



**To:** Members of Dublin City Council

**From:** Marsha I. Grigsby, City Manager

**Date:** December 6, 2012

**Initiated By:** Dana L. McDaniel, Deputy City Manager/Director of Economic Development  
Terry Foegler, Director of Strategic Initiatives and Special Projects  
Philip K. Hartmann, Attorney, Ice Miller, LLP

**Re:** Ordinance 75-12 – Real Estate Purchase Agreement with Invictus and Tuller Henderson, LLC (Vrable)

## Background

Ordinance 75-12 authorizes the City Manager to enter into a Real Estate Purchase Agreement (REPA) with Invictus, LLC and Tuller Henderson, LLC ("Sellers") for the purchase of a combined 12.30 acres from two parcels consisting of a combined 37.104 acres +/- being generally located to the east of the Scioto River, to the west of Tuller Ridge Drive, to the south and adjacent to Tuller Road, and north of Dale Drive, which real property being purchased is more fully described in Exhibit "A" as RW-2, RW-3, and RW-4, OS-1, OS-2, OS-3 and OS-4. As part of this purchase, the City will also be acquiring the parcel and improvements, which include the restaurant formerly known as the Digger and Finch restaurant. The total purchase price of both the acreage and the restaurant is Three Million Five Hundred Twenty Eight Thousand One Hundred Ninety One Dollars and zero cents (\$3,528,191.00). The agreed upon price for the Digger & Finch Restaurant with 1.27 acres is \$1,210,000 (10% above the appraised value of \$1,100,000). The agreed upon price for the remaining acreage is \$2,318,191 (7% above the appraised value of \$180,000 per acre). The purchase of this green space will be paid for from the Parkland Acquisition Fund, with the balance of the property and the restaurant being funded from the Capital Improvements Tax Fund. The Sellers have agreed to dedicate, at no cost to the City, the RW-9 acreage referenced in Exhibit "A". The City will be responsible, at its cost and discretion, for the design and construction of any future public road way on this acreage.

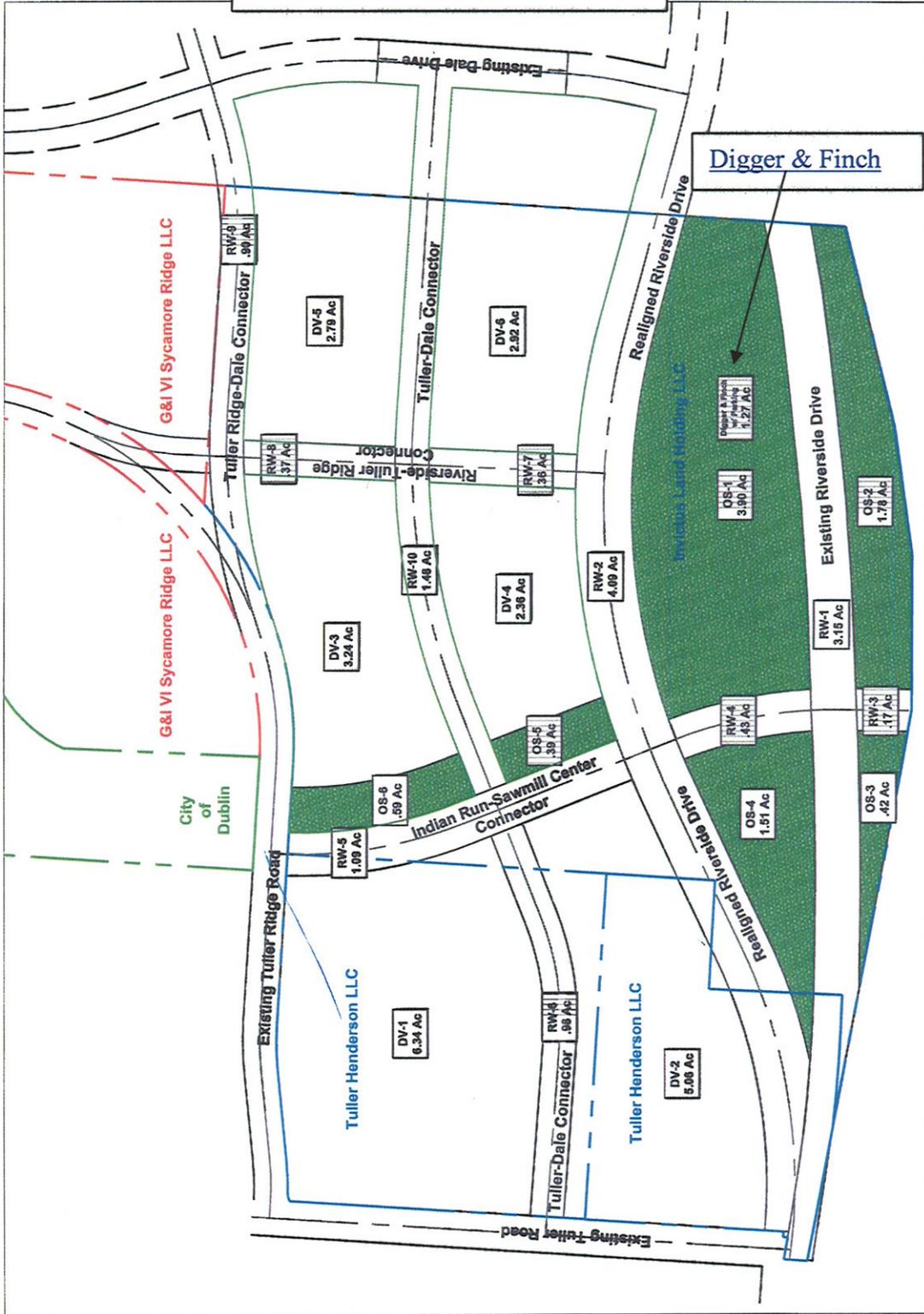
As Council may recall, this property is intended to secure green space along the riverfront in order to provide the community the option to develop a future park and/or allow the potential relocation of Riverside Drive. Council's action to secure this property will be consistent with plans developed and discussed in support of the vision for the Bridge Street District. The property owner will only enter into this REPA at the proposed price if the City will close by December 31, 2012. Therefore, the ordinance is submitted as an emergency.

The Sellers have also agreed to sell to the City OS-5 and OS-6 found in Exhibit "A." The Purchase of OS-5 and OS-6 will be brought forward to Council at a later date when the road alignment and access point(s) to the remaining southern half of the site are finalized. Council will likely be presented additional legislation in the future in the form of development and Tax Increment Finance agreements relative to the sites shown in Exhibit "A."

### **Recommendation**

Staff recommends that Council dispense with the public hearing and approve Ordinance No. 75-12 by emergency at the December 10, 2012 Council meeting. There is no guarantee at this time that the Seller will agree to extend the REPA price beyond the end of this year. Staff continues to develop conceptual plans and ideas to bring forward to Council regarding the future park, potential relocation of Riverside Drive and other development within the river corridor. Please address any questions to Dana McDaniel, Terry Foegler or Phil Hartman.

# Exhibit A

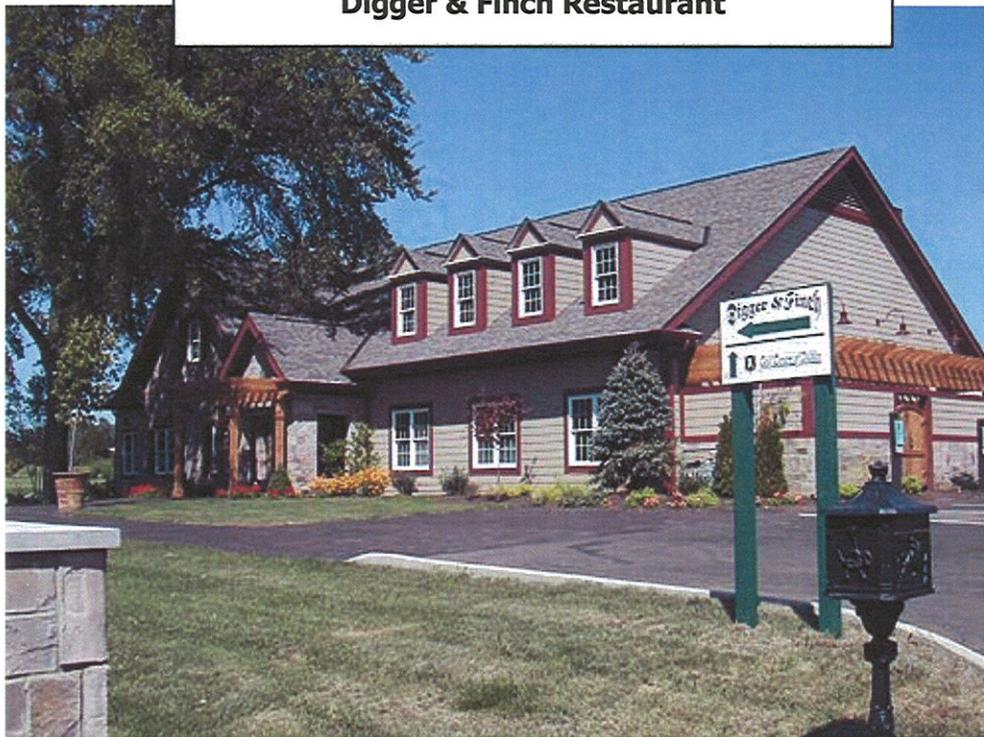


North  
 Not to Scale

Vrable Property Acreage Analysis  
 Prepared by City of Dublin Planning: June 4, 2012

# Exhibit A (Cont'd)

## Digger & Finch Restaurant



# RECORD OF ORDINANCES

**75-12**

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT WITH TULLER HENDERSON LLC AND INVICTUS LAND HOLDING COMPANY LLC, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Dublin ("City") has been in negotiations with Tuller Henderson, LLC ("Tuller Henderson") and Invictus Holding Company LLC ("Invictus")(Jointly "Sellers") for the purchase of certain real estate; and

**WHEREAS**, Sellers are the owners of certain tracts of real property situated in the City of Dublin, County of Franklin and State of Ohio, such real properties being approximately 37.104+/- acres and known as tax parcels 273-009101-00 and 273-008244-00, generally located to the east of the Scioto River, to the west of Tuller Ridge Drive, to the south and adjacent to Tuller Road, and north of Dale Drive, which real property is more fully described in Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, Sellers desire to sell to the City, and City desires to purchase from Sellers certain portions of real property described generally in Exhibit "A" of the Real Estate Purchase Agreement ("REPA") and marked as RW-2, RW-3, and RW-4, OS-1, OS-2, OS-3 and OS-4, being approximately 12.30 acres attached hereto and incorporated herein by reference; and

**WHEREAS**, Sellers desire to sell to the City, and City desires to purchase from Sellers the improvement on the 12.30 acres formally known as the restaurant Digger and Finch; and

**WHEREAS**, City is purchasing the Digger and Finch parcel "as is," together with all improvements constructed thereon, and all rights, appurtenances and hereditaments appertaining thereto, including, but not limited to the liquor permit and furniture, fixtures and equipment ("FF&E) with the exclusion of the dining tables, decorative items and associated chairs as determined by an inventory jointly developed between City and Seller; and

**WHEREAS**, Sellers shall retain the right to any structures associated with the Driving Range; and

**WHEREAS**, Sellers agree to dedicate, at no cost to the City, the real property associated with RW-9 as generally described in Exhibit "A" of the REPA; and

**WHEREAS**, the Real Property being purchased is for the potential relocation of Riverside Drive and/or the establishment of a riverfront park; and

**WHEREAS**, the City and Sellers have come to mutually agreeable terms for the acquisition of property; and

**WHEREAS**, the City desires to execute all necessary conveyance documentation to complete the transaction between Sellers and the City.

**NOW, THEREFORE, BE IT ORDAINED** by the Council, of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring that:

Section 1. The City Manager is hereby authorized to execute all necessary conveyance documentation to acquire the combined 12.30 acres, more or less, in fee simple, as depicted in the attached Exhibit "A" marked as RW-2,

# RECORD OF ORDINANCES

Ordinance No. 75-12 Page 2 of 2  
*Passed* \_\_\_\_\_, 20\_\_\_\_

RW-3, RW-4, OS-1, OS-2, OS-3, and OS-4 and as detailed in the REPA, and to accept the dedication of real property as also depicted in the attached Exhibit "A" marked as RW-9 to the REPA.

Section 2. Sellers shall be compensated for the aforementioned property interests in the amount Three Million Five Hundred Twenty Eight Thousand One Hundred Ninety One Dollars and 00/100 cents (\$3,528,191.00).

Section 3. This ordinance is hereby declared to be an emergency necessary for the immediate preservation of the public health, safety and welfare and to meet the terms agreed upon by the parties. This ordinance shall be effective upon passage.

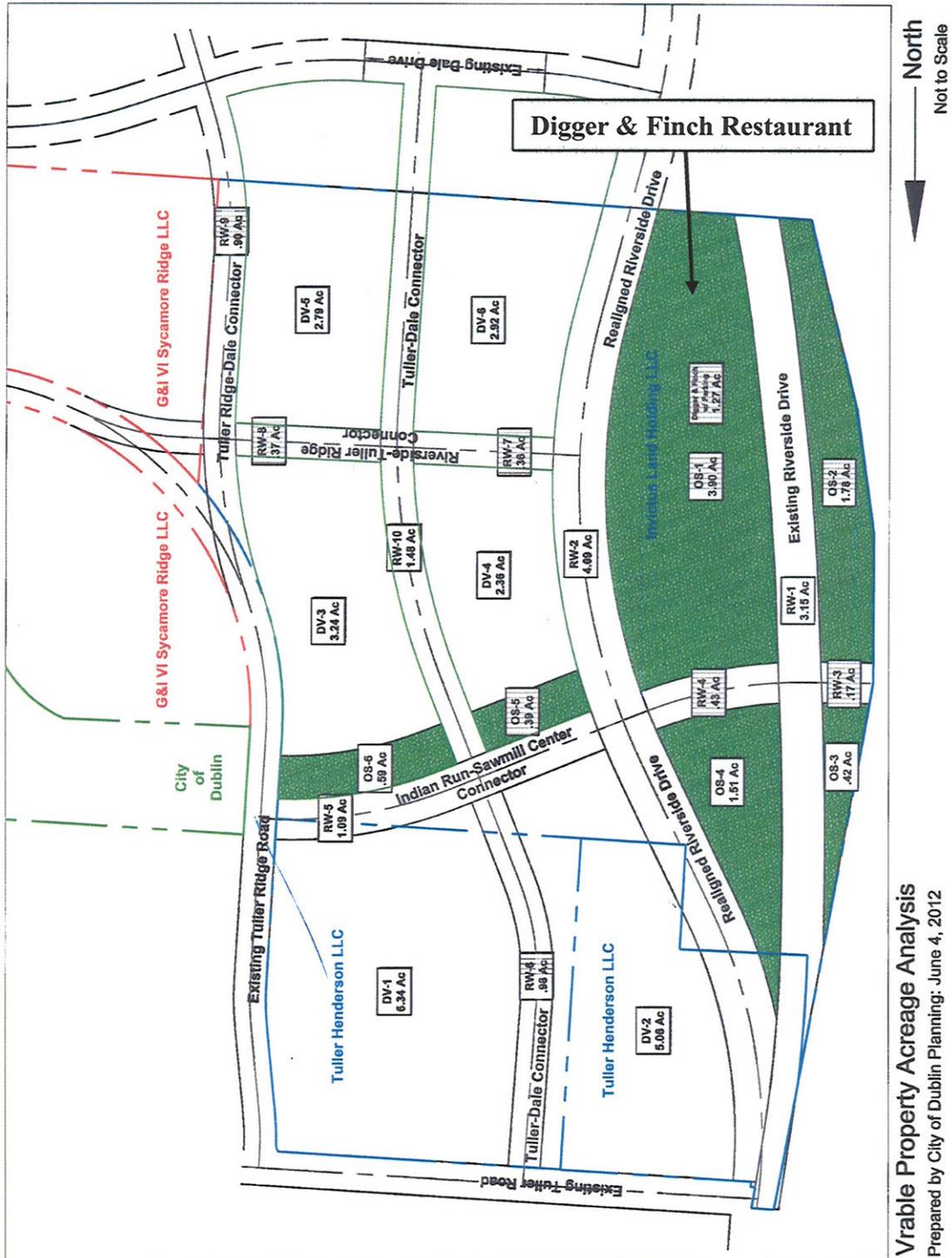
Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor - Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

Exhibit A (to be replaced with legal description/survey prior to closing, acreages are approximate)



Vrable Property Acreage Analysis  
Prepared by City of Dublin Planning: June 4, 2012

Exhibit A (Continued)  
Digger & Finch Restaurant



## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (hereinafter the "Agreement") is made and entered into on the \_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date") by and between the **City of Dublin** ("Purchaser" or "City"), an Ohio municipal corporation, with offices at 5200 Emerald Parkway, Dublin, Ohio 43017 and **Tuller Henderson LLC** ("Tuller Henderson"), an Ohio limited liability company and **Invictus Land Holding LLC** ("Invictus"), an Ohio limited liability company with a mailing address of 3248 W. Henderson Road, Columbus, Ohio 43220 (Tuller Henderson and Invictus referred to herein after together as "Developers" or "Sellers")(Sellers and Purchaser referred to herein collectively as "Parties").

### BACKGROUND INFORMATION

WHEREAS, Sellers are the owners of certain tracts of real property situated in the City of Dublin, County of Franklin and State of Ohio, such real properties being approximately **37.104+/- acres** and known as tax parcels 273-009101-00 and 273-008244-00, generally located to the east of the Scioto River, to the west of Tuller Ridge Drive, to the south and adjacent to Tuller Road, and north of Dale Drive, which real property is more fully described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Sellers desire to sell to the Purchaser, and Purchaser desires to purchase from Seller certain portions real property described in Exhibit A and marked as RW-2, RW-3, and RW-4, OS-1, OS-2, OS-3 and OS-4 being approximately 12.3 acres attached hereto and incorporated herein by reference and in accordance with the terms and conditions of this Agreement (said real property, together with all improvements constructed thereon, and all rights, appurtenances and hereditaments appertaining thereto, shall hereinafter be referred to as the "Premises"); and

WHEREAS, Sellers agrees to dedicate the real property marked as RW-9 in Exhibit "A" at no cost to the City and the City will be responsible for the design and construction, at the City's expense and discretion, of any future public road way to be constructed on RW-9; and

WHEREAS, Sellers desires to sell to the Purchaser, and Purchaser desires to purchase from Sellers containing a restaurant formerly known as Digger and Finch, supporting parking lot and patio and grounds ("Digger and Finch" parcel, approximately 1.27 +/- acres with improvements); and

WHEREAS, Purchaser is purchasing the Digger and Finch parcel "as is" together with all improvements constructed thereon, and all rights, appurtenances and hereditaments appertaining thereto, including but not limited to the liquor permit and furniture, fixtures and equipment ("FF&E) with the exclusion of the dining tables, decorative items and associated chairs as determined by an inventory jointly developed between Purchaser and Sellers; and

WHEREAS, Sellers shall retain the right to any structures and FF&E associated with the Driving range.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the covenants, warranties, terms and conditions hereinafter set forth, Purchaser and Sellers agree as follows:

1. Purchase and Sale of the Premises. Sellers hereby agree to sell and convey to Purchaser, and Purchaser hereby agrees to purchase and obtain from Sellers, subject to the satisfaction or waiver by Purchaser of the conditions precedent hereinafter set forth, the Premises. The total Purchase Price for the Premises shall be **Three Million Five Hundred Twenty Eight Thousand One Hundred Ninety One Dollars and 00/100 cents (\$3,528,191.00)** (the "Purchase Price"). The Purchase Price is the sum of **One Million Two Hundred Ten Thousand and 00/100 Dollars and 00/100 cents (\$1,210,000.00)** for the Digger and Finch and **Two Million Three Hundred Eighteen Thousand One Hundred Ninety One Dollars and 00/100 cents (\$2,318,191.00)** for the remaining Premises, payable in cash or by immediately available wired funds at the Closing, subject to prorations, credits, allowances and other adjustments specifically provided for herein.

2. Dedication of Right of Way. The Sellers hereby agree as part of the consideration herein to dedicate the real property marked as RW-9 to the City at no cost. The City agrees to design and construct, at its expense and discretion, public road way on the RW-9 acreage.

3. Prohibitions Against Disposition of the Premises. Sellers shall not without the prior written consent of the City, take any action that may hinder Purchaser's ability to enjoy full ownership rights in the Premises, such as but not limited to transferring, leasing, or mortgaging the Premises to a third party. Sellers shall not encumber the Premises in any manner and shall maintain the full value of the relevant portions of the Premises.

4. Conditions Precedent.

(a) Conditions Precedent to Purchaser's Obligation to Close. Purchaser shall not be obligated to close under this Agreement until all of the following conditions are satisfied in the sole and absolute discretion of the Purchaser, any one or all of which may be waived by Purchaser, on or before \_\_\_\_\_, 201\_ (hereinafter the "Contingency Date"). If anyone or any combination or all of the conditions precedent set forth in this Paragraph 3.a. are not timely satisfied in favor of Purchaser, Purchaser shall provide written notice to Sellers of same on or before the Contingency Date, and this Agreement shall terminate (unless Purchaser, by written notice delivered to Sellers, on or before the Contingency Date, waives all of said unsatisfied conditions precedent) and thereafter both Parties shall be fully released and relieved from all further liability and obligation hereunder. The conditions precedent are as follows:

i. Purchaser shall approve of the environmental condition of the Premises and Dedicated Property as disclosed by a report, prepared by a certified environmental engineer selected by Purchaser (the "Environmental Report");

ii. Purchaser shall be satisfied, in its sole judgment, with the physical condition of the Premises ;

iii. Purchaser shall determine, in its sole judgment, that the development and/or use

of the Premises for Purchaser's Intended Purpose is feasible; and

iv. Purchaser shall receive the approval of the Dublin City Council for all obligations under this Agreement.

(b) Conditions Precedent to Seller's Obligations to Close. N/A.

4. Tests and Engineering Studies. For and during the entire period that this Agreement is in effect, Purchaser shall, at its sole cost, have the right through Purchaser's associates, employees and/or contractors and agents to enter upon the Premises and cross any adjacent lands of Sellers for access to the Premises for the purpose of surveying, inspecting, making contour surveys, temporary excavations (to be refilled by Purchaser as promptly as the same shall have served their purpose), test borings and other purposes required by Purchaser to enable Purchaser to ascertain whether it is feasible to complete the proposed development of the Premises for the Intended Purpose.

5. Due Diligence. Within 15 days after the mutual execution of this Agreement, Sellers shall deliver to Purchaser any of the following documentation, to the extent that such documentation and information is within the possession or reasonable control of Sellers or any officer or agent of Sellers: (i) copies of any tenant leases with respect to the Premises; (ii) copies of all material agreements with respect to the use or operation of the Premises; (iii) copies of all title policies, title commitments and surveys of the Premises; and (iv) copies of any and all hazardous waste or environmental audits, soil tests, utility studies, water retention (storm sewer) and civil engineering drawings, studies, tests, examinations, reports and other material documentation with respect to the physical and environmental condition of the Premises including but not limited to any orders, correspondence, consents, permits or approvals from any governmental entities or authorities. In the event that Purchaser decides to terminate this Agreement, Sellers shall have the right to purchase some or all due diligence studies and tests (e.g., survey, Phase I, etc.) from Sellers for the cost of said studies and tests, and no additional monies.

Purchaser agrees, upon conducting the due diligence contemplated herein, to restore the Premises to as nearly the condition, which existed prior to Purchaser's entry onto the property. Purchaser hereby agrees, to the extent permissible under Ohio law to defend, indemnify and hold Sellers harmless from and against any and all claims, demands, law suits, losses, liabilities, damages and expenses of every nature and kind (including, without limitation, cleanup costs and attorneys' fees arising by reason of any of the aforesaid or an action against the Sellers under this indemnity) which Sellers may sustain at any time as a result of, arising directly or indirectly from, out of or in any way connected with the Purchaser's due diligence or entrance upon the Premises, or by reason of any untruth, breach, misrepresentation or nonfulfillment of any of the covenants, representations, warranties or agreements made by Purchaser in this Agreement or in any documents or agreements delivered in connection with this Agreement or with the closing of the transaction contemplated hereby. Purchaser's obligations under this section shall survive any termination of this Agreement.

6. Evidence of Title.

(a) Title Commitment. Purchaser may obtain a commitment (a "Title Commitment")

from a title insurance company licensed to do business in the State of Ohio to issue an ALTA Owner's Title Insurance Policy (Form 6/17/06) in the full amount of the Purchase Price (the "Title Policy"). The cost of the Title Policy shall be split between Purchaser and Sellers. The Title Commitment will be certified to the Effective Date and will include copies of all recorded documents evidencing title exceptions raised in Schedule B of the Title Commitment. On or before the date of Closing, the Title Commitment must show in Sellers good and marketable title to the Premises, free and clear of the standard printed exceptions contained in Schedule B of said commitment and the Title Policy, and free and clear of all liens, charges, encumbrances and clouds of title, whatsoever, except the following (collectively, the "Permitted Encumbrances"):

- (i) Matters created by Purchaser;
- (ii) Zoning ordinances, legal highways and public rights-of-way which do not interfere with Purchaser's Intended Purpose of the Premises;
- (iii) Real estate taxes which are a lien on the Premises but which are not yet due and payable; and
- (iv) Easements and restrictions of record acceptable to Purchaser.

(b) Survey. Purchaser can elect to obtain a survey of the Premises (the "Survey," and together with the Title Commitment, the "Title Evidence"). The cost of the Survey shall be split between Purchaser and Sellers, at Closing.

(c) Status of Title; Permitted Encumbrances; Objections. Within thirty (30) days after receipt of the Title Evidence, Purchaser may provide Sellers with written objections to the extent that the Title Evidence reveals matters other than the Permitted Encumbrances (the "Objections") which constitute a monetary lien or may interfere with Purchaser's Intended Purpose. Purchaser's failure to make Objections within such time period will constitute a waiver of Purchaser's right to make Objections. To the extent the Objections constitute a monetary lien against the Premises, Sellers shall satisfy those Objections at the Closing. For all other Objections, Sellers shall have ten (10) days after receipt of written notice of such Objections by Purchaser, to notify Purchaser whether Sellers will cure the Objections ("Sellers's Notification"). Sellers shall have no obligation to cure any Objections. In the event Sellers elects not to cure the Objections, Purchaser may terminate this Agreement by giving written notice of termination to Sellers within twenty business (20) days of Sellers's Notification. If Sellers elects to cure or remove any Objections, Sellers shall have ten (10) days to cure or remove the Objections. In the event the Objections cannot be cured or removed until Closing, Sellers shall provide Purchaser with evidence, satisfactory to Purchaser, in its sole discretion, that the Objections will be fully cured and/or released on the date of Closing or that the Title Company will issue satisfactory endorsements to the final Title Policy insuring against the risks associated with same. In the event the Objections are not cured or removed within said ten (10) day period, or in the event Sellers cannot provide satisfactory evidence within said ten (10) day period that the Objections will be cured on or before the date of Closing or that satisfactory endorsements to the Title Policy will be issued, Purchaser shall make its election, within five (5) business days after expiration of the ten (10) day period, by written notice to Sellers, to either:

- (1) Accept title to the Premises, at which point such uncured Objections shall be Permitted Encumbrances hereunder; or
- (2) Terminate this Agreement.

Purchaser's failure to make its election within such time period will constitute Purchaser's election to accept title to the Premises, at which point such uncured Objections shall be Permitted Encumbrances hereunder.

7. Deed of Conveyance. Sellers shall convey to Purchaser, at the time of closing, good and marketable title in fee simple to the Premises by transferable and recordable general warranty deed, signed by all parties necessary or required by the Title Commitment or Purchaser's attorney, free and clear of all defects, mortgages, easements, restrictions, reservations, conditions, agreements, liens and encumbrances, except those excepted in Paragraph 5 hereof. Purchaser shall pay the requisite conveyance fee and/or realty transfer tax required by applicable law.

8. Closing and Possession. Sellers and Purchaser agree that the purchase and sale of the Premises shall be closed (the "Closing") upon request by Purchaser within five (5) days after notice by Purchaser to Sellers, but not later than thirty (30) days after the Contingency Date. Said Closing shall be held at a time and place in Franklin County, Ohio as shall be selected by Purchaser, and agreed to by Sellers. At the Closing, Sellers shall deliver the general warranty deed, Purchaser shall deliver the Purchase Price and the Parties shall each deliver to the other such additional and other closing documents reasonably necessary to consummate the transaction contemplated herein. Purchaser shall be entitled to full and exclusive possession of the Premises on and after the Closing.

In addition to the deed described above, at the Closing, Sellers shall deliver to Purchaser: (i) a closing statement showing the Purchase Price and all charges or credits to Purchaser or Sellers provided for herein, (ii) all consents, affidavits or other documents reasonably and customarily required to issue the Title Policy, (iii) such evidence of authority as Purchaser or the title company issuing the Title Policy reasonably may deem necessary to evidence the authority of Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, (iv) an affidavit that Sellers is not a non-resident "alien", "foreign corporation", "foreign partnership", "foreign trust", or "foreign estate" within the meaning of the Internal Revenue Code and Regulations thereunder, (v) an assignment and assumption agreement relating to agreements and contracts pertaining to the Premises that are assignable in accordance with their terms without the consent of any third party and that Purchaser elects to assume the ("Executory Contracts"), pursuant to which (A) Sellers shall assign all of its interest in the Executory Contracts to Purchaser, and (B) Purchaser shall assume said Executory Contracts.

At the Closing, Purchaser shall deliver to Sellers: (i) the Purchase Price, (ii) a closing statement showing the Purchase Price and all charges or credits to Purchaser or Sellers provided for herein, (iii) such evidence of authority as Sellers or the title company issuing the Title Policy reasonably may deem necessary to evidence the authority of Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, (iv) an assignment and assumption agreement relating to the Executory Contracts, pursuant to which (A) Sellers shall assign all of their interest in the Executory Contracts to Purchaser, and (B) Purchaser shall

assume said Executory Contracts.

In addition to the foregoing, within thirty (30) days subsequent to the Closing, Sellers shall have terminated any tenant leases on the Premises and Dedicated so that any existing tenants have vacated the Premises on or before the thirtieth day subsequent to the Closing. Sellers shall be responsible for providing any existing tenants with all required notices and for instituting any necessary action to ensure that any existing tenants vacate the Premises and/or Dedicated Property in accordance with this paragraph. In any event, Purchaser will not assume any tenant leases on the Premises and/or Dedicated Property that exist prior to the Closing and will not be responsible for any obligations under any preexisting tenant lease. In the event that any tenant(s) fails to so vacate the Premises and/or Dedicated Property in accordance with this paragraph, Purchaser may pursue appropriate action to evict said tenant(s).

9. Closing Expenses.

The Sellers shall, at the Closing (unless previously paid), pay by credit against the Purchase Price the following:

- (a) The cost of all municipal services and utility charges (if any) due through the date of Closing;
- (b) The cost to remove any lien or mortgage not assumed by the Purchaser;
- (c) One half of the cost of furnishing the title commitment and policy referred to in Paragraph 5 above;
- (d) One-half the fee, if any, charged by the title insurance company and/or closing agent for closing the transaction contemplated herein;
- (e) One half of the cost of the Survey, if any, referred to in Paragraph 6 above;
- (f) One half of the cost of the Environmental Report.

The Purchaser shall, at the Closing (unless previously paid), pay the following:

- (a) Recording fees required for recording the general warranty deed;
- (b) One half of the cost of furnishing the title commitment and policy referred to in Paragraph 6 hereof;
- (c) One-half the fee, if any, charged by the title insurance company and/or closing agent for closing the transaction contemplated herein;
- (d) One half of the cost of the Survey, if any, referred to in Paragraph 6 hereof;

- (e) One half of the cost of the Environmental Report.

10. Taxes and Assessments. Sellers shall pay or credit against the Purchase Price all delinquent real estate taxes, together with penalties and interest thereon, all assessments which are a lien against the Premises and/or Dedicated Property as of the date of closing, both current and reassessed and whether due, or to become due and not yet payable, all use recoupment taxes (agricultural or otherwise) for years through the year of closing, if any, and all real estate taxes for years prior to the closing, through the date of closing. The proration of undetermined taxes shall be based on a 365-day year and on the last available tax rate and valuations, giving effect to applicable exemptions, recently voted millage, change in tax rate or valuation, etc., whether or not officially certified. It is the intention of the Parties in making this tax proration to give Purchaser a credit as close in amount as possible to the amount which Purchaser will be required to remit to the County Treasurer for the period of time preceding the date of Closing hereof. Upon making the proration provided for herein, Sellers and Purchaser agree that the amount so computed shall be final and shall not be subject to later adjustment. Sellers warrant that all assessments now a lien are shown on said treasurer's duplicate, that no improvements have been installed by public authority, the cost of which are to be assessed against the Premises and/or Dedicated Property in the future, and that Sellers have not been notified orally or in writing of possible future improvements by public authority, any part of the cost of which would or might be assessed against the Premises and/or Dedicated Property.

10. Representations and Warranties.

Sellers hereby represent and warrant as follows:

- (a) Sellers have not received any written notice or notices from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health, environmental or building violation, or violation of any laws, ordinances, statutes or regulations relating to pollution or environmental standards, which have not heretofore been corrected;
- (b) The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the Premises and/or Dedicated Property, under any agreement or other instrument to which Sellers are a party or by which Sellers or the Premises and/or Dedicated Property might be bound;
- (c) Sellers have no knowledge of any fact or condition which would result in the termination or material limitation of the existing pedestrian and/or vehicular access to the Premises from abutting public roads;
- (d) No other person or entity other than Purchaser has or will have any right to acquire the Premises and/or Dedicated Property, or any portion thereof;
- (e) The execution, delivery and performance by Sellers of this Agreement and the performance by Sellers of the transactions contemplated hereunder, and the conveyance and delivery by Sellers to Purchaser of possession and title to the

Premises have each been duly authorized by such persons or authorities as may be required, and on the date of Closing, Sellers shall provide documentation, in form satisfactory to Purchaser, evidencing such authorization;

- (f) From the Effective Date through and until the Closing, Sellers shall not enter into any easement, lease or other contract pertaining to the Premises or Dedicated Property and shall not modify or change the condition of the Premises, unless Purchaser has approved of such modification or change; and
- (g) Sellers are not a "Foreign Person" as that term is defined in the Foreign Investment in Real Property Tax Act.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLERS HEREBY EXPRESSLY DISCLAIM AND NEGATE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE CONDITION OF OR VALUE OF THE PREMISES. PURCHASER IS PURCHASING THE PROPERTY "AS-IS WHERE-IS" AND IS SOLELY RELYING ON ITS OWN DUE DILIGENCE AND INSPECTION OF THE PREMISES.

Purchaser hereby represents and warrants as follows:

- (a) That Purchaser's execution and delivery of, and performance under, this Agreement is pursuant to valid authority duly conferred upon Purchaser and the signatory hereto; and the consummation of the transactions contemplated hereby and the compliance by Purchaser with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of any agreement, arrangement, understanding, accord, document, or instrument to which Purchaser is a party or by which Purchaser is bound, or constitute a violation of any law or ordinance to which Purchaser is bound or subject.

11. Survival of Representations and Warranties. The warranties, representations, covenants and agreements set forth in this Agreement shall not be canceled by performance under this Agreement, but shall survive the closing of this transaction and the delivery of the deed of conveyance hereunder. All representations and warranties set forth in Paragraph 10 shall be true and correct as of the date hereof and as of the date of Closing, and at Closing, if requested by Purchaser, Sellers shall so certify, in writing, in form reasonably requested by Purchaser.

Sellers hereby agree to defend, indemnify and hold Purchaser harmless from and against any and all claims, demands, law suits, losses, liabilities, damages and expenses of every nature and kind (including, without limitation, cleanup costs and attorneys' fees arising by reason of any of the aforesaid or an action against the Sellers under this indemnity) which Purchaser may sustain at any time as a result of, arising directly or indirectly from, out of or in any way connected with the operation, ownership, custody or control of the Premises prior to the Closing by reason of any untruth, breach, misrepresentation or nonfulfillment of any of the covenants, representations, warranties or agreements made by Sellers in this Agreement or in any documents or agreements delivered in connection with this Agreement or with the closing of the transaction contemplated hereby, excepting any such claim arising as a result of Purchaser's actions related to the Premises.

12. Notices. Whenever in this Agreement it shall be required or permitted that notice be given or served by either Party hereto on the other, such notice shall be in writing and shall be deemed served when either delivered in person to the following designated agents for that purpose, or deposited in the United States Mail, by certified or registered mail, postage prepaid, return receipt requested, addressed to the other Party as follows:

If to Sellers:

With copy to:

or such other address as Sellers may hereinafter designate by written notice to Purchaser. Any notice to be served on Purchaser shall be addressed as follows:

If to Purchaser:        Marsha I. Grigsby  
                                  City Manager  
                                  City of Dublin  
                                  5200 Emerald Parkway  
                                  Dublin, Ohio 43017

with copy to:            Stephen J. Smith  
                                  Ice Miller LLP  
                                  250 West Street  
                                  Columbus Ohio 43215

or such other address as Purchaser may hereinafter designate by written notice to Sellers.

13. Entire Agreement.

This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings, and agreements between the Parties. This Agreement may be amended or modified only by a writing executed by the Parties.

14. Applicable Law: Venue.

This Agreement is governed by and will be construed in accordance with the laws of the State of Ohio (regardless of the laws that might be applicable under principles of conflicts of law) as to all matters, including, but not limited to, matters of validity, construction, effect, and

performance. The Parties consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the United States District Court for the Southern District of Ohio, and waive any contention that any such court is an improper venue for enforcement of this Agreement.

15. Time of Essence.

Time is of the essence of this Agreement in all respects.

16. Assignment.

This Agreement is binding upon and inure to the benefit of the Parties, their respective heirs, legal representatives, successors and assigns. Any assignment of this Agreement will not relieve the assigning party of its obligations under this Agreement.

17. Invalidity.

In the event that any provision of this Agreement is held to be invalid, the same will not affect in any respect whatsoever the validity of the remainder of this Agreement.

18. Waiver.

Any waiver of a right or default under this Agreement must be in writing. Any waiver of a particular default will constitute a waiver of such default only and not of any other default by the nonwaiving party. Any waiver of a specific right or remedy under this Agreement will constitute a waiver of such right or remedy only and not of any other right or remedy of the waiving party.

19. Headings.

The subject headings of the various sections of this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of any of its provisions.

20. Counterparts.

This Agreement may be executed in one or more counterparts all of which will be considered one and the same agreement, binding on the Parties, notwithstanding that all Parties are not signatories to the same counterpart.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below their respective signatures.

SELLERS:

PURCHASER:

TULLER HENDERSON LLC  
An Ohio Limited Liability Company,

CITY OF DUBLIN  
an Ohio municipal corporation

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

\_\_\_\_\_

Its: \_\_\_\_\_

Marsha I. Grigsby,  
Dublin City Manager

Date: \_\_\_\_\_, 2012

Date: \_\_\_\_\_, 2012

SELLERS:

INVICTUS LAND HOLDING LLC  
An Ohio Limited Liability Company,

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

Approved as to form:

\_\_\_\_\_  
Stephen J. Smith, Law Director

CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that the money required to meet the obligations of Dublin hereunder has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from an previous obligation or certification as required by Ohio Revised Code §5705.01 to §5705.47.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dublin Finance Director

Attachments:

Exhibit "A": Legal descriptions

Exhibit A (to be replaced with legal description/survey prior to closing, acreages are approximate)

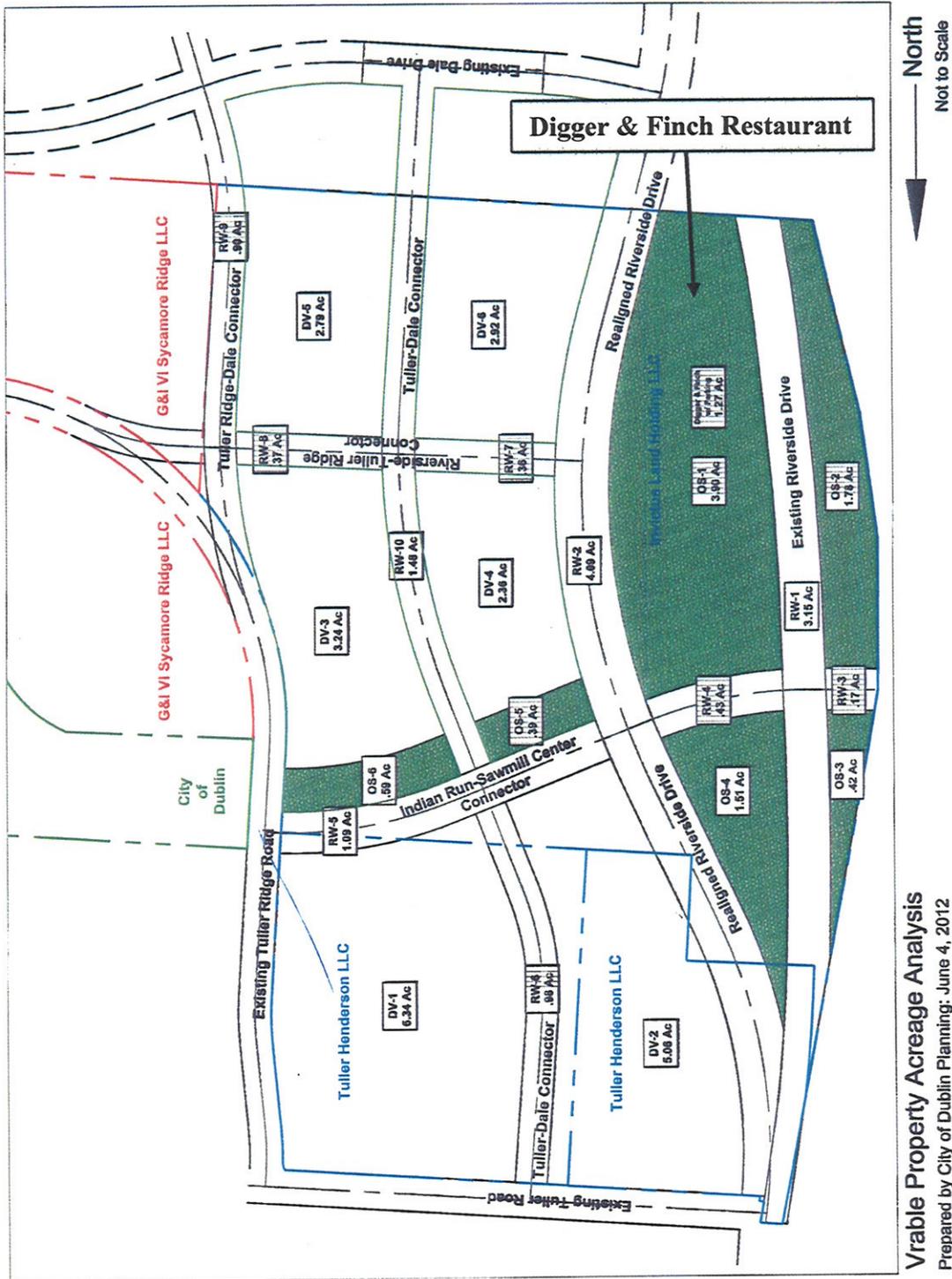


Exhibit A (Continued)  
Digger & Finch Restaurant

