



To: Members of Dublin City Council

From: Marsha I. Grigsby, City Manager 

Date: January 23, 2014

Initiated By: Colleen Gilger, Director, Economic Development
Jeremiah Gracia, Economic Development Administrator

Re: Ordinance 10-14 – Development and Land Exchange Agreement for Everhart Advisors

Background

Economic Development staff has been in discussion with Dublin-based Everhart Financial Group, Inc. (dba Everhart Advisors) about their interest in building a new corporate headquarters in Dublin. Everhart Advisors is an independent investment-consulting firm providing retirement plan advisory services to corporations, and wealth advisory services to corporate executives and other individuals.

Everhart's proposed new corporate headquarters will be approximately 8,000 –10,000 square feet. The company currently leases 3,300 square feet at 5890 Venture Drive. The construction of a new corporate headquarters facility demonstrates Everhart's long-term commitment to Dublin. The company has 15 employees and expects to grow to 25+ employees by 2019.

The company has identified four, contiguous, small properties located at the intersection of Post Road and Perimeter Drive for their new construction. The company is in contract for the purchase of 7155 Post Road and an undeveloped parcel currently owned by Mount Carmel just north of Perimeter Drive. Attachment #1 provides an overview of those two sites.

The two other parcels identified for consolidation (to allow for enough acreage for the proposed development project) belong to the City of Dublin, located at the intersection of Perimeter Drive and Post Road. Attachment #2 provides an overview of the City-owned parcels (split in half by the Franklin/Union county line). A professional appraisal completed in April 2013 valued the entire tract (0.924 acres) at \$50,000. The referenced tract is located in the Perimeter West Straight TIF that does not expire until 2024.

As an economic development incentive for Everhart to construct its new headquarters in Dublin and grow its employment base, the City's economic development team proposes to transfer 0.74 acres of the 0.924 acres City-owned land to Everhart. The additional property is necessary for Everhart to construct their future headquarters. The reduced acreage granted brings the total value of the land incentive to \$37,500.

The City will retain 0.182 acres of the City-owned property for future road improvements at the intersection of Perimeter Drive and Post Road. In addition, Everhart has agreed to transfer 0.023 acres of their acquired property at 7155 Post Road to the City to assist with potential future road improvements at the Perimeter Drive and Post Road intersection.

A critical part of this project will require a rezoning of all the respective parcels referenced in this memo, as three distinct zoning classifications are currently in place in this area. Everhart has already initiated that application process through the Planning office, hoping to achieve the rezoning by July 2014 and for construction to begin in September 2014. The legal transfer of City-owned property will not take place until after the rezoning is complete. Details of the real estate agreement are attached as supplements to this memo.

Recommendation

Staff recommends Council passage of Ordinance 10-14 at the second reading/public hearing on February 10, 2014. Please contact Jeremiah Gracia or Colleen Gilger with any questions you may have.

RECORD OF ORDINANCES

Ordinance No. 10-14

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO EVERHART FINANCIAL GROUP INC., DBA EVERHART ADVISORS TO INDUCE IT TO RETAIN A MAIN OFFICE AND ASSOCIATED OPERATIONS AND WORKFORCE WITHIN THE CITY, AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AND LAND EXCHANGE AGREEMENT.

WHEREAS, consistent with its Economic Development Strategy (the "*Strategy*") approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and create and preserve jobs and employment opportunities within the City; and

WHEREAS, Everhart Financial Group Inc., DBA Everhart Advisors (the "*Company*") recently performed a comprehensive examination of its workforce needs, and based on the results of this examination, and induced by and in reliance on the economic development incentives provided in the proposed Development and Land Exchange Agreement (as described below), the Company is desirous of constructing a facility within the City to retain a main office and associated operations and workforce within the City; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for certain economic development incentives to the Company, as described in the proposed Development and Land Exchange Agreement; and

WHEREAS, this Council has determined to offer the economic development incentives, the terms of which are set forth in a substantially final form of Development and Land Exchange Agreement presently on file in the office of the Clerk of Council, to induce the Company to construct a facility and retain a main office and associated operations and workforce, all within the City, which will result in the preservation of existing jobs and employment opportunities within the City and the possible creation of new jobs and employment opportunities within the City, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution.

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

Section 1. The Development and Land Exchange Agreement by and between the City and the Company, in the form presently on file with the Clerk of Council, providing for, among other things, the provision of certain economic development incentives in consideration for the Company's agreement to construct a facility within the City for the retention of a main office and associated operations and workforce within the City, which will result in the preservation of existing jobs and employment opportunities within the City and the possible creation of new jobs and employment opportunities within the City, is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that Development and Land Exchange Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the Development and Land Exchange Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Clerk of Council, or other appropriate

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 10-14

Passed Page 2 of 2, 20

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 open meetings of this Council or 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 Section 121.22 of the Revised Code.

Section 4. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Signed:

Mayor - Presiding Officer

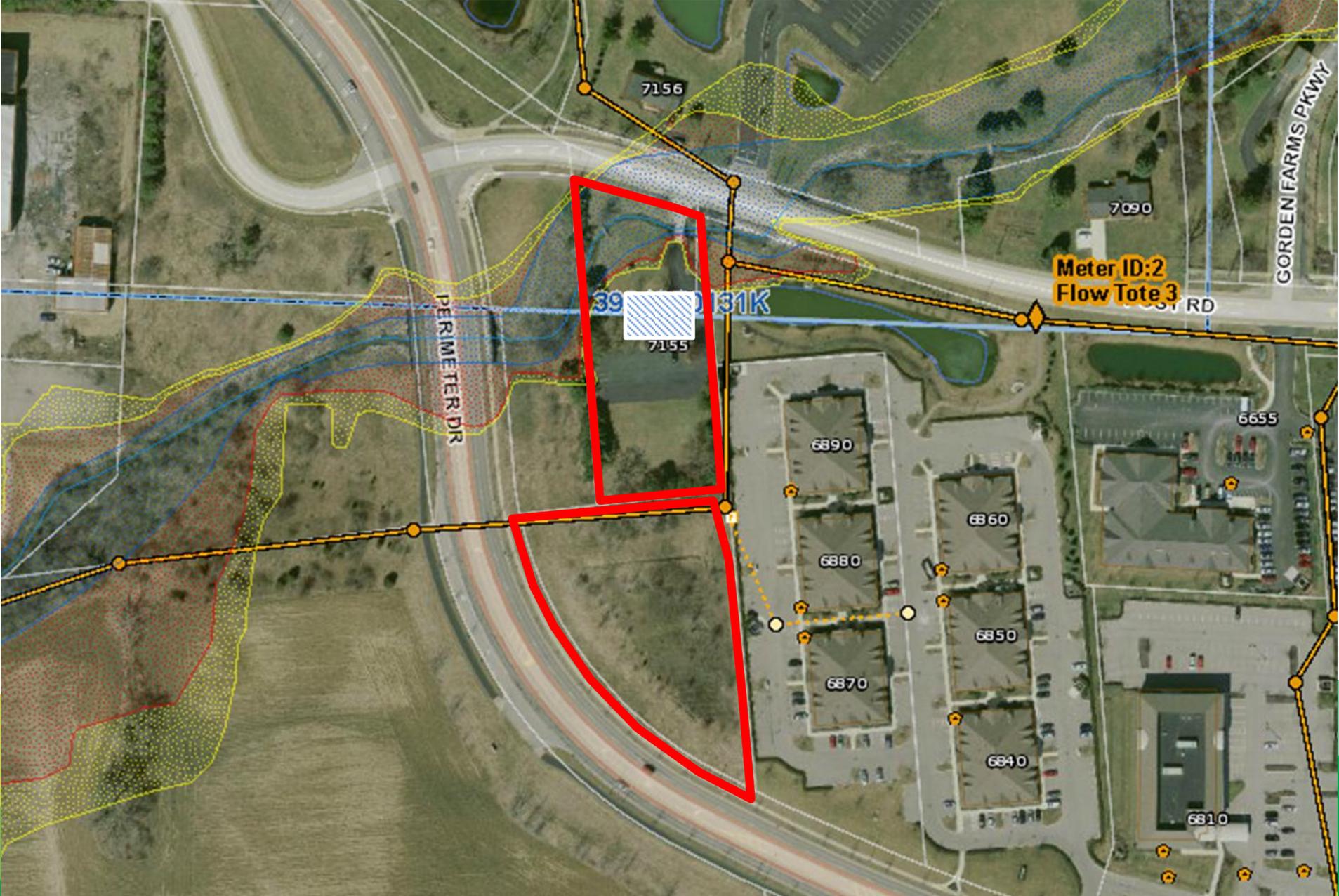
Attest:

Clerk of Council

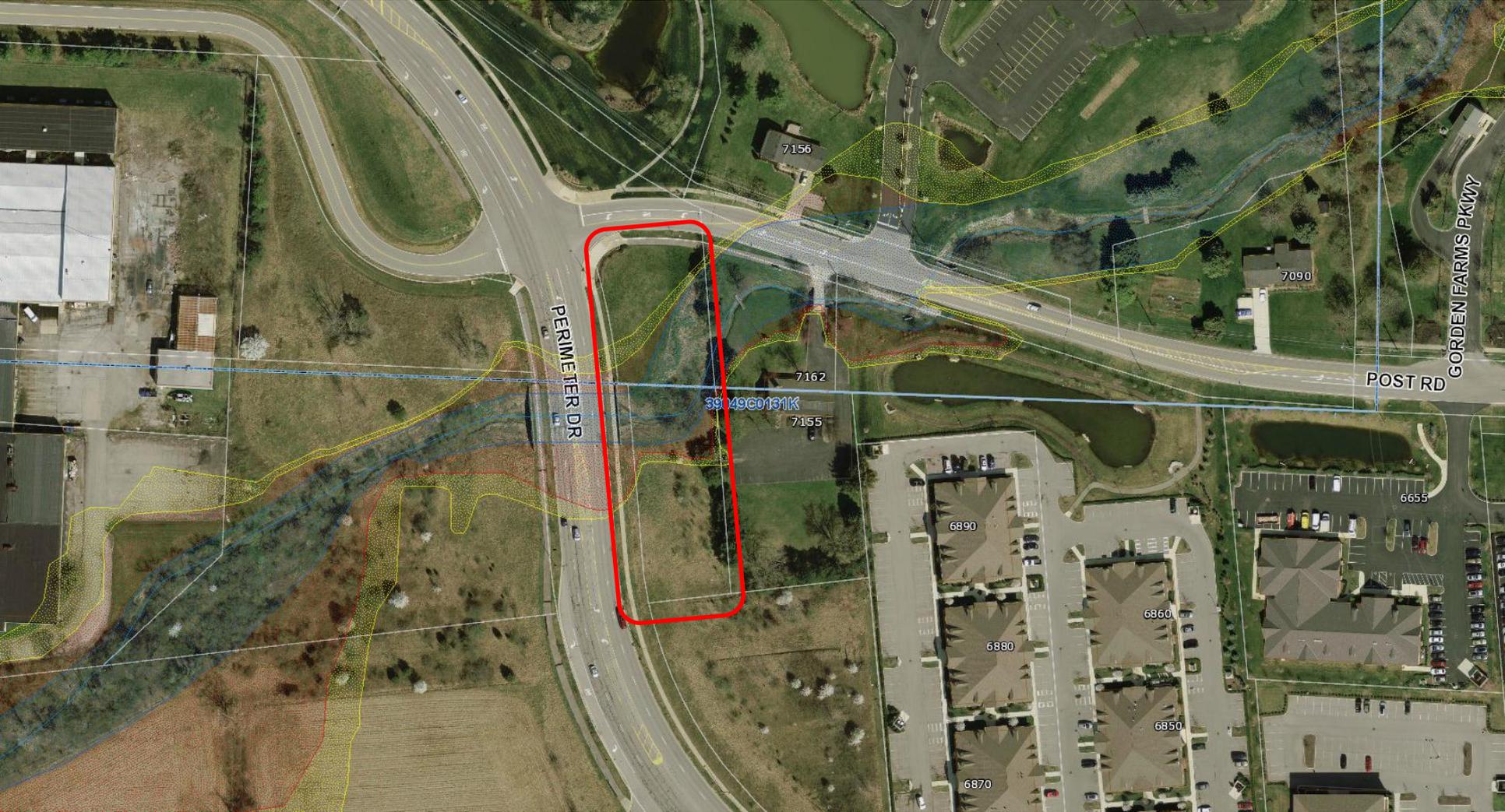
Passed: _____, 2014

Effective: _____, 2014

Attachment #1 – Property in contract by Everhart



Attachment #2: City owned land at Post Rd. & Perimeter Drive



DEVELOPMENT AND LAND EXCHANGE AGREEMENT

THIS AGREEMENT FOR DEVELOPMENT AND LAND EXCHANGE (this “Agreement”) is made and entered into on this ____ day of _____, 2014 (the “Effective Date”), by and between **Everhart Financial Group Inc.**, DBA Everhart Advisors (the “Company”), whose mailing address is 5890 Venture Drive, Suite D, Dublin, Oh 43017, and the **City of Dublin, Ohio**, an Ohio municipal corporation (the “City”), whose mailing address is 5200 Emerald Parkway, Dublin, Ohio 43017. The City and the Company may hereinafter be referred to individually as a “Party,” or collectively as the “Parties.”

Background Information

WHEREAS, consistent with its Economic Development Strategy (the “*Strategy*”) approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office and retail development and provide for the retention and creation of employment opportunities within the City;

WHEREAS, based on the results of the Company’s recent comprehensive examination of its business needs, and induced by and in reliance on the economic development incentives provided in this Agreement, the Company with headquarters located at 5890 Venture Drive, Dublin, Ohio consisting of a 3,300 square foot office is desirous of building new headquarters in the City to consist of approximately 8,000 to 10,000 square feet to enable the Company to expand its workforce and operations within the City;

WHEREAS, the construction of a new corporate headquarters facility demonstrates the Company’s long-term commitment to Dublin;

WHEREAS, the Company currently has 15 employees within the City and expects to grow to 25+ employees within the City by 2019;

WHEREAS, to facilitate the Company’s proposed building of its new headquarters and to promote the retention, and potential creation, of employment opportunities within the City, the City has determined to exchange certain real property with the Company;

WHEREAS, the new headquarters site consists of four contiguous parcels and 1.5 acres, more or less, of another adjacent parcel located at the northwest corner of the Post Road and Perimeter Drive intersection;

WHEREAS, the Company is in contract for the purchase of 7155 Post Road consisting of two parcels (one in Franklin County and one in Union County) currently owned by GLK Properties LTD, an Ohio limited liability company (the “GLK Property”) and 1.5 acres, more or less, (the “Mt. Carmel Property”) of an adjacent parcel to the south and bounded on the southwest by Perimeter Drive, in Franklin County part of a larger parcel (38.179 acres, more or less) owned by Mount Carmel Health Systems, an Ohio Non-Profit Corporation (See Exhibit “A”);

WHEREAS, the other two parcels (one in Franklin County and one in Union County) identified for consolidation to allow for enough acreage for the proposed project are owned by the City of Dublin (“City Owned Parcels”) (See Exhibit “B”);

WHEREAS, the City hired a professional appraiser to complete an appraisal report for the City Owned Parcels in April 2013 and the report valued the parcels (0.924 acres) at \$50,000;

WHEREAS, the City desires to transfer 0.74 acres (“City Exchange Parcel”) of the 0.924 acres of the City Owned Parcels (See Exhibit “C”) to Everhart as an economic development incentive for Everhart to construct its new headquarters in Dublin and grow its employment base and to retain, and potentially expand, its workforce and operations within the City;

WHEREAS, the 0.74 acres totaling the City Exchange Parcel is valued at \$37,500;

WHEREAS, the City will retain 0.182 acres of the City Owned Parcels for future road improvements at the intersection of Perimeter Drive and Post Road;

WHEREAS, upon its purchase, the Company desires to transfer 0.023 acres (“Company Exchange Parcel”, and collectively with the City Exchange Parcel, the “Exchange Parcels”) of the 1.35 acres of the GLK Property (See Exhibit “D”) to the City to assist with planned future road improvements at the Perimeter Drive and Post Road intersection in exchange for the City Exchange Parcel;

WHEREAS, the 0.023 acres totaling the Company Exchange Parcel is valued at \$_____, bringing the total value of the land incentive agreement to the Company to \$_____;

WHEREAS, the 0.74 acre City Exchange parcel will be combined with the remaining 1.327 acres of the GLK Property and the Mt. Carmel Property creating the site for the Company’s new headquarters (the “Company Property”);

WHEREAS, the Company Property must be rezoned as it consists of multiple distinct zoning classifications;

WHEREAS, the Company has started that application process through the Dublin Land Use and Long Range Planning department with the goal of achieving the rezoning by July 2014 so construction can begin in September 2014;

WHEREAS, the legal transfer of the City Exchange Parcel will not take place until after the rezoning is complete and the Company has acquired both the GLK Property and the Mt. Carmel Property;

WHEREAS, pursuant to Ordinance No. 10-14 passed on _____, 2014 (the “Ordinance”), the City has determined to offer the economic development incentive described herein to induce the Company to remain within the City, which will result in the preservation of

existing jobs and employment opportunities within the City and the potential creation of new jobs and employment opportunities within the City, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, in order to provide for the sale and conveyance of the City Exchange Parcel to the Company and to induce the Company to proceed with the Project to facilitate the building of its new facility within the City and to retain, and potentially expand, its workforce and operations within the City, the City and the Company desire to enter into this Agreement on the terms as hereinafter provided.

Statement of Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Company agree to the foregoing Background Information and as follows:

ARTICLE I **EXCHANGE OF LAND**

- A. Retention of Existing Company Operations and Workforce and Related Potential Expansion. In consideration of the economic development incentives to be provided by the City herein, the Company agrees to preserve its existing workforce and operations within the City, and the Company anticipates that the Company Property will allow it to build a larger headquarters and create new employment opportunities within the City.
- B. Transfer. The City hereby agrees that it shall cause the City Exchange Parcel to be transferred and deeded to the Company, and the Company hereby agrees that it shall cause the Company Exchange Parcel to be transferred and deeded to the City, upon the terms and conditions of this Agreement. The Parties agree that no cash will be paid by or to either Party except as otherwise provided for in this Agreement. The City and the Company agree that the transfer of the properties contemplated herein shall be a money-free exchange.
- C. Reimbursement/Reconveyance to City. If the Company shall fail to obtain an Occupancy Permit for the Development by January 1, 2016, then Dublin shall be entitled, in its sole discretion, to either fair market value upon the sale of the property or a deed from the Company reconveying the City Exchange parcel with the same general warranties as provided by the City in its deed.
- D. Contingencies.
 - a. **Environmental Inspection.** Up and until October 1, 2014, the City agrees to permit the Company, the Company's lender and any qualified, professional environmental consultant or consultants retained by the Company or its prospective lender(s) to conduct, at the expense of the Company, an environmental site assessment of the City

Exchange Parcel. The Company agrees to indemnify and hold harmless the City from any injury or damage to persons, property and crops caused by such inspection and to restore the City Exchange Parcel to substantially the condition in which the same were found before such inspection. If such assessment is obtained and the consultant recommends further inspection to determine the extent of suspected contamination or recommends remedial action, the Company, at its option, may notify the City in writing, within the above-specified period, that this Agreement is null and void. Failure of the Company to deliver written notice and copy of the environmental report(s) within such time period shall constitute a waiver of the Company's right to terminate this Agreement pursuant to this provision. The indemnification herein shall survive the termination of this Agreement.

b. Property Inspection. The Company, at its own expense, shall have until October 1, 2014 to have the City Exchange Parcel including any and all improvements, fixtures and equipment contained thereon inspected. The Company shall be permitted to complete any inspection including but not limited to soil sampling and testing, soil boring and soil compaction tests, and inspections regarding the availability of necessary utilities of the respective Exchange Parcel. The City shall cooperate in making the City Exchange Parcel reasonably available for such inspection(s). The Company agrees to indemnify and hold the City harmless from any injury or damage to persons, property and crops caused by such inspection(s) and to restore the City Exchange Parcel to substantially the condition in which the same was found before such inspection. If the Company is not, in good faith, satisfied with the condition of the City Exchange Parcel as disclosed by such inspection(s), the Company may terminate this Agreement by delivering written notice of such termination to the City, along with a written copy of such inspection report(s), within the time period specified above, such notice and report(s) shall specify the unsatisfactory conditions. Failure of the Company to deliver written notice and copy of the inspection report(s) within such time period shall constitute a waiver of the Company's right to terminate this Agreement pursuant to this provision. The indemnification herein shall survive the termination of this Agreement.

c. Zoning Contingency. The Company, at its sole expense, shall have until October 1, 2014 (the "Zoning Contingency Period") to obtain from the City of Dublin or any other applicable zoning, building or engineering department, commission or board, zoning changes and/or approvals reasonably satisfactory to the Company to allow the Company to use the Company Property for its headquarters. If delays in obtaining satisfactory approval are not caused by any fault of the Company, but are caused by events or factors beyond the reasonable control of the Company, the Company shall be entitled to four (4) additional thirty (30) day extensions of the Zoning Contingency Period by providing, in each case, written notice to the City that the Company requires such extension(s) on or before the expiration of the Zoning Contingency Period or applicable extension thereof, and providing the City with evidence of the cause or causes of such delay. The City will cooperate with the Company in the completion of any application needed in order for the Company to seek zoning and building approval, but shall incur no expense in excess of the expense typically incurred by the City in processing and adjudicating similar zoning applications in connection with the Company's efforts to seek and obtain approvals.

If the Company is unable to obtain the approval of the City or applicable zoning commission or board for zoning changes or approvals to allow the Company to use the Company Property for the intended use described herein, the Company may terminate this Agreement by delivering written notice to the City prior to the expiration of the Zoning Contingency Period or applicable extension thereof. Failure of the Company to deliver written notice of termination prior to the expiration of the Zoning Contingency Period or extension thereof, if applicable, shall constitute a waiver of the Company's right to terminate the Agreement pursuant to this provision.

d. Dublin City Council Approval. This Agreement shall be contingent upon the City, within ninety (90) days after the acceptance hereof, obtaining Dublin City Council approval of the terms of this Agreement. If Dublin City Council fails to approve of this Agreement within such period, then this Agreement may be terminated by City upon delivery of written notice thereof to Buyer.

e. Survey Approval. The City, at its own expense, shall have until October 1, 2014 to have the Exchange Parcels and the Company Property surveyed and approved. The dimensions and boundaries shall be generally consistent with the Exhibits attached hereto by the Parties. Promptly following the approval of any applicable zoning commission or board and both Parties' approval of the general boundaries and dimensions of the respective Exchange Properties (but in no event later than ten (10) business days prior to the closing), the City shall, at its sole cost and expense, deliver to the Company and the Title Company for approval, the boundary surveys (the "Surveys") and legal description of the Exchange Parcels prepared by a surveyor, registered in the State of Ohio (the "Surveyor"), together with any other documents legally necessary to split the Exchange Parcels from its Parent Parcel.

f. Property Acquisition. The Company's obligations hereunder are specifically contingent upon the Company's acquisition of the GLK Property and the Mt. Carmel Property. The Company shall have the right and option of terminating this Agreement by delivery of written notice of termination to the City in the event the Company does not, for any reason whatsoever, acquire title to both the GLK Property and the Mt. Carmel Property.

ARTICLE II **EVIDENCE OF TITLE**

A. **Title Examination.** Within fifteen (15) days after the Effective Date, the City and the Company each may obtain, at its own expense, a letter report ("Letter Report") or an ALTA Commitment for Title Insurance (2006) (the "Title Commitment") issued by a title agency of its choosing ("Title Insurance Company"), which Letter Report or Title Commitment shall show all recorded liens and encumbrances affecting the City Exchange Parcel and the Company Exchange Parcel, as the case may be, and shall include copies of all documents referenced in the Letter Report or Title Commitment. The Letter Report or Title Commitment obtained by the Company shall show in the City good and marketable title to

the City Exchange Parcel, free and clear of all liens, charges, encumbrances and clouds of title, whatsoever, except the following (“Permitted Encumbrances”):

- a. Those created or assumed by the City, as to the Company Exchange Parcel, or the Company, as to the City Exchange Parcel;
- b. Zoning ordinances;
- c. Legal highways and public rights-of-way;
- d. Real estate taxes which are liens on the respective properties, but which are not yet due and payable; and
- e. Covenants, restrictions, conditions and easements of record acceptable to the City, in the case of the Company Exchange Parcel, and to the Company, in the case of the City Exchange Parcel.

The Letter Report or the Title Commitment, as the case may be, shall fully and completely disclose all easements, rights-of-way, and any appurtenant rights and easements affecting the City Exchange Parcel and/or the Company Exchange Parcel, as applicable, and shall show the results of a special tax search and examination for any financing statements filed of record which may affect the properties.

B. Title Insurance. At the Closing (as hereinafter defined), each Party shall have the right to purchase, at its own expense, title insurance coverage for the property to which each respective Party will be taking title.

C. Title Defects.

- a. In the event that an examination of either the Title Commitment/Letter Report or the Company Survey discloses any matter adversely affecting title to the Company Exchange Parcel, or if title to the Company Exchange Parcel is not marketable, as determined by Ohio law with reference to the Ohio State Bar Association’s Standards of Title Examination, or if the Company Exchange Parcel is subject to liens, encumbrances, easements, conditions, restrictions, reservations or other matters not specifically excepted by the terms of this Agreement, or in the event of any encroachment or other defect shown by the Company Survey (the foregoing collectively referred to as, “Company Parcel Defects”), the City shall, within ten (10) days following the later of the City’s receipt of both the Title Commitment/Letter Report and Company Survey, provide the Company with written notice of any such Defects to which the City is objecting. The Company shall have ten (10) days following receipt of such written notice to cure or remove any such Company Parcel Defects to the reasonable satisfaction of the City.
- b. In the event that an examination of either the Title Commitment/Letter Report or the City Survey discloses any matter adversely affecting title to the City Exchange Parcel, or if title to the City Exchange Parcel is not marketable, as determined by Ohio law with reference to the Ohio State Bar Association’s Standards of Title Examination, or if the City Exchange Parcel is subject to liens, encumbrances, easements, conditions, restrictions, reservations or other matters not specifically

excepted by the terms of this Agreement, or in the event of any encroachment or other defect shown by the City Survey (the foregoing collectively referred to as, "City Parcel Defects"), the Company shall, within ten (10) days following the later of the Company's receipt of both the Title Commitment/Letter Report and City Survey, provide the City with written notice of any such City Parcel Defects to which the Company is objecting. The City shall have ten (10) days following receipt of such written notice to cure or remove any such City Parcel Defects to the reasonable satisfaction of the Company.

ARTICLE III
CLOSING; POSSESSION

- A. Closing Date. The property exchange contemplated herein shall be closed through the a Title Agency mutually agreed to by the Parties (the "Closing") within thirty (30) days following the termination of the Contingency Period, which Closing date may be extended in writing by mutual agreement of the Parties and shall be extended by such time, if any, as is necessary to cure any Company Parcel Defects and/or City Parcel Defects, as set forth in Section 2.03 hereof. The Closing shall be at such time as the City and the Company may mutually agree.
- B. General Warranty Deed. At the Closing, the City shall convey to the Company fee simple title to the City Exchange Parcel and the Company shall convey to the City fee simple title and easement to the Company Exchange Parcel, by validly executed, recordable general warranty deeds/easement, free and clear of all liens and encumbrances, except the Permitted Encumbrances applicable to each parcel and as stated within each instrument.
- C. Adjustments at Closing. At the Closing, the City and the Company shall apportion, adjust, prorate and pay the following items in the manner hereinafter set forth:
- a. Real Estate Taxes and Assessments. The City shall pay to the Franklin County Treasurer all delinquent real estate taxes, if any, together with penalties and interest thereon, all assessments which are a lien against the City Exchange Parcel as of the date of Closing (both current and reassessed, whether due or to become due and not yet payable), all real estate taxes for years prior to Closing and real estate taxes for the year of Closing, prorated through the date of Closing, applicable to the City Exchange Parcel. The Company shall pay to the Franklin County Treasurer all delinquent real estate taxes, together with penalties and interest thereon, all assessments which are a lien against the Company Exchange Parcel as of the date of Closing (both current and reassessed, whether due or to become due and not yet payable), all real estate taxes for years prior to Closing and real estate taxes for the year of Closing, prorated through the date of Closing, applicable to the Company Exchange Parcel. The proration of undetermined taxes shall be based upon a three hundred sixty-five (365) day year and on the last available tax rate, giving due regard to applicable exemptions, recently voted millage, change in tax rate or valuation (as a result of this transaction or otherwise), whether or not the same have been certified. The Parties acknowledge the City Exchange Parcel is being split from the City Property and the Company Exchange Parcel is being split from the Company

Property, and therefore, the proration of real estate taxes shall be calculated by multiplying the applicable foregoing taxes for each parcel by a fraction, the numerator of which shall be the acreage contained in the City Exchange Parcel or the Company Exchange Parcel, and the denominator of which shall be the total acreage contained in the City Property or the Company Property, as applicable. The estimated proration of real estate taxes paid by each Party at the Closing shall be final;

- b. The City's Expenses. The City shall, at the Closing (unless previously paid), pay the following expenses:
- i. The cost of furnishing the Title Commitment/Letter Report for the Company Exchange Parcel, and the premium for any owner's policy of title insurance for the Company Exchange Parcel desired by the City;
 - ii. The cost of all municipal services and public utility charges (if any) applicable to the City Exchange Parcel due through the date of Closing;
 - iii. The cost of recording the general warranty deed transferring title in the Company Exchange Parcel to the City;
 - iv. The cost of obtaining the City Survey and the Company Survey; and
 - v. One-half (1/2) the fee, if any, charged by the Title Insurance Company for closing the transactions contemplated herein.
- c. The Company's Expenses. The Company shall, at the Closing (unless previously paid), pay the following expenses:
- i. The cost of furnishing the Title Commitment/Letter Report for the City Exchange Parcel, and the premium for any owner's policy of title insurance for the City Exchange Parcel desired by the Company;
 - ii. The cost of all municipal services and public utility charges (if any) applicable to the Company Exchange Parcel due through the date of Closing;
 - iii. The cost of recording the general warranty deed transferring title in the City Exchange Parcel to the Company;
 - iv. The cost of recording any release or partial release of any mortgages or other liens affecting the Company Exchange Parcel; and
 - v. One-half (1/2) the fee, if any, charged by the Title Insurance Company for closing the transactions contemplated herein.

- d. Other Closing Costs. All other closing costs and expenses not herein referenced and not specifically attributable to either Party shall be shared equally by the Parties.
- e. Brokers. Each Party represents and warrants to the other Party that neither Party has dealt with or through any real estate broker or real estate company that is claiming, or which may be entitled to claim, a commission or fee for services relating to this Agreement.
- f. Other Documents. The Parties agree that such other documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by the appropriate party to the Title Insurance Company at Closing. Such documents shall include, but not be limited to, a settlement statement, affidavits regarding liens, unrecorded matters and possession as may be reasonably requested by the Title Insurance Company.

ARTICLE IV
WARRANTIES AND REPRESENTATIONS OF THE PARTIES

- A. Warranties and Representation of the Company. In addition to any other representations or warranties contained in this Agreement, the Parties hereby represent and warrant as follows with respect to the Parcel they are conveying to the other Party:
 - a. There are no leases in effect for the Parcels;
 - b. The City is the owner of title to the City Exchange Parcel, free and clear of any third-party lien;
 - c. Neither the Party nor any agent, employee or representative of the Party, has received any notice or notices, either orally or in writing, from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health, environmental or building violation, or violation of any laws, ordinances, statutes or regulations relating to pollution or environmental standards, which have not heretofore been disclosed to the other Party or otherwise corrected;
 - d. The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against the Parcel, under any agreement or other instrument to which the Party is a party or by which the Party might be bound;
 - e. No other person or entity other than the City currently owns or has any legal or equitable interest in the City Exchange Parcel and no other person or entity other than the Company has or will have any right to acquire the Parcel, or any portion thereof;

- f. The execution, delivery and performance by the Party of this Agreement and the performance by the Party of the transactions contemplated hereunder, and the conveyance and delivery by the Party to the other Party of possession and title to the Parcel have each been duly authorized by such persons or authorities as may be required, and on the date of Closing, the Party shall provide the other Party with certified resolutions, or other instruments, in form satisfactory to the other Party, evidencing such authorization;
- g. Through and until the date of Closing, the Party shall not enter into any easement, lease or other contract pertaining to the Parcel without the prior written consent of the other Party;
- h. The Party has not used, generated, discharged, released or stored, and will not use, generate, discharge, release or store, any Hazardous Substances on, in or under the Parcel, and have received no notice and have no knowledge of the presence in, on or under the Parcel of any such Hazardous Substances; (ii) to the best of the Party's knowledge, there are no, and will not be, any underground storage tanks at the Parcel, whether owned by the Party or its predecessors in interest; and (iii) to the best of the Party's knowledge, there are no Hazardous Substances, and will not be, on, in or under the Parcel. "Hazardous Substances" means all "hazardous substances" (as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. paragraph 9601 et seq. and the regulations promulgated pursuant thereto, as amended); any other toxic or hazardous waste, material or substance as defined under any other federal, state or local law, rule, regulation or ordinance; petroleum products; asbestos and asbestos-containing material; mold; electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; and any other pollutant or environmental contaminant; and
- i. The Party is not a "Foreign Person" as that term is defined in the Foreign Investment in Property Tax Act.

All representations and warranties set forth in this Article IV shall be true and correct as of the date hereof and as of the Closing Date, and at Closing, if requested by the Party, the other Party shall so certify the same, in writing, in form reasonably requested by the other Party.

- B. Breach of Warranties Prior to Closing. If, during the pendency of this Agreement, either Party determines that any warranty or representation given to the other Party under this Agreement shall be untrue, incorrect or misleading, in whole or in part, the same shall constitute a default hereunder. In such event, the Party claiming default may give written notice thereof and shall thereafter have such rights and remedies as may be available as provided herein, at law or in equity, including, but not limited to, the right to terminate this Agreement and receive compensation for damages or to proceed to Closing for the completion of this transaction.

ARTICLE V

NOTICES

A. Notices. Notice from one Party to another relating to this Agreement shall be deemed effective if made in writing and delivered to the recipient's address set forth below by any of the following means: (i) hand delivery, (ii) registered or certified U.S. mail, postage prepaid, with return receipt requested, or (iii) Federal Express, UPS, or like overnight courier service. Notice made in accordance with this Section 5.01 shall be deemed delivered when delivered by hand, upon receipt or refusal of receipt if mailed by registered or certified U.S. mail, or the next business day after deposit with an overnight courier service if delivered for next day delivery. The Parties agree that electronic mail shall not constitute a permitted form of notice under this Section 5.01. All notices shall be addressed as follows:

(a) If intended for the Company, to:

Everhart Advisors
5890 Venture Drive, Suite D
Dublin, OH 43017
Attn: Matt Romeo, COO

With a copy to:

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43215
Attn: J. Theodore Smith, Esq.

(b) If intended for the City, to:

City of Dublin
5200 Emerald Parkway
Dublin, OH 43017
Attn: Marsha Grigsby, City Manager

With a copy to:

Frost Brown Todd LLP
10 West Broad Street, Suite 2300
Columbus, OH 43215
Attn: Philip K. Hartmann, Esq.

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent.

ARTICLE VI MISCELLANEOUS PROVISIONS

A. Survival. The warranties, representations, covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder.

- B. Governing Law. This Agreement is being executed and delivered in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts of Franklin County, Ohio.
- C. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto, and may not be modified except by an instrument in writing signed by both Parties, and this Agreement supersedes all previous agreements, written or oral, if any, between the Parties.
- D. Economic Development Assistance Certification. The Company has made no false statements to the City in the process of obtaining approval of the incentives described in this Agreement. If any representative of the Company has knowingly made a false statement to the City to obtain the incentives described in this Agreement, the Company shall be required to immediately return all benefits received under this Agreement pursuant Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). The Company acknowledges that any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.
- E. Time of Essence. Time is of the essence of this Agreement in all respects.
- F. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, legal representatives, successors and assigns.
- G. Invalidity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.
- H. Waiver. No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the Party making the waiver.
- I. Headings. The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement. As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall be each deemed to include the other whenever the context so requires.

{Signatures on the following page}

The Parties have hereunto subscribed their names on the day and year first aforesaid.

CITY:

City of Dublin, Ohio
an Ohio municipal corporation

COMPANY:

Everhart Financial Group Inc.
an Ohio corporation for profit

By: _____
Marsha I. Grigsby, City Manager

By: _____

Its: _____

Approved as to Form:

By: _____

Printed: _____
Stephen J. Smith

Title: _____
Director of Law

FISCAL OFFICER'S CERTIFICATE

The undersigned, 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 2014 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: January ____, 2014

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

EXHIBIT A

Aerial of Company parcels

EXHIBIT B

Aerial of City parcels

EXHIBIT C

City Exchange Parcel

EXHIBIT D

Company Exchange Parcel

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