6 Q So a single phase?
 7 A Right.
 8 Q Now, as we go through Exhibit Number 5, I'm just -- and I
 9 want to confess, sir, that I am not sure that all of the
 10 documents belong together. That's going to be the scope of
 11 our inquiry here. I understand that the first three pages
 12 would be part of the resolution and then the next page is
 13 roll A. Is that part of the resolution as well?
 14 A I believe it's incorporated by reference in the resolution.
 15 Q So then page number 5, which has "design and inspection
 16 fees" at the top of the page, that would be also part of the
 17 resolution?
 18 MR. OTIS: (Pointing)
 19 A Yes, that's part of roll A document.
 20 Q Now we go to another page. And the reason that I question
 21 whether it's part of the roll is it seems to have a
 22 different document number in the lower left-hand corner.
 23 See, it says 0693-537. -- I'm sorry. Start over again.
 24 06939.537.240784.1. See that?
 25 A Yes, I do.

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1 A It would be manual as well.
 2 Q What types of -- or physically describe those records to
 3 your knowledge. Is there a separate sheet for each
 4 assessment or is there a separate sheet for each property or
 5 both?
 6 MR. OTIS: Are you talking about records in the
 7 treasurer's office?
 8 MR. DONALD VISSER: In the treasurer's office.
 9 A I'm not sure what -- to what level they went as far as the
 10 detail. I believe what I've seen is each parcel had a
 11 separate tab in the spreadsheet, so that would have been
 12 what I would have -- what I recall seeing it related to the
 13 special assessment roll.
 14 Q So as you -- at least as your mind tends to remember it at
 15 this point, and I'm admitting you're not saying it's
 16 absolute, but you think each of the manual records were kept
 17 by assessment with a tab then for each property?
 18 A In a spreadsheet for a tab -- with a tab for each prop --
 19 or with the -- for each neighborhood, each one that was
 20 designated as a B number.
 21 Q Now, were there more than one phase to your recollection?
 22 Was there more than one phase for this improvement?
 23 A No, I don't believe so.
 24 Q Just a single phase?
 25 A Yes, I believe there was only one phase.

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1 Q First of all, do you know whose document numbers those are?
 2 A That's Law Weathers. It's a Law Weathers document number.
 3 Q Now, the previous page had a different document number, so
 4 that suggests to me the one that has "design and inspection
 5 fees" in the -- on the first line. Do you know whether this
 6 is or is not part of the special assessment roll? In the
 7 lower right corner it says "SA Roll"?
 8 A Lower right corner? What, you mean as far as the next page?
 9 Q Yes.
 10 A Okay.
 11 Q Is that part of the special assessment -- I'm sorry. Is
 12 that part of the resolution or not to your knowledge?
 13 A I'm not sure.
 14 Q What about the next page that says "Cost"? Is that part of
 15 the resolution? In the lower right-hand corner again that
 16 has --
 17 A It's not specifically referred to in the resolution.
 18 Q So you're not sure whether it is or is not part?
 19 A That's correct.
 20 Q And what about the next page, which has in the lower right
 21 corner "Prime Rate"?
 22 A Again, it's not specifically mentioned in the resolution.
 23 Q The next page has in the lower right corner "B-1 Phase 1".
 24 Do you know if that's part of the resolution?
 25 A I don't know whether it is or isn't.

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11 (Pages 38 to 41)

1 Q What about the next page, which has "B-1 Phase 2"?

2 A I don't know.

3 Q The next one has "B-2 Phase 1." Do you know if that's part

4 of the resolution?

5 A I do not.

6 Q The next page, "B-2 Phase 2," do you know if that's part of

7 the resolution?

8 A I do not.

9 Q What about "B-3 Phase 1"?

10 A I do not.

11 Q "B-3 Phase 2," which is on the next page?

12 A I do not.

13 Q Would it be the same for the next two pages, which are phase

14 3 and 4?

15 A Yes.

16 Q And then the next two pages, which reference B-4 Phase 1 and

17 Phase 2, be the same thing?

18 A It would be the same answer, yes.

19 Q Now, while you're on the last page, what -- do you know what

20 the intention of what these pages say? Let's start at the

21 last page, B-4 phase 2.

22 A I think it was intended to provide guidance to the city

23 treasurer on how to go about administering the roll.

24 Q You're just guessing or is that something you've seen before

25 or you know that?

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1 Q So we might not have to go to your computer? We might be

2 able to get those directly from the treasurer?

3 A Uh-huh (affirmative). This (indicating) included --

4 MR. OTIS: Are we talking about a document that

5 we're actually looking at right now?

6 MR. DONALD VISSER: No.

7 MR. OTIS: What do we need to get if we're looking

8 at the document?

9 MR. DONALD VISSER: Explanation as to what this is

10 for that -- from the spreadsheets.

11 MR. OTIS: Well, that's a different question. We

12 haven't established that such a document exists. We've been

13 talking about the documents that are right in front of us.

14 Are you asking him if there's some other document that he's

15 aware of that explains the documents you just asked him

16 about?

17 MR. DONALD VISSER: Well, that's what he testified

18 to, the spreadsheet.

19 MR. OTIS: No; no; no. He didn't testify to that.

20 You were asking him if he had these (indicating) actual

21 documents on his computer.

22 MR. DONALD VISSER: No, I was asking about the

23 spreadsheets. Let's make the question clear.

24 Q Did you understand my question to be that I was asking about

25 the spreadsheets that the treasurer had sent to you?

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1 A I've seen this before.

2 Q In what context?

3 A I've seen it in some of the spreadsheets that I received

4 from -- I have received it in the past from the treasurer's

5 office.

6 Q And what was the purpose that you would receive the

7 spreadsheets?

8 A If we were -- it would have been included in other

9 spreadsheets -- or in the spreadsheets related to the --

10 that I mentioned earlier about a tab for each --

11 Q So those would have been sent to you?

12 A I have received them, yes.

13 Q Have you maintained copies of any of them?

14 A Yes.

15 Q And are they in your office?

16 A They're on my computer.

17 Q On your computer? Okay. Can they be printed?

18 A Well, let me --

19 Q Or do we have to look at your computer?

20 A No, I would say -- I'd have to look at specifically -- let

21 me correct. I'm not sure that this (indicating) is in a

22 file on my computer. I'd have to look at it more closely.

23 Q Does the city treasurer maintain copies of those

24 spreadsheets?

25 A I believe so.

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1 A I don't know that they included these (indicating).

2 Q Right. But you have received spreadsheets?

3 A I have received some spreadsheets related to the special

4 assessments.

5 Q And that's what you were referring to were on your computer?

6 A Yes.

7 MR. DONALD VISSER: I understood him correctly.

8 MR. OTIS: Well, Mr. Visser, just so the record's

9 clear, I believe the spreadsheets you're talking about are

10 the spreadsheets that we produced to you earlier this summer

11 that have a spreadsheet for each parcel.

12 MR. DONALD VISSER: It may or may not. I don't

13 know at this point.

14 MR. OTIS: Well, I don't want to be there a bunch

15 of confusion in the record. I want you to ask him about

16 those documents so that we're not in front of the court, you

17 asking the judge to send us on a wild goose chase for

18 spreadsheets that were produced to you earlier this summer.

19 You have spreadsheets that are associated with the documents

20 you just asked the witness about. So I don't want there to

21 be confusion on the record about this.

22 MR. DONALD VISSER: Well, I think what --

23 MR. OTIS: And we held up that spreadsheet in

24 court on your motion to compel.

25 MR. DONALD VISSER: You held up a spreadsheet.

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1 MR. OTIS: Right.
 2 MR. DONALD VISSER: I guess.
 3 MR. OTIS: We can clarify that right now because
 4 you have that spreadsheet. That's my point.
 5 Q Now, when you talk about spreadsheets, did they look like
 6 this?
 7 A I don't believe so, no.
 8 MR. DONALD VISSER: I think, Counsel, that answers
 9 the question.
 10 MR. OTIS: It doesn't answer any question at all.
 11 These (indicating) are obviously not a spreadsheet, Mr.
 12 Visser, and they wouldn't look like --
 13 THE WITNESS: It's a Word document.
 14 MR. OTIS: -- a spreadsheet because they're not a
 15 spreadsheet.
 16 MR. DONALD VISSER: Correct. So you told me you
 17 produced the spreadsheets, they looked like this and he just
 18 testified --
 19 MR. OTIS: I didn't say they looked like that. I
 20 just said they don't --
 21 MR. DONALD VISSER: You did. You held --
 22 MR. OTIS: -- they don't look like that.
 23 MR. DONALD VISSER: You held it up in court. It
 24 looks like that.
 25 MR. OTIS: Mr. Visser, you're trying to create

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1 that's actually a good idea.
 2 (Deposition Exhibit 6 marked)
 3 Q When we're talking about spreadsheets, you're talking about
 4 documents or spreadsheets that look like Exhibit Number 6?
 5 A That is correct.
 6 Q Why were those provided to you?
 7 A As we have turnover in a position, it's helpful to have
 8 documents of that sort that carry on some of the
 9 institutional knowledge. So it would have been solely for
 10 purposes of trying to make sure we had historical documents.
 11 Q What is Exhibit Number 6 telling us?
 12 A It's telling us that there were interest-only payments made
 13 in the time between -- or the time since the special
 14 assessment roll was adopted.
 15 Q So as I look at that -- and what are you referring to there,
 16 the --
 17 A I'm referring to the lines at the top.
 18 Q Top, the horizontal --
 19 A Yes.
 20 Q -- lines, maybe -- what? -- six, seven lines, eight lines
 21 deep?
 22 A Yes. It would be --
 23 Q Going --
 24 A -- the subtotal; would show the subtotal.
 25 Q And it starts with 2005 and ends with 2014?

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1 confusion here and this is not going to be the proper basis
 2 for a motion to compel later on.
 3 MR. DONALD VISSER: David, we're here. We're here
 4 with the understanding that you have records that we can
 5 look at today. I'm going to narrow those down. We're going
 6 to pull some of those records. We're going to look at it
 7 and there won't be any confusion because we'll have the
 8 records in front of us.
 9 A The spreadsheets that I'm referring to were ones that were
 10 prepared by the treasurer to keep track of interest-only
 11 payments made along the way. That's what I'm referring to,
 12 not anything in this format.
 13 Q Not the original --
 14 (Witness reviews document)
 15 THE WITNESS: Yes, these are the spreadsheets that
 16 I'm referring to.
 17 MR. OTIS: The spreadsheets that the witness has
 18 been referring to are part of the documents that were
 19 produced to you in response to the city's Answers to
 20 Interrogatories. And it is the document that I held up in
 21 court on your motion to compel. There's no confusion about
 22 this issue. You have the spreadsheets that the witness has
 23 been testifying to. Now, shall we mark one of these, Mr.
 24 Visser, so there's no confusion?
 25 MR. DONALD VISSER: Sure we can mark one. I think

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1 A Correct.
 2 Q And then what is the remainder of the information below that
 3 section?
 4 A I was just, I think, mirroring the -- intended to mirror the
 5 information in the other document.
 6 Q And this was obviously -- well, do you know when this -- I
 7 guess not obviously. Do you know when this was completed?
 8 A I do not.
 9 Q It was obviously, though, completed either after 2013 or
 10 after 2014; right?
 11 A It probably was used many times over a several-year
 12 period --
 13 Q Well, it has --
 14 A -- and the last one -- last --
 15 Q I'm sorry.
 16 A -- entry probably would have been related to the -- added
 17 the 2013 winter tax.
 18 Q So it has specific information -- and I'm sorry, sir. I did
 19 not mean to start talking while you -- I thought you were
 20 done.
 21 A Uh-huh (affirmative).
 22 Q So did not mean to cut you off. It has information under
 23 the column 2013?
 24 A Yes.
 25 Q So that is specific information indicating that at least

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1 after September 12 of 2013 this information was put in,
 2 either that day or after, right?
 3 A I believe so.
 4 Q We have 2014, but there's no information listed there;
 5 right? So we don't know if that's just a column there in
 6 anticipation of 2014 or whether it was prepared in 2014?
 7 A It doesn't look like it was updated in 2014.
 8 Q And who provided the information on this spreadsheet? You
 9 or is this from the treasurer?
 10 A This would have been maintained by the city treasurer.
 11 Q Is it accurate to your knowledge?
 12 A I have not verified anything.
 13 Q Do you know any reason that it would not be accurate?
 14 A I do not know any reason why it would not be accurate.
 15 Q Now, it says -- in the bottom right-hand corner it's got a
 16 couple of notations there. What does it say on yours?
 17 A "B-4 Phase 2."
 18 Q What does that refer to?
 19 A That refers to the Ravines neighborhood B-4, and then
 20 there -- I believe there were two -- but it refers to
 21 neighborhood B-4.
 22 Q This suggests that there was more than one phase; right?
 23 A That I don't know, but I -- it probably was incorporated
 24 in the -- this is something that was approved under a
 25 planned unit development, so I'd have to -- I don't know.

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1 exactly what the phase means as it relates to this
 2 neighborhood. It indicates that there's more than one.
 3 Q What does B-4 stand for?
 4 A B-4 is the neighborhood that was assigned -- the number --
 5 neighborhood number that was assigned to that parcel.
 6 Q Is that a specific parcel?
 7 A I believe it's the Damghani property.
 8 Q Are there similar schedules or spreadsheets like this for
 9 the other parcels?
 10 A I believe so.
 11 Q How many other parcels?
 12 A I think there was 1 through 4; B-1 through 4.
 13 Q And so there we should expect to be able to find similar
 14 spreadsheets for parcels B-1, B-2 and B-3?
 15 A I believe so. I think we've just identified them in the
 16 exhibits or in the documents already provided.
 17 MR. OTIS: They're all B-4.
 18 THE WITNESS: They're all B-4?
 19 MR. OTIS: I think so.
 20 THE WITNESS: -- narrowed it down to that?
 21 (Deposition Exhibit 7 marked)
 22 Q I'm showing you now what's been marked B-7 and I think this
 23 is a copy that we were -- or Exhibit 7 -- copy that we were
 24 provided in court the other day. That's a similar type of
 25 schedule, but this one says at the bottom "B-4 Phase 1."

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1 What does that mean?
 2 A That means that's the same neighborhood as the other, B-4.
 3 Appears there were two phases originally or may -- at least
 4 two.
 5 Q How much is -- I mean, it reflects -- on Exhibit Number 6 it
 6 reflects that \$154,758.79 is due; right?
 7 A That's the amount of the special assessment principal
 8 allocated.
 9 Q Is that the amount that you understand is --
 10 A I've not dealt with it in individual phases. I've only
 11 dealt with it by the neighborhood.
 12 Q By the neighborhood do you think there's a different number
 13 due from the Damghani parcel?
 14 A No.
 15 Q You think that's the number?
 16 A I'd have to add it up and compare it to something, but these
 17 were prepared at the time that the special assessment roll
 18 was created, so -- and there were no payments on -- of
 19 principal on the -- on that neighborhood.
 20 Q If you look at Exhibit 7 do you believe -- well, again, that
 21 was a document provided to you by the treasurer?
 22 A This was maintained by the treasurer.
 23 Q And did you make any alterations to it?
 24 A I did not.
 25 Q So to your knowledge does this contain true and accurate

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1 information?
 2 A Yes, to my knowledge.
 3 Q It was sent to you so you could rely on it, though; right?
 4 A I didn't need to rely on it because the accounting records
 5 had already reflected anything that was collected. It was
 6 only providing additional information if I needed to look
 7 further.
 8 Q Now, other than this (indicating) do you have any
 9 spreadsheets? I just want to make sure because I understood
 10 differently. Do you have any spreadsheets that you've
 11 maintained?
 12 A These are the ones that I'm referring to. The only other
 13 ones would be the revised payment schedule that I've
 14 maintained -- or that I created for the -- that's in the
 15 earlier exhibit.
 16 Q Oh, that Exhibit 2 when the payments were extended?
 17 A Yes.
 18 Q But you haven't maintained any other schedules or
 19 spreadsheets?
 20 A If we did it was in connection with the annual audit or
 21 other things of that sort.
 22 Q And do you have similar sheets as Exhibit 7 here for B-1,
 23 B-2 and B-3?
 24 A I believe they are -- that -- those are the tabs I was
 25 referring to on the spreadsheet, similar to this, but for

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1 those neighborhoods.
 2 Q So you would have those on your computer as well?
 3 A Well, yes, I would have those and the treasurer's office
 4 would also have those.
 5 MR. DONALD VISSER: I'll make -- when we go off
 6 the record I'll give you a list of a couple things -- gather
 7 them and then we can come back together.
 8 (Deposition Exhibit 8 marked)
 9 Q I'm showing you what's been marked as Exhibit 8 now.
 10 A Yes.
 11 Q By the way, maybe before I forget, on Exhibit 5 we had those
 12 additional pages that you weren't sure that -- whether they
 13 were or were not part of the special assessment -- I mean of
 14 the assessment roll?
 15 A Well, normally what I see is the resolution and the list of
 16 the parcels from a special assessment roll. That's more
 17 than what I would normally see with a special assessment
 18 resolution.
 19 Q Where would we go today to figure out what -- whether those
 20 are or are not really part of the assessment -- the
 21 resolution?
 22 A The city clerk's office maintains the record, but sometimes
 23 what's actually in the resolution along with the resolution
 24 may be just extra information that isn't necessarily part of
 25 the resolution. So say, for example, when I do a budget

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1 adoption, because I want the record to show a little bit
 2 more -- or some more detail than what is specifically dealt
 3 with in the resolution, I include in the clerk's file
 4 documents that provide additional information so that I have,
 5 only one place to go back to if I want to find that
 6 information. And so it may be that even though these aren't
 7 incorporated in the resolution, that they're in the file in
 8 the city clerk's office with the resolution.
 9 Q Just because they were provided for information at the time?
 10 A I believe so. That's what I would speculate. It's not
 11 referred to in the resolution.
 12 Q So we could go to the official books and records, and even
 13 though it's not in the -- part of the resolution still find
 14 them appended to or next to the resolution as part of the
 15 materials that are in the city's books?
 16 A In the city clerk's files.
 17 Q So the best way to figure it out is whether the information
 18 is actually referenced to in the resolution itself?
 19 A That would be my --
 20 Q I understand. All right. Sorry for that little deviation.
 21 A No, that's all right.
 22 Q You're looking now at Exhibit --
 23 A Exhibit 8.
 24 Q -- Number 8; right?
 25 A Yup; yup. Voluntary special assessment development

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1 agreement.
 2 Q You've seen that document before?
 3 A I have.
 4 Q Did you see that back when the resolution was passed?
 5 A I don't believe so.
 6 Q You did not?
 7 A No, I don't believe so. Well, I just don't recall.
 8 Q Do you know what that is? Have you seen it since?
 9 A I have.
 10 Q What do you understand that document to be?
 11 A It's the agreement between the city of Kentwood and 44th and
 12 Shaffer Avenue LLC related to the improvements made on
 13 Pfeiffer Woods Drive.
 14 Q What relationship does that have with the -- what you have
 15 termed as the Pfeiffer Woods Drive special assessment, if
 16 any?
 17 A This would be related to the construction, not the
 18 landscaping.
 19 Q So Exhibit 8 is related to the construction. Do you know
 20 when it was -- was it negotiated before or after the special
 21 assessment roll?
 22 A I don't know. I would have to assume that it was in the
 23 discussions leading up to adoption because it's dated as of
 24 the date of the adoption of the resolution.
 25 Q Do you know whether that was the controlling document or

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1 whether the special assessment was the controlling document
 2 for what's referred to now as the Pfeiffer Woods Drive
 3 special assessment?
 4 A I believe the special assessment resolution would be because
 5 I believe it refers to this document in that, if I recall.
 6 It refers to it on Exhibit 5, number 3.
 7 Q Exhibit 5, number 3? I'm sorry.
 8 A It's Resolution 96-04 and item number 3 refers to the
 9 voluntary special assessment/development agreement dated
 10 September 7th, 2004.
 11 Q Well, as we go -- if you could also grab number 5 for me.
 12 I'd just kind of like to walk through both of those. Keep
 13 both of those in front of you.
 14 A Uh-huh (affirmative).
 15 Q Exhibit Number 5 refers to, on what I would have there as
 16 page 5, the design and inspection fees. Now, do you know
 17 whether this was part of the special assessment now? This
 18 is part of roll A, wasn't it?
 19 A This is part of roll A, yes.
 20 Q So this page would -- you believe would be part of the
 21 special assessment; right?
 22 A Yes.
 23 Q I see there that -- a paragraph called "Deferred
 24 Installments."
 25 A Okay.

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

DAMGHANI v. CITY OF KENTWOOD, ET AL

DEPOSITION OF TOM CHASE

1 Q Do you see that?
 2 A Yes, I do.
 3 Q Is there anything that's there that says "Interest only"?
 4 A Not those words specifically, no.
 5 Q Now, it does -- "Term" up there does talk about a balloon --
 6 right? -- upon termination date?
 7 A That the principal is due --
 8 Q Any unpaid --
 9 A -- ten years from confirmation of the roll.
 10 Q Yeah, and it says, "Any unpaid principal and interest is due
 11 in full upon termination date"; right?
 12 A It does say that there, yes.
 13 Q It doesn't say "balloon payment," but that's what a --
 14 A That's what it's intended to be.
 15 Q We use balloon payment terms, but that's what you would
 16 understand that to be?
 17 A The principal is due, yes.
 18 Q Then paragraph C says,
 19 "Principal payments, along with unpaid simple
 20 interest on that portion of the principal shall be due
 21 upon certain governmental approvals being issued
 22 consistent with the terms of a Voluntary Special
 23 Assessment/ Development Agreement dated September 7."
 24 What does that mean as far as you know?
 25 A I'm not sure what that means. As far as the term "certain

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1 engineering office would be involved in that --
 2 Q They would --
 3 A -- or inspections and engineering.
 4 Q Would that be their responsibility or yours?
 5 A Not mine, no.
 6 Q I expected that answer.
 7 A Uh-huh (affirmative).
 8 Q You just put the numbers where they belong and you're not
 9 doing the -- basically, the enforcement aspect of the special
 10 assessment?
 11 A The billing and collection I do not have any hand in.
 12 Q If you get the money you put it in the account?
 13 A Uh-huh (affirmative).
 14 Q If you don't get the money you show it as an account
 15 receivable?
 16 A Right. It remains in accounts receivable, yes.
 17 Q Yes, it remains there?
 18 A Uh-huh (affirmative).
 19 Q Because you put it there --
 20 A Initially.
 21 Q -- Initially on that special assessment?
 22 A When it was adopted or established. I think that what they
 23 were contemplating is that construction would actually take
 24 place on the parcel and that if construction were to take
 25 place, that that would trigger the special assessment's

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1 governmental approvals," I'm not sure.
 2 Q That does refer, though, to principal payments, right?
 3 A It does. It has that in the paragraph, yes.
 4 Q And it also says "along with any unpaid simple interest,"
 5 which would be kind of a sub-balloon payment, right?
 6 Picking up all unpaid simple interest, right?
 7 A To that date, right.
 8 Q To that date. "Shall be due upon certain governmental
 9 approvals -- consistent with the term (sic)" -- would you
 10 agree that that paragraph anticipates that payments are
 11 going to be principal payments on the assessment are going
 12 to be made in accordance with whatever's set forth in the
 13 September 7 agreement?
 14 A There may be certain reasons for principal payments to be
 15 due.
 16 Q Well, whatever that paragraph says about principal payments,
 17 that's when they would be due, right?
 18 A Based on the voluntary special assessment/ development
 19 agreement it basically says when that shall be due, so
 20 principal payments would be due upon certain governmental
 21 approvals.
 22 Q To your knowledge did anybody in the city track the -- any
 23 of those events under paragraph -- under that paragraph,
 24 paragraph C?
 25 A I believe the treasurer's office in coordination with the

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1 receivable payments and principal payments.
 2 Q So as I understand this, there was an agreement in place,
 3 and maybe that's -- I need to follow that up, make sure my
 4 understanding is correct, that there was an agreement in
 5 place but there -- at the time the special assessment roll
 6 was passed that there were still loose ends that needed to
 7 be done before everything would get going?
 8 A Probably the biggest uncertainty would have been when would
 9 the developer move forward with development.
 10 Q Yeah. Certain things that the city didn't have in its
 11 control, basically this -- correct?
 12 A It would not be in our control.
 13 Q And since I'm familiar with some of these, I basically look
 14 at this as a financing tool for a developer to put certain
 15 improvements in that obviously the city's in favor of or
 16 willing to go along with, but that allows the city's
 17 finances to basically -- to be used to do the development
 18 and then recoup it over time?
 19 A To construct the street --
 20 Q To construct the street.
 21 A -- and the improvements related to this that were adjacent
 22 or under the street.
 23 Q Things that would typically be infrastructure for a
 24 developer oftentimes eventually in dedicated roads and so
 25 forth that would become city improvements, but necessary for

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16 (Pages 58 to 61)

1 development of a property?
 2 **A That would be -- it would facilitate it.**
 3 **Q Right. A developer wouldn't need a special assessment to do**
 4 **this. He or she could simply take the money out of the**
 5 **bank, put the improvements in and get to the same position,**
 6 **correct?**
 7 **A That's correct.**
 8 **Q So when I talk about it as a financing tool back in those**
 9 **days, that was not atypical for a city to use or a**
 10 **municipality to use a special assessment agreement to**
 11 **basically finance infrastructure within the city's -- within**
 12 **new streets and so forth?**
 13 **A For the purposes of putting a street through it's not**
 14 **uncommon for a special assessment --**
 15 **Q To do that?**
 16 **A -- to do that.**
 17 **Q Under the Exhibit B that you're looking at, it's -- if you'd**
 18 **turn to paragraph 10 with me -- or page 10, I'm sorry.**
 19 **A Yes.**
 20 **Q Do you have that?**
 21 **A I do.**
 22 **Q Does that -- let me get there a minute. That lays out**
 23 **certain cost at the top of the page of calculation**
 24 **apportionment between properties?**
 25 **A Yes.**

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1 **Q As you look down there under paragraph sub (d), which is**
 2 **about a third of the way down there right after the chart**
 3 **there, does it set forth when principal payments are going**
 4 **to be due?**
 5 **A Under certain circumstances, yes.**
 6 **Q First of all, what are the circumstances?**
 7 **A Within 180 days of final zoning approval for a phase or upon**
 8 **city issuance of a soil erosion permit for the phase,**
 9 **whichever is earlier.**
 10 **Q Are there any other conditions?**
 11 **A I think the balloon payment's due on September 7th of 2014.**
 12 **Q Anything in that paragraph, conditions reflected -- or that**
 13 **subparagraph?**
 14 **A Other than that it discusses a pro rated basis -- a pro rata**
 15 **basis, other than that, no.**
 16 **Q Does that pro rata refer to the chart above showing**
 17 **neighborhood B-1, B-2, B-3 and B-4?**
 18 **A It relates to that, but I think that's where the phases come**
 19 **in. So if the phase 1 of neighborhood B-4 were to be**
 20 **started, construction were -- or development were to be**
 21 **started --**
 22 **Q This chart --**
 23 **A -- that would be the --**
 24 **Q I'm sorry.**
 25 **A It's associated with it, but it's not exactly -- in other**

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1 words, it refers to "for the phase." So these -- the
 2 neighborhoods B-1 through B-4 in the table above are -- it
 3 doesn't show the individual phases that there might be for
 4 each neighborhood.
 5 **Q Does this refresh your recollection that there was actually**
 6 **intended to be four phases?**
 7 **A There's four neighborhoods. I'm not -- well, let me -- the**
 8 **construction of the street was only one phase. There were**
 9 **neighborhoods that were anticipated to be developed over a**
 10 **period of time and I believe those phases refer to those**
 11 **phases that they anticipated for development of the**
 12 **properties.**
 13 **Q If you look horizontally for the -- under the B-3, --**
 14 **A Uh-huh (affirmative).**
 15 **Q -- there it reflects actually four phases; right? The last**
 16 **two phases being \$118,171 each time?**
 17 **A Yes, it appears that there's two phases for neighborhoods**
 18 **B-1, 2 and 4, and four phases for B-3. But that's**
 19 **construction of the properties themselves, not the street.**
 20 **Q So now, did any of these phases receive -- or any of these**
 21 **parcels receive final zoning approval? They all did; right?**
 22 **A No.**
 23 **Q Which ones did not?**
 24 **A Well, I can't -- I'm not sure what final zoning approval**
 25 **would be. I think that's related to not the planned unit**

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1 development. I'm not sure what that refers to, I guess,
 2 final zoning approval.
 3 **Q It was approved for PUD, was it not?**
 4 **A It was approved for PUD, but I think that there was a step**
 5 **beyond that that this contemplated.**
 6 **Q Which was -- at what step was that?**
 7 **A I'm not sure exactly. I'm not as familiar with that**
 8 **process. I think once they decided to move forward with the**
 9 **actual development of a phase they would have to go through**
 10 **some additional approval processes.**
 11 **Q Approval processes for what?**
 12 **A To actually commence development of the phase.**
 13 **Q To actually, like, get permits; right?**
 14 **A I'm assuming that.**
 15 **Q For construction?**
 16 **A I'm assuming that.**
 17 **Q That's what you're -- when you're referring need some**
 18 **additional approvals?**
 19 **A I would believe so, yes.**
 20 **Q Anything else, though, that needed to be done for final**
 21 **zoning approval that did not occur that was contemplated by**
 22 **this agreement that you're aware of?**
 23 **A I'm not familiar with that.**
 24 **MR. OTIS: I think he was just testifying in**
 25 **relation to the document that you're asking him about.**

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1 A: ~~Not the actual process of the zoning or the approvals.~~
 2 Q Paragraph 3 indicates that it's estimated that the
 3 construction will be completed by December 31 of 2005. See
 4 that?
 5 A I see that.
 6 Q Do you know when it was actually completed?
 7 A No, I do not. This is --
 8 MR. OTIS: -- talking about --
 9 A Again, this is referring to the street.
 10 Q Yes.
 11 MR. OTIS: Pfeiffer Woods Drive; correct?
 12 Q That's what we're talking about. We're not talking about
 13 the individual houses and --
 14 A Correct.
 15 Q -- or condos or whatever was going to go in; right?
 16 A We're talking about the construction of the street itself.
 17 Q Are there any other contracts that are related to the
 18 special assessment that we've talked about now as the
 19 Pfeiffer Woods Drive special assessment, other than Exhibit
 20 B?
 21 THE WITNESS: Would amendments of this constitute
 22 separate agreements or --
 23 MR. OTIS: I don't think the witness understands
 24 your question, Mr. Visser.
 25 Q Prior to the adoption of the special assessment for Pfeiffer

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1 that date that's listed there?
 2 A It shows October 28th, 2006.
 3 Q Do you believe that to be true and accurate?
 4 A I do not.
 5 Q You do not?
 6 A Because the parcel has not been developed.
 7 Q Is it your belief that final zoning approval equals
 8 development?
 9 A I think it would be evidenced by development.
 10 Q So it would be evidenced. What do you think final zoning
 11 approval is then? Or I guess what I'm looking for is your
 12 foundation as to why you don't think that's an accurate
 13 number, even though the treasurer put it in there.
 14 A I don't know that the treasurer put it in there. It may
 15 have been hypothetical at the time that it was created by
 16 the attorney anticipating that there would be construction
 17 at some point in the near -- more near term as opposed to
 18 extending out as it ended up happening.
 19 Q So you're just guessing now that it's hypothetical?
 20 A Well, again, not knowing who put it in there I can't
 21 necessarily say. But I don't believe -- because the
 22 neighborhood didn't develop, that's my rationale for the --
 23 Q So you're associating final development with final zoning
 24 approval?
 25 A At least the commencement of it, I believe. But I don't --

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1 Woods, were there any other contracts that were in place
 2 that impacted that resolution?
 3 A Not that I'm aware of.
 4 Q Afterwards your previous answer suggested that there were
 5 some amendments?
 6 A I believe so, yes.
 7 Q Was that done also by agreement with the owner or owners?
 8 A Yes, I believe so.
 9 Q To your knowledge they didn't go through the process of
 10 having a public hearing and --
 11 A I'm not sure what steps were taken.
 12 Q But you believe it was done pursuant to just simply
 13 agreement?
 14 A I believe that the amendment was documented in a -- any
 15 amendments to this document were carried out through the
 16 city commission resolution adoption process.
 17 Q Now, if you'll turn with me to Exhibit Number 7, who put --
 18 If you go down the -- about a third of the way down where it
 19 says "due date triggers," who put that information in? Did
 20 you?
 21 A No.
 22 Q City treasurer?
 23 A I'm not sure. I think the original spreadsheet was created
 24 by the law firm.
 25 Q So when it says 180 days from final zoning approval, what's

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1 again, I don't deal with the zoning.
 2 Q Would it be, then, contrary to your thinking that somebody
 3 could get final zoning approval and decide not to go forward
 4 with the approved zoning?
 5 A I don't know that.
 6 Q I'm just trying to get to your experience in the areas
 7 because you have an opinion. I'm just trying to figure
 8 out --
 9 A Right.
 10 Q -- what the foundation of that opinion is.
 11 A Yup.
 12 Q If you go down on your exhibit there, it says phase date --
 13 or date phase payment actually made. What's the date there
 14 do you see?
 15 A I believe it says September 16th, 2006, I believe, or 8. Is
 16 it 8?
 17 Q Do you know when the final -- when that payment was made?
 18 A I don't believe it has been made yet.
 19 Q You had reflected on your books as to when you made
 20 payments; right?
 21 A We would reflect a payment if it were made.
 22 Q Correct. That's what I'm saying?
 23 A Right.
 24 Q At some point -- I'm assuming you do a double entry
 25 system --

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1 A Yes.
 2 Q -- with your bookkeeping?
 3 A Yes.
 4 Q So when you put an account receivable in for the special
 5 assessment, what did you do for the corresponding entry?
 6 Where did that go?
 7 A We recorded it as deferred revenue.
 8 Q So deferred -- well, that would be --
 9 A It's not shown as revenue at the time, so it's shown as a
 10 liability -- or in the liability section of the balance
 11 sheet as a deferred revenue.
 12 Q So you would have a -- you would show it as a liability
 13 called deferred revenue, and then as you made payment for
 14 the improvements that were made, that liability would be
 15 reduced; right?
 16 A What would happen is the receivable would be reduced by the
 17 cash payment.
 18 Q But if you had --
 19 A And then we would recognize the special assessment revenue
 20 as a revenue by reducing the deferred revenue.
 21 Q I think we might be not talking about the same here.
 22 A Okay.
 23 Q I'm not looking at the special assessment money coming in
 24 and so forth. What I'm talking about is at the same time
 25 that you're showing that being entered as deferred income or

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1 an account receivable, you now have an asset; right?
 2 A There is a receivable, yes.
 3 Q You have a receivable as an asset and you have some type of
 4 liability; right? Don't you have a liability for the
 5 improvements that you've contracted by the agreement to
 6 make?
 7 A No, that doesn't -- that transaction would not establish a
 8 liability of that sort.
 9 Q You have a contract that says you're going to get in X
 10 number of dollars pursuant to the special assessment?
 11 A Uh-huh (affirmative).
 12 Q And you're going to pay the same number of dollars out for
 13 the improvement. Where does that reflect the obligation to
 14 make the payment?
 15 A It wouldn't be reflected until the costs were incurred for
 16 the improvements. So as the construction happened, as the
 17 street construction happened, the bills were paid and it was
 18 expensed.
 19 Q Let me follow that when you -- from that end. Let's say you
 20 pay \$100,000 out for excavating.
 21 A Uh-huh (affirmative).
 22 Q Where does that get charged to?
 23 A It would be charged to a construction expenditure account in
 24 the special assessment revolving fund.
 25 Q In the revolving fund?

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1 A Yes.
 2 Q So all of those payments would also be -- that you've made
 3 on this special assessment would be reflected if we get a
 4 trial balance for that account?
 5 A Well, in this case I believe the actual construction was
 6 handled by the property owner. I would have to look back at
 7 it, but I believe the payments were made to the property
 8 owner.
 9 Q But all those payments directly to the excavating contractor
 10 or the Consumers Power, whoever is putting the electric in
 11 or all of those improvements, they get paid for it? They
 12 get paid for it to somebody, either through the owner or
 13 directly to the contractor; right?
 14 A It would be in this case to the owner, I believe.
 15 Q If we get a trial balance for that special assessment fund,
 16 would those payments be reflected on there as well?
 17 A In the trial balance, yes.
 18 Q So if we get that during our break we should be able to
 19 figure out when payments were made on the special
 20 assessment; right? We wouldn't have to guess anymore;
 21 right?
 22 A I wouldn't think so.
 23 MR. DONALD VISSER: I think this would probably be
 24 a good time to get a couple of documents.
 25 MR. OTIS: That's fine.

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1 MR. DONALD VISSER: Let's do the trial balance.
 2 And I'm going to want the spreadsheets, also, for B-1, B-2
 3 and B-3.
 4 A That trial balance would include in that expenditure account
 5 any projects that might have happened in that same year. It
 6 would not have been detailed by just solely this project.
 7 Q So we might have some extra lines?
 8 A Some extra cost in that line.
 9 Q Yeah. Okay. Your trial balance shows dates and so forth?
 10 A It would show by year.
 11 Q If we need dates further how do we -- how would we drill
 12 down to the actual date that the check was cut, if we need
 13 that?
 14 A I'll have to look at it because that was on a previous
 15 accounting system.
 16 MR. DONALD VISSER: So why don't we get what we
 17 figure out -- what we can figure out now?
 18 MR. OTIS: What is it that we're trying to figure
 19 out that's possibly relevant to this case?
 20 MR. DONALD VISSER: Well, we'll see when other
 21 principal payments are made on the other accounts when
 22 they're billed to see if they're consistent with this one.
 23 That's it. I don't think it's a huge thing to -- looks like
 24 to me another six sheets.
 25 MR. OTIS: All right. Shall we go look for them?

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1 THE WITNESS: Uh-huh (affirmative).
 2 (Off the record)
 3 (Deposition Exhibit 9 and 10 marked)
 4 Q Showing you now what's been marked as Deposition Exhibit 9.
 5 Is that copies of similar spreadsheets that you've obtained
 6 from your computer regarding parcels?
 7 A It's the --
 8 Q Remaining three parcels?
 9 A -- the tabs -- prints of the tabs on the same spreadsheet
 10 that were used to generate the other document.
 11 MR. OTIS: For B-1, B-2 and B-3.
 12 A Yes.
 13 Q And these were also things that were sent to you by the
 14 treasurer?
 15 A The treasurer sent them to me, yes.
 16 Q And you maintained them?
 17 A I do not maintain them. I have not changed them. I have
 18 not revised them at all with the exception of preparing them
 19 for printing that document.
 20 Q And that was probably a bad word to use as far as
 21 maintaining. You've just simply kept them as they were sent
 22 to you by the treasurer?
 23 A That is correct.
 24 Q There is a page in here, the fifth page in, which seems to
 25 be a different format. What is that?

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1 Q Follow that across. It says in 2005 it says interest -- or
 2 I think that's "int" stands for "interest" -- only payments?
 3 A Only payments, right.
 4 Q I'm correct with that assumption?
 5 A That is correct.
 6 Q Then the next column, 2006, it says 11-29 of 2007 instead of
 7 interest only. Why is that?
 8 A I'm not sure why except that to the left of the -- of that
 9 line where it says interest only payments, if you look just
 10 to the left, it said "paid." It may be that the treasurer
 11 entered those dates in there as the dates that payment was
 12 actually made.
 13 Q You don't know?
 14 A I do not know. It looks like -- but it appears at least
 15 that the first -- the line above that was the date it was
 16 billed and the second line is the date it was paid is what
 17 it appears, and what check number it was paid by is the next
 18 line.
 19 Q Then the line just above it says, "Amount of SA" -- I assume
 20 that stands for special assessment?
 21 A Yes.
 22 Q -- "principal allocated to this phase"?
 23 A Yes.
 24 Q And then it has dates in there, 11-6 of 2007 going all the
 25 way up 'til 2008, then it's 10-15 of 2008. What does that

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1 A That's a page that shows what actually happened for the only
 2 neighborhood and phase that actually has been developed in
 3 the Ravines area. So this one -- and that's the only one of
 4 those special assessment receivable that are actually paid
 5 off.
 6 Q This is for parcel B-3; correct?
 7 A Neighborhood B-3, phase 1.
 8 Q Phase 1. Did you receive other documents similar to that
 9 for any of the other parcels or any of the other phases?
 10 A No.
 11 Q So this is the only one like this that you received from the
 12 treasurer?
 13 A This is the only one that in that spreadsheet was like that.
 14 Q And this is as received from the treasurer again?
 15 A That is correct. And the reason why it differs is because
 16 the -- that's the only neighborhood and phase that actually
 17 has been constructed. And that receivable is paid off.
 18 Q As we look at the last page of that document --
 19 MR. OTIS: Talking about Exhibit 9?
 20 MR. DONALD VISSER: Exhibit 9; correct.
 21 Q Again, on the top 2 inches or so, 3 inches of the document
 22 in the horizontal spreadsheet there, on the -- what appears
 23 to be the second line, it says, "Effective date of special
 24 assessment." See that?
 25 A I do see that line.

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1 refer to?
 2 A I believe it refers to the date that it was billed by the
 3 treasurer. The 112,000 is what was used as the basis for
 4 the interest calculation. But just to the right of that
 5 112,000 is the word "billed." And then the dates I believe
 6 drive -- or are based on what date it was billed, not what
 7 date the principal was due.
 8 Q For that fifth page, that odd -- the one that's different,
 9 it has a number of dates entered under "due date triggers."
 10 See that?
 11 A Uh-huh (affirmative).
 12 Q "Yes"?
 13 A Yes, I see it. I'm sorry.
 14 Q No problem. Then on the right-hand side it indicates
 15 apparently where the source is?
 16 A For that date, I believe.
 17 Q For that date. And for the first one, final zoning would be
 18 from planning?
 19 A Yes.
 20 Q And then from -- then the next calculation is per the
 21 formula, it's 180 days from the final date?
 22 A From the final zoning approval date.
 23 Q Which was in this case 3-1 of 2005?
 24 A The final zoning approval date is shown as, on this
 25 document, March 1st of 2005. I believe that the August

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20 (Pages 74 to 77)

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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DAMGHANI v. CITY OF KENTWOOD, ET AL

DEPOSITION OF TOM CHASE

1 28th, 2005, date is 180 days after that as calculated by:
 2 formula, is what I think it means.
 3 Q Then the next one for the erosion permits and so forth, this
 4 indicates that data was derived from engineering and
 5 inspections?
 6 A I believe that's the case, yes.
 7 Q And that would be typically where erosion permits would be
 8 issued?
 9 A Yes.
 10 Q And then the final date of phase payment indicates is April
 11 21 of 2005; correct?
 12 A That is the date that's entered there, yes.
 13 Q And that's also the same date that's entered a little lower
 14 and where it says, bold, "Date Phase Payment Actually Made"?
 15 A Yes, that is the same date there.
 16 Q Now, you've also given us what's been marked as Exhibit
 17 Number 10, which is a list of apparently payments and
 18 receipts related to this special assessment; correct?
 19 A This is what I described previously as a trial balance.
 20 What it shows solely is a printout from our general ledger
 21 system for the special assessment revolving fund for the
 22 period when the construction was done and when the -- also
 23 when the receivable was set up.
 24 Q So this shows all the payments that were made?
 25 A No, it shows in the summary --

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1 A That's correct.
 2 Q We're going to want to see the balance of those. Okay. So
 3 what we're looking for is 051.141; correct?
 4 A That is the one that has all of the Ravines neighborhoods in
 5 it including the parcel that we're discussing.
 6 Q So now as you get payments of principal back, would you
 7 assign it to that same line item?
 8 A We would record it as a reduction of that line item.
 9 Q So in the first column under general ledger number, we
 10 would -- you would be utilizing the same assignment number
 11 for that; correct?
 12 A As we collect money on that receivable we would record it to
 13 that account.
 14 Q So what I take from this is that in the -- sometime between
 15 June 30 of 2004 and June 30 of 2005 the city of Kentwood cut
 16 a check to somebody, or multiple checks, a combination
 17 totaling 1,585,926.23; right?
 18 A Actually this balance reflects only the recording of the
 19 receivable based on the resolution that was adopted by the
 20 city commission.
 21 Q Where do we get -- are the payments here then?
 22 A Where you would see that is in the -- on the last page near
 23 the bottom, accounts 978 -- the 978 account numbers. So it
 24 would be in the expenditures area. During those two years
 25 we made --

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1 Q Well, let's go through it.
 2 A Yup. I have a copy of it as well.
 3 Q So the first entry shows in column number 1, that's a
 4 general ledger number?
 5 A That is correct.
 6 Q And this one happens to be 003 of line number 0407
 7 A This actually -- it does say that but that is not related to
 8 the -- what -- this is what comes off of our financial
 9 accounting system.
 10 Q Correct.
 11 A And if you're looking for the receivable that's applicable
 12 in this case, you need to look on the second page. And it
 13 has the GL number as 80800051.141. It's deferred Pfeiffer
 14 Woods Ravines. And it shows that as of June 30, 19- -- or
 15 June 30, 2004, there was a zero balance for that. During
 16 that next fiscal year the receivable was set up; in the June
 17 30, 2005, fiscal year.
 18 Q Correct.
 19 A So that shows when the receivable was established or when it
 20 was recorded.
 21 Q Now, this shows only through June 30 of 2007?
 22 A Correct.
 23 Q I'm assuming that's the parameters that you put in?
 24 A That is correct.
 25 Q We could have run it through 2014 or 2015?

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1 Q Just a second here. I'm looking for 978. I'm not --
 2 A Yup.
 3 Q Way at the bottom of the --
 4 A Yup, near the bottom.
 5 Q -- page there? Okay.
 6 A And you can see that in 20- -- fiscal year 20- -- that ended
 7 in June of 2005 and June of 2006 that there were costs
 8 that -- or expenditures made for right-of-way costs, Ravines
 9 special -- or Pfeiffer Woods Drive and Breton North Pfeiffer
 10 Woods. And the total of all that should be the total of the
 11 amounts that were billed in special assessments.
 12 Q So as we look at this, there's expenditures for certain --
 13 you said 978?
 14 A Yeah, the 978's. They have it as .001, .006 and .007 are
 15 most likely what it is.
 16 Q What about the 000?
 17 A I'm not sure as far as that, whether that particular one is
 18 related to this project.
 19 Q So we have roughly 1,780,000 being expended in between June
 20 of 2004 and June of 2005 on the project?
 21 A 1.7 million approximately; correct. Yeah, between 1.7 and
 22 1.8 million.
 23 Q Right. And then in 2006 you showed it 2.66 total for all of
 24 the columns, but maybe 108,000 isn't attributable?
 25 A It may or may not be, depending on how the accounts were --

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21 (Pages 78 to 81)



1 how the payments were coded.
 2 Q So we have between 1.55 -- or 2.55 and 2.6 probably being --
 3 A Yes.
 4 Q -- expended on the project in that year?
 5 A In that year, yes. Well, in -- yes.
 6 Q And then after that and for the next year from 2006 to 2007
 7 we have \$424 for legal expenses that may or may not be
 8 related to this project?
 9 A My guess is probably they were not related to the project.
 10 Q But certainly we have no construction costs being disbursed
 11 anymore?
 12 A Not in that year. My understanding was -- from an earlier
 13 document that we looked at was that the construction was to
 14 be done by December 31st of 2005, so that would have been
 15 during 2006 fiscal year.
 16 Q And we can safely draw a conclusion that at least by June 30
 17 of 2006 all of the funds that were going to be expended by
 18 the city on this project for construction had been expended?
 19 A Yes.
 20 Q In Damghani's Complaint there was also another assessment
 21 which was referred to as the -- go back to you to Exhibit 1
 22 as the ADAA assessment. Do you know which one that is?
 23 I'll give you a chance to get caught up with me. And I want
 24 to focus your attention on --
 25 A Which page are you referring to?

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1 A Because the property was no longer theirs.
 2 Q Thank you. Were you involved at all with the foreclosure
 3 sale process?
 4 A Not from the actual process.
 5 Q Correct. You seemed to hesitate a little bit, so there
 6 might -- apparently I maybe didn't ask a broad enough
 7 question. You say not with the actual process. What --
 8 A I was familiar with it because it was discussed in meetings
 9 and that sort, so -- but I wasn't involved in the actual --
 10 our treasurer would have been involved in that.
 11 Q Are there any other revisions or amendments to special
 12 assessments for any special assessment districts in the city
 13 that you're aware of?
 14 A My understanding is that there is provision for that in the
 15 code of ordinances for special assessment code. I am not
 16 aware -- I'm not familiar with how many there are or what
 17 there are, but I understand that's part of our process.
 18 Q But are you aware that there -- that this -- other than this
 19 particular assessment are you aware that it's ever been done
 20 in regards to any other special assessments?
 21 A I can't answer that.
 22 Q So you're not aware of any?
 23 A I'm not saying that. What I'm saying is that I was not
 24 involved in any of the process for it, so I can't speak to
 25 it directly.

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1 Q The question number 32 and 37. I just want to confirm.
 2 (Witness reviews exhibit)
 3 A What does ADAA refer to?
 4 Q You're not familiar?
 5 A In the context of this document I'm not sure that it's not
 6 defined elsewhere.
 7 Q Was there an amendment to the deferred assessment agreement?
 8 A I believe there was, but I believe it only affected the
 9 parcel that Holland Home purchased.
 10 Q And I believe you're correct. I just want to clarify that.
 11 (Deposition Exhibit 11 marked).
 12 Q Hopefully we get copies of this later. Here's a resolution
 13 with an amendment. And it's our understanding -- and the
 14 reason I'm asking is because it currently isn't pairing the
 15 title to the Damghani property. And I don't believe there's
 16 any amounts due and owing, but the title company can't get
 17 that straight. So that's what we refer to in the Complaint
 18 as the ADAA, the amendment to the deferred assessment
 19 agreement. And in questions number 32 and 37 I think you
 20 confirmed that those -- that there was nothing due from the
 21 Damghani parcel arising out of this (indicating) document?
 22 A I believe that's correct.
 23 Q Basically what that did is it took part of the assessment
 24 and put it elsewhere -- actually took it off the Damghani
 25 parcel; right?

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1 MR. OTIS: Maybe I'm confused but I thought we
 2 started out with testimony about Holland Home's and this
 3 amendment with regard to the Damghani property arising out
 4 of the discussions relating to Holland Home's.
 5 MR. DONALD VISSER: Let me clarify that.
 6 Q Is the Holland Home assessment part of the Pfeiffer Woods
 7 Drive special assessment?
 8 A Only the portion -- well, there are two. There were two
 9 resolutions adopted. One was the -- related solely to
 10 Holland Home and the other was related to the Ravines
 11 parcels. And with Holland Home purchasing a portion of one
 12 of the Ravines parcels, that's when that came into play. So
 13 there's more than just Ravines.
 14 Q So there is -- Holland Home is involved with more than
 15 Ravines, but was the special assessment not dealing with the
 16 Ravines, only with Holland Home? Was that renegotiated as
 17 well?
 18 A I'd have to look at it, but not -- oh. From what
 19 standpoint? Renegotiated how?
 20 Q To change the term -- or repayment terms.
 21 A Yes.
 22 Q Both assessments were? The Ravines and the Holland Home
 23 parcel?
 24 A As it related to Holland Home, both parcels had payment
 25 schedules put in place similar to what was for the Damghani

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1 **property.**
 2 Q So the special assessment dealing with -- that's what I'm
 3 trying to hone in on. Is the special assessment dealing
 4 only with Holland Home property, not that acquired from the
 5 Ravines? That repayment schedule was also modified?
 6 A Yes.
 7 MR. OTIS: I thought that's where we started out
 8 at the very beginning of the deposition.
 9 MR. DONALD VISSER: I understood that only to be
 10 the Ravines, so that's --
 11 MR. OTIS: Oh. Okay. All right.
 12 MR. DONALD VISSER: And you may have understood it
 13 differently because you have a different background than
 14 what I do. So if you have more knowledge, you have to share
 15 that with me, you see.
 16 MR. OTIS: I'm just glad we're getting things
 17 clarified.
 18 Q Why was the city concerned at the -- when the taxes went
 19 up for -- or the property went up for sale, the Damghani
 20 property? Why was the city concerned as to how much money
 21 the parcel would bring at tax sale, if the city was
 22 concerned at all?
 23 A The county, in order to cover their -- again, I'm speaking
 24 from a layman's term. They sell tax anticipation notes, I
 25 believe, and they need to have the sale cover that amount at

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1 ~~least across the entire county. And so what they're looking~~
 2 ~~at is they're trying to make sure that their tax sale~~
 3 ~~generates sufficient sales to cover the tax foreclosed~~
 4 ~~property, the taxes and the other assessments and things of~~
 5 ~~that sort that are on those properties countywide. And so~~
 6 ~~they're interested in making it as attractive as possible on~~
 7 ~~the first sale.~~
 8 Q You aware of county initiatives on any other properties
 9 where they've tried to make it more attractive?
 10 A I'm not aware of it. It doesn't mean it doesn't --
 11 Q Correct.
 12 A -- hasn't happened, but I'm not aware of it.
 13 Q Right. Okay. That's all I can ask you, is about what
 14 you're aware of.
 15 A Uh-huh (affirmative).
 16 Q So this is the first one where you've been aware that the
 17 county was concerned about that?
 18 A Solely on that.
 19 Q Any reason why the city didn't exercise an option to take
 20 the property prior to going to tax sale?
 21 A We're not a developer.
 22 Q That's the only reason? Was it discussed?
 23 A It was actually offered to us and we declined.
 24 Q When you say "we," who was --
 25 A The city I mean.

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1 Q Who was involved in that discussion?
 2 A The Damone Group, the original owner of the property before
 3 it was -- went through the tax sale, offered it to sale
 4 for -- or for sale to us and we declined.
 5 Q Did you ever talk --
 6 A The city declined, I should say.
 7 Q Did the city ever talk about picking it up as part of the
 8 tax foreclosure sale, in other words, between the time that
 9 the county treasurer acquired title to it and the time it
 10 went up for public auction?
 11 A No.
 12 Q You never heard of anybody discussing that option?
 13 A We had eliminated the ownership of the parcel in its
 14 entirety prior to that even.
 15 Q Just simply by -- the city was not interested in being a
 16 developer?
 17 A Right.
 18 Q Have you had any involvement at all with any of the tax
 19 foreclosure sales?
 20 A No.
 21 Q Anybody here in the city that's been involved with the
 22 foreclosure sales as you --
 23 A My understanding is the treasurer is involved because the
 24 tax roll -- she maintains the tax roll.
 25 Q And what is your understanding as to how she's involved --

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1 she or he? Because I know it's apparently switched.
 2 A Well, she maintains the tax roll, so levies the taxes and
 3 posts the collections. She also settles with the county at
 4 the end of the tax collection period, so -- and then
 5 that's -- if there's unpaid taxes for two or three years, I
 6 think, it's when it actually goes up for tax sale, is
 7 when -- if it's three -- I think it's the third year is when
 8 it actually goes to the tax sale.
 9 Q But other than turning it over to the treasurer do you --
 10 does the treasurer have any involvement at all with --
 11 A I wouldn't think that --
 12 Q -- the tax sale?
 13 A No, I don't. I wouldn't think that they would have any
 14 involvement other than turning over the delinquent taxes to
 15 the county treasurer.
 16 Q So past that you're not aware that your city treasurer has
 17 had fingers --
 18 A No; no. That's solely --
 19 Q -- in the process?
 20 A -- county process.
 21 Q Are you aware of any other special assessment districts in
 22 this city that have a ten-year interest only with a balloon
 23 at the end assessments?
 24 A I'm not aware of any. I'm not sure.
 25 Q Did anyone from the city have any discussions with the owner

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1 of the Damghani parcel prior to the tax sale and offer them
 2 the same terms as the Holland Home agreement?
 3 **A I don't know.**
 4 **Q Do you know how the amount that was due at the tax sale was**
 5 **determined; the minimum bid?**
 6 **A I don't know.**
 7 **Q Were any portions of the special assessment included in the**
 8 **amount due to avoid the tax foreclosure?**
 9 **A No, not that I'm aware of.**
 10 **Q Tax only?**
 11 **A Well, there would be special assessment -- unpaid special**
 12 **assessments, but not the construction-related special**
 13 **assessments.**
 14 **Q What unpaid special assessments would have been included?**
 15 **A I think the landscaping might have been, but I'd have to**
 16 **verify that.**
 17 **Q When you indicated that the -- strike that. When you**
 18 **indicated that the special -- landscape special assessment**
 19 **was added to the taxes is that because it wasn't paid?**
 20 **A: When it was added to the taxes -- I'd have to check with the**
 21 **treasurer about that to see --**
 22 **Q That would be a --**
 23 **A -- exactly when it was added and for what reason. It might**
 24 **have been that it was due.**
 25 **Q That would be a question I really should direct to the**

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1 **Q In your experience once a special assessment roll has been**
 2 **levied are you allowed to simply modify it by resolution or**
 3 **what steps do you have to go through to your --**
 4 **A I'm not sure what they are.**
 5 **Q How is the interest booked into your special assessment**
 6 **revolving fund?**
 7 **A It was recorded as interest at the time it was collected.**
 8 **Q Is it recorded then into the special assessment revolving**
 9 **fund?**
 10 **A Yes.**
 11 **Q Is the amount that's due ever recorded as a account**
 12 **receivable or is it handled on a cash basis only?**
 13 **A Historically it was handled on a cash basis. I'm not sure**
 14 **what the system is presently, whether the billing records it**
 15 **in the system or not. We've integrated our accounting**
 16 **systems. But historically it's been recorded as it's been**
 17 **collected.**
 18 **Q So it's been recorded as it's been collected. So if**
 19 **somebody doesn't make the payment, it doesn't get recorded?**
 20 **A That would be what it was historically, yes.**
 21 **Q As far as Exhibit 10 am I correct that the first two pages**
 22 **are one printout or one -- one specification for general**
 23 **ledger information and the third page is a separate -- has**
 24 **separate search criteria?**
 25 **A No.**

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1 treasurer?
 2 **A Probably so.**
 3 **Q You indicated earlier that the county treasurer could enter**
 4 **into the agreement. I think that's -- what is that? --**
 5 **Exhibit Number 2. You indicated that that could be amended**
 6 **because it was a -- originally an agreement, so that the**
 7 **agreement could be amended. I just want to probe your**
 8 **understanding or your belief there. Is that because the**
 9 **county treasurer succeeded to the contractual rights of the**
 10 **owner or is it because of some legal provision under the**
 11 **statute?**
 12 **A My understanding is that there was a point in time when the**
 13 **county treasurer became owner of the property and that at**
 14 **that time, as owner of the property, they had the ability to**
 15 **enter -- or to agree to an amendment to the agreement.**
 16 **That's my understanding. Whether it's legal or exactly what**
 17 **the legal basis for that is, I don't --**
 18 **Q And because they became -- is that the bas- -- because they**
 19 **became owner and succeeded to the --**
 20 **A I believe so.**
 21 **Q -- interest of the --**
 22 **A I believe so.**
 23 **Q -- prior owner?**
 24 **A Yes, because the original agreement did flow to the new**
 25 **owners, any new owners, I believe.**

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1 **Q It's all --**
 2 **A It's all the same printout.**
 3 **Q So it's one --**
 4 **A It's one printout.**
 5 **Q The payments, where would -- as I see this sheet extended,**
 6 **if we would go out through 2015, where would the payments be**
 7 **reflected?**
 8 **A The payments against the special assessment receivable, this**
 9 **particular one would be shown in that account number that I**
 10 **mentioned earlier, the 80800051141.**
 11 **Q So that it would be shown as a -- on the same line number,**
 12 **just simply as a negative?**
 13 **A No. Only if there's a payment will that number change. So**
 14 **that number is the balance that's receivable and only at the**
 15 **point where there's a payment made would that account**
 16 **balance change.**
 17 **Q So as I'm looking on the second page, about three-quarters**
 18 **of the way down, there's a 051.99 and it has the parentheses**
 19 **--referencing a negative number there.**
 20 **A Uh-huh (affirmative).**
 21 **Q Is that how a payment would show up?**
 22 **A No; no. That was set up solely at that time to have on the**
 23 **record what we -- it was called suspense because it's -- we**
 24 **needed to take some additional actions, do some additional**
 25 **analysis in order to handle it. So from that -- that's the**

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1 reason why that shows up at all. That was later adjusted.
 2 You'll end up seeing -- if we run this out to 2015 you'll
 3 see that as being eliminated.
 4 Q So maybe I better just wait until I -- what I'm trying to do
 5 is envision what payments look like, how they're reflected,
 6 if they're a bracketed number, a negative number, a positive
 7 number, a separate line --
 8 A No, there's no -- it'll only be -- if there's a payment made
 9 on the account it will only be shown because the balance is
 10 a different balance on that particular line.
 11 Q Oh, Okay. So we would look at the line and have to do the
 12 math, subtracting the prior -- using the prior line,
 13 subtracting the current line to determine the payments that
 14 were made in that year's period?
 15 A That's correct.
 16 Q That's why I didn't understand. Because I was thinking of
 17 it more in the line of detail, like you have on your third
 18 page and thought, well, it's going to reflect who made
 19 payments and so forth. It'll be which a gross payment -- a
 20 gross change in number?
 21 A That's correct. The third page, though, the reason why it
 22 looks different is because there's not as many accounts.
 23 But you can see at the top of the page that there's total
 24 assets, which is a continuation from the previous first two
 25 pages. This is the subtotal for total assets, which

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1 includes all the lines above. And then you see liabilities
 2 and equity, revenues and expenditures on the third page. It
 3 just happens that in a trial balance it's just a
 4 different -- these are different types of accounts and so
 5 they're showing separately.
 6 (Deposition Exhibit 12 marked)
 7 Q I'm showing you now what's been marked as Exhibit Number 12,
 8 one of the documents that you produced. Is that a document
 9 that comes out of your file, out of the treasurer's file or
 10 whose -- where did that originate from?
 11 A It would be prepared in the treasurer's office. Not my
 12 file, not my process -- any process that I'm involved in.
 13 Q I assume that this goes out on an annual basis?
 14 A I believe so, yes. This is the interest billing for the --
 15 appears B-1 phase 1 and phase 2 and B-4 phase 1 and phase 2.
 16 Q That'd be for the Damghani parcel; right?
 17 A B-4, yes.
 18 Q And what does it show is due for interest?
 19 A For B-4 phase 1 and phase 2 the total shows as \$19,424.21.
 20 Q Is there also a number for total due for principal?
 21 A It shows a principal number, but the interest was the only
 22 amount that was due at that time.
 23 Q What does that bill show, though, as far as the principal
 24 due?
 25 A It shows a total 353,167.50 -- .607 -- .50.

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1 Q Is there any doubt that in 2012 that was the amount of
 2 principal due?
 3 A Absolutely because it was not --
 4 Q It wasn't --
 5 A It wasn't interest-only payments during that time period as
 6 is reflected on the -- and what you'll find in the tax
 7 record at least, what was added to the taxes was solely the
 8 interest.
 9 Q Well, when you say that was only due, where are you drawing
 10 that from?
 11 A From the previous exhibits that we provided.
 12 Q I'm going to give you a chance to look at that again and
 13 show me where --
 14 A Might I see that exhibit then, please?
 15 Q Oh, sure.
 16 (Witness reviews documents)
 17 A Exhibit 7 for B-4, phase 1, the amount that was added -- it
 18 says was added to the 2012 taxes is 10,912.46 -- .48.
 19 Q And which column is that, sir?
 20 A That would be the -- I believe it was the 2011.
 21 Q That's just your accounting there that does -- that's not
 22 the actual establishment of what's due; right?
 23 A This is what's -- what was actually added to the tax roll.
 24 Q But as far as the assessment documents themselves, is there
 25 any document that says interest only? We went over some

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1 other ones that talked about when principal was due 180 days
 2 after. Is there any that says that interest only is due
 3 forever or the first -- well, I mean, for the first nine
 4 years?
 5 (Witness reviews documents)
 6 A I marked it on the copy that I had read.
 7 Q Pardon me?
 8 A I marked it. I do remember marking it on the copy that I
 9 reviewed.
 10 Q As we're sitting here right now, though, you're not able to
 11 identify a provision in either the resolution or the
 12 agreement that says "interest only"?
 13 A I believe line -- or section 3 of 96-04.
 14 Q Resolution 96-04?
 15 A Yup, Exhibit --
 16 Q The one that talks --
 17 A -- 5 is where it discusses the annual payments equal and to
 18 simple interest on any unpaid balance shall be due and
 19 payable on the anniversary date of the confirmation of this
 20 special assessment roll.
 21 Q That, you believe, is the --
 22 A I believe that's the section that deals with the interest
 23 only.
 24 Q Now, other --
 25 A Oh. Wait a minute. Actually I'd found it now. Let's see.

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1 **Yup. It's actually in the deferred installment. So it's in**
 2 **a -- it's on -- put this back together -- roll A under**
 3 **"deferred installments." Let's see. A payment shall be due**
 4 **annually on the anniversary date of the confirmation of the**
 5 **roll in an amount equivalent to simple interest on any**
 6 **unpaid principal amount. It's section B.**
 7 **Q So that provision charges interest on any deferred payment;**
 8 **correct?**
 9 **A Any unpaid principal balance.**
 10 **Q Unpaid principal balance. So basically it establishes**
 11 **that -- you agree with me that it establishes interest if**
 12 **there's an unpaid principal balance, but it doesn't say that**
 13 **all principal is going to be deferred, does it?**
 14 **A I think that's dealt with in the -- I am not finding it**
 15 **right now.**
 16 **Q Well, let's go back to where you were because I think that's**
 17 **a good point. You were looking at subparagraph (b) under**
 18 **"Deferred Installments" -- right? -- of the resolution? And**
 19 **we're talking about, I think, roll A.**
 20 **A We're talking about the resolution --**
 21 **Q Roll --**
 22 **A -- 96-04, roll A document.**
 23 **Q Roll A; right?**
 24 **A Yes. That's where I was pointing to.**
 25 **Q At least look at it with me and see if you agree that it**

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1 could be read this way. That subparagraph (a) there under
 2 "Deferred Installments" talks about interest -- what the
 3 interest rate's going to be?
 4 **A Uh-huh; yes.**
 5 **Q Subparagraph (b) applies that interest rate to the unpaid**
 6 **principal amount; right? It says "and that payment shall be**
 7 **due annually"; correct?**
 8 **A Yes.**
 9 **Q And then subparagraph (c) tells when the principal payments**
 10 **will be come due; right? So those three paragraphs all do a**
 11 **different function? Is that a fair reading of that**
 12 **document?**
 13 **A It talks about principal payments being due -- shall be due**
 14 **upon certain governmental approvals being consistent with**
 15 **the terms of the voluntary special assessment agreement.**
 16 **Q Correct. Would you agree that that's a fair reading of how**
 17 **that document's supposed to work?**
 18 **A I think it would cause me to go and look at the voluntary**
 19 **special assessment agreement.**
 20 **Q I understand. Now, you're not aware of any -- well,**
 21 **let's -- are you -- other than the role and the agreement**
 22 **itself are you aware of any other documents that**
 23 **contractually or by resolution affect how much is due and**
 24 **when it's due?**
 25 **A There may be some but I'm not -- I couldn't think of them --**

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1 **I can't think of them at the moment.**
 2 **Q Well, that's what I'm trying to ferret out, because I'm**
 3 **aware of these, and I think my client takes a different**
 4 **position, which you've probably heard, than what the city**
 5 **does as to what these mean. But we all need to get on the**
 6 **same page at least as to what documents are involved with**
 7 **that process. So that's why I'm trying to identify if**
 8 **you're aware of any other documents that we need --**
 9 **A I believe we've identified the ones that are attributable or**
 10 **related to this.**
 11 **Q No other back room, unrecorded agreements or anything else**
 12 **that you're aware of?**
 13 **A I'm not aware of anything of that sort. I think really**
 14 **where we're looking at in the voluntary special assessment**
 15 **agreement is on page 7 of the document under terms of the**
 16 **special assessment. It talks about the term of the special**
 17 **assessment will not exceed ten years. I think that's what**
 18 **fixes September 7th --**
 19 **Q Sure.**
 20 **A -- of 2014 as the date of the balloon payment.**
 21 **Q Everything has to be done by that date is what that**
 22 **paragraph means; right?**
 23 **A Unless other things happen, such as that would trigger it**
 24 **otherwise.**
 25 **Q But that's in the agreement part; right?**

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1 **A That's in the agreement, which is referred to in the**
 2 **resolution.**
 3 **Q And that's the agreement that you believe was modified by**
 4 **the agreement with -- between the county treasurer and the**
 5 **city of Kentwood in 2014?**
 6 **A I believe it was, yes.**
 7 **Q Now, are you aware of any discussions that occurred with the**
 8 **previous owner back in 2011 or so?**
 9 **A I mentioned earlier that the owner -- the previous owner did**
 10 **offer the property to the city.**
 11 **Q Was that as a result of the city saying that principal**
 12 **payments needed to start being made pursuant to the terms of**
 13 **the agreement?**
 14 **A No.**
 15 **Q It wasn't any discussion -- do you know what his name was,**
 16 **by the way?**
 17 **A Mike Damone.**
 18 **Q Any discussions that you're aware of with him that said the**
 19 **triggering events of the agreement had been reached, it**
 20 **looks like you're going to probably need to start making**
 21 **some payments in addition to interest --**
 22 **A No.**
 23 **Q -- on the property?**
 24 **A Because nothing had occurred of that sort. There was no --**
 25 **again, as I mentioned earlier, the trigger was development**

Page 101

1 of the property as at least in my understanding.
 2 Q Did he inform you back in -- Inform the city back in 2011
 3 that he couldn't make the payments and was going to stop
 4 making tax payments?
 5 A He did.
 6 Q Who did he talk to?
 7 A I believe he -- I was in the meeting with him and the mayor.
 8 Q And the mayor?
 9 A Yes.
 10 Q So would you tell me about that? Just one meeting?
 11 A I think there may have been two.
 12 Q Could you tell me about the first one, what was said?
 13 A He provided what he wanted to sell the property for and
 14 asked the city if we would be interested in buying it. And
 15 the second meeting I believe was after some -- giving some
 16 thought to it we came back and declined.
 17 Q So did you discuss the taxes at all during those meetings?
 18 A Well, he did say that he was not going to be able to pay the
 19 taxes.
 20 Q Did you discuss special assessments at all?
 21 A I don't recall that we did.
 22 Q Did he?
 23 A He may have mentioned knowing that the balloon payment was
 24 coming up in 2014, but I don't recall that that -- it was
 25 basically before that was going to be when he was going to

Page 102

1 be past due so far enough that it would have to go to tax
 2 sale.
 3 Q I think I covered it, but I want to make sure. I may not
 4 have got entirely clear. Other than this special assessment
 5 that -- of some \$300,000 that supposedly was carried over or
 6 extended pursuant to contract between the county treasurer
 7 and the city, are there any other special assessments that
 8 are due on this property, either now or in the future on --
 9 A Only the construction special assessments are due as future
 10 installments.
 11 Q That's the one special assessment covered by the agreement
 12 with the treasurer; correct?
 13 A That is correct.
 14 Q There was a landscape special assessment --
 15 A Uh-huh (affirmative).
 16 Q -- also that's -- but that's no longer due and payable for
 17 this property; right?
 18 A I believe that's correct. It may be billed, but it may not
 19 be due and payable.
 20 Q And it's not payable -- it's not an assessment in the future
 21 either against this property?
 22 A It is not a future assessment that would be billed -- or an
 23 assessment that would be billed in the future.
 24 Q Because that's also another one of the tax cloud -- or title
 25 clouds on the property that we need to get cleared. I think

Page 103

1 I'm getting close. You want to take a lunch break or you
 2 want me to --
 3 A No, let's just keep going.
 4 Q -- finish and get done with you?
 5 A Let's just keep going.
 6 MR. DONALD VISSER: Same with you?
 7 MR. OTIS: Yup.
 8 MR. DONALD VISSER: I'd like the extended
 9 spreadsheet for the ledger.
 10 MR. OTIS: Yup.
 11 MR. DONALD VISSER: And also I'd like the tax
 12 bills for B-1, B-2 and B-3 for 2012, 2013, '14 and '15. And
 13 '16?
 14 MR. DONOVAN VISSER: (Nodding head in affirmative)
 15 MR. DONALD VISSER: That's right. We're in '16.
 16 Yes. So '12 through '16. I don't need them before then.
 17 A So which parcels again?
 18 Q B-1, 2 and 3. I don't know if you have those or if we have
 19 to run over to the treasurer's -- I mean, the -- yeah, it
 20 would be the treasurer's.
 21 A We would get them from the treasurer.
 22 Q Or they're in the big boxes. I don't know.
 23 THE WITNESS: Through 2016?
 24 MR. OTIS: -- '16.
 25 THE WITNESS: Well, that's the tax bills, but I

Page 104

1 want to make sure that I understand --
 2 MR. OTIS: The trial balance?
 3 THE WITNESS: Yeah.
 4 MR. OTIS: What do you want the trial balance
 5 through, Don?
 6 MR. DONALD VISSER: I'd like it through present.
 7 MR. OTIS: Anything else?
 8 MR. DONALD VISSER: Nope, I think that's it.
 9 (Off the record)
 10 (Deposition Exhibit 13 and 14 marked)
 11 Q You've given me now a couple of documents. First of all,
 12 sir, one of them is what's been marked as Exhibit 13. It
 13 also has a "B-1" that somebody handwrote in blue on, which I
 14 think is your counsel. I assume that wasn't on there to
 15 start with.
 16 A I wrote it on to identify because what you have there is the
 17 tax billing history. And there's three different printouts.
 18 One is for properties that have been designated as B-1, B-2
 19 and B-3, one each, in that packet.
 20 Q Now, I assume that for -- that this is internal compilation?
 21 A It's right off of our tax system.
 22 Q Now, I assume for each of those parcels, though, that
 23 there's documents that look like Exhibit 12; correct?
 24 A I would say that they're -- I'd have to check. There
 25 probably is. It was just going to be tak -- it would take

Page 105

1 more time to get it.
 2 Q I think what we'll do, I'm going to conclude the deposition
 3 today but ask you to provide those through your counsel for
 4 the years -- the individual tax bills for those B-1, B-2 and
 5 B-3, same years for --
 6 A This is actually a special assessment billing, not a tax
 7 billing.
 8 Q So that's what I'll be looking for, is --
 9 A You're looking for this (indicating)?
 10 Q For the special assessment billing for those years for the
 11 parcels.
 12 A Okay.
 13 Q And if you do them at your leisure over the next week or so
 14 and give them to your counsel.
 15 MR. OTIS: For what years now, Don?
 16 MR. DONALD VISSER: '12 through '16 for the
 17 three --
 18 A So you're looking actually for the special assessment
 19 billing rather than the billing?
 20 Q I probably slipped up in what I was saying.
 21 A No worries.
 22 Q Thank you.
 23 A So what you have here is the tax billing in Exhibit -- 13 is
 24 it?
 25 Q And there would be something like this, if I had said the

Page 106

1 A I'm not sure.
 2 Q Was it a payment or a reduction in -- a recapture of unspent
 3 funds?
 4 A I'm not sure, but there was one -- one of them that paid
 5 off. Let's see my earlier document.
 6 (Witness reviews documents)
 7 THE WITNESS: This one, 9?
 8 MR. OTIS: Page 5, yeah.
 9 A I'm not sure what the reason was. I'll have to look at --
 10 I'll have to do some research, I guess. But it changed. My
 11 guess is that the amount, it is related to an adjustment,
 12 but I'm not sure.
 13 Q How would we find that out?
 14 A I'd have to research it.
 15 Q Would there be another detail sheet that would provide that
 16 information?
 17 A It may.
 18 Q Because this appears to be a summary sheet?
 19 A This is the general ledger; at the general ledger level. So
 20 it just shows what the account balance was year to year.
 21 Q It's possible to ask for the same thing with detail? That
 22 would probably expand it by volumes, but --
 23 A Well, I guess the question would be -- it would probably be
 24 only for that particular account that you'd be looking for,
 25 so I'd have to see what we can run -- we could run from our

Page 108

1 right word, for special assessments maybe?
 2 A Actually we're headed toward, I think, individual pages like
 3 that is my guess.
 4 Q Thank you. Appreciate your efforts in that and I'm sorry I
 5 used the wrong terminology.
 6 A No worries.
 7 Q Now, Exhibit 14 is the extended spreadsheet of the prior
 8 sheet?
 9 A Yes.
 10 Q And I am -- oh, man. I forgot the numbers I'm looking for.
 11 A 141 is the last three numbers, so it's about two-thirds of
 12 the way down the second page.
 13 Q And so on this one we see that the same number extends all
 14 of the way through June 30 of 2014 of the 1 million 523; is
 15 that correct?
 16 A It started out as 1 million 585, changed in June of '09.
 17 Q And then continued --
 18 A Yup.
 19 Q -- with that number until June of 2005; correct?
 20 A Until June of --
 21 Q Of '15?
 22 A -- 2014, and then '15 -- 2015 year was when the payment
 23 schedules were put in place. And so payments started to
 24 come in from other --
 25 Q What caused the change between 2008 and 2009?

Page 107

1 system on that. In other words, I wouldn't suggest running
 2 the entire fund. What I would suggest was -- is if you're
 3 interested in just seeing how that particular account
 4 changed, we may be able to run that.
 5 Q I will communicate, if it's acceptable to you, with your --
 6 after I take a look at this a little bit more -- detail with
 7 your counsel.
 8 A Uh-huh (affirmative).
 9 Q All right. And then the -- after 2014 to 2015 the amount
 10 dropped again. Was that because of payments?
 11 A Yes. That would be because the payment schedules were put
 12 in place and so payments were actually being made at that
 13 point.
 14 Q Now, you indicated you did the audit of the special
 15 assessment revolving fund or do you have an outside auditor
 16 that looks at those?
 17 A We have an outside auditor that provides audit services and
 18 provides us with financial statements on an annual basis.
 19 Q And who is that?
 20 A Presently it's Vredveld Haefner LLC.
 21 Q And who was it --
 22 A Previously it was Rehmann Robson.
 23 Q In the years from 2004 through present has that independent
 24 or outside auditor ever raised any questions about the
 25 special assessment revolving fund?

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

DAMGHANI v. CITY OF KENTWOOD, ET AL

DEPOSITION OF TOM CHASE

1 A No.

2 Q Do you know of any other instances where one owner in a

3 special assessment district has been able to negotiate a new

4 repayment schedule?

5 A The ordinance provides for either payment in full or a

6 ten-year payment schedule on any other type of assessment,

7 but this is different than those.

8 Q But in this instance, Holland Home negotiated a different

9 payment schedule before the ordinance was changed, right?

10 A Well, the ordinance was not changed. It was just simply an

11 amendment to their agreement.

12 Q And that included one part of the Ravines or the Pfeiffer

13 Woods Drive assessment?

14 A They have two payment schedules. One is the Breton North

15 and the other is their portion of the Ravines.

16 Q Do you know of any other situation other than this where one

17 property's within a special assessment district has been

18 able to negotiate a different schedule than what the

19 assessment -- special assessment provided?

20 A I'm not aware of any.

21 Q I thought I heard you indicate that your interpretation of

22 the assessment was that the trigger for the principal was

23 development of the property?

24 A Whatever steps moved forward with development. That's my

25 understanding of it.

Page 110

1 counsel, including those tax bills from the -- I mean the

2 assessment bills --

3 A Yes.

4 Q -- special assessment bills from your counsel, I am finished

5 and I much appreciate your time, sir.

6 A Very well. Thank you.

7 MR. DONALD VISSER: Thank you.

8 MR. OTIS: I don't have any questions.

9 (Deposition concluded at 2:00 p.m.)

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Page 112

1 Q Now, the Damghani parcel B-4 isn't being developed, is it?

2 A No.

3 Q Why is the city seeking to collect principal now if the goal

4 was to defer until development?

5 A The ten-year term -- if it had developed prior to September

6 7th of 2014, some portion of it might have been due -- or

7 would have been due and payable. It's because we're past

8 the September 7th, 2014, date, which was the term of the

9 voluntary special assessment agreement.

10 Q So your belief that prior to the ten years the only thing

11 that would have triggered it is development?

12 A Right; that's correct.

13 Q And development of the parcel or development of any of the

14 parcel within the district?

15 A They would have had probably to move forward with a phase,

16 an entire phase, in order to move forward with development.

17 Q And what do you mean by "phase"?

18 A Well, as we saw on the earlier one there's one of them that

19 has four phases, the rest have two phases, designated phases

20 as part of the -- probably as part of the planned unit

21 development approval.

22 Q So then it would be moving forward with one of those phases

23 that would trigger it?

24 A That would be what I would believe.

25 Q Other than a couple follow-ups that I'll do with your

Page 111

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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

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I certify that this transcript, consisting of 112 pages, is a complete, true and correct record of the testimony of Tom Chase held in this case on November 29, 2016.

I also certify that prior to taking this deposition, Tom Chase was duly sworn to tell the truth.

December 12, 2016

Marie de la Vega
Marie De La Vega, CER 7614
Notary Public, State of Michigan
County of Kent
My commission expires 05/2017
Network Reporting Corporation
2604 Sunnyside Drive
Cadillac, Michigan 49601-8749



Cheryl Poley

From: Jeff Sluggett
Sent: Thursday, June 26, 2014 3:51 PM
To: Ken.Parrish@kentcountymi.gov
Cc: Chase, Tom; Rich Houtteman
Subject: Kentwood Matter
Attachments: Kentwood-KCT-B3-B and B-4 - Amendment to Voluntary SAD Agreement (00029024).docx; Kentwood - Resolution to Extend Payment Term -KCT-B3-B and B-4 (00029022).docx

Ken:

Attached for your review are drafts of the documentation which I anticipate using for the extension of payment terms which we've discussed.

I know that there will be some provisions/additions/subtractions to these, but this should give you an overview of the approach I'd recommend taking. The documentation for the Holland Home portion of the SAD will be treated in a similar fashion.

I have not included the various exhibits, etc. and those will of course need to be finalized over the next couple of weeks. Still, this should give your office and the City an opportunity to start fine tuning.

Would be glad to discuss questions or concerns. Otherwise, will plan to finalize by end of next week so you can review before City Commission meeting on the 15th of July.

Thanks.

Jeff

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

Jeffrey V.H. Sluggett
Direct Dial: (616) 965-9341
Direct Fax: (616) 965-9351
Email: jsluggett@bsmlawpc.com

June 29, 2015

Mr. Kenneth Parrish
Kent County Treasurer
Kent County Administration Building
300 Monroe Ave. NW
Grand Rapids, MI 49503-2288

**Re: City of Kentwood / Ravines Neighborhood B1
Amendment to Voluntary Special Assessment/Development Agreement**

Dear Ken:

Enclosed for your records is an original *Amendment to Voluntary Special Assessment/Development Agreement (Ravines Neighborhood B1)* recorded with the Kent County Register of Deeds on June 23, 2015. Also enclosed is a copy of *A Resolution to Extend Payment Terms for a Confirmed Special Assessment District (Ravines Neighborhood B1)*, adopted by the Kentwood City Commission on June 16, 2015.

Please contact us should there be any questions. Thank you for all your help on this matter.

Very truly yours,

Jeffrey V.H. Sluggett

Enclosures

{05939-004-00044121.1}

CITY000016

0201b



20150623-0053765

Mary Hollinrake P:17 2:03PM
Kent Cnty MI Reg: 06/23/2015 SEAL

RECD KENT COUNTY, MI REG

2015 JUN 23 PM 2:02

**AMENDMENT TO VOLUNTARY SPECIAL
ASSESSMENT/DEVELOPMENT AGREEMENT
(RAVINES NEIGHBORHOOD B1)**

This Amendment to Voluntary Special Assessment/Development Agreement is dated June 16, 2015 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the conveyance of certain real property.

C. Subsequently, the owner of a tract of real property (i.e., neighborhood) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on its property. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the property was forfeited and a judgment of foreclosure was entered with respect to the property on March 31, 2015. As a result of the foreclosure, the property is now titled to the KCT.

D. The real property owned by the KCT remains subject to the terms of the Agreement, as amended, is legally described on attached Exhibit A, which is incorporated by reference ("Property").

E. The obligations set forth in the Agreement were covenants running with the land which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.



20150623-0053765

Mary Hollinrake P:2/7 2:03PM
Kent, Cnty, MI Registr 06/23/2015 SEAL

~~F. In accordance with its adopted ordinances and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").~~

G. A balloon payment in the principal amount of \$403,620 plus accrued interest is due on September 7, 2015 under the terms set forth as part of the Roll and the Agreement.

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable, enhancing economic development opportunities within the City, and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be payable in accordance with the schedule attached as **Exhibit B** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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20150623-0053765

Mary Hollinrake P:3/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

~~3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 467, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, the KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, agreements, special assessments, etc. which impact the special assessment or Roll as amended herein.~~

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations and pledges contained in this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: *Stephen Kepley*
Stephen Kepley, Mayor

By: *Dan Kasunic*
Dan Kasunic, City Clerk

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on June 18, 2015, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
* MARY L. BREMER
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 08-09-2016

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

KENT COUNTY TREASURER

STATE OF MICHIGAN

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION



20150623-0053765

Mary Hollinrake P:417 2:03PM
Kent Cnty MI Rgstr 05/23/2015 SERL

KENT COUNTY TREASURER

STATE OF MICHIGAN

COUNTY OF KENT

By:

Kenneth D. Parish

Kenneth Parish

Acknowledged before me in Kent County,
Michigan on June 23, 2015, by Kenneth
Parish, the Treasurer of Kent County,
Michigan, for that office.

Rose Heys

*
Rose Heys
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 5/26/2020

*Name must be typed or printed in black in
beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY
ANY REAL PROPERTY.

20150623-0053765
Mary Hollinrake P:5/7 2:03PM
Kent Cnty MI Restr 06/23/2015 SEAL

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E 1/2 COM AT E 1/4 COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W 1/4 LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E 1/4 COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

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20150623-0053765

Mary Hollinrake P:777 2:03PM
Kent Cnty MI Regtr 06/23/2015 SEAL

Pfeiffer Woods Drive

Special Assessment District

Proposed Principal & Interest Payments

Ravines PUD Neighborhood B1

Initial principal balance \$ 403,620.00
Interest rate 5.50%
of days in year 365
Calculate initial interest from 9/7/2014
Target annual payment amount \$ 54,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
9/7/2014				\$ 403,620.00
9/7/2015	\$ 22,199.10	\$ 31,800.90	\$ 54,000.00	\$ 371,819.10
9/7/2016	\$ 20,506.08	\$ 33,493.92	\$ 54,000.00	\$ 338,325.18
9/7/2017	\$ 18,607.88	\$ 35,392.12	\$ 54,000.00	\$ 302,933.06
9/7/2018	\$ 16,661.32	\$ 37,338.68	\$ 54,000.00	\$ 265,594.38
9/7/2019	\$ 14,607.69	\$ 39,392.31	\$ 54,000.00	\$ 226,202.07
9/7/2020	\$ 12,475.20	\$ 41,524.80	\$ 54,000.00	\$ 184,677.27
9/7/2021	\$ 10,157.25	\$ 43,842.75	\$ 54,000.00	\$ 140,834.52
9/7/2022	\$ 7,745.90	\$ 46,254.10	\$ 54,000.00	\$ 94,580.42
9/7/2023	\$ 5,201.92	\$ 48,798.08	\$ 54,000.00	\$ 45,782.34
9/7/2024	\$ 2,524.93	\$ 45,782.34	\$ 48,307.27	\$ -
	<u>\$ 130,687.27</u>	<u>\$ 403,620.00</u>	<u>\$ 534,307.27</u>	

2064.xlsx

6/2/2015

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

Cheryl Poley

From: Jeff Sluggett
Sent: Thursday, July 10, 2014 10:01 AM
To: Ken.Parrish@kentcountymi.gov
Cc: Rich Houtteman ()
Subject: FW: Kentwood-Ravines Neighborhood B3-B and B4 Resolution & Amendment
Attachments: Kentwood- Ravines Neighborhood B3-B and B4 Resolution Amendment (00029510).PDF

Ken: This is going in next week's agenda packet for Kentwood's Commission. I've asked that they approve Thursday night. Assuming they do, we'll get copies for you signature on Wednesday if you are available.(?)

Thanks.

Jeff

From: Sandra Cameron
Sent: Thursday, July 10, 2014 9:58 AM
To: Jeff Sluggett
Subject: Kentwood-Ravines Neighborhood B3-B and B4 Resolution & Amendment

Cheryl Poley

From: Jeff Sluggett
Sent: Monday, April 06, 2015 1:36 PM
To: Parrish, Kenneth
Subject: RE: Questions

Thanks.

From: Parrish, Kenneth [<mailto:ken.parrish@kentcountymi.gov>]
Sent: Monday, April 06, 2015 12:04 PM
To: Jeff Sluggett
Subject: Re: Questions

1. land sale proceeds account
2. You are correct.

Ken

Sent from my iPhone

On Apr 6, 2015, at 10:51 AM, Jeff Sluggett <jsluggett@bsmlawpc.com> wrote:

Ken: Sorry to bother you but had two quick questions if you have a moment --

1. The fund into which delinquent property revenues (from foreclosure sales) is deposited is called what?
2. My recollection is that so long as the overall sales revenues from the annual foreclosure process exceed taxes and special assessments due, that County typically does not seek reimbursement for taxing units, is that correct?

Thanks.

Jeffrey V.H. Sluggett

<image003.jpg>

15 Ionla Ave. SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9340

Direct Dial (616) 965-9341
Direct Fax (616) 965-9351
jsluggett@bsmlawpc.com

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Tax Advice Disclosure: IRS regulations require that we inform you that to the extent this communication (or any attachments) contains any statement regarding federal taxes, that statement was not written or intended to be used, and it cannot be used,

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

Ken, I'm really hoping to get the amendment for neighborhoods B3-B and B-4 to the Kent County Register of Deeds tomorrow if possible so changes can be made to the County's auction website (if there is one and as relevant) and to the City's records.

~~Holland Home is not, I believe, as pressing in terms of timing, and after I get the certified resolutions and amendments back for those properties I will mail the originals to you Jack, asking that you return to me for recording (or that you proceed to get recorded with copies to me [I'm fine either way]).~~

My assistant, Sandra, has been asked to coordinate the above and so feel free to direct questions her way.

Thanks again to everyone for all of your help on this project.

Jeff

Jeffrey V.H. Sluggett



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Cheryl Poley

From: Jeff Sluggett
Sent: Monday, April 06, 2015 1:36 PM
To: Parrish, Kenneth
Subject: Re: Questions

Thanks.

From: Parrish, Kenneth [mailto:ken.parrish@kentcountymi.gov]
Sent: Monday, April 06, 2015 12:04 PM
To: Jeff Sluggett
Subject: Re: Questions

1. land sale proceeds account
2. You are correct.

Ken

Sent from my iPhone

On Apr 6, 2015, at 10:51 AM, Jeff Sluggett <jsluggett@bsmlawpc.com> wrote:

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Cheryl Poley

From: Jeff Sluggett
Sent: Tuesday, May 26, 2015 5:05 PM
To: Alex Santos
Subject: FW: B1 Tax Foreclosure SAD Restructure
Attachments: Damone.xlsx; Voluntary SAD Amendment B3-B4 2014.pdf; Ravines PP Presentation 2014.pptx

PPT

From: Houtteman, Rich [mailto:HouttemanR@ci.kentwood.mi.us]
Sent: Monday, April 27, 2015 1:46 PM
To: Sheldon, Laurie; 'ken.parrish@kentcounty.org'
Cc: Jeff Sluggett; Chase, Tom; Ring, Debby; Johnson, Andy; Kasunic, Dan; 'Terpstra,Denise'
Subject: B1 Tax Foreclosure SAD Restructure

Good Afternoon,

The attachments (I believe) provide clues to how we proceed with the restructuring of B-1. Tom stopped by and was wondering if it may make more sense to have a 9 year payback so that all the SADs' get paid back in full at the same time.

As you may recall, we were unable to restructure B1 because it was not yet in the Tax Foreclosure process. I suppose we should get clarification of the deadline when the current property owner has lost all rights to the property. We should also establish when City Commission action is desired to enact the restructuring and have filed with the County.

Ok. Thanks for your input in advance!

Rich

44th Shaffer/LLC

(Damone Property)

2013	41.18.22.426.001	41.18.22.276.001	Total
	B-1	B-4	
2013 Delinquent Taxes	57,412.77	45,543.73	102,956.50
Construction Balloon Due 9/1/2014	403,600.00	353,167.50	756,767.50
Landscape Balloon Due 1/1/2014	38,615.80	33,788.82	72,404.62
Landscape Interest Due 2014	3,185.80	2,787.58	5,973.38
Construction Interest Due 2014	22,199.10	19,424.21	41,623.31
	525,013.47	454,711.84	979,725.31

2012	41.18.22.426.001	41.18.22.276.001	Total
	B-1	B-4	
2012 Summer Tax	25,055.42	18,131.92	43,187.34
2012 Winter Tax	12,574.62	10,165.89	22,740.51
SA Construction (added to WTAX)	98,712.77	97,121.05	195,833.82
SA Landscape (added to WTAX)	6,371.60	5,575.16	11,946.76
	142,714.41	130,994.02	273,708.43

2011	41.18.22.426.001	41.18.22.276.001	Total
	B-1	B-4	
2011 Summer Tax	24,262.64	17,558.20	41,820.84
2011 Winter Tax	8,093.54	5,857.05	13,950.59
	32,356.18	23,415.25	55,771.43

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

Cheryl Poley

From: Jeff Sluggett
Sent: Thursday, May 28, 2015 5:22 PM
To: Parrish, Kenneth
Subject: RE: Pfeiffer Woods Neighborhood B-1

Thanks Ken, this will help

From: Parrish, Kenneth [<mailto:ken.parrish@kentcountymi.gov>]
Sent: Thursday, May 28, 2015 2:57 PM
To: Jeff Sluggett; Rich Houtteman (houttemanr@ci.kentwood.mi.us)
Cc: Sheldon, Laurle; Chase, Tom
Subject: RE: Pfeiffer Woods Neighborhood B-1

All,

The date of judgment of foreclosure is March 31, 2015.

\$383,397.30 is the minimum bid for the first auction. That includes taxes, special assessments, local administration fees and interest, and delinquent fees and interest. The special assessments break down as follows:

2011: No assessments

2012: Construction \$98,712.77
 Landscape \$ 6,371.60

2013: Construction \$22,199.10
 Landscape \$ 3,185.80

2014: Landscape \$44,568.45

I agree with the other statements.

Ken

This message has been prepared on resources owned by Kent County, MI.
 It is subject to the Acceptable Use Policy and Procedures of Kent County.

ken.parrish@kentcountymi.gov
 Kenneth D. Parrish CPA, CGMA
 Kent County Treasurer
 Treasurer's Office
 (616) 632-7513

From: Jeff Sluggett [<mailto:jsluggett@bsmlawpc.com>]
Sent: Wednesday, May 27, 2015 5:02 PM
To: Rich Houtteman (houttemanr@ci.kentwood.mi.us)

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

Cheryl Poley

From: Jeff Sluggett
Sent: Tuesday, June 09, 2015 10:42 AM
To: Johnson, Andy
Subject: RE: Ravines B1 Neighborhood

Thanks.

From: Johnson, Andy [<mailto:johnsona@ci.kentwood.mi.us>]
Sent: Tuesday, June 09, 2015 10:40 AM
To: Jeff Sluggett; Ken.Parrish@kentcountymi.gov; Houtteman, Rich
Cc: Sheldon, Laurie; Chase, Tom
Subject: RE: Ravines B1 Neighborhood

I have verified the legal and the parcel numbers to make sure they are correct. They match our tax description. I also sketched it to make sure the parcel according to the legal looked correct and it does.

Andy Johnson, MMAO
Deputy Assessor
City of Kentwood

From: Jeff Sluggett [<mailto:jsluggett@bsmlawpc.com>]
Sent: Monday, June 08, 2015 5:07 PM
To: Ken.Parrish@kentcountymi.gov; Houtteman, Rich
Cc: Sheldon, Laurie; Chase, Tom; Johnson, Andy
Subject: Ravines B1 Neighborhood

Am attaching my initial drafts of the proposed Resolution to extend the payment terms for the SAD for Neighborhood B1, and to amend the Voluntary SAD Agreement. Please review the legal description, numbers, etc. The pattern follows that which we used last year, but also acknowledges that the history on this parcel is different. Anyway, I'll wait for your comments.

As an aside, please look at what I calculated to be the balloon payment on the P&I for the SAD (Recital G in Amendment). I used that figure based on 44th Shaffer/LLC worksheet I got from the City in April. If I'm mistaken feel free to mark up and send back to me.

Would appreciate any comments as soon as possible. Thanks.

Jeff

Jeffrey V.H. Sluggett



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SLUGGETT
MORGAN

15 Ionia Ave. SW, Suite 640

Direct Dial (616) 965-9341

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM

From: Parrish, Kenneth [mailto:ken.parrish@kentcountymi.gov]
Sent: Tuesday, June 09, 2015 4:39 PM
To: Jeff Sluggett
Cc: Houtteman, Rich; Sheldon, Laurie; Chase, Tom; Johnson, Andy
Subject: Re: Final Drafts ?

I reviewed yesterday's version and thought they looked fine. I'm sure today's version is just as fine.

Ken

Sent from my iPhone

On Jun 9, 2015, at 4:16 PM, Jeff Sluggett <jsluggett@bsmlawpc.com> wrote:

Am attaching what I think will be the final drafts.

Changes made to what you were sent yesterday were minimal.

Anyway, if you can get your comments/questions to me by early afternoon tomorrow that will allow us to make any final changes and get to City Clerk for inclusion in City Commission packet. Particularly, I'd like Tom and Laurie to weigh in on the balloon amount shown as due and owing in Recital "G" of the Amendment, which is to be spread as part of the Payment Schedule.

Ken, if you see anything of concern please advise.

Thanks.

Jeff

Jeffrey V.H. Sluggett



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EXHIBIT
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REC'D KENT COUNTY, MI REG

2014 JUL 16 PM 1:09



20140716-0055364

Mary Hollinrake P 1/B 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

**AMENDMENT TO VOLUNTARY SPECIAL
ASSESSMENT/DEVELOPMENT AGREEMENT
(RAVINES NEIGHBORHOOD B3-B AND B4)**

This Amendment to Voluntary Special Assessment/Development Agreement is dated July 15, 2014 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the purchase of additional real property by 44th/Shaffer.

C. Subsequently, the owners of two large tracts of real property (i.e., neighborhoods) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on their respective properties. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the properties were forfeited and judgments of foreclosure were entered with respect to each of the properties on March 31, 2014. As a result of the foreclosure, the properties are now titled to the KCT.

D. The real properties owned by the KCT, and which remain subject to the terms of the Agreement, as amended, are legally described on attached **Exhibit A**, which is incorporated by reference (collectively referred to herein as the "Property").

E. The obligations set forth in the Agreement were covenants running with the land, and which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

F. In accordance with its adopted ordinance and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment



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 Mary Hollinrake P 2/B 1 11PM
 Kent Cnty MI Regstr 07/16/2014 SEAL

district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").

G. A balloon payment on the outstanding principal and interest attributable to the Property in the amount of \$791,210.98 is due on September 7, 2014 under the terms set forth as part of the Roll and the Agreement, allocated as follows:

Neighborhood	Principal	Interest	Total
B3-B	\$396,795.51	\$21,823.76	\$418,619.27
B4	\$353,167.50	\$19,424.21	\$372,591.71
Total	\$749,963.01	\$41,247.97	\$791,210.98

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable at public auction by the foreclosing governmental unit, enhancing economic development opportunities within the City and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:


1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be made in accordance with the schedules attached as Exhibit B to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise


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Mary Hollinrake P 3/8 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to the special assessment or Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, etc. impacting the special assessment or Roll.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations under this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

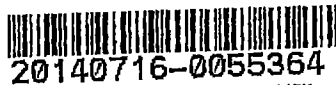
7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

(Remainder of page left intentionally blank.)

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

RECEIVED by MSC 6/13/2022 11:00:48 AM



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Kent Cnty MI Rgsr 07/16/2014 SEAL

CITY OF KENTWOOD

By: *Stephen Kepley*
Stephen Kepley, Mayor

By: *[Signature]*
Dan Kasunic, City Clerk

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on July 16, 2014, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
*
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 8-9-2016

KENT COUNTY TREASURER

By: *Kenneth D. Parrish*
Kenneth Parrish

DENISE M. TERPSTRA
Notary Public, State of Michigan
County of Kent
My Commission Expires: 10/05/2018
Acting in the County of Kent

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on 7-16-14, by Kenneth Parrish, the Treasurer of Kent County, Michigan, for that office.

Denise M. Terpstra
*
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: _____

*Name must be typed or printed in black in beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY ANY REAL PROPERTY.

29024



20140716-0055364

Mary Hollinrake P 5/8 1 11PM
 Kent Cnty MI Rgstr 07/16/2014 SEAL

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B3-B: 41-18-22-201-001

PART OF NE ¼ COM AT NE COR OF SEC TH S 3D 35M 29S E ALONG E SEC LINE 395.0 FT TH S 89D 42M 31S W 258.0 FT TH S 3D 35M 29S E 120.0 FT TH N 89D 42M 31S E 258.0 FT TH S 3D 35M 29S E 705.38 FT TH N 54D 47M 03S W 395.85 FT TH S 89D 45M 47S W 308.0 FT TH N 48D 05M 08S W 57.70 FT TH NWLY 85.19 FT ALONG A 185 FT RAD CURVE TO LT/LONG CHORD BEARS N 61D 16M 42S W 84.44 FT TH NWLY 317.79 FT ALONG A 726.68 FT RAD CURVE TO LT/LONG CHORD BEARS N 86D 59M 57S W 315.27 FT/TH N 6D 29M 36S W 3.24 FT TH NLY 24.30 ALONG A 345 FT RAD CURVE TO LT/LONG CHORD BEARS N 8D 46M 49S W 24.29 FT/TH N 10D 47M 53S W 144.99 FT TH NWLY 31.28 FT ALONG 444.86 FT RAD CURVE TO RT/LONG CHORD BEARS N 57D 59M 27S W 31.27 FT/TH N 55D 58M 35S W 154.50 FT TH N 64D 32M 33S W 11.03 FT TH N 71D 23M 21S W 59.08 FT TH NWLY 82.21 FT ALONG A 522.84 FT RAD CURVE TO LT/LONG CHORD BEARS N 76D 45M 27S W 82.13 FT/TH S 8D 30M 37S W 110.0 FT TH NWLY 60.08 FT ALONG A 320.0 RAD CURVE TO LT/LONG CHORD BEARS N 86D 52M 07S W 60.0 FT/TH S 2D 14M 52S E 60.0 FT TH S 5D 37M 05S E 120.40 FT TH S 21D 10M 34S W 464.76 FT TH S 0D 45M 27S E 325.54 FT TH S 64D 51M 03S W 319.71 FT TH SWLY 215.67 FT ALONG A 760 FT RAD CURVE TO RT/LONG CHORD BEARS S 72D 58M 49S W 214.94 FT/TH S 81D 06M 35S W 155.45 FT TH NWLY 31.99 FT ALONG A 47.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 79D 35M 41S W 31.39 FT/TH NELY 42.22 FT ALONG A 177.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 53D 29M 04S W 42.12 FT/TH NWLY 79.46 FT ALONG A 92.5 FT RAD CURVE TO LT/LONG CHORD BEARS N 71D 16M 48S W 77.04 FT/TH NWLY 128.57 FT ALONG A 452.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 87D 45M 01S W 128.14 FT/TH NWLY 67.97 FT ALONG A 540 FT RAD CURVE TO LT/LONG CHORD BEARS N 83D 12M 58S W 67.92 FT/TO N&S ¼ LINE TH N 3D 29M 48S W ALONG N&S ¼ LINE 1768.48 FT TO N ¼ COR TH N 89D 42M 31S E N 89D 42M 31S E 2633.71 FT TO BEG*SEC 22 T6N R11W 74.11 A.

and

Parcel B4: 41-18-22-276-001

PART OF E ½ COM AT NE COR OF SEC TH S 3D 35M 29S E 1980.57 FT ALONG E SEC LINE TH S 89D 49M 02S W 40.07 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 35M 29S E ALONG W LINE OF SD AVE 660.18 FT TO E&W ¼ LINE TH N 89D 49M 02S E ALONG E&W ¼ LINE 0.02 FT TH S 3D 10M 02S E 61.23 FT TH S 88D 09M 27S W 467.76 FT TH N 69D 14M 04S W 227.04 FT TH N 75D 46M 26S W 333.65 FT TH S 70D 13M 01S W 266.80 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 36D 39M 55S W 187.39 FT TH N 53D 54M 21S W 346.87 FT TH N 64D 29M 25S W 183.51 FT TH N 30D 34M 11S W 393.92 FT TO S LINE OF PFEIFFER WOODS DR TH NELY 90.86 FT ALONG 840 FT RAD CURVE TO LT/LONG CHORD BEARS N 67D 56M 59S E 90.82 FT/TH N 64D 51M 03S E 368.73 FT TH ELY 1119.01 FT ALONG A 960 FT RAD CURVE TO RT/LONG CHORD BEARS S 81D 45M 22S E 1056.72 FT/TH S 41D 54M 24S W 17.75 FT TH S 47D 02M 47S E 91.85 FT TH SELY 208.54 FT ALONG A 277 FT RAD CURVE TO LT/LONG CHORD BEARS S 68D 36M 53S E 203.65/N 89D 49M 02S E 258.88 FT TO BEG*SEC 22 T6N R11W 34.57 A.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION



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Mary Hollinrake P 6/8 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

EXHIBIT B

PAYMENT SCHEDULES

Attached

RECEIVED by MSC 6/13/2022 11:00:48 AM


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Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

7/9/2014

Ravines PUD Neighborhood B3-B				
Initial principal balance		\$	396,795.51	
Interest rate		5.50%		
# of days in year		365		
Calculate initial interest from		1/17/2014		
Target annual payment amount		\$	50,000.00	
Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				\$ 396,795.51
9/7/2014	\$ 13,931.33	\$ 21,068.67	\$ 35,000.00	\$ 375,726.84
9/7/2015	\$ 20,664.98	\$ 29,335.02	\$ 50,000.00	\$ 346,391.82
9/7/2016	\$ 19,103.75	\$ 30,896.25	\$ 50,000.00	\$ 315,495.57
9/7/2017	\$ 17,352.26	\$ 32,647.74	\$ 50,000.00	\$ 282,847.83
9/7/2018	\$ 15,556.63	\$ 34,443.37	\$ 50,000.00	\$ 248,404.46
9/7/2019	\$ 13,662.25	\$ 36,337.75	\$ 50,000.00	\$ 212,066.71
9/7/2020	\$ 11,695.62	\$ 38,304.38	\$ 50,000.00	\$ 173,762.33
9/7/2021	\$ 9,556.93	\$ 40,443.07	\$ 50,000.00	\$ 133,319.26
9/7/2022	\$ 7,332.56	\$ 42,667.44	\$ 50,000.00	\$ 90,651.82
9/7/2023	\$ 4,985.85	\$ 45,014.15	\$ 50,000.00	\$ 45,637.67
9/7/2024	\$ 2,510.07	\$ 45,637.67	\$ 48,147.74	\$ -
	<u>\$ 136,352.23</u>	<u>\$ 396,795.51</u>	<u>\$ 533,147.74</u>	

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 Mary Hollinrake P 8/8 1 11PM
 Kent Cnty MI Rgstr 07/16/2014 SEAL

Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

7/9/2014

Ravines PUD Neighborhood B4				
		Initial principal balance	\$	353,167.50
		Interest rate		5.50%
		# of days in year		365
		Calculate initial interest from		1/17/2014
		Target annual payment amount	\$	45,000.00
Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				\$ 353,167.50
9/7/2014	\$ 12,399.57	\$ 17,600.43	\$ 30,000.00	\$ 335,567.07
9/7/2015	\$ 18,456.19	\$ 26,543.81	\$ 45,000.00	\$ 309,023.26
9/7/2016	\$ 17,042.84	\$ 27,957.16	\$ 45,000.00	\$ 281,066.10
9/7/2017	\$ 15,458.64	\$ 29,541.36	\$ 45,000.00	\$ 251,524.74
9/7/2018	\$ 13,833.86	\$ 31,166.14	\$ 45,000.00	\$ 220,358.60
9/7/2019	\$ 12,119.72	\$ 32,880.28	\$ 45,000.00	\$ 187,478.32
9/7/2020	\$ 10,339.56	\$ 34,660.44	\$ 45,000.00	\$ 152,817.88
9/7/2021	\$ 8,404.98	\$ 36,595.02	\$ 45,000.00	\$ 116,222.86
9/7/2022	\$ 6,392.26	\$ 38,607.74	\$ 45,000.00	\$ 77,615.12
9/7/2023	\$ 4,268.83	\$ 40,731.17	\$ 45,000.00	\$ 36,883.95
9/7/2024	\$ 2,028.62	\$ 36,883.95	\$ 38,912.57	\$ -
	<u>\$ 120,745.07</u>	<u>\$ 353,167.50</u>	<u>\$ 473,912.57</u>	

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Chapter 10 - ANIMALS

FOOTNOTE(S):

⁽²¹⁾ Cross reference— Environment, ch. 78.

ARTICLE 1. - IN GENERAL

Sec. 10-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal means a dog, cat, bird, reptile, mammal, fish or any other dumb creature.

Animal control officer means the agent of the county department of animal control and any other person designated for such duties by the Mayor.

Animal shelter means the county animal shelter or another facility designated by the City Commission.

Department means the county health department, division of animal control.

Director means the director of the county health department, division of animal control.

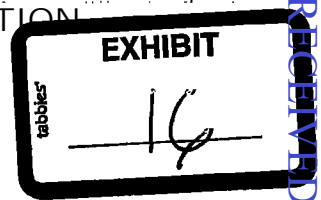
Impounded means any animal received into the custody of any animal shelter pursuant to this chapter or any state statute.

Kennel means any establishment which keeps or boards dogs or cats for profit, whether for breeding, sale, or sporting or grooming purposes.

Owner means, when applied to the proprietorship of an animal, every person having a right of property in the animal, and every person who keeps or harbors the animal or has it in his care, and every person who permits the animal to remain on or about any premises occupied by him. For the purposes of this chapter, any person keeping or harboring any animal for seven consecutive days shall be deemed the owner thereof within the meaning of this chapter.

(Comp. Ords. 1987, §§ 35.321—35.332)

Cross reference— Definitions generally, § 1-2.



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RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

Sec. 10-2. - Construction.

It is deemed by the City that the ownership of an animal carries with it responsibilities to the City and its residents with regard to the care and custody of such animal. In interpretation and application, the provisions of this chapter shall be construed to impose a primary responsibility for compliance with the provisions of this chapter on the owner of such animal.

(Comp. Ords. 1987, § 35.311)

Sec. 10-3. - Enforcement responsibility.

Responsibility for enforcement of this chapter shall be vested in the county sheriff's department, City police department, state police and the county health department, division of animal control, its agents and employees. Primary responsibility for enforcement is vested in the on duty agent or employee of the county health department, division of animal control.

(Comp. Ords. 1987, § 35.313)

Sec. 10-4. - Care guidelines.

Every animal and pet owner, and every person who owns, conducts, manages or operates any animal establishment for which a license is required shall comply with each of the following conditions:

- (1) Housing facilities for animals shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals.
- (2) All animals shall be supplied with sufficient, good, wholesome food and water as often as the feeding habits of the respective animals require.
- (3) All animals and animal buildings or enclosures shall be maintained in a clean and sanitary condition.
- (4) No animal shall be without attention more than 24 consecutive hours. Whenever an animal is left unattended at a commercial animal facility, the name, address and telephone number of the responsible person shall be posted in a conspicuous place at the front of the property.
- (5) Every reasonable precaution shall be used to ensure that animals are not teased, abused, mistreated, annoyed, tormented or in any manner made to suffer by any person or means.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

- (6) No condition shall be maintained or permitted that is or could be injurious to the animals.
- (7) All reasonable precautions shall be taken to protect the public from the animals and animals from the public:
- (8) Every animal establishment shall sufficiently isolate sick animals so as not to endanger the health of other animals.
- (9) Every building or enclosure wherein animals are maintained shall be constructed of easily cleaned materials, and shall be kept in a sanitary condition. The building shall be properly ventilated to prevent drafts and remove odors. Heating and cooling shall be provided as required, according to the physical need of the animals, with sufficient light to allow observation of animals and sanitation.
- (10) The owner or custodian shall take any animal to a veterinarian for examination and treatment if the director or his agent finds it necessary in order to maintain the health of the animal and orders such action.
- (11) All animal rooms, cages, kennels and runs shall be of sufficient size to provide adequate and proper accommodations for the animals kept therein.
- (12) Every violation of an applicable regulation shall be corrected within a reasonable time to be specified by the director.
- (13) Proper shelter and protection from the weather shall be provided at all times. This shall mean a minimum of a roofed, three-sided shelter of suitable size.
- (14) No person shall give an animal any alcoholic beverage, unless prescribed by a veterinarian.
- (15) No person shall allow animals which are natural enemies, temperamentally unsuited or otherwise incompatible to be quartered together or so near each other as to cause injury, fear or torment. If two or more animals are so trained that they can be placed together and do not attack each other or perform or attempt any hostile act to each other, such animals shall be deemed not to be natural enemies.
- (16) No person shall allow the use of any tack, equipment, device, substance or material that is, or could be, injurious or cause unnecessary cruelty to any animal.
- (17)

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Working animals shall be given rest periods. Confined or restrained animals shall be given exercise proper for the individual animal under the particular conditions.

- (18) No person shall work, use or rent any animal which is overheated, weakened, exhausted, sick, injured, diseased, lame or otherwise unfit.
- (19) No person shall allow any animal which the animal shelter has suspended from use to be worked or used until such animal is released by the animal shelter.
- (20) No person shall allow any animal to constitute or cause a hazard or be a menace to the health, peace or safety of the community.
- (21) No person who has injured or killed any domestic animal or pet in a motor vehicle shall fail to notify the director or owner of the animal or the City police department.
- (22) No person having a female domestic animal or pet in heat shall permit such animal to be contained in such a fashion that stray animals have access to such animal, or that permits the animal to escape.
- (23) No person shall confine an animal on a chain for more than four hours unless the chain permits movement over at least 30 square feet and allows the animal free access to a suitable shelter.
- (24) No person shall keep any animal in a manner which creates a nuisance because of odor.

(Comp. Ords. 1987, § 35.371)

State law reference— Crimes relating to animals and birds, MCL 750.49 et seq.

Sec. 10-5. - Abuse.

A person shall not:

- (1) Sell, offer for sale, barter or give away as pets, toys, premiums or novelties any baby chickens, ducklings or other fowl under three months of age, or rabbits under two months of age.
- (2) Color, dye, stain or otherwise change the natural color of the fowl or rabbits described in subsection (1) of this section.
- (3) Bring or transport the fowl or rabbits described in subsection (1) of this

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

section into the City.

- (4) Molest, injure, kill or capture any wild bird, or molest or disturb any wild bird's nest, or the contents thereof, on either public or private property, with the exception of the legal hunting of game birds as permitted under state law.
- (5) Tease, abuse, mistreat, annoy, torment or in any manner make any animal suffer, except in the lawful hunting of such animal, or as otherwise provided under state or federal law.

(Comp. Ords. 1987, § 35.372)

State law reference— Crimes relating to animals and birds, MCL 750.49 et seq.; dying fowl or game, MCL 752.91.

Sec. 10-6. - Defecation on public and private property.

No person owning or having custody or control of an animal shall intentionally, or through failure to exercise due care, permit the animal to defecate on any public or private property, other than the property of such person, unless such person immediately collects and properly disposes of all such fecal matter.

(Comp. Ords. 1987, § 36.373)

Sec. 10-7. - Violations, penalties.

A violation or refusal to comply with any provision of sections 10-1 through 10-4, inclusive, or section 10-6 of Article 1, or a violation or refusal to comply with any provision of sections 10-41 through 10-104, inclusive, of Article 2 of this chapter, shall be deemed a municipal civil infraction and shall subject the violator to such fines, costs and other relief as provided for in section 1-7 of this Code.

(Ord. No. 14-05, § 1, 7-28-2005)

Secs. 10-8—10-40. - Reserved.

ARTICLE 2. - ADMINISTRATION AND ENFORCEMENT

FOOTNOTE(S):

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

⁽²²⁾ Cross reference— Administration, ch. 2.

DIVISION 1. - GENERALLY

Sec. 10-41. - Representative investigations.

Representatives of the county animal shelter, police department or other duly designated representatives may enter any premises where animals are maintained, for the purpose of investigation or inspection as to whether or not any portion of such premises, building, structure, enclosure, pen or cage is being used, kept or maintained in violation of this chapter or any other county ordinance. No person shall deny, prevent or obstruct, or attempt to deny, prevent or obstruct such access. This section does not permit any person to enter a private dwelling, except where necessary to rescue an animal. A search warrant shall be used, where required.

(Comp. Ords. 1987, § 35.374)

Secs. 10-42—10-60. - Reserved.

DIVISION 2. - IMPOUNDMENT

Sec. 10-61. - Generally.

Any animal which is in violation of the provisions of this chapter shall be subject to being impounded, and any animal which is so impounded shall be held at the county animal shelter and shall be cared for, released or disposed of as provided in the county animal control health regulations and the rules and regulations of the county for the operation of the county animal shelter.

(Comp. Ords. 1987, § 35.361)

Sec. 10-62. - Animals found by individuals.

Persons, other than animal control officers or police officers, taking up and impounding any animal, shall, within 12 working hours thereafter, give notice to the county animal shelter of the:

- (1) Fact that he has such animal in his possession.
- (2) Complete description of such animal.
- (3)

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

License number of such animal, if any, and the name of the county or municipal corporation which issued such license. If such animal has no license, he shall so state.

- (4) Place where such animal is confined and shall surrender such animal to the division of animal control, upon demand.

(Comp. Ords. 1987, § 35.362)

Sec. 10-63. - Fees for reclaiming animal.

If any person appears and reclaims any animal prior to the time disposition has been made of the animal, the animal shelter shall collect the fees set forth by the county board of commissioners.

(Comp. Ords. 1987, § 35.363)

Sec. 10-64. - Notification of owners.

When an animal wearing a current valid license tag issued by the county or any municipality within the county is impounded pursuant to this division, the director shall, within 12 working hours after receiving such animal, give written notice of the location of such animal to the person to whom the current license for such animal was issued.

(Comp. Ords. 1987, § 35.364)

Secs. 10-65—10-100. - Reserved.

ARTICLE 3. - DOGS

FOOTNOTE(S):

⁽²³⁾ State Law reference— Dog Law of 1919, MCL 287.261 et seq.

Sec. 10-101. - Licenses; tags.

- (a) All dogs within the City over the age of six months shall at all times be currently licensed in accordance with the requirements of state law and the county animal control health regulations.
- (b)

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

A license tag issued by the county shall be securely affixed to a collar, harness or other device which shall be worn by the dog at all times unless the dog is within the confines of the residence of the owner or of a dog run or other secure enclosure on the owner's premises.

(Comp. Ords. 1987, § 35.341)

State law reference— Dog licensing, MCL 287.262 et seq.

Sec. 10-102. - Kennel license.

Kennels may be permitted as governed by the City zoning ordinance (see appendix A) and by the requirements of the director of animal control of the county. Only under these circumstances will more than three dogs over six months old be permitted in one person's care, custody or control in the City.

(Comp. Ords. 1987, § 35.345)

State law reference— Kennel licenses, MCL 287.270b.

Sec. 10-103. - Barking, yelping and howling.

No person owning or having charge, care, custody or control of a dog shall permit such dog at any time, by loud, frequent or habitual barking, yelping or howling, to cause a nuisance or annoyance to the neighborhood.

(Comp. Ords. 1987, § 35.343)

Sec. 10-104. - Running at large.

No person owning or having charge, care, custody or control of any dog shall cause, permit or allow the dog to run at large or be upon any highway, street, lane, alley, court or other public place, or upon any private property or premises, except for hunters with the consent of the owner of such property and persons owning or having charge, care, custody or control of such dog within the City, unless such dog is restrained by a substantial chain or leash not exceeding six feet in length and is in the charge, care, custody or control of a person with the ability to restrain such dog.

(Comp. Ords. 1987, § 35.344)

Secs. 10-105—10-140. - Reserved.

ARTICLE 4. - CATS

Sec. 10-141. - Reserved.

Editor's note—

Ord. No. 12-04, § 1, adopted Dec. 7, 2004, repealed § 10-141, which pertained to licenses, rabies vaccinations, late fees, tags, and concealment and derived from § 35.352 of the Comp. Ords. 1987.

Sec. 10-142. - Nuisances.

A person having custody of a cat shall not permit such cat to create a nuisance by way of noise, odor or in any other manner.

(Comp. Ords. 1987, § 35.354)

Cross reference— Nuisances, ch. 30.

Sec. 10-143. - Reserved.

Editor's note—

Ord. No. 19-06, adopted Dec. 5, 2006, repealed § 10-143 in its entirety. Former § 10-143 pertained to running at large and derived from § 35.351 of the 1981 Comp. Ords.

Secs. 10-144—10-170. - Reserved.

ARTICLE 5. - VICIOUS ANIMALS

FOOTNOTE(S):

⁽²⁴⁾ **Cross reference—** Environment, ch. 78.

⁽²⁴⁾ **State Law reference—** Dangerous animals, MCL 287.321 et seq.; dogs attacking or biting persons, MCL 287.288, 287.351.

Sec. 10-171. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Vicious animal means any:

- (1) Animal that, when unprovoked, approaches, in a dangerous or terrorizing manner, any person in an apparent attitude of attack in any public place or upon any private property not occupied by the animal's owner;
- (2) Animal with a known propensity, tendency or disposition to attack when unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals;
- (3) Animal which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation, on public or private property; or
- (4) Dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for animal fighting.

(Comp. Ords. 1987, § 35.381)

Cross reference— Definitions generally, § 1-2.

Sec. 10-172. - Exceptions.

No animal shall be declared vicious pursuant to this article if the threat, injury or damage caused by such animal was sustained by a person who, at the time, was committing an assault, a criminal trespass or other crime upon the property occupied by the owner, harbinger or keeper of the animal, or was physically abusing or assaulting the animal; nor shall any animal be declared vicious if it was responding to pain or injury, or was protecting itself, its kennels or its offspring.

(Comp. Ords. 1987, § 35.385)

Sec. 10-173. - Responsibility of parents and legal guardians.

If the owner or keeper of a vicious animal is a minor, any parent or legal guardian of such minor shall be liable for all injuries and property damage sustained by any person or domestic animal caused by an unprovoked attack by such vicious animal.

(Comp. Ords. 1987, § 35.386)

Sec. 10-174. - Enforcement responsibility.

(a)

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

If any law enforcement officer, animal control officer or county health department employee has probable cause to believe that a vicious animal is being harbored in violation of this article, the officer or employee may:

- (1) Order the violation immediately corrected and cite the owner, keeper or harborer to appear in court for the violation;
 - (2) If the violation cannot be immediately corrected and the animal is posing an imminent and serious threat to the safety of human beings or other domestic animals, the vicious animal may be seized and impounded at the owner's expense. The owner, harborer or keeper will be cited to appear in court for the violation.
- (b) The animal may be released to the owner only after payment of any fees and penalties, and upon presentation of proof that either the animal will now be kept in accordance with the restrictions of this article or will be permanently removed from the City.
- (c) If the owner, harborer or keeper of an alleged vicious animal fails to appear or to either provide proof that the animal will now be kept in compliance with this article and if the animal cannot be adopted by a person providing proof that the animal will be kept restrained or confined as specified in this article, the animal will be humanely euthanized.
- (d) Each day that a violation of this article continues shall be deemed a separate offense.
- (e) In addition, any person who violates this article shall pay all expenses, including shelter, food, handling, veterinary care and testimony, necessitated by the enforcement of this article. Court costs, and legal and administrative expenses of the City for such action shall be taxed against the owner, keeper or harborer of the animal against whom the complaint was issued.

(Comp. Ords. 1987, § 35.384)

Sec. 10-175. - Determination of a vicious animal.

- (a) *Written complaint.* The Mayor shall have the authority to make a determination that an animal is vicious upon the written complaint of any person.
- (b) *Informal hearing/notice.* Prior to such a determination, the Mayor shall conduct an informal hearing, written notice of which shall be given to the complainant and the owner of the animal, where the owner's address can be reasonably ascertained by

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

the City. The hearing shall be held no less than ten days, nor more than 20 days after such notice is mailed, by first class mail, to the owner of the animal. At such hearing, all interested persons shall have the opportunity to present evidence on the issue of the animal's viciousness.

- (c) *Immediate impoundment.* If the animal in question has caused severe injury to any person, the Mayor or his designee, prior to the hearing, may order the immediate impoundment of the animal, at the owner's expense, pending the determination.
- (d) *Mandatory compliance or removal from City.* If, as a result of the hearing, the Mayor determines that the animal is vicious, the owner, at his expense, must, within ten calendar days, either comply with the requirements in section 10-176 or remove the animal from the City.

(Comp. Ords. 1987, § 35.382)

Sec. 10-176. - Leash and muzzle.

- (a) No person shall permit a vicious animal to go outside the owner's home, or its kennel or pen unless such animal is securely leashed with a leash that is of sufficient strength that the animal cannot break or tear it, and that is no more than four feet in length.
- (b) No person shall permit a vicious animal to be kept on a chain, rope or other type of leash unless a competent person, of adequate size and strength, is in physical control of the leash.
- (c) Vicious animals may not be chained, tethered, tied or otherwise leashed to inanimate objects, such as trees, posts, buildings, etc.
- (d) While outside the owner's home or the animal's kennel or pen, all vicious animals must be muzzled by a muzzling device sufficient to prevent the animal from biting persons or other animals.

(Comp. Ords. 1987, § 35.383(a))

Sec. 10-177. - Confinement outdoors.

- (a) Owners of vicious animals who maintain their animal out of doors must, within ten days of the effective date of a determination that such animal is a vicious animal, fence a portion of their property with a perimeter or area fence. Within the perimeter fence, the vicious animal must be humanely confined inside a pen or kennel, which shall be a minimum of five feet wide, ten feet long and five feet in

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

height above grade. The pen or kennel may not share common fencing with the area or perimeter fence. The kennel or pen must have secure sides and a secure top attached to all sides, which shall all be at least nine gauge chainlink fencing, with necessary steel supporting posts. The sides must be either buried two feet into the ground, sunken into a concrete pad or securely attached to a wire bottom. The gate to the pen or kennel must be of the same material as the fencing, fit closely and be securely locked with a key or combination lock when such animals are within the structure.

- (b) All pens or kennels erected to house such animals must comply with all zoning and building regulations of the City and must be adequately lighted, appropriately ventilated and kept in a clean and sanitary condition.

(Comp. Ords. 1987, § 35.383(b))

Sec. 10-178. - Confinement indoors.

Owners of vicious animals may maintain their animal indoors, provided that no vicious animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition.

(Comp. Ords. 1987, § 35.383(c))

Sec. 10-179. - Signs.

All owners, keepers or harborers of vicious animals within the City shall display in a prominent place on their premises a sign, easily readable by the public, using the following words:

"Beware of Vicious Animal."

In addition, a similar sign is required to be posted on the kennel or pen of such animal if the dog will not be confined exclusively indoors.

(Comp. Ords. 1987, § 35.383(d))

Sec. 10-180. - Insurance.

All owners, keepers or harborers of vicious animals must provide proof to the City of public liability insurance for a single incident amount of \$100,000.00 for bodily injury to, or death of, any person which may result from such animal. Such insurance policy shall provide that no cancellation of the policy will be made unless 30 days' written notice is first given to the City Clerk.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

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(Comp. Ords. 1987, § 35.383(e))

Sec. 10-181. - Identification photographs.

All owners, keepers or harborers of vicious animals must provide the City Clerk with two color photographs, clearly showing the color and approximate size of the animal.

(Comp. Ords. 1987, § 35.383(f))

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Chapter 50 - SPECIAL ASSESSMENTS

FOOTNOTE(S):

⁽⁴⁵⁾ **Charter reference**— Special assessments, § 10.1 et seq.

⁽⁴⁵⁾ **Cross reference**— Any ordinance levying or imposing any special assessment saved from repeal, § 1-11(10); administration, ch. 2; streets, sidewalks and other public places, ch. 54; planning and miscellaneous restrictions, ch. 86.

Sec. 50-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings provided in this section, except where the context clearly indicates a different meaning:

Cost includes, when referring to the cost of any local public improvement, the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction and legal fees and all other costs incidental to the making of such improvement, the special assessments and the financing.

Local public improvement means any public improvement which is of such a nature as to especially benefit any real property or properties within a district in the vicinity of such improvement.

(Comp. Ords. 1987, § 12.101)

Cross reference— Definitions generally, § 1-2.

Sec. 50-2. - Authority to assess.

The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter.

(Comp. Ords. 1987, § 12.102)

Sec. 50-3. - Project initiation.

Proceedings for the making of local public improvements within the City may be commenced by resolution of the City Commission. Such action may be requested by the filing with the City Clerk of a petition signed by at least 50 percent of the owners of the property to be assessed for

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

the improvement, requesting that the improvement be made and the cost be defrayed by special assessment upon the property benefitted, but such petition shall be advisory to the City Commission only.

(Comp. Ords. 1987, § 12.103)

Sec. 50-4. - Report of City Clerk.

Before the City Commission shall consider the making of any local public improvement, it shall be referred by resolution to the City Clerk, directing the City Clerk to prepare a report which shall include necessary plans, profiles, specifications and detailed estimates of costs, an estimate of the life of the improvement, a description of the assessment districts and such other pertinent information as will permit the City Commission to decide the costs, extent and necessity of the improvement proposed and what part, or proportion thereof, should be paid by special assessments upon the property especially benefitted and what part, if any, should be paid by the City at large. The City Commission shall not finally determine to proceed with the making of any local public improvement until such report of the City Clerk has been filed, nor until after a public hearing has been held by the City Commission for the purpose of hearing objections to the making of such improvement.

(Comp. Ords. 1987, § 12.104)

Sec. 50-5. - Determination; notice of hearing.

After the City Clerk has presented the report required in section 50-4 for making any local public improvement as requested in the resolution of the City Commission, and the City Commission has reviewed the report, a resolution may be tentatively passed, determining the necessity of the improvement, setting forth the nature thereof, prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefitted, a determination of benefits received by affected properties and what part, if any, shall be paid by the City at large, designating the limits of the special assessment district to be affected, designating whether it is to be assessed according to frontage or other benefits, placing the complete information on file in the office of the City Clerk, where it may be found for examination, and directing the City Clerk to give notice of a public hearing on the proposed improvement, at which time and place an opportunity will be given to interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the City and by first class mail addressed to each owner of, or person interested

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

in, the property to be assessed as shown by the last general tax assessment roll of the City. Such publication and mailing is to be made at least ten full days prior to the date of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the City Commission.

(Comp. Ords. 1987, 5 12.105)

Sec. 50-6. - Hearing.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which, the City Commission may modify the scope of the local public improvement in such a manner as they shall deem to be in the best interest of the City as a whole, provided that, if the amount of work is increased or additions are made to the district, then another hearing shall be held pursuant to the notice prescribed in section 54-5. If the determination of the City Commission is to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications, assessment district and detailed estimates of cost, determining the probable useful life of the improvement, and directing the assessor to prepare a special assessment roll in accordance with the City Commission's determination and report the special assessment roll to the City Commission for confirmation; provided that, if, prior to the adoption of the resolution to proceed with the making of the public improvement, written objections thereto have been filed by the owners of property in the district, which, according to the City Clerk's report, will be required to bear more than 50 percent of the cost thereof, or by a majority of the owners of property to be assessed, no resolution determining to proceed with the improvement shall be adopted while such objections remain, except by the affirmative vote of five members of the City Commission.

(Comp. Ords. 1987, 5 12.106)

Sec. 50-7. - Making special assessment roll.

The assessor shall make a special assessment roll of all lots and parcels of land within the designated district benefitted by the proposed improvement and assess to each lot or parcel of land the proportionate amount benefitted thereby. The amount spread in each case shall be based upon the detailed estimate of the City Clerk as approved by the City Commission.

(Comp. Ords. 1987, 5 12.107)

Sec. 50-8. - Filing assessment roll.

RESPONSE TO DEFS MOTION FOR SUMMARY DISPOSITION

When the assessor shall have completed the assessment roll, he shall file it with the City Clerk for presentation to the City Commission for review and certification by the City Commission.

(Comp. Ords. 1987, § 12.108)

Sec. 50-9. - Meeting to review special assessment roll.

Upon receipt of the special assessment roll, the City Commission by resolution shall accept such assessment roll and order it to be filed in the office of the City Clerk for public examination, shall fix the time and place the City Commission will meet to review such special assessment roll, and direct the City Clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the City and by first class mail addressed to each owner of, or person interested in, property to be assessed as shown by the last general tax assessment roll of the City. Such publication and mailing is to be made at least ten full days prior to the date of such hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the City Commission. At such meeting, all interested persons or parties shall present, in writing, their objections, if any, to the assessments against them. The assessor shall be present at every meeting of the City Commission at which a special assessment is to be reviewed.

(Comp. Ords. 1987, § 12.109)

Sec. 50-10. - Changes and corrections in special assessment roll.

The City Commission shall meet at the time and place designated for the review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The City Commission may correct such roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein, or it may by resolution annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in the making of the new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the City Commission deems justified, the City Commission determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the clerk to attach his warrant to a certified copy thereof within ten days, therein commanding the assessor to spread, and the treasurer to collect, the various sums and amounts appearing thereon as directed by the City Commission. Such roll shall have the date

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of confirmation endorsed thereon and shall, from that date, be final and conclusive for the purpose of the improvement to which it applies, subject only to adjustment to conform to the actual cost of the improvement, as provided in section 50-14.

(Comp. Ords. 1987, § 12.110)

Sec. 50-11. - Due date.

All special assessments, except such installments thereof as the City Commission shall make payable at a future time as provided in this chapter, shall be due and payable upon confirmation of the special assessment roll.

(Comp. Ords. 1987, § 12.111)

Sec. 50-12. - Payments.

- (a) The City Commission may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed 20 in number, and the first installment shall be due upon confirmation of the roll or on such date as the City Commission may determine.
- (b) Interest shall be charged on all deferred installments at a rate equal to the project bond interest rate, plus one percentage point; or in the case that a bond is not sold for the project, then, a rate equal to one percentage point over the prime rate in effect as stated in the Wall Street Journal on the date the roll is confirmed, commencing on the due date of the first installment and payable on the due date of the first installment and payable on the due date of each subsequent installment; the full amount of all or any deferred installments, with interest accrued thereon to the date of payment thereof.
- (c) If the full assessment or the first installment thereof shall be due upon confirmation, each property owner shall have 60 days from the date of confirmation to pay the full amount of such assessment or the full amount of any installments, without interest or penalty. Following the 60-day period, the assessment or first installment shall, if unpaid, be considered as delinquent and the same penalties shall be collected on such unpaid assessments or first installments as are provided in the City Charter to be collected on delinquent general City taxes.

(d)

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Deferred installments shall be collected without penalty until 60 days after the due date thereof, after which time, such installments shall be considered as delinquent and such penalties on such installments shall be collected as are provided in the City Charter to be collected on delinquent general City taxes.

- (e) After the City Commission has confirmed the roll, the City Treasurer shall notify by mail each property owner on such roll that such roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the City Treasurer to give such notice or of such owner to receive such notice shall not invalidate any special assessment roll of the City or any assessment, nor excuse the payment of interest or penalties.

(Comp. Ords. 1987, § 12.112)

Sec. 50-13. - Creation of lien.

Special assessments and all interest, penalties and charges thereon from the date of confirmation of the roll shall become a personal obligation to the City from the persons to whom they are assessed, and, until paid, shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for county and school taxes and by the City Charter for City taxes, and the lands upon which such amounts are a lien shall be subject to sale the same as are lands upon which delinquent City taxes constitute a lien. In addition to the procedures established in section 54-12 for the collection of special assessments levied against property, the City may recover such amounts in a suit in any court of competent jurisdiction. In any such suit, the confirmed special assessment roll upon which the special assessment concerned appears shall be prima facie evidence of the existence of the special assessment, of the regularity of the proceedings in making the special assessment and of the right of the City to recover judgment therefor.

(Comp. Ords. 1987, § 12.113)

Sec. 50-14. - Additional assessments; refunds.

The City Clerk shall, within 60 days after the completion of each local public improvement, compile the actual cost thereof and certify such cost to the City Commission. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the City Commission may make an additional pro rata assessment; provided, however, that no property shall be assessed in excess of benefits received. The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental

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thereto may be placed in the general fund of the City if such excess is less than five percent of the total amount of the assessment roll, but should the assessment prove larger than such amount by five percent or more, the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of outstanding evidence of indebtedness secured, in whole or in part, by such special assessment.

(Comp. Ords. 1987, § 12.114)

Sec. 50-15. - Additional procedures.

In any case where the provisions of this chapter may prove to be insufficient to fully carry out the making of any special assessment, the City Commission shall provide by ordinance any additional steps or procedures required.

(Comp. Ords. 1987, § 12.115)

Sec. 50-16. - Reassessment for benefits.

Whenever the City Commission shall deem any special assessment invalid or defective for any reason whatsoever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatsoever, in whole or in part, the City Commission shall have the power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement, or any part thereof, has been completed and whether or not any part of the assessment has been collected. All proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment shall, to that extent, be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

(Comp. Ords. 1987, § 12.118)

Sec. 50-17. - Combination of projects.

The City Commission may combine several districts into one project for the purpose of effecting a savings in the costs; provided, however, that for each district, there shall be established separate funds and accounts to cover the cost thereof.

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(Comp. Ords. 1987, § 12.119)

Sec. 50-18. - Postponement of payment due to impoverishment.

The City Commission may provide that any person who, in the opinion of the assessor and City Commission, by reason of poverty, is unable to contribute toward the cost of making a public improvement, by special assessment, may execute to the City an instrument creating a lien for the benefit of the City on all or any part of the real property owned by him and benefitted by any public improvement, which lien will mature and be effective from and after the execution of such instrument shall be recorded with the register of deeds of the county and shall not be discharged or released until the terms thereof are met in full. The City Commission shall establish the procedure for making this section effective.

(Comp. Ords. 1987, § 12.120)

Sec. 50-19. - Single lot special assessments.

- (a) *Report to commission.* When the City incurs an expense for or in respect to any single lot or parcel, which expense is chargeable against the lot or parcel pursuant to law and is not otherwise to be prorated among several lots or parcels in a special assessment district, the amount of labor and material, or any other applicable expense, with a description of the lot or parcel for which the expense was incurred, and the name of the owner, if known, shall be reported to the City Commission.
- (b) *Determination of City Commission.* After reviewing the report, the City Commission may determine by resolution what amount or part of such expense will be charged and the premises upon which the charge will be levied as a special assessment. By resolution, the City Commission will determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged, designate the premises upon which the special assessment may be levied and direct the preparation of a special assessment roll in accordance with the City Commission's determination. As the City Commission deems expedient, it may require that notice of the assessments be given to each owner of or party in interest in the property to be assessed whose name appears upon the last local tax assessment records, by mailing by first-class mail addressed to such owner or

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party at the address shown on the tax records which notice shall also advise the owner(s) or party(ies) in interest of any hearing scheduled pursuant to subsection 50-19(d).

- (c) *Certificate of roll.* When the assessment roll has been completed, it shall be filed with the City Clerk who will present it to the City Commission.
- (d) *Resolution; notice of hearing.* After the special assessment roll is filed in the office of the City Clerk, the City Commission shall, by resolution, fix the time and place when it will review the roll, which meeting shall not be less than ten days after notice of the time and place has been mailed to the owner of or party in interest in the property to be assessed, whose name appears on the last City tax assessment records in accordance with state law.
- (e) *Objections to roll.* Any person deeming himself aggrieved by the special assessment roll may file his objections and protest in writing with the City Clerk at or prior to the time of hearing, which objections shall specify how he is aggrieved. If the objections are timely and properly filed, the objecting person's appearance in person is not required at the hearing.
- (f) *Review of roll.* The City Commission shall meet and review the special assessment roll at the time and place appointed or an adjourned date and shall consider any objections. The City Commission may correct the roll as to any assessment or description of any lot or parcel of land or other errors. Any changes made in the roll shall be noted in the minutes.
- (g) *Confirmation of roll.* After the hearing, the City Commission may confirm such ~~special assessment roll, with any corrections that were made, and the City Clerk shall endorse the date of confirmation and, upon confirmation, the roll shall be final and conclusive.~~

(Ord. No. 5-08, § 1, 3-28-2008)

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"YOU CAN'T DO THAT!"

What is a deed restriction? Is a deed restriction the same as a restrictive covenant, covenant, or plat restriction? In general, all of those words and phrases involve the same concept. I will refer to all of those restrictions in this article collectively as "deed restrictions."

Deed restrictions are rules and regulations that govern one or more lots or parcels of land. Deed restrictions "bind" land. Typically, a deed restriction is created in a document that is recorded with the county register of deeds records where the property is located. Most deed restrictions are permanent and "run with the land;" that is, they generally bind all current and future owners of the lot or parcels involved.

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Deed restrictions can only be created with the written consent of the owner of the lot or parcels involved at the time the deed restrictions are created. In most cases, deed restrictions constitute a comprehensive set of regulations imposed by a land developer when creating a plat (sometimes called a subdivision), condominium development, multi-parcel land division, or other development. However, any property owner can impose deed restrictions on one lot or numerous parcels of land owned by that individual before the lot or parcels of land are sold to third parties.

In most cases, deed restrictions are negative or restraints on the use of land ("*Thou shalt not...*"). Typical deed restriction regulations include prohibitions on mobile homes, junk, commercial or business activities in a residential area, dwellings under a certain size, further dividing the lot involved, multi-family use, nuisances, farm animals, or large pole barns. Other deed restrictions can be "positive;" for example, deed restrictions that indicate that a property can be used for horses, home occupations, or farming. Still other deed restrictions are relatively "neutral;" for example, the setting up of a mandatory property owners association and the imposition of annual dues or assessments.

The overwhelming majority of properties in Michigan are not subject to any deed restrictions. Deed restrictions are private contractual matters that bind real estate. If none of the prior owners of the lot or properties involved imposed any deed restrictions, they do not exist. Prior to buying any property, a prospective purchaser should obtain either a title search or title insurance commitment by a reputable title insurance company in order to determine whether the property at issue is subject to deed restrictions, and if so, the nature of the deed restrictions involved.

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In general, deed restrictions are enforceable in Michigan. See *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206 (2007); *Rofe v Robinson (on Second Remand)*, 126 Mich App 157 (1983); *Terrien v Zwit*, 467 Mich 56 (2002). Furthermore, the penalty for violating deed restrictions can be quite severe. On occasion, the Michigan courts have ordered that dwellings or buildings be torn down that do not comply with mandatory setbacks or other deed restrictions. See *Webb v Smith (After Second Remand)*, 224 Mich App 203 (207); *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206 (2007); *Thom v Palushaj (unpublished decision by the Michigan Court of Appeals dated February 12, 2012—Case No. 301568)*.

In general, deed restrictions protect property owners and property values. If you are purchasing property in a deed restricted development or community, the deed restrictions represent somewhat of a guarantee that certain matters will not occur. As with any contract, however, deed restrictions are not infallible.

Even a non-developer property owner who is splitting a parcel into several lots for sale or is selling a lot next to the landowner's dwelling may want to consider imposing deed restrictions on any lots or properties sold (particularly if the landowner intends to keep one or more of the adjoining lots or lots in the area). For example, if you are going to sell the parcel next to the lot with your dwelling (which you will keep), you may want to consider imposing certain deed restrictions on the lot to be sold (for example, that the lot to be sold cannot have a mobile home located thereon, there can be no barking dogs, and no commercial or business uses will be allowed to occur thereon). Anyone seeking to impose deed restrictions on any property should retain the services of an experienced real estate attorney.

Common deed restrictions can regulate the following areas:

- Types of housing
- Single-family residential dwellings only
- Proper usage of the waterfront
- Setbacks
- Minimum house size
- Maximum accessory building size
- Prohibition on selling or transferring property to governmental units the public use
- Easements and usage of easements
- Property owners association
- Dues or annual assessments
- No nuisances
- Limits on pets
- Architectural rules (and mandatory review and approval of all structures by a committee)
- No livestock
- No further splits or land divisions
- No outdoor storage of junk, RV's, trailers, etc.

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Required building exterior materials

Mandatory compliance with local government zoning regulations and building codes

A common misperception among laypeople is that if a deed restriction is not stated or referenced in the deed to land that you purchase, even if there was an earlier deed restriction binding the land, it will no longer be applicable to you. That is incorrect. Once a deed restriction is properly recorded, it remains in the "chain of title" for the property involved forever (or until the time limit specified in the deed restriction), regardless of whether or not later deeds to the property mention or reference the deed restriction. In some cases, deed restrictions can lie dormant and unknown for years regarding one or more properties, but could potentially still be enforceable.

Deed restrictions are a serious matter. They can either help protect one's real estate or prove to be a nightmare when they prevent another person from using their land the way they desire.

By Clifford H. Bloom, Esq., Bloom Sluggett Morgan, P.C., Grand Rapids, Michigan

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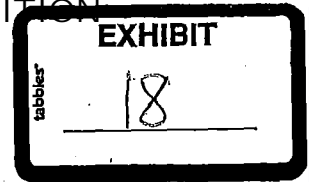
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Example Deed Restriction Template

THIS DEED RESTRICTION is made this _____ day of _____, _____,
date month year
by _____,
name

street address city/town
_____ County, New Hampshire, _____
county zip code

(hereinafter referred to as the "Grantor", which includes the plural of the word where the context requires, and shall, unless the context clearly indicates otherwise, include the Grantor's heirs, administrators, legal representatives, devisees, successors, and assigns) and hereby imposes the following deed restrictions on those lots specified herein and as described on a plan entitled,

_____ name of plan
dated _____, consisting of _____ sheets, by
date #

_____ survey/engineering firm
recorded at Book # _____, Page # _____ at the _____
county

County Registry of Deeds (hereinafter referred to as the "Plan"), as follows:

Select one or more as appropriate:

- Natural buffer conservation area
Wetland buffer conservation area
Critical habitat protection area
Open space area
Limited fertilizer application area
Limited insecticide and/or herbicide application area
Limited road salt application area
Other

To all lots which contain _____
enter designated area from above
as referred to on the Plan, and marked with permanent survey monuments on each lot:

That within the _____,
enter designated area from above
which consists of a designated area on said plan, the following restrictions apply:

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Select one or more as appropriate:

Removal of vegetation is prohibited, except for removal of dead, diseased, or invasive species.

Fertilizer application is prohibited except for fertilizer that contains no more than ___ % of phosphorus and ___ % of nitrogen by weight. Fertilizer shall be applied no more than once in the spring and once in the fall at an application rate not to exceed ___ lbs/acre.

Fertilizer application is prohibited.

Insecticide and/or Herbicide application is prohibited or limited as follows:

Use of road salt shall be minimized as follows:

Other (specify)

Include if appropriate:

To all lots which contain on lot best management practices (BMPs) as referred to on the Plan, including, but not limited to rain gardens, bioretention areas, vegetated swales, or other management practices intended to retain and treat stormwater runoff:

The Grantor acknowledges and agrees to:

Assume responsibility for proper maintenance of stormwater quality best management practices.

Perform maintenance and inspection of best management practices, not less than once annually in accordance with NHDES approved _____ plan of (date).

Retain written proof that the inspection and maintenance were performed, with said proof being retained for a period of not less than five (5) calendar years and provided to NHDES upon request.

This deed restriction shall run with the land and shall be binding upon the Grantor, tenants and any subsequent owners and tenants, their successors, heirs or assigns. Any lease of said specific parcels shall be subject to this restriction.

The above represent enforceable conditions established by the New Hampshire Department of Environmental Services that are necessary to meet NH Surface Water Quality Standards. These conditions are intended to be complied with in perpetuity.

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IN WITNESS WHEREOF, I hereby set my hand this _____ day of _____

_____,
month year

GRANTOR:

By: _____
representative name, title
Duly Authorized

Witness to Grantor

STATE OF NEW HAMPSHIRE
County of _____

On this _____ day of _____, _____, before me
date month year
_____, the undersigned officer,
name of notary public
personally appeared _____, who
representative name
acknowledged himself/herself to be the _____ of
representative title
_____, and that he, as such
grantor name
_____, being so authorized to do so,
representative title
executed the foregoing instrument for the purposes contained therein.

In witness whereof, I have set my hand and official seal.

Notary signature

Commission Expiration Date: _____
(Seal) enter notary name and date