



City of Dublin

Office of the City Manager

5200 Emerald Parkway • Dublin, OH 43017-1090

Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council

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

Date: June 27, 2013

Initiated By: Terry Fiegler, Director of Strategic Initiatives/Special Projects
Angel L. Mumma, Deputy City Manager/Director of Finance & Administration

Re: Ordinance 60-13 - Authorizing the Execution and Delivery of a Development and Tax Increment Financing Agreement and an Infrastructure Agreement to Provide for the First Phase of Redevelopment of Dublin Village Center, and Declaring an Emergency.

Ordinance 61-13 - Authorizing the City Manager to Execute and Deliver Documents on Behalf of the City to Accept Title to a Parcel of Real Property within the Dublin Village Center and to Transfer that Parcel Back to the Original Owner, and Declaring an Emergency.

Background

As Council is aware, for a number of months the Administration has been working with representatives from the Stavroff Interests, LTD. and the Edwards Companies, LLC regarding a cooperative series of agreements intended to advance the Phase 1 redevelopment of Dublin Village Center (DVC), which include both public and private improvements. The Phase 1 private improvements contemplate the development of a 324-unit multi-family housing project by the Edwards Communities (refer to the associated "Information Only" memo submitted in Council's packet for more information about this project), the nearly \$7 million renovation of the AMC Theatre facility, and the renovation of the existing Applebee's restaurant. The public improvements include a series of roadway related improvements intended to provide the initial framework of an urban street grid as contemplated by the Bridge Street District plans and regulations.

On Council's Monday, July 1, 2013 meeting agenda are several Council actions requested to advance the implementation of first phase of the Dublin Village Center redevelopment. It is important to note that implementation of all of these requested Council actions is contingent upon the Dublin City School District Board of Education's approval of a Tax Increment Financing agreement that would fund some of the contemplated Phase 1 improvements. (As Council is aware, we have been engaged in ongoing discussions with representatives from the School District to provide them with the information, analysis and background materials about the City's Bridge Street initiative, and the Phase 1 Dublin Village Center redevelopment project, to allow the Board to make a fully informed decision about this matter.)

The actions before Council for action on July 1 include:

Ordinance 60-13 - Authorizing the Execution and Delivery of a Development and Tax Increment Financing Agreement and an Infrastructure Agreement to Provide for the First Phase of Redevelopment of Dublin Village Center, and Declaring an Emergency.

- Ordinance 60-13 authorizes an agreement between the City of Dublin and two developers: affiliates of the Stavroff Interests, LTD (Whittingham Capital, LLC) and Edwards Companies, LLC (Multicon Development Company). The agreement lays out:
 - The basic understandings associated with the implementation of the developments contemplated as part of the Phase 1 private and public improvements; and
 - The terms of the proposed Tax Increment Financing agreement.

Based upon the anticipated value of the private improvements, tax increment proceeds will be generated sufficient to fund approximately \$5.6 million in roadway related improvements and up to \$3.24 million to reimburse Edwards for the incremental cost of providing podium parking within the multifamily project.

- Under this agreement, the private development interests will implement (or cause to be implemented) the contemplated private improvements, provide the land for the proposed public improvements, provide the minimum service payments needed to pay the required reimbursements, and carry out a series of other terms and provisions needed to ensure the successful implementation of the Phase 1 improvements.
- Because the Phase 1 DVC project is a redevelopment project, it is eligible for the statutory provisions of Ohio Revised Code Section 5709.41 (the "*Urban Redevelopment TIF*"). Under the so called "Chapter 41" provisions, the TIF proceeds can actually help fund (or reimburse a developer for) certain private improvements, and in this case will be used to help reimburse Edwards for the incremental costs of its podium parking. As contemplated within the Bridge Street Vision, such structured parking is necessary to achieve the desired levels of density and pedestrian vitality, and will also help produce significantly higher per-acre real estate valuations for the proposed development. The Chapter 41 TIF is only being applied to the Edwards multi-family project site. The cinema renovation and the Applebee's renovation are proceeding under more traditional Chapter 40 TIF provisions, for which TIF proceeds are used to fund public improvements, and will fully include provisions to reimburse the Dublin City School District for all of its normal tax revenues.
- This ordinance also authorizes the execution of an Infrastructure Agreement which will establish the terms and conditions under which Edwards can perform the City's public roadway improvements within this Phase1 project, and be reimbursed for the cost of those improvements. The terms and conditions of this agreement are very similar to those entered into by the City with other private developers in the past (including Edwards).

Ordinance 61-13 - Authorizing the City Manager to Execute and Deliver Documents on Behalf of the City to Accept Title to a Parcel of Real Property within the Dublin Village Center and to Transfer that Parcel Back to the Original Owner, and Declaring an Emergency.

- One of the requirements of the Chapter 41 TIF is that the City must hold fee title to the parcel on which the private improvements will occur prior to enacting an ordinance establishing the Urban Redevelopment TIF. Ordinance 61-13 provides for the needed transfers of the Edwards parcel to and from the City to meet this requirement. The City's ownership of the parcel will only last for approximately one day, and will not require any payment by the City.

Other related matters

On a related matter, on Council's July 1 agenda are two other items related to this development and the actions outlined above:

- **Ordinance 62-13** provides for acceptance of a waterline easement to allow Edwards to initiate construction of a waterline before a final plat is accepted and recorded by the City. The rationale for the easement is related to timing and is explained in the staff memo accompanying that ordinance.
- Also requested of Council is action to approve the **Preliminary Plat** associated with the Phase1 Dublin Village Center redevelopment project, and a separate staff memo is included in your packet for that item.

Approval of the Plat and the Easement Agreement are also needed if the project is to be in a position to move forward in July or early August, but their execution will also be dependent upon approval of the proposed TIF arrangements by the Dublin City Schools Board of Education.

Recommendation

Staff recommends that Council dispense with the public hearings and approve Ordinance 60-13 and 61-13 by emergency action at the July 1, 2013 Council meeting.

The Administration is requesting that Council act on Ordinances 60-13 and 61-13 with emergency language because Council is not scheduled to meet again until August 12, and the developers have represented that the window of opportunity for successful project implementation requires that they begin construction in July. The Developers are aware that the agreements will not be executed until the Dublin City School Board has approved the proposed Tax Increment Financing arrangement for the Edwards project.

The Administration believes that the Phase 1 projects will have a positive catalytic effect to begin and to encourage the further redevelopment of the Dublin Village Center; they will create the framework for the critical first phases of the urban street grid as envisioned for the Bridge Street District planning to guide and accommodate future phases of redevelopment; and the type and density of the housing proposed for young professionals by Edwards is fully consistent with the housing types recommended by the Bridge Street planning efforts.

RECORD OF ORDINANCES

60-13

Ordinance No. _____

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT AND AN INFRASTRUCTURE AGREEMENT TO PROVIDE FOR THE FIRST PHASE OF REDEVELOPMENT OF DUBLIN VILLAGE CENTER, AND DECLARING AN EMERGENCY.

WHEREAS, this Council desires to encourage the construction of new public infrastructure and private improvements within the area of the City known as Dublin Village Center; and

WHEREAS, to encourage redevelopment of Dublin Village Center, the City contemplates adopting ordinances (such ordinances, when adopted, the "TIF Ordinances") declaring that 100% of the increase in the assessed value of certain properties within Dublin Village Center (the "TIF Properties") subsequent to the effective date of the TIF Ordinances is to be a public purpose and exempt from taxation in accordance with the requirements of Ohio Revised Code Sections 5709.40 through 5709.43; and

WHEREAS, Whittingham Capital LLC (together with any other appropriate affiliates, the "Developer") and the Edwards Companies, LLC (or its designee, "Edwards") expect to redevelop certain real property (the "Property") within Dublin Village Center that is expected to be included among the TIF Properties; and

WHEREAS, the City, Edwards and the Developer desire to facilitate the construction of new public infrastructure improvements (the "Public Improvements") in and around the Property; and

WHEREAS, the TIF Ordinances will require the owners of the TIF Properties receiving real property tax exemptions thereunder make service payments in lieu of taxes (the "Service Payments") with respect to the TIF Properties pursuant to and in accordance with Ohio Revised Code Section 5709.42; and

WHEREAS, to support the construction of the Public Improvements, the Developer and Edwards have each agreed to make minimum service payments (the "Minimum Service Payments") with respect to the portion of the Property each owns or will own in order to supplement the Service Payments as necessary; and

WHEREAS, the City has determined that it is in the best interests of the City to enter into a Development Agreement and Tax Increment Financing (the "Development Agreement") with Edwards and the Developer to provide for the collection of the Service Payments and the Minimum Service Payments with respect to the Property, to enable the financing, design, construction and maintenance of the Public Improvements, and to memorialize their mutual understandings with regard to the manner in which the Property and the Public Improvements will be developed; and

WHEREAS, the City has determined that it is in the best interests of the City to enter into an Infrastructure Agreement (the "Infrastructure Agreement") with Edwards to provide for the design and construction of the Public Improvements.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, Franklin, Union and Delaware Counties, Ohio, _____ of the elected members concurring that:

Section 1. The Development Agreement by and among the City, the Developer, and Edwards, and the Infrastructure Agreement by and between the City and Edwards are hereby approved in the forms currently on file with the Clerk of Council, with completions and changes thereto not inconsistent with this ordinance, not substantially adverse to the City and approved by the City Manager. The City Manager, for and in the name of the City, is authorized to execute and deliver the Development Agreement and the Infrastructure Agreement, provided that the City

RECORD OF ORDINANCES

60-13

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Ordinance No. _____

Passed _____, 20____

Manager's approval of any completions and changes to the forms of those agreements on file, and the character of those completions and changes as not being inconsistent with this ordinance or substantially adverse to the City, will be evidenced conclusively by the City Manager's execution and delivery of those agreements.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Finance, the Director of Law, the Clerk of Council, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this ordinance.

Section 3. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Ohio Revised Code Section 121.22.

Section 4. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of this City and for the further reason that this ordinance is required to be immediately effective in order to allow for the timely construction of the Public Improvements, thereby permitting Dublin Village Center to be redeveloped as quickly as possible, providing necessary jobs and employment opportunities and improving the economic welfare of the people; wherefore, this ordinance will be in full force and effect immediately upon its passage.

Signed:

Presiding Officer

Attest:

Clerk of Council

Passed: _____, 2013

Effective: _____, 2013

DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT

THIS DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT (the "Agreement") is made and entered into as of the last date of signature below (the "Effective Date") by and among the **CITY OF DUBLIN, OHIO** (the "City"), a municipal corporation organized and existing under the constitution and the laws of the State of Ohio and its Charter, **[STAVROFF INTERESTS, LTD.]** and **WHITTINGHAM CAPITAL LLC** (together, "Developer") [**Note: depending on ultimate City Contribution amount and minimum service payment structure, Stavroff may be eliminated as a party**], each an Ohio limited liability company having its address at 565 Metro Place, Suite 480, Dublin, Ohio 43017, and **MULTICON DEVELOPMENT COMPANY** ("Edwards"), an Ohio corporation having its address at 495 South High Street, 3rd Floor, Columbus, Ohio 43215.

WITNESSETH:

WHEREAS, the Developer owns certain real property that constitutes a portion of the real property currently known as Dublin Village Center, as depicted in **Exhibit A** (the "Property"); and

WHEREAS, Edwards owns or is in contract to purchase from the Developer certain real property adjacent to the Property and within Dublin Village Center, as depicted in **Exhibit A** (the "Edwards Site"); and

WHEREAS, the City, Edwards and the Developer desire to facilitate the construction of new public infrastructure improvements in and around the Property and the Edwards Site (as further described in Section 2, the "Public Improvements"); and

WHEREAS, the City contemplates adopting an ordinance (such ordinance, when adopted, the ".40 TIF Ordinance") declaring that 100% of the increase in the assessed value of the Property subsequent to the effective date of the .40 TIF Ordinance is to be a public purpose and exempt from taxation in accordance with the requirements of Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43; and

WHEREAS, the City contemplates adopting an ordinance (such ordinance, when adopted, the ".41 TIF Ordinance") and, together with the .40 TIF Ordinance, the "TIF Ordinances") declaring that 100% of the increase in the assessed value of the Edwards Site subsequent to the effective date of the .41 TIF Ordinance is to be a public purpose and exempt from taxation in accordance with the requirements of Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43; and

WHEREAS, the TIF Ordinances are expected to provide that the owners of the Property and the Edwards Site make service payments in lieu of taxes with respect to the Property and the Edwards Site (the "Service Payments") pursuant to and in accordance with Ohio Revised Code Section 5709.42; and

WHEREAS, to support the construction of the Public Improvements, the Developer and Edwards have each agreed to make minimum service payments with respect to the Property and

the Edwards Site, respectively (the “Minimum Service Payments”), to supplement the Service Payments as necessary [Note: it is possible that minimum service payments will be eliminated for the Developer property depending on final amount of City Contribution, credit analysis and minimum service payment level for Edwards property]; and

WHEREAS, the City, the Developer and Edwards desire to enter into this Agreement to provide for the collection of the Service Payments and the Minimum Service Payments to enable the financing, design, construction and maintenance of the Public Improvements as contemplated herein, and to memorialize their mutual understandings with regard to the manner in which the Property, the Edwards Site, the Private Improvements (as such term is defined below), and the Public Improvements will be developed; and

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties hereto agree to the foregoing and as follows:

Section 1. Private Improvements. The Developer agrees to redevelop the Property and Edwards agrees to redevelop the Edwards Site, respectively, with the following improvements (collectively, the “Private Improvements”) in a manner consistent with the objectives of the Bridge Street District Vision Plan and associated zoning regulations (subject to any waivers, variances, or deviations from such objectives and/or regulations that may be approved by the City as permitted under the Bridge Street Corridor Zoning Code, any rights to redevelop the Property under the PUD zoning classification that applied to the Property immediately prior to the rezoning of the Property into its current zoning classification as permitted by the Bridge Street Corridor Zoning Code, and not restricting the right of the Developer or City to file a rezoning application for the Property or the Edwards Site), as further described below:

(a) Developer Improvements. The Developer will redevelop the Property with the following improvements: (a) complete interior renovation of existing AMC Theatre (estimated cost of \$6,000,000); (b) exterior façade improvements to the AMC Theatre (estimated cost of \$800,000); (c) new landscaping and/or improved parking fields around the AMC Theatre (estimated cost of \$500,000), (d) interior renovations to the existing Applebee’s restaurant (estimated cost of \$300,000); (e) demolition of approximately 167,000 square feet of existing buildings within Dublin Village Center (estimated cost of \$262,500), as depicted on **Exhibit A-2**; and (f) rebranding, renaming, and marketing of the new Dublin Village Center (estimated cost of \$200,000)(collectively, the “Developer Improvements”). The Developer will complete the Developer Improvements by June 30, 2015.

(b) Edwards Improvements; Podium Parking Facilities. Edwards will redevelop the Edwards Site into a multi-family residential apartment building containing at least 300 upscale multi-family residential units (estimated cost of \$21,000,000)(the “Edwards Improvements”). The multi-family building will include parking facilities located on the first floor of the building that are partially below grade (the “Podium Parking Facilities”). The Podium Parking Facilities will be privately owned, designed, constructed and financed by Edwards, and Edwards will indemnify and hold the City harmless from all claims and liabilities in connection with the Podium Parking Facilities. To encourage the urban redevelopment of the Edwards Site and the

surrounding Property, the City will reimburse Edwards for the incremental expense of constructing the Podium Parking Facilities when compared to the cost to install surface parking to serve the Edwards Improvements on the Edwards Site or nearby property (the “Incremental Parking Expense”). The Incremental Parking Expense will be in an amount equal to the lesser of (i)(A) the construction labor and material costs for the Podium Parking Facilities, less (B) \$[] (the agreed upon total cost of providing a comparable amount of surface parking), or (ii) \$[3.24] million. Upon completion of the Podium Parking Facilities and in order to begin reimbursement payments, Edwards must provide documentation of the costs of the Podium Parking Facilities reasonably acceptable to the City. Any material inaccuracy in such cost documentation will constitute an Event of Default by Edwards hereunder. Upon the City’s review and approval of that cost documentation, which will not be unreasonably withheld or delayed, the City will reimburse Edwards for the Incremental Parking Expense as provided in Section 5(a). Edwards must complete the Edwards Improvements by December 31, 2014.

(c) Maintenance/Property Management Obligations. The City and the Developer acknowledge that the redevelopment of Dublin Village Centers needs to provide for carefully coordinated, well planned development and on-going operations and management of the redeveloped site while maintaining the flexibility to respond to appropriate market opportunities that are likely to emerge throughout the redevelopment process. Because the redevelopment strategy for Dublin Village Center contemplates the installation of a new grid of public streets and the associated creation of many new development parcels, the parties recognize and agree that a mechanism is required to provide for the delivery of centrally provided private property management services for the redevelopment that will provide an enhanced levels of services beyond those typically provided for by the City. These services could include, but are not limited to, common area maintenance, marketing/promotions, private security, and other enhanced services to the public right of ways (such as enhanced landscaping, seasonal lighting, banners, street sweeping, etc.). The Developer agrees that, prior to the City’s approval of any development or similar agreements for any future phases of development or redevelopment at Dublin Village Center, the Developer and the City will have mutually agreed upon a plan and a mechanism that ensures that the foregoing mechanisms are in place to provide the enhanced levels of property management services.

(d) Provision of Required Open Space. The Developer and Edwards must provide a minimum of 0.82-acres of publicly accessible open space, or an alternative amount necessary to meet the required open space provisions of Zoning Code Section 153.064 for the Edwards Site, in addition to any other open spaces required as part of any future development proposed on the Property or on the Additional Developer Property (as such term is defined in Section 10), unless Edwards is permitted by the City to pay a fee in lieu of the provision of all or a part of such open space. The open space must be provided within the minimum horizontal distance from the Edwards Site as required by the applicable zoning regulations. The open space must comply with the design, dimensional, and any other physical conditions as required by Zoning Code Section 153.064. The required open space acreage, dimensions, and locations must be depicted on the plans as part of the basic plan review for the next phase of redevelopment for the Property or the Additional Developer Property, with details to be provided as part of the site plan review for the next phase of redevelopment for the Property or the Additional Developer Property.

(e) Demolition and Restoration of Property Affected by Construction of Public Improvements or Demolition. Costs of the design and restorations to parking and landscaping located on the Property, Edwards Site or Additional Developer Property necessitated by the construction of the Public Improvements (as such term is defined in Section 2(a)) will be reimbursed from the City Contribution (as such term is defined in Section 2(b)) if funds remain after paying costs of designing and constructing all other Public Improvements or, to the extent insufficient funds remain, Edwards will pay such costs at the request of the City and will be reimbursed pursuant to Section 5(a)(v) or 5(b)(iv). In the event that Developer demolishes buildings and/or other improvements on the Property or the Additional Developer Property and redevelopment of the building sites on which such demolition occurs does not commence within 90 days following the completion of the demolition, then the restoration of demolished building sites on areas of the Property or Additional Developer Property not located within the future public right of way or on the Edwards Site must be restored by the Developer to an interim graded and seeded condition and backfilled with proper compaction, so as to allow for future development of those building sites. In addition, under the same circumstances and within the same time period the Developer must restore all other properties disturbed by the demolition, including newly exposed wall elevations and former building site locations not being redeveloped at this time.

To clarify and memorialize the total site modifications and restorations within Dublin Village Center being implemented by or in connection with the Private Improvements and the Public Improvements, the Developer will prepare a Master Phase 1 Site Development Plan (the "Plan") for prompt and timely review, revision and approval by the City. The Plan must be submitted prior to the initiation of the construction of the Public Improvements. The Plan must reflect the location of all Private Improvements and Public Improvements, and the party responsible for each component's design, construction and funding. The Plan will assume completion of the construction of all Public Improvements by June 30, 2015. To the extent that all of the Public Improvements are not constructed by that date, the Developer will submit an updated Plan to the City for its review, revision and approval. The updated Plan must be submitted by June 31, 2014. The updated Plan will include elements to ensure provision of appropriate traffic circulation, access, landscaping, etc. supporting the Private Improvements and associated restorations.

Section 2. Public Improvements; City Contribution; Rights-of-Way.

(a) Public Improvements; Infrastructure Agreement. The City, the Developer and Edwards hereby agree that the public improvements described in **Exhibit B** (the "Public Improvements") benefit and serve the Property, the Edwards Site and other real property in the vicinity of the Property, and will be implemented as provided in the Infrastructure Agreement by and among the City and Edwards dated [____], 2013 (the "Infrastructure Agreement"). Edwards agrees to use good faith efforts to ensure the costs of the Public Improvements do not exceed the City Contribution.

(b) City Contribution. Based upon the estimated values of the Private Improvements and the Minimum Service Payment Obligation (as defined in Section 4) of the Developer and Edwards, the City's contribution to the construction of the Public Improvements is [\$5.6] million

(the "City Contribution"), subject to adjustment pursuant to paragraph (c) of this Section. The City Contribution will be disbursed pursuant to the terms of the Infrastructure Agreement. [**\$5.6 million figure subject to reduction or increase based on final minimum service payment commitment from Developer/Edwards and reduction based on final compensation agreement with school district.**]

(c) Rights-of-Way; Construction Easements. The City will purchase all rights-of-way necessary for the construction of the Public Improvements on real property that is not owned by Developer or Edwards and, if necessary, will utilize its power of eminent domain to obtain necessary right-of-way for public streets. Costs of obtaining any such right-of-way will be deducted from the City Contribution. The Developer and Edwards will dedicate or provide to the City (at no cost to City) all rights-of-way and easements necessary for the construction of the Public Improvements and located within the Property, Additional Developer Property or Edwards Site, as applicable upon request of the City in accordance with the approved Plan, including, without limitation, any necessary construction easements. As of the Effective Date, it is anticipated that the only right-of-way needed in conjunction with the Public Improvements and not located on the Property, the Additional Developer Property or the Edwards Site is found on Franklin County Auditor Parcel Number 273-009055 (as depicted on **Exhibit A-3**). In order to minimize costs for right-of-way purchases, the Developer will use its best efforts to implement a land swap (as depicted in **Exhibit A-3**) between the Developer and the owner ("Adjacent Owner") of Franklin County Auditor Parcel Number 273-009055 (the "Adjacent Property") for that right-of-way. Developer discloses that it has an agreement with the Adjacent Owner to facilitate this land swap, pursuant to which the Adjacent Owner has agreed to dedicate right-of-way to the City from the Adjacent Property for the construction of a portion of the Public Improvements thereon. In exchange for this agreement from the Adjacent Owner, the Developer has agreed to transfer 1.5+/- acres of real property to the Adjacent Owner, to redesign, install and reconfigure parking on the Adjacent Property that is necessary as a result of the right-of-way dedication, and to repair/screen any exposed wall elevations and other impacted site improvements on the Adjacent Property. Provided that the Adjacent Owner completes the dedication of right-of-way to the City, the City will pay to the Developer the sum of \$175,000, which sum will be deducted from the City Contribution. That payment must be made by the City to the Developer no later than the date that is 45 days following the effective date of the City's legislation to approve the first final plat to facilitate redevelopment of the Property, the Additional Developer Property or the Edwards Site. The Developer will provide, no later than 5 days after the date of this Agreement, Environmental Phase I reports that were prepared by Foust Engineering on September 2, 2009 and updated on September 25, 2012, together with a bring down report and reliance letter in favor of and acceptable to the City, for right of way property to be dedicated to the City prior to construction commencement for the Public Improvements. In the event that the City determines that action is necessary, the Developer will take all actions and pay all expenses necessary to remediate any environmental conditions existing in violation of federal and state environmental laws revealed by those reports prior to construction commencement for the Public Improvements.

Section 3. Cost Overruns for Public Improvements; Completion Guaranty. Notwithstanding anything to the contrary in this Agreement, in the event that the anticipated cost of designing and constructing all Public Improvements exceeds the City Contribution, then

Edwards, after reasonable consultation with the Developer and approval of the City, may elect to forgo the installation (but not the design) of all or a portion of Street "4D", as further described in **Exhibit A-1**, to the extent necessary to reduce the cost of the Public Improvements so that this cost will not exceed the City Contribution. Alternatively, Edwards will fund the costs of the installation of all or a portion of the Public Improvements that are in excess of the City Contribution and obtain reimbursement for the costs in excess of the City Contribution as provided in Section 5. Edwards and the Developer each acknowledge that the City has no obligation to complete design and construction of the Public Improvements, nor any obligation to pay costs of designing and constructing the Public Improvements except from the City Contribution or the application of Service Payments and Property Tax Rollback Payments pursuant to Section 5.

If the costs of the Public Improvements are in excess of the City Contribution, Edwards guarantees the completion of, and will fund the remaining costs of, designing and constructing all Public Improvements pursuant to the Infrastructure Agreement. Edwards is eligible for reimbursement for any amounts it is required to fund pursuant to this Section as provided in Section 5 upon satisfaction of all conditions of the Infrastructure Agreement for the Public Improvements. The guaranty obligations of Edwards under this paragraph are absolute and unconditional and are not subject to set-off, and payments under the guaranty will be made by Edwards at the times and in the amounts specified by the City. Money advanced by Edwards pursuant to this paragraph will be deposited into the TIF Fund defined in and created by the .40 TIF Ordinance and disbursed pursuant to the Infrastructure Agreement.

If Edwards does not complete the design and construction of all Public Improvements, the Developer and Edwards, as applicable, must apply for and comply with any required zoning and/or permit reviews for the resulting amendments to the interim site conditions such that proper vehicular, pedestrian, and bicycle circulation and access to the public way are maintained until such time as those streets are constructed.

Section 4. Tax Increment Financing Areas.

(a) General. The Developer and Edwards will reasonably cooperate with the City in the creation of two tax increment financing areas including the Property and the Edwards Site. The tax increment financing area encompassing the Property is to be enacted pursuant to Ohio Revised Code Section 5709.40(B) and will provide that the Dublin City School District and Central Ohio Joint Vocational School District will receive Service Payments and Property Tax Rollback Payments (as each is defined in the Declaration, as such term is defined in Section 4(c)) in an amount equal to the amount of real property taxes each would have received absent the exemption provided by the tax increment financing ordinance for the Property. The tax increment financing area encompassing the Edwards Site is to be enacted pursuant to Ohio Revised Code Section 5709.41 and will provide the Dublin City School District and Central Ohio Joint Vocational School District with compensation as agreed by the City and the Dublin City School District. Edwards acknowledges that the City must obtain fee ownership of the Edwards Site and convey the Edwards Site back to Edwards before City Council can adopt the tax increment financing ordinance for the Edwards Site, and Edwards will enter into such real

property transfer agreements and indemnification agreements as reasonably requested by the City in connection with such acquisition and conveyance.

(b) Minimum Service Payments. [Note: minimum service payment levels subject to change pursuant to credit analysis for City Contribution] The Property and the Edwards Site are each subject to a minimum service payment obligation (the "Minimum Service Payment Obligation"), which constitutes a minimum service payment obligation under Ohio Revised Code Section 5709.91.

Until the first date when the cost of the Public Improvements has been paid in full and all reimbursements have been to relevant parties from Service Payments as contemplated in this Agreement, the Minimum Service Payment Obligation for the Property for each calendar year will be an amount equal to \$[7 million] of market value for the Property, multiplied by 35% and the then current applicable real property tax rates for the Property, less the amount the City is required to pay or cause to be paid with respect to the Property to the Dublin City School District and the Central Ohio Joint Vocational School District in that year under the .40 TIF Ordinance. The Minimum Service Payment Obligation for the Property is effective beginning calendar year 2016 and continues through calendar year 2044.

Until the first date when the cost of the Public Improvements has been paid in full and all reimbursements have been to relevant parties from Service Payments as contemplated in this Agreement, the Minimum Service Payment Obligation for the Edwards Site for each calendar year will be an amount equal to \$[21] million of market value for the Edwards Site, multiplied by 35% and the then current applicable real property tax rates for the Edwards Site, less the amount the City is required to pay or cause to be paid with respect to the Edwards Site to the Dublin City School District and the Central Ohio Joint Vocational School District in that year under the .41 TIF Ordinance. The Minimum Service Payment Obligation for the Edwards Site is effective beginning calendar year 2016 and continues through calendar year 2044.

(c) Declaration of Covenants; Priority of Lien. It is intended and agreed, and it will be so provided by the Developer in a declaration relating to the Property and by Edwards in a declaration relating to the Edwards Site (each, a "Declaration") recorded by the Developer and Edwards, respectively, within 30 days following the first date when both (i) this Agreement has become effective and (ii) the legislation approving both the .40 TIF Ordinance and the .41 TIF Ordinance has been passed by Dublin City Council, and substantially in the form attached hereto as **Exhibit C**, that the covenants provided in that Declaration are covenants running with the land. The covenants set forth in the Declaration are hereby incorporated into this Agreement by this reference.

Upon satisfaction of the obligation of an owner of all or any portion of the Property or the Edwards Site to make the Service Payments and Minimum Service Payments, the City will, upon the request of the owner, execute an instrument in recordable form evidencing such termination and releasing the covenants running with the land set forth in the Declaration with respect to that owner's property.

(d) Exemption Applications. The Developer and Edwards agree to prepare, execute and file all necessary applications and supporting documents to obtain from time to time the exemption granted by the TIF Ordinances to enable the City to collect Service Payments with respect to the Property and the Edwards Site. The City agrees to cooperate with the Developer and Edwards in preparing and filing such applications and supporting documents. The City, the Developer and Edwards each agree to perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain that exemption and collect the Service Payments, including, without limitation, joining in the execution of all documentation and providing any necessary certificate required in connection with that exemption or the Service Payments.

(e) Estoppel Certificate. Within 45 days after a request from an owner of all or a portion of the Property or Edwards Site, the City will execute and deliver to that owner or any proposed purchaser, mortgagee or lessee of that property, a certificate stating that with respect to that property, if the same is true: (i) that this Agreement is in full force and effect; (ii) that the requesting owner is not in default under any of the terms, covenants or conditions of this Agreement, or, if that owner is in default, specifying same; and (iii) such other matters as that owner reasonably requests.

Section 5. Distribution of TIF Funds; Reimbursement of Costs.

(a) Distribution of .41 TIF Funds. The City will distribute Service Payments and Property Tax Rollback Payments received with respect to the Edwards Site in the following order of priority:

- i. First, to make any required payments to the Dublin City School District and the Central Ohio Joint Vocational School District;
- ii. Second, to the extent necessary to reimburse Edwards over a period of 30 years with approximately equal reimbursement payments each year, to Edwards for reimbursement of the Incremental Parking Expense, plus accrued simple (and not compounded) interest on any unreimbursed balance at the lesser of the rate of interest paid by Edwards on money it borrows to construct the Podium Parking Facilities (Edwards will provide documentation establishing this rate) or 4% per annum, until Edwards is paid in full, provided that in no event will Edwards be reimbursed for such costs and interest in an amount that exceeds the lesser of (I) the actual amount of Incremental Parking Expense, plus interest, and (II) \$[3.24] million, plus interest;
- iii. Third, to City to reimburse itself for the City Contribution and reasonable City expenses incurred in connection with this Agreement, the Infrastructure Agreement and the .41 TIF Ordinance;
- iv. Fourth, to reimburse Edwards, as appropriate, for any costs of the Public Improvements that exceed the City Contribution and are funded by Edwards;

- v. Fifth, to reimburse Edwards for the costs of the design and restorations to parking and landscaping located on the Property, Edwards Site or Additional Developer Property necessitated by the construction of the Public Improvements as contemplated in Section 1(d); and
- vi. Sixth, for any other permitted purpose as determined by the City, including, without limitation, infrastructure improvements in furtherance of the Bridge Street Plan.

(b) Distribution of .40 TIF Funds. The City will distribute Service Payments and Property Tax Rollback Payments received with respect to the Property in the following order of priority:

- i. First, to make any required payments to the Dublin City School District and the Central Ohio Joint Vocational School District;
- ii. Second, to City to reimburse itself for the City Contribution and reasonable City expenses incurred in connection with this Agreement, the Infrastructure Agreement and the .40 TIF Ordinance;
- iii. Third, to reimburse Edwards for any costs of the Public Improvements that exceed the City Contribution and are funded by the Developer or Edwards;
- iv. Fourth, to reimburse Edwards for the costs of the design and restorations to parking and landscaping located on the Property, Edwards Site or Additional Developer Property necessitated by the construction of the Public Improvements as contemplated in Section 1(d); and
- v. Fifth, for any other permitted purpose as determined by the City, including, without limitation, infrastructure improvements in furtherance of the Bridge Street Vision Plan.

(c) Use of Service Payments from Additional Developer Property. If Service Payments and Property Tax Rollback Payments from the Edwards Site and the Property are insufficient to reimburse Edwards as provided in Sections 5(a) or 5(b), the City will use service payments in lieu of taxes received by the City with respect to the Additional Developer Property (as defined in Section 10) after funding any required school compensation payments and repaying City expenses for establishing the tax increment financing program for that Additional Developer Property. The City agrees that neither the .40 TIF Ordinance nor the .41 TIF Ordinance shall include any portion of the Additional Developer Property, it being the intent of the City and the Developer to leave open the possibility of creating one or more additional tax increment financing districts in the future that will encompass the Additional Developer Property.

Section 6. Representations and Warranties of the City. The City represents and warrants as of the date of delivery of this Agreement that:

(a) It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter.

(b) It will have duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Agreement and to constitute this Agreement as a valid and binding obligation of the City enforceable in accordance with its terms.

(c) It is not in violation of or in conflict with any provision of the laws of the State of Ohio that would impair its ability to observe and perform its covenants, agreements and obligations under this Agreement.

(d) It has and will have full power and authority to (i) execute, deliver, observe and perform this Agreement and all other instruments and documents executed and delivered by the City in connection herewith and (ii) enter into, observe and perform the transactions contemplated in this Agreement and those other instruments and documents.

(e) It has or will have duly authorized the execution, delivery, observance and performance of this Agreement.

Section 7. Representations and Warranties of the Developer and Edwards. The Developer represents and warrants with respect to itself (but making no representations and warranties with respect to Edwards), and Edwards represents and warrants with respect to itself (but making no representations and warranties with respect to the Developer), that as of the date of delivery of this Agreement :

(a) It (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate the Property and the Developer Improvements, or the Edwards Site and the Edwards Improvements, as applicable, and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) It has the authority and power to execute and deliver this Agreement and perform its obligations hereunder.

(c) Its execution and delivery of this Agreement and its compliance with all of the provisions hereof (i) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, its articles of incorporation, organization, code of regulations, operating agreement or other formative document, or other instrument to which it is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, and (ii) have been duly authorized by all necessary action on its part.

(d) There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks

to enjoin performance of, this Agreement or the construction of the Public Improvements and Private Improvements, or if successful would materially impair its ability to perform its obligations under this Agreement or to construct the Private Improvements.

(e) It is in compliance with State of Ohio campaign financing laws contained in Ohio Revised Code Chapter 3517.

(f) No event has occurred and no condition exists with respect to it that would constitute an Event of Default under this Agreement or that, with the lapse of time or with the giving of notice or both, would constitute an Event of Default under this Agreement.

(g) It will comply with all laws and regulations (including, without limitation, zoning and permitting laws and regulations) applicable its development of the Developer Improvements or Edwards Improvements, as applicable.

Section 8. Events of Default and Remedies.

(b) Events of Default. Any one or more of the following constitutes an “Event of Default” under this Agreement:

- i. The Developer or Edwards fails to perform or observe any material obligation punctually and as due under this Agreement, provided that if a Force Majeure (as such term is defined below) event causes the failure, the Developer or Edwards may receive an additional period of time as is reasonably necessary to perform or observe the material obligation in light of the event if it notifies the City of the potential event and the extent of the delay promptly after becoming aware of the event;
- ii. The Developer or Edwards fails to pay any Service Payment or Minimum Service Payment when due;
- iii. The Developer or Edwards makes a representation or warranty in this Agreement that is materially false or misleading at the time it is made.
- iv. The Developer or Edwards files a petition for the appointment of a receiver or a trustee with respect to it or any of its property;
- v. The Developer or Edwards makes a general assignment for the benefit of creditors;
- vi. A court enters an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Developer or Edwards as debtor; or

- vii. The Developer or Edwards files an insolvency proceeding with respect to itself or any proceeding with respect to itself for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

As used in this Section, "Force Majeure" means any event that is not within the control of the Developer, Edwards or its employees, contractors, subcontractors and material suppliers, including the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; nuclear accidents; fires; restraint of government and people; explosions; and partial or entire failure of utilities.

(c) General Right to Cure. Except with regard to the Developer's and Edward's obligation to make Service Payments and Minimum Service Payments under Section 4 of this Agreement, in the event of any Event of Default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, the Developer or Edwards, as applicable, will, upon written notice from the City, proceed, as soon as reasonably possible, to cure or remedy such Event of Default or breach, and, in any event, within 30 days after receipt of such notice. In the event such Event of Default or breach is of such nature that it cannot be cured or remedied within said 30-day period, then in such event the Developer or Edwards (as the case may be) will upon written notice from the City commence its actions to cure or remedy said breach within said 30-day period, and proceed diligently thereafter to cure or remedy said breach. In no event shall a default by Edwards be deemed to be a default by the Developer hereunder, and in no event shall a default by the Developer be deemed to be a default by Edwards hereunder.

(d) Remedies. If Developer or Edwards fails to make Service Payments or Minimum Service Payments under Section 4 of this Agreement or the Developer or Edwards fails to cure any other Event of Default pursuant to Subsection 8(b), the City may institute such proceedings against the defaulting party as may be necessary or desirable in its opinion to cure and remedy such default or breach. Such remedies include, but are not limited to: (i) terminating the City's obligations under this Agreement, (ii) instituting proceedings to compel specific performance by the defaulting party and (iii) any other rights and remedies available at law, in equity or otherwise to collect all amounts then becoming due or to enforce the performance of any obligation under this Agreement.

(e) Costs of Enforcement. If an action is brought by the City for the enforcement of any provision of this Agreement, the Developer or Edwards, as applicable and only to the extent that each is party to such action and is found to be in default or breach of this Agreement, will pay to the City all costs and other expenses that become payable as a result thereof, including without limitation, reasonable attorneys' fees and expenses.

Section 9. Community Entertainment District. Upon the Developer's satisfaction of open space requirements set forth Section 1(d) and establishment of a property management program pursuant to Section 1(c), the City agrees to use its best efforts to establish the Dublin

Village Center Community Entertainment District as proposed in the application previously filed by Developer with City.

Section 10. Additional Phases of Redevelopment for Dublin Village Center. The Developer and City acknowledge that the Developer owns additional property within Dublin Village Center (as depicted on **Exhibit A**, the “Additional Developer Property”). The Developer and the City further acknowledge that the redevelopment of the Additional Developer Property is likely to require additional public infrastructure improvements beyond the Public Improvements. Possible additional public infrastructure improvements that may be necessary in connection with the redevelopment of the Additional Developer Property include, but are not limited to, additional roadway improvements, parking lots and garages, entry features, and beautification improvements along Sawmill Road. The Developer and the City agree to use good faith efforts to negotiate an agreement to facilitate additional redevelopment opportunities on the Additional Developer Property in a manner that furthers the objectives of the Bridge Street District Vision Plan, associated zoning regulations and remaining open space requirements for the Developer Improvements and Edwards Improvements; provided, however, the foregoing agreement does not limit the Developer’s right to seek waivers from the applicable zoning regulations from City Council or apply to place all or a portion of the Additional Developer Property into another zoning classification; provided, further, that Developer understands that the City, Planning and Zoning Commission, and City Council are under no obligation to grant such waivers or approve such applications. Developer and City acknowledge and agree that some of the contemplated public infrastructure improvements for such future redevelopment are not located within the City and therefore depend on the consent or approval of the City of Columbus, the Ohio Department of Transportation, or other applicable entities.

Section 11. Notices. All notices or other correspondence relating to this Agreement must be in writing (including e-mail or facsimile) and must be delivered or sent guaranteed overnight delivery, by facsimile or e-mail (to be followed by personal or overnight guaranteed delivery, of requested) or by postage prepaid registered or certified mail, return receipt requested, and will be deemed to be given for purposes of this Agreement on the date such writing is received by the intended recipient. Unless otherwise specified in a notice sent in accordance with this section, all communications in writing must be given to the parties at the following addresses:

(a) As to the City:

City of Dublin, Ohio
Attn: City Manager
5200 Emerald Parkway
Dublin, Ohio 43017

(b) As to the Developer:

Attn: _____

(c) As to Edwards:

Attn: _____

Section 12. Successors; Assignment; Amendments, Changes and Modifications.

This Agreement is binding upon the Developer, Edwards and their respective successors in interest and the City and its successors in interest. This Agreement may not be assigned by the Developer, Edwards or the City without the consent of the other; provided, however, that nothing in this Agreement prevents the Developer from transferring ownership of all or a portion of the Property, or Edwards from transferring ownership of all or a portion of the Edwards Site, to another person or entity so long as the Declaration is then in effect with respect to the Property or Edwards Site transferred. This Agreement may only be amended by written instrument executed by each of the City, Edwards and the Developer.

Section 13. Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law; provided, however, that the City's financial obligations under this Agreement are not a debt or general obligation of the City and are subject to the City Council's appropriation of the funds necessary therefor. No such covenant, stipulation, obligation or agreement will be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties hereto in their individual capacity.

Section 14. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, said provision will be fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never formed a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

Section 15. Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument. Signatures transmitted by facsimile or electronic means are deemed original signatures.

Section 16. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties on this subject matter.

Section 17. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Section 18. Additional Contingency. The respective obligation of the City, Edwards and the Developer to perform under this Agreement is contingent upon the sale and conveyance of the Edwards Site by the Developer to Edwards.

[Signature lines found on next pages.]

IN WITNESS WHEREOF, the City, the Developer and Edwards have caused this Development and Tax Increment Financing Agreement to be executed in their respective names by their duly authorized officers as of the last date set forth below.

CITY OF DUBLIN, OHIO

By: _____

Printed: Marsha Grigsby

Title: City Manager

Date: _____

Approved as to Form:

By: _____

Printed: Stephen J. Smith

Title: Law Director

Date: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Deputy City Manager and Director of Finance of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement during Fiscal Year 2013 have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2013

Angel L. Mumma
Deputy City Manager/Director of Finance
City of Dublin, Ohio

[STAVROFF INTERESTS, LTD.

By: _____

Printed: _____

Title: _____

Date: _____]

WHITTINGHAM CAPITAL LLC

By: _____

Printed: _____

Title: _____

Date: _____

MULTICON DEVELOPMENT COMPANY

By: _____

Printed: _____

Title: _____

Date: _____

Exhibit A

The following Exhibits are to be attached:

Exhibit A: Depiction of Property, Edwards Site and Additional Developer Property

Exhibit A-1: Depiction of Streets

Exhibit A-2: Depiction of Buildings to be Demolished

Exhibit A-3: Depiction of Land Swap

Exhibit B

DESCRIPTION OF PUBLIC IMPROVEMENTS

The following Public Improvements must be designed and built in a manner that is consistent with the requirements of the Bridge Street District Vision Plan and associated zoning regulations and conditions of approval of applicable applications for development:

- 1) The realignment of Dublin Center Drive, shown as Street “1A” in the preceding Exhibit A-1.
- 2) The extension of realigned Dublin Center Drive, shown as Street “1B” in the preceding Exhibit A-1.
- 3) The installation and construction of Street “1C”, shown in the preceding Exhibit A-1.
- 4) The installation and construction of two new public streets located to the east of the Edwards Site, shown as Street “2A” and Street “2B” in the preceding Exhibit A-1.
- 5) The installation of a two new public streets extending southward from Street “1A”, shown as Streets “3” and “4B” in the preceding Exhibit A-1.
- 6) The installation of Street “4A”, “4C”, and “4D”, as shown in the preceding Exhibit A-1, subject to the right to forgo the installation of Street 4D as provided in Section 3 of the Agreement to which this Exhibit B is attached.

NOTE: In addition to pavement, curbs, and other improvements, the aforementioned street improvements that are part of Public Improvements may include, if and as agreed by the parties hereto, but are not limited to, the following improvements if and to the extent located in the public right of way dedicated to the City: sidewalks, bicycle facilities, landscaping, street trees, street lighting, utilities installation, burial and relocation, water, storm sewer, stormwater management facilities, fiber optics, tie-ins to existing parking fields, entry features, etc., all as further set forth in the Constuction Documents defined in the Infrastructure Agreement.

Exhibit C

FORM OF DECLARATION

[Form to be completed for each of the Developer and Edwards based on Minimum Service Payment Obligation for each as set forth in Section 4]

TAX INCREMENT FINANCING DECLARATION OF COVENANTS

This TAX INCREMENT FINANCING DECLARATION OF COVENANTS (this "Declaration") is made by [Stavroff Interests, Ltd. and Whittingham Capital LLC, each an Ohio limited liability company having its address at 565 Metro Place, Suite 480, Dublin, Ohio 43017] [The Edwards Companies, LLC, an Ohio limited liability company having its address at 495 South High Street, 3rd Floor, Columbus, Ohio 43215] ([together,] the "Declarant").

WITNESSETH:

WHEREAS, the Declarant has acquired certain parcels of real property located in the City of Dublin, Ohio (the "City"), a description of which real property is attached hereto as Exhibit A (with each parcel as now or hereafter configured, a "Parcel"), having acquired such fee simple title by instruments No. _____ and _____ recorded in the Office of the Recorder of Franklin County, Ohio (the "County Recorder"); and

WHEREAS, the City, by its Ordinance No. [_____] passed [_____] (the "Ordinance"), has declared that one hundred percent (100%) of the increase in the assessed value of each Parcel subsequent to the effective date of the Ordinance (such increase hereinafter referred to as the "Improvement" as further defined in Ohio Revised Code Section 5709.[40][.41] and the Ordinance) is a public purpose and is exempt from taxation (such exemption referred to herein as the "TIF Exemption") for a period commencing with the first tax year that begins after the effective date of the Ordinance [and in which an Improvement first appears on the tax list and duplicate of real and public utility property] for such Parcel and ending on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of Ohio Revised Code Sections 5709.[40][.41], 5709.42 and 5709.43 (collectively, the "TIF Statutes") and the Ordinance; and

WHEREAS, the Ordinance provides that the owner of the Parcel make service payments in lieu of taxes with respect to any Improvement on that Parcel (the "Service Payments"), all pursuant to and in accordance with the TIF Statutes and the Ordinance; and

WHEREAS, the Declarant, [Edwards][Stavroff/Whittingham] and the City entered into a Development and Tax Increment Financing Agreement dated as of _____, 2013 (the "Agreement"); and

WHEREAS, the Agreement creates an obligation that the owner of the Parcel make minimum service payments with respect to that Parcel (the "Minimum Service Payments"); and

WHEREAS, this Declaration is being made and filed of record pursuant to Section 4 of that Agreement; and

NOW, THEREFORE, the Declarant, for itself and its successors and assigns to or of the Parcel, hereby declares that the foregoing recitals are incorporated into this Declaration by this reference and that the Parcel it owns and any improvements thereon will be held, developed, encumbered, leased, occupied, improved, built upon, used and conveyed subject to the terms and provisions of this Declaration:

Section 1. Service Payments. The Declarant agrees to make Service Payments for the Parcel it owns attributable to its period of ownership of that Parcel, all pursuant to and in accordance with the requirements of the TIF Statutes, the Ordinance, the Agreement and any subsequent amendments or supplements thereto.

Service Payments for the Parcel will be made semiannually to the Treasurer of Franklin County, Ohio (or to such county treasurer's designated agent for collection of the Service Payments), on or before the date on which real property taxes would otherwise be due and payable for that Parcel. Any late payments will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time.

Service Payments for the Parcel will be made in accordance with the requirements of the TIF Statutes and the Ordinance and will be in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel (after credit for any other payments received by the City under Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time (the "Property Tax Rollback Payments")) had the TIF Exemption not been granted, including any penalties and interest. A Declarant will not, under any circumstances, be required for any tax year to pay both real property taxes and Service Payments with respect to the Improvement to a Parcel pursuant to this Declaration.

In addition to the obligation to make Service Payments, Declarant agrees to a minimum service payment obligation (the "Minimum Service Payment Obligation") for the Parcel it owns, all pursuant to and in accordance with the requirements of the TIF Statutes, the Ordinance, the Agreement and any subsequent amendments or supplements thereto. The Minimum Service Payment Obligation constitutes a minimum service payment obligation under Ohio Revised Code Section 5709.91. The total Minimum Service Payment Obligation due for all Parcels for any calendar year is an amount equal to the \$[7,000,000][21,000,000] on of market value for the Parcel, multiplied by 35% and the then current applicable real property tax rates for the Parcel, less the amount the City is required to pay with respect to the Parcels to the Dublin City School District and the Central Ohio Joint Vocational School District in that year under the Ordinance. The Minimum Service Payment Obligation is effective beginning calendar year 2016 and continues through calendar year 2044. The Parcel's share of the Minimum Service Payment Obligation in any calendar year will be equal to that Parcel's assessed value divided by the assessed value of all Parcels, each as recorded on the tax list and duplicate of Franklin County for the preceding calendar year. If the Service Payments and Property Tax Rollback Payments payable to the City on a Parcel in any calendar year, less the amount the City is required to pay

with respect to that Parcel to the Dublin City School District and the Central Ohio Joint Vocational School District in that year under the Ordinance, are less than the Minimum Service Payment Obligation for that Parcel for that calendar year, the City will prepare and send an invoice for the amount by which the Minimum Service Payment Obligation for that Parcel exceeds those Service Payments and Property Tax Rollback Payments (such difference, the “Minimum Service Payments”) to the Declarant for that Parcel at its registered address for tax bills. The Declarant must pay the Minimum Service Payments invoiced to the City pursuant to payment instructions set forth in the invoice in immediately available funds within 30 days of its delivery. The City may assess a 10% administrative fee and interest accruing at an annual rate of 10% on any Minimum Service Payments not paid within 35 days of the delivery of the invoice. The City may certify delinquent Minimum Service Payments, fees and interest to the Franklin County Auditor for collection on real property tax bills. Any late payments of amount so certified will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time. In the event that the Parcel is subject to an action that would foreclosure the lien created by this Declaration (such as a property tax foreclosure action), the City may declare immediately due and payable all Minimum Service Payments projected to be due in the then current year or any future year based on the then current value of the Parcel (as determined by the Franklin County Auditor) and then current real property tax rates applicable to the Parcel.

[For Edwards Site Only: The Declarant agrees that so long as Service Payments are payable under the Ordinance, the Declarant will not, and will not permit, conversion of the improvements located on the Parcels to owner-occupied condominium units or another use that will result in the improvements to the Parcels being taxed as residential property for real property tax purposes.]

Section 2. Exemption Applications. The Declarant further agrees to cooperate in the preparation, execution and filing of all necessary applications to obtain from time to time the TIF Exemption and to enable the City to collect Service Payments with respect to each Parcel it owns. The Declarant authorizes the City to file any applications necessary to obtain from time to time the TIF Exemption for each Parcel it owns.

Section 3. Provision of Information. The Declarant agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually during the term of the Agreement the compliance of each Declarant with the terms of the Agreement.

The Declarant further agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Section 5709.40(I) to the Director of the Ohio Development Services Agency on or before March 31 of each year.

Section 4. Nondiscriminatory Hiring Policy. The Declarant agrees to comply with the City’s policies adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions practice nondiscriminatory hiring in its operations. In furtherance

of that policy, each Declarant agrees that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

Section 5. Covenants to Run With the Land. The Declarant agrees that each of its covenants contained in this Declaration are covenants running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against each Parcel, as applicable, any improvements thereon and the owner of the Parcel, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. The City has the right in the event of any breach of any covenant herein contained to exercise all of the rights and remedies and to maintain all actions or suits at law or in equity or in other proper proceedings to which it may be entitled to cure that breach.

The Declarant further agrees that all covenants herein, whether or not these covenants are included by any owner of a Parcel in any deed to that owner's successors and assigns, are binding upon each subsequent owner and are enforceable by the City, and that any future owner of that Parcel, or any successors or assigns of a Declarant, will be treated as a Declarant, with respect to that Parcel for all purposes of this Declaration.

The Declarant further agrees that its covenants herein will remain in effect so long as the Service Payments can be collected pursuant to the TIF Statutes and the Ordinance unless otherwise modified or released in writing by the City in a written instrument filed in the Official Records of the County Recorder.

The Declarant further agrees that the covenants herein have priority over any other lien or encumbrance on any Parcel it owns and any improvements thereon, except for such title exceptions as are approved in writing by the City, and the Declarant will cause any and all holders of mortgages or other liens existing on each Parcel it owns as of the time of recording of this Declaration to subordinate such mortgage or lien to those covenants running with the land. The Declarant acknowledges that the provisions of Ohio Revised Code Section 5709.91, which specify that the Service Payments and the Minimum Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11 including, but not limited to, the priority of the lien and the collection of Service Payments and Minimum Service Payments applies to the Parcels and any improvements thereon.

At the City's option and at its request, the Declarant hereby agree to provide such title evidence with respect to the Parcel it owns, at no cost to the City, as is necessary to demonstrate to the City's satisfaction that the covenants running with the land provided in this Declaration are prior and superior to any other liens, encumbrances or other title exceptions, except for those which are approved in writing by the City.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and effective as of _____, 2013.

**[STAVROFF INTERESTS, LTD./WHITTINGHAM
CAPITAL LLC]**

By: _____

Printed: _____

Title: _____

STATE OF OHIO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013,
by _____, _____ of [Stavroff Interests, Ltd./Whittingham Capital
LLC, an Ohio limited liability company, on behalf of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official
seal on the date and year aforesaid.

Notary Public]

[MULTICON DEVELOPMENT COMPANY]

By: _____

Printed: _____

Title: _____

STATE OF OHIO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013,
by _____, _____ of Multicon Development Company, an Ohio
corporation, on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official
seal on the date and year aforesaid.

Notary Public]

This instrument is prepared by: Greg Daniels
 Squire Sanders (US) LLP
 41 S. High Street, Suite 2000
 Columbus, Ohio 43215

INFRASTRUCTURE AGREEMENT
(Dublin Village Center)

THIS INFRASTRUCTURE AGREEMENT (the “*Agreement*”) is made and entered into this [] day of [], 2013 (the “*Effective Date*”), by and between the CITY OF DUBLIN, OHIO (the “*City*”), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio (the “*State*”) and its Charter, and [THE EDWARDS COMPANIES, LLC][**Note: an Edwards affiliate may be substituted if appropriate**] (“*Edwards*” and together with the City, the “*Parties*”) an Ohio limited liability company, under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I).

RECITALS:

WHEREAS, Edwards owns or will own certain real property in Dublin Village Center and it plans to construct the Edwards Improvements on that real property; and

WHEREAS, the Parties have determined that certain Public Improvements will need to be designed and constructed to facilitate the development of the Edwards Improvements; and

WHEREAS, the Parties and the Developer have entered into the TIF Agreement to provide generally for the development and financing of the Edwards Improvements, the Developer Improvements (as defined in the TIF Agreement), and the Public Improvements; and

WHEREAS, the City has determined that it would be in the best interests of the City to contract with Edwards to provide for the design, construction and installation of certain Public Improvements in the manner described herein; and

WHEREAS, City Council passed Ordinance No. []-13] on [], 2013, authorizing the execution and delivery of this Agreement;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, and to induce Edwards to proceed with the design and construction of the Public Improvements, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

Section 1.2. Definitions. As used herein:

“Agreement” means this Infrastructure Agreement (Dublin Village Center) by and between the City and Edwards and dated as of the Effective Date.

“Authorized City Representative” means initially the City Manager of the City. The City may from time to time provide a written certificate to Edwards signed on behalf of the City by the City Manager designating an alternate or alternates who has the same authority, duties and powers as the initial Authorized City Representative.

“Authorized Edwards Representative” means initially [_____]. Edwards may from time to time provide a written certificate to the City signed on behalf of Edwards by the President of Edwards designating an alternate or alternates or a substitute who has the same authority, duties and powers as the initial Authorized Edwards Representative.

“City” means the City of Dublin, Ohio, an Ohio municipality.

“City Council” means the City Council of City.

“Construction Documents” means this Agreement and the Drawings and Specifications as such documents may be revised or supplemented from time to time with the approval of the Authorized City Representative and the Authorized Edwards Representative, which Drawings and Specifications contain the detailed construction plans and specifications for the Public Improvements and when completed, will be placed on file with the Authorized City Representative on behalf of the City.

“Cost of the Work” means the actual costs of the design and construction of the Public Improvements, current estimates of which are reflected in **EXHIBIT B**. Costs of the Work may include construction labor and material costs, related permit and inspection fees, design and engineering fees as approved by the Engineer, site preparation costs, construction management fees not to exceed 3% of total construction labor and material costs, legal fees related to the review of project construction documents, and other costs necessary appurtenant and thereto, all as further described in the approved Construction Documents.

“County” means the County of Franklin, Ohio.

“Drawings and Specifications” has the meaning set forth in Section 5.1.

“Developer” means [Stavroff Interest, Ltd. and] Whittingham Capital LLC.

“Edwards” means [The Edwards Companies, LLC], a limited liability company organized and existing under the laws of the State, including any successors or assigns thereof permitted under this Agreement.

“Edwards’ Completion Certificate” has the meaning set forth in Section 4.3(a).

“Edwards Improvements” means the project proposed to be constructed by Edwards consisting of at least 300 upscale multi-family residential units situated on top of a private podium parking facility.

“Effective Date” means the date as defined in the preambles of this Agreement.

“Engineer” means the City Engineer, or any architectural or engineering firm licensed to perform architectural and engineering services within the State of Ohio and appointed by the City with the consent of the Authorized Edwards Representative, which consent may not be unreasonably withheld or delayed.

“Engineer’s Completion Certificate” has the meaning set forth in Section 4.3(b).

“Event of Default” means an Event of Default under Section 7.1.

“Force Majeure” means acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any other cause or event not reasonably within the control of Edwards or the City, as the case may be, excluding, however, the inability of Edwards to obtain financing for its obligations hereunder.

“Notice Address” means:

as to City: City of Dublin, Ohio
5200 Emerald Parkway
Dublin, Ohio 43017
Attention: City Manager

as to Edwards: [The Edwards Companies, LLC]
495 South High Street, 3rd Floor
Columbus, Ohio 43215
Attention: [_____]

“Public Improvements” means the public infrastructure improvements as generally described on Exhibit B to the TIF Agreement and depicted on Exhibit A-1 to the TIF Agreement, and which will be more specifically described in the Construction Documents, as the same may be modified pursuant to the TIF Agreement.

“State” means the State of Ohio.

“TIF Agreement” means the Development and Tax Increment Financing Agreement by and among the City, the Developer, and Edwards dated [____], 2013.

“TIF Fund” means the Dublin Village Center Municipal Tax Increment Equivalent Fund created in Section 5 of Ordinance No. [__]-13 passed on [____], 2013 by the City Council.

“Work” means the design and construction of the Public Improvements in accordance with this Agreement.

Section 1.3. Interpretation. Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code includes such section, provision or chapter as modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter is applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “*hereof*”, “*hereby*”, “*herein*”, “*hereto*”, “*hereunder*” and similar terms refer to this Agreement; and the term “*hereafter*” means after, and the term “*heretofore*” means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 1.5. Conflicts between this Agreement and other Construction Documents. Where there is a conflict between this Agreement and the other Construction Documents, the conflict will be resolved by providing the better quality or greater quantity and compliance with the more stringent requirement. If an item is shown on the Drawings and Specifications but not specified, Edwards will provide the item of the same quality as similar items specified, as

determined by the Engineer. If an item is specified but not shown on the Drawings and Specifications, it will be located as directed by the Engineer.

(END OF ARTICLE D)

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1. General Agreement Among Parties. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties, the Parties will cooperate in the manner described herein to facilitate the design and construction of the Public Improvements.

Section 2.2. Term of Agreement. This Agreement is effective as of the Effective Date and continues until the Parties have satisfied their respective obligations as set forth in this Agreement, unless sooner terminated in accordance with the provisions set forth herein.

Section 2.3. No Agency Relationship. The City and Edwards each acknowledge and agree that in fulfilling its obligations under this Agreement and under the TIF Agreement, Edwards acts as an independent contractor of the City and not as an agent of the City.

(END OF ARTICLE II)

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1. Representations and Covenants of City. City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of City, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the covenants and agreements of City contemplated herein are valid and binding obligations of City, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by City wherein an unfavorable ruling or decision would materially and adversely affect City's ability, to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

Section 3.2. Representations and Covenants of Edwards. Edwards represents and covenants that:

(a) It is a limited liability company duly organized and validly existing under the applicable laws of the State.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to Edwards that would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of Edwards, that execution, delivery and performance do not and will not violate or conflict with

any provision of law applicable to Edwards, and do not and will not conflict with or result in a default under any agreement or instrument to which Edwards is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by Edwards and all steps necessary to be taken by Edwards have been taken to constitute this Agreement, and the covenants and agreements of Edwards contemplated herein are valid and binding obligations of Edwards, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by Edwards wherein an unfavorable ruling or decision would materially and adversely affect Edwards's ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(END OF ARTICLE III)

ARTICLE IV

DESIGN AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 4.1. General Considerations. In consideration of Edwards's promise to design and construct the Public Improvements, the City agrees, subject to Section 4.4, to reimburse or otherwise pay Edwards for the Cost of the Work in accordance with Section 6.2 and any other applicable provisions of this Agreement.

Section 4.2. Design and Construction of the Public Improvements. Edwards will design and construct all of the Public Improvements in accordance with this Agreement and the other Construction Documents. The Public Improvements must be designed and built in a manner that is consistent with the requirements of the Bridge Street Corridor Zoning Code. Edwards will complete construction of the Public Improvements by [_____], 201[___].

Edwards will supervise, perform and direct the Work utilizing qualified personnel, and in accordance with the standards of care normally exercised by construction organizations performing similar work. Edwards is solely responsible for and has control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work.

Edwards will submit the names of the subcontractors it proposes to use. Under no circumstances may Edwards propose to use any subcontractor who is not specified. The City will promptly reply to Edwards in writing stating whether or not the City has reasonable objection to any such proposed person or entity.

Edwards agrees that the Public Improvements, including all rights-of-way and easements associated therewith, will be dedicated for public use upon completion and acceptance as provided in Sections 4.3 and 4.4 and in accordance with all applicable City platting and dedication requirements.

Section 4.3. Completion of the Public Improvements. The Public Improvements will be deemed completed upon fulfillment of the following conditions:

(a) Receipt of written notice ("*Edwards' Completion Certificate*") from the Authorized Edwards Representative that the Public Improvements are complete and ready for final acceptance by the City, which notice must (i) generally describe all property acquired or installed as part of the Public Improvements; (ii) state the Cost of the Work, and (iii) state and constitute Edwards' representation that the construction of the Public Improvements have been completed substantially in accordance with the Construction Documents, all costs then due and payable in connection therewith have been paid, there are no mechanics' liens or to its knowledge, after reasonable inquiry, any basis for such liens, and all obligations, costs and expenses in connection with the Public Improvements have been paid or discharged.

(b) Receipt from the Engineer of a final Certificate of Completion (the "*Engineer's Completion Certificate*") stating that to the best of the Engineer's knowledge,

information and belief, and on the basis of the Engineer's on-site visits and inspections, that the Public Improvements have been satisfactorily completed in accordance with the terms and conditions of the Construction Documents, including all punch list items, that the construction of the Public Improvements have been accomplished in a manner that conforms to all then applicable governmental laws, rules and regulations; and that the Public Improvements have been approved by the relevant public authorities.

Section 4.4. Acceptance of the Public Improvements. The City has no obligation to accept the Public Improvements until (a) the Public Improvements are satisfactorily completed in accordance with the Construction Documents, as evidenced by the Engineer's Completion Certificate and properly dedicated as public rights-of-way and easements to the City; (b) the City receives Edwards' Completion Certificate, the Engineer's Completion Certificate, copies of the approval letters issued by the public authorities as referenced in Section 4.3 herein, and all documents and instruments to be delivered to the City pursuant to the Construction Documents; (c) the City has been paid all applicable plan review and inspection fees pursuant to City requirements; and (d) the City has received evidence reasonably satisfactory to it that all liens on the Public Improvements, including, but not limited to, tax liens then due and payable, the lien of any mortgage, and any mechanic's liens, have been released, or, with respect to mechanic's liens, security therefor has been provided pursuant to Section 5.8. The City agrees to accept the Public Improvements and the rights-of-way allocable thereto within upon satisfaction of the conditions listed in (a) through (d) of the preceding sentence. The City acceptance of the Public Improvements does not relieve Edwards of its responsibility for defects in material or workmanship as set forth in Section 5.10.

Section 4.5. Extensions of Time. If Edwards or the City is delayed in the commencement or progress of its obligations hereunder by a breach by the other Party of its obligations hereunder, or by failure of the Engineer to act as provided in this Agreement, or by Force Majeure, then the time for performance under this Agreement by the Party so delayed will be extended for such time as is commercially reasonable under the circumstances.

Section 4.6. Changes in the Work. After the execution of this Agreement, and without invalidating this Agreement, Edwards, the Authorized City Representative and the Engineer by written agreement (a "*Change Order*") may agree to changes in the Work. Changes in the Work will be performed under applicable provisions of this Agreement and the Construction Documents, unless otherwise provided in the Change Order.

A Change Order must be in the form attached as **EXHIBIT A**, be prepared by the Engineer and be signed by the Authorized City Representative, the Authorized Edwards Representative and the Engineer, stating their agreement upon (a) the change in the Work, (b) any adjustment of the Cost of the Work, and (c) any extension of the time for performance under this Agreement.

(END OF ARTICLE IV)

ARTICLE V

FURTHER PROVISIONS RELATING TO THE DESIGN AND CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 5.1. Construction Documents. Edwards is causing to be prepared the Construction Documents, which must be in a form satisfactory to the Authorized City Representative and the Authorized Edwards Representative. Any working drawings, plans and specifications prepared in connection with the Work (collectively, the “*Drawings and Specifications*”) and that comprise the Construction Documents are instruments of service through which the Work to be executed is described. Edwards may retain one record set. The City owns the copyrights on the Drawings and Specifications and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of the Drawings and Specifications, except Edwards’ the record set, must be returned or suitably accounted for to the City, on request, upon final completion of the Public Improvements, and the copy thereof furnished to Edwards is for use solely with respect to the Public Improvements. They are not to be used by Edwards on other projects without the specific written consent of the City. Edwards is authorized to use and reproduce applicable portions of the Drawings and Specifications appropriate to the execution of obligations with respect to the Public Improvements; provided, however, that any reproduction and distribution of copies of the Drawings and Specifications by Edwards to the extent necessary to comply with official regulatory requirements or obligations of law will not be construed as an infringement of the copyrights or other reserved rights of the City with respect to the Drawings and Specifications. All copies made under this authorization must bear the statutory copyright notice, if any, shown on the Drawings and Specifications.

Section 5.2. Prevailing Wage. The City designates its Staff Assistant, Division of Engineering as the prevailing wage coordinator for the Public Improvements (the “*Prevailing Wage Coordinator*”). Edwards acknowledges and agrees that the Public Improvements are subject to the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code and all wages paid to laborers and mechanics employed on the Public Improvements must be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Improvements in Franklin County, Ohio, which wages must be determined in accordance with the requirements of that Chapter 4115. Edwards must comply, and Edwards must require compliance by all contractors and must require all contractors to require compliance by all subcontractors working on the Public Improvements, with all applicable requirements of that Chapter 4115, including any necessary posting requirements. Edwards (and all contractors and subcontractors thereof) must cooperate with the Prevailing Wage Coordinator and respond to all reasonable requests by the Prevailing Wage Coordinator when the Prevailing Wage Coordinator is determining compliance by Edwards (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator will notify Edwards of the prevailing wage rates for the Public Improvements. The Prevailing Wage Coordinator will notify Edwards of any change in prevailing wage rates within seven working days of receiving notice of such change from the Director of the Ohio Department of Commerce. Edwards must immediately upon such notification (a) insure that all contractors and subcontractors receive notification of any change in prevailing

wage rates as required by that Chapter 4115; (b) make the necessary adjustment in the prevailing wage rates and pay any wage increase as required by that Chapter 4115; and (c) insure that all contractors and subcontractors make the same necessary adjustments.

Edwards must, upon beginning performance of this Agreement, notify the Prevailing Wage Coordinator of the commencement of Work, supply to the Prevailing Wage Coordinator the schedule of the dates during the life of this Agreement on which Edwards (or any contractors or subcontractor thereof) is required to pay wages to employees. Edwards (and each contractor or subcontractor thereof) must also deliver to the Prevailing Wage Coordinator a certified copy of its payroll within two weeks after the initial pay date, and supplemental reports for each month thereafter and in connection with any Written Requisition exhibiting for each employee paid any wages, the employee's name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments and deductions from the employee's wages; provided, however, that Edwards must submit such payroll reports weekly if construction of the Public Improvements lasts less than four months. The certification of each payroll must be executed by Edwards (or contractor, subcontractor, or duly appointed agent thereof, if applicable) and recite that the payroll is correct and complete and that the wage rates shown are not less than those required by this Agreement and Chapter 4115 of the Ohio Revised Code.

Edwards must provide to the Prevailing Wage Coordinator a list of names, addresses and telephone numbers for any contractors or subcontractors performing any Work on the Public Improvements as soon as they are available, and the name and address of the bonding/surety company and the statutory agent (if applicable) for those contractors or subcontractors. Edwards may not contract with any contractor or subcontractor listed with the Ohio Secretary of State for violations of Chapter 4115 of the Ohio Revised Code pursuant to Section 4115.133 of the Ohio Revised Code.

Prior to final payment under this Agreement, Edwards (and any contractor or subcontractor thereof) must submit to the Prevailing Wage Coordinator the affidavit required by Section 4115.07 of the Ohio Revised Code.

Section 5.3. Traffic Control Requirements. Edwards is responsible for ensuring the provision, through contractors or otherwise, of all traffic control devices, flaggers and police officers required to properly and safely maintain traffic during the construction of the Public Improvements. All traffic control devices must be furnished, erected, maintained and removed in accordance with the Ohio Department of Transportation's "Ohio Manual of Uniform Traffic Control Devices" related to construction operations.

Section 5.4. Equal Opportunity Clause. Edwards must, in all solicitations or advertisements for employees placed by or on behalf of Edwards, state that Edwards is an equal opportunity employer. Edwards will require all contractors and will require all contractors' subcontractors to include in each contract a summary of this equal opportunity clause.

Section 5.5. Insurance Requirements. [Insurance requirements subject to review and update by City's risk management team.] Edwards must furnish proof to the City at the time of commencing construction of the Public Improvements of comprehensive general liability insurance naming the City and its authorized agents as an additional insured. The minimum limits of liability for the required insurance policies may not be less than the following unless a greater amount is required by law:

(a) Commercial General Liability (“CGL”): Bodily injury (including death) and property damage with a combined single limit of \$1,000,000 each occurrence, with a \$2,000,000 aggregate; \$100,000 for damage to rented premises (each occurrence); \$5,000 for medical expenses (person); and \$1,000,000 for personal and advertising injury. CGL must include (i) premises-operations, (ii) explosion and collapse hazard, (iii) underground hazard, (iv) independent contractors’ protective, (v) broad form property damage, including completed operations, (vi) contractual liability, (vii) products and completed operations, with \$2,000,000 aggregate and to be maintained for a minimum period of one year after acceptance of the Public Improvements pursuant to Section 2.4, (viii) personal injury with employment exclusion deleted, (ix) owned, non-owned, and hired motor vehicles, and (x) stopgap liability for \$100,000 limit. The general aggregate must be endorsed to provide that it applies to the Work only.

(b) Automobile liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death) and property damage with a combined single limit of \$1,000,000 per person and \$1,000,000 each occurrence.

(c) Such policies must be supplemented by an umbrella policy, also written on an occurrence basis, to provide additional protection to provide coverage in the total amount of \$5,000,000 for each occurrence and \$5,000,000 aggregate. Edwards’s insurance is primary to any insurance maintained by the City.

(d) Edwards must obtain an additional named insurance endorsement for the CGL and automobile liability coverage with the following named insureds for covered claims arising out of the performance of the Work under the Construction Documents:

- (i) the City of Dublin;
- (ii) Dublin City Council members, executive officers, and employees;
- (iii) the Engineer and its employees; and
- (iv) the Developer, to the extent that any construction activities are being staged or undertaken on real property owned by the Developer.

Each policy of insurance and respective certificate of insurance must expressly provide that no less than 10 days prior written notice be given to City in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy.

(e) Insurance policies must be written on an occurrence basis only.

(f) Products and completed operations coverage will commence with the certification of the acceptance of the Public Improvements pursuant to Section 4.4 and will extend for not less than two years beyond that date.

(g) Edwards must require all contractors and subcontractors to provide workers' compensation, CGL, and automobile liability insurance with the same minimum limits specified herein, unless the City agrees to a lesser amount.

Section 5.6. City Income Tax Withholdings. Edwards will withhold and pay, will require all contractors to withhold and pay, and will require all contractors to require all subcontractors to withhold and pay, all City income taxes due or payable with respect to wages, salaries, commissions and any other income subject to the provisions of Chapter 35 of the Dublin City Code.

Section 5.7. Compliance with Occupational Health and Safety Act of 1970. Edwards and all contractors and subcontractors are solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970 under this Agreement.

Section 5.8. Provision of Security for Mechanic's Liens. To the extent any materialman, contractor, or subcontractor files and records a mechanic's lien against the Public Improvements, Edwards will, or will require the appropriate contractor to, provide any security required by Chapter 1311 of the Ohio Revised Code to cause that mechanic's lien to be released of record with respect to the Public Improvements.

Section 5.9. Security for Performance. Edwards will furnish or require all contractors performing Work to furnish prior to commencement of construction of the Public Improvements a performance and payment bond that names Edwards and the City as obligees in the form provided by Section 153.57 of the Ohio Revised Code. The bond must cover all Costs of the Work, including a guarantee period of one year set forth in Section 5.10.

Any bond must be executed by sureties that are licensed to conduct business in the State as evidenced by a Certificate of Compliance issued by the Ohio Department of Insurance. All bonds signed by an agent must be accompanied by a power of attorney of the agent signing for the surety. If the surety of any bond so furnished by a contractor declares bankruptcy, become insolvent or its right to do business is terminated in Ohio, Edwards, within five days thereafter, will substitute another bond and surety or cause the contractor to substitute another bond and surety, both of which is acceptable to the City and Edwards. Edwards must provide to the City prior to commencement of any Work by any contractor a copy the security for performance provided by Edwards or contractor pursuant to this Section.

Section 5.10. Further Edwards Guaranties Relating to the Public Improvements. Edwards guarantees that it will cause to be exercised in the performance of the Work the standard of care normally exercised by well-qualified engineering and construction organizations engaged in

performing comparable services in Central Ohio. Edwards further warrants that the Work and any materials and equipment incorporated into the Work will be free from defects, including defects in the workmanship or materials (without regard to the standard of care exercised in its performance) for a period of one year (two years for existing storm sewer improvements dedicated to the City) after final written acceptance of the Work by City. The performance and payment bond of the contractor(s) must remain in effect until the expiration of the guarantee period. The guarantee provided in this Section is in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Construction Documents.

If defective Work becomes apparent within the warranty or guarantee period, the City will promptly notify Edwards in writing and provide a copy of said notice to the Engineer. Within ten days of receipt of said notice, Edwards will visit the project in the company of one or more representatives of the City to determine the extent of the defective work. Edwards will, within a reasonable time frame, repair or replace (or cause to be repaired or replaced) the defective Work, including all adjacent Work damaged as a result of such defective Work or as a result of remedying the defective Work. If the defective Work is considered by the City to be an emergency, the City may require Edwards to visit the project within one day of receipt of said notice. Edwards is fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If Edwards does not repair or replace defective Work within a reasonable time frame, the City may repair or replace such defective Work and charge the cost thereof to Edwards or Edwards' surety. Work that is repaired or replaced by Edwards is subject to inspection and acceptance by the Engineer and City and must be guaranteed by Edwards for one year from the date of acceptance of the corrective work by the City.

Section 5.11. Edwards Representations as to Personal Property Taxes. Edwards represents that at the time of the execution of this Agreement, it is not charged with any delinquent personal property taxes on the general tax list of personal property of the County. Further, Edwards will require all contractors to execute an affidavit in the form **EXHIBIT C** (which is attached hereto and incorporated herein by reference), a copy of which certificate must be delivered to the Authorized City Representative prior to the commencement of any work by that contractor or subcontractor.

Section 5.12. Indemnity. (a) Edwards releases the City and each officer, official and employee thereof (collectively, the "*Indemnified Parties*") and each an "*Indemnified Party*") from, agrees that the Indemnified Parties are not liable for, and indemnifies each Indemnified Party against, all liabilities, obligations, damages, costs and expenses (including without limitation, reasonable attorneys' fees) asserted against, imposed upon or incurred by an Indemnified Party (collectively, the "*Liabilities*" and each a "*Liability*"), other than any Excluded Liability as hereinafter defined, arising out of, in connection with or resulting from the execution and delivery of this Agreement, the consummation of the transactions provided for herein and contemplated hereby, and all activities undertaken by Edwards or the City pursuant to this Agreement in furtherance of the development of the Edwards Improvements or the Public Improvements.

“Excluded Liability” means each Liability to the extent it is attributable to (i) the gross negligence or willful misconduct of any Indemnified Party, or (ii) the failure of the City to comply with any of its obligations under this Agreement. Excluded Liabilities include, without limitation, any Liabilities settled without Edwards’ consent and any Liability to the extent that Edwards’ ability to defend that Liability is prejudiced materially by the failure of an Indemnified Party to give timely written notice to Edwards of the assertion of that Liability.

(b) Upon notice of the assertion of any Liability, the Indemnified Party must give prompt written notice of the same to Edwards.

(c) Upon receipt of written notice of the assertion of a Liability, Edwards has the duty to assume, and must assume, the defense thereof, with full power and authority to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party has the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest.

(d) At its own expense, an Indemnified Party may employ separate counsel and participate in the defense of any Liability; provided, however, if it is ethically inappropriate for one firm to represent the interests of Edwards and the Indemnified Party, Edwards must pay the reasonable legal expenses of the Indemnified Party in connection with its retention of separate counsel. Edwards is not liable for any settlement of any Liability effected without its written consent, but if settled with the written consent of Edwards, or if there is a final judgment for the plaintiff in an action, Edwards agrees to indemnify and hold harmless the Indemnified Party except only to the extent of any Excluded Liability.

(e) This Section survives the termination of this Agreement.

(END OF ARTICLE V)

ARTICLE VI

PAYMENT OF COST OF THE WORK

Section 6.1. Deposit of Monies in the TIF Fund. The City has established the TIF Fund for the payment of the Cost of the Work. Upon the execution of this Agreement, the City covenants and agrees to deposit monies into the TIF Fund in an amount equal to the estimated Cost of the Work for the Public Improvements but not to exceed the City Contribution set forth in the TIF Agreement. Promptly following the execution and delivery of any Change Order requested by the City, the City agrees to deposit additional monies into the TIF Fund as may be required to pay the adjusted Cost of the Work.

Section 6.2. Disbursements from the TIF Fund. The City agrees to pay the Cost of the Work in accordance with the Construction Documents, including any retainage as provided for therein, based on Written Requisitions executed by the Authorized Edwards Representative substantially in the form of **EXHIBIT D** (which is attached hereto and incorporated herein by reference). To the extent consistent with the customary payment process of the City with respect to payment applications from contractors on City public improvement contracts, each Written Requisition must be accompanied by conditional lien waivers and releases from all subcontractors and suppliers to be paid from the payment resulting from the Written Requisition, and unconditional lien waivers and releases from all subcontractors and suppliers for which Edwards was required to provide a conditional lien waiver in connection with a prior Written Requisition. The period covered by each Written Requisition must be at least one calendar month, ending on the last day of the month. Edwards will deliver payment requests to the City no more often than once each calendar month during the course of construction of the Public Improvements. Unless the City objects to any such Written Requisition, the City will, within 30 days following receipt of the Written Requisition (60 days in case of the final Written Requisition), pay to Edwards the amounts reflected in the Written Requisition and Edwards will promptly pay to the applicable subcontractors and suppliers the amounts payable to such subcontractors and suppliers. The City may object to a Written Requisition by giving written notice of and specific reasons for the objection(s) and of the amounts subject to the objection(s) within 15 business days of receipt. Objections may be made because of a good faith belief that there is a material defect in Work or the percentage of completion of the Work in question in the Written Requisition is materially overstated. A Written Requisition is not payable until the objection is resolved. All disbursements requested pursuant to this section are subject to the prior approval of the Engineer and the Director of Finance. All disbursements pursuant to this Section will be made solely from the money deposited by the City into the TIF Fund (not to exceed the City Contribution as defined in the TIF Agreement) or otherwise made available pursuant to the TIF Agreement.

Upon request of the Authorized City Representative or the Engineer, Edwards will furnish invoices or other documentation in connection with each such Written Requisition. Any Written Requisition under this Section 6.2 may be in the form of a communication by telegram, e-mail, or facsimile transmission, but if in such form, it must be promptly confirmed by a Written Requisition executed by an Authorized Edwards Representative and approved by the Authorized City Representative.

In paying any Written Requisition under this Section 6.2, the City is entitled to rely as to the completeness and accuracy of all statements in such Written Requisition upon the approval of such Written Requisition by an Authorized Edwards Representative, execution thereof, and communication thereof by telegram, e-mail, or facsimile transmission, to be conclusive evidence of such approval, and Edwards will indemnify and save harmless the City from any liability incurred in connection with any Written Requisition so executed or communicated by an Authorized Edwards Representative.

Edwards may not submit or cause to be submitted to the City any Written Requisition pursuant to this Section 6.2 and has no claim upon any money in the TIF Fund, so long as any Event of Default by Edwards continues.

Section 6.3. Final Disbursement. Upon final completion of the Work and acceptance by the City, Edwards will submit to City a final Written Requisition for payment of all remaining sums. Payment of the final payment is subject to the provisions of this Article VI. Edwards will deliver to City copies of unconditional final lien waivers executed by all subcontractors, suppliers or lien claimants along with the final Written Requisition together with the final payroll report and prevailing wage affidavit required by Section 5.2.

Section 6.4. Tax Covenants. The City's obligation to make payments to Edwards pursuant to this Agreement is not an obligation or pledge of any money raised by taxation and does not represent or constitute a debt or pledge of the faith and credit of the City. Except for the payments from the TIF Fund and in the aggregate amount described in this Agreement and for the reimbursements of Cost of the Work as provided in the TIF Agreement, Edwards will receive no other money from the City in connection with the construction of the Public Improvements.

(END OF ARTICLE VI)

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or the TIF Agreement, or any of its terms or conditions, by either Party, such Party will, upon written notice from the other, proceed promptly to cure or remedy such default or breach, and, in any event, within 30 days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within that 30 day period, then the Party will upon written notice from the other commence its actions to cure or remedy the breach within the 30 day period, and proceed diligently thereafter to cure or remedy the breach. In case such action is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the following remedies may be pursued: (i) the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations; (ii) the aggrieved Party may terminate this Agreement; and (iii) in addition, if the default or breach is a failure of Edwards to achieve completion of the Work by the date set forth in Section 4.2 herein, as adjusted by Change Order, City may perform Edwards's obligations under this Agreement and pay the costs thereof from the TIF Fund. Edwards and its surety are responsible for any amount necessary to perform those obligations in excess of the City Contribution set forth in the TIF Agreement.

Section 7.2. Other Rights and Remedies; No Waiver by Delay. The Parties each have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; provided, that any delay by either Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement does not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that neither Party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor does any waiver in fact made by either Party with respect to any specific default by the other Party under this Agreement be considered or treated as a waiver of the rights of such Party with respect to any other defaults by the other Party to this Agreement or with respect to the particular default except to the extent specifically waived in writing.

Section 7.3. Force Majeure. Notwithstanding anything contained in Sections 7.1 and 7.2 to the contrary and except as otherwise provided herein, no Party will be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to an event of Force Majeure beyond its control and without its fault or negligence; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations will be extended for the period of the enforced delay; provided, however, that the Party seeking the benefit of the provisions of this Section 7.3 must, within 14 days after the beginning of such enforced delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof or, if

a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other Party in writing of the duration of the delay.

(END OF ARTICLE VII)

ARTICLE VIII

DISPUTE RESOLUTION PROVISIONS AS TO AMENDMENTS AND CLAIMS

Section 8.1. Notice and Filing of Requests. Any request by the City or Edwards for amendment of the terms of this Agreement, including without limitation, for additional funds or time for performance must be made in writing and given prior to completion of the Public Improvements.

Section 8.2. Request Information. In every written request given pursuant to Section 8.1, the Party giving notice must provide the nature and amount of the request; identification of persons, entities and events responsible for or related to the request; and identification of the activities on the applicable schedule affected by the request.

Section 8.3. Meeting. Within ten days of receipt of the request given pursuant to Section 8.1, the Parties will schedule a meeting in an effort to resolve the request and endeavor to reach a decision on the request promptly thereafter or reach a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting will be attended by persons expressly and fully authorized to resolve the request on behalf of the City and Edwards.

Section 8.4. Mediation. If no mutually acceptance decision is reached within 30 days of the date of the meeting held pursuant to Section 8.3, the Parties may submit the matter to mediation, upon written agreement between them, or exercise any other remedy permitted to them at law or in equity.

Section 8.5. Performance. The City and Edwards will proceed with their respective performance of this Agreement during any dispute resolution process, unless otherwise agreed by them in writing.

(END OF ARTICLE VIII)

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notice. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient previously notified the sender of in writing, and will be deemed received upon actual receipt, unless sent by certified mail, in which event such notice will be deemed received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties must be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one Party to the other.

Section 9.2. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement are effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement is a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party other than his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement are liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

Section 9.3. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination will not affect any other provision, covenant, obligation or agreement, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement will be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 9.4. Binding Effect Against Successors and Assigns. The provisions of this Agreement are binding upon the successors or assigns of the Parties.

Section 9.5. Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 9.6. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 9.7. Executed Counterparts. This Agreement may be executed in several counterparts, each of which constitutes an original, but all of which together constitute one and

the same instrument. Signatures transmitted by facsimile or electronic means are deemed original signatures. It will not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 9.8. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between any of the Parties and their respective agents and employees, arising out of or relating to this Agreement or its breach must be decided in a court of competent jurisdiction within Franklin County, Ohio.

Section 9.9. Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning Party.

Section 9.10. Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement survive the execution and delivery of this Agreement.

(END OF ARTICLE IX – SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF DUBLIN, OHIO

By: _____
Printed: Marsha I. Grigsby
Title: City Manager

Approved as to Form:

By: _____
Printed: Stephen J. Smith
Title: Director of Law

[THE EDWARDS COMPANIES, LLC]

By: _____
Printed: _____
Title: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Deputy City Manager and Director of Finance of the City of Dublin, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2013 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: [_____], 2013

Angel L. Mumma
Deputy City Manager/Director of Finance
City of Dublin, Ohio

EXHIBIT A

FORM OF CHANGE ORDER

[to be attached]

EXHIBIT B

PRELIMINARY COST ESTIMATES

[to be attached]

EXHIBIT C

PERSONAL PROPERTY TAX AFFIDAVIT
(O.R.C. § 5719.042)

State of Ohio
County of _____, ss:

_____, being first duly sworn, deposes and says that he/she is the
(Name)

_____ of _____
(Title) (Name and Address of Contractor)

_____ (the
"Contractor") and as its duly authorized representative, states that effective this ____ day of
_____, 201__, the Contractor:

() is charged with delinquent personal property taxes on the general list of personal property as set forth below:

<u>County</u>	<u>Amount</u> (include total amount penalties and interest thereon)
_____ County	\$ _____
_____ County	\$ _____
_____ County	\$ _____

() is not charged with delinquent personal property taxes on the general list of personal property in any Ohio county.

(Affiant)

Sworn to and subscribed before me by the above-named affiant this ____ day of _____, 201__.

(Notary Public)

My commission expires _____, 201__

EXHIBIT D

WRITTEN REQUISITION

No. _____

City of Dublin, Ohio
5200 Emerald Parkway
Dublin, Ohio 43017
Attention: City Manager

Attention: _____, Authorized City Representative

Subject: Certificate and Request for Disbursement of Funds from the Dublin Village Center
Municipal Tax Increment Equivalent Fund

You are hereby requested to disburse from the TIF Fund described above, and in accordance with the provisions of Section 6.2 of the Infrastructure Agreement, dated [____], 2013 (the "Agreement") by and between the City and The Edwards Companies, LLC ("Edwards"), the amount of \$_____ as more fully set forth on the attached Project Payment Request attached hereto to be paid pursuant to this Written Requisition No. _____ to Edwards at _____. All capitalized terms not otherwise defined in this Written Requisition have the meanings assigned to them in the Agreement.

The undersigned Authorized Edwards Representative does hereby certify in compliance with Section 6.2 of the Agreement that:

(i) I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents of Edwards relating to the matters covered by this Written Requisition;

(ii) The amount and nature of the portion of the Cost of the Work requested to be paid are shown on Schedule A attached hereto;

(iii) The disbursement herein requested is for an obligation properly incurred, is a proper charge against the TIF Fund as a Cost of the Work, has not been the basis of any previous withdrawal from the TIF Fund and was made in accordance with the Construction Documents;

(iv) The Public Improvements have not been materially injured or damaged by fire or other casualty in a manner which, if not repaired or replaced, would materially impair the ability of Edwards to meet its obligations under the Agreement;

(v) Edwards is in material compliance with all provisions and requirements of the Agreement, including, but not limited to, all prevailing wage requirements;

(vi) No Event of Default set forth in Article VII of the Agreement, and no event which but for the lapse of time or the giving of notice or both would be such an Event of Default, has occurred and is continuing;

(vii) Attached hereto as Schedule B are conditional lien waivers from any materialmen, contractors and subcontractors who have provided services or materials to the Public Improvements as required by Section 6.2 of the Agreement, and Edwards further acknowledges its obligation to require, or require provision of, certain security pursuant to Section 5.8 of the Agreement in the event any mechanic's liens are filed in connection with the Public Improvements;

(viii) The Public Improvements are being and have been installed substantially in accordance with the Construction Documents for the Public Improvements and all materials for which payment is requested have been delivered to and remain at the location where they are to be installed;

(ix) The payment requested hereby does not include any amount which is entitled to be retained under any holdbacks or retainages provided for in any agreement;

(x) Edwards has asserted its entitlement to all available manufacturer's warranties to date upon acquisition of possession of or title to such improvements or any part thereof which warranties have vested in Edwards and must be wholly transferable to the City; and

(xi) All money of the TIF Fund heretofore disbursed has been spent in accordance with the Written Requisition applicable thereto.

(xii) Attached hereto as Schedule C are unconditional lien waivers for any outstanding conditional lien waivers provided in conjunction with previous Written Requisitions;

EXECUTED this ____ day of _____, 201__.

By: _____
Authorized Edwards Representative

[City form of Project Payment Request to be attached as part of Exhibit D]