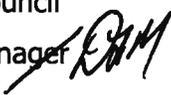




To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager 
Date: June 4, 2015
Initiated By: Terry Foegler, Director of Strategic Initiatives and Special Projects
Angel L. Mumma, Director of Finance
Re: Ordinance 39-15 – Authorizing the Execution of an Infrastructure Agreement to Provide for the Construction of Public Infrastructure Improvements Relating to a Residential Development

Background

On January 5, 2015, Dublin City Council approved Ordinance 115-14, which authorized the City Manager to enter into the Development and Tax Increment Finance Agreement with Casto Tuller LLC ("Developer") for the residential project known as Tuller Flats. That agreement also contemplated the Infrastructure Agreement authorized by this ordinance, which provides for the construction of the public infrastructure related to the project. Ordinance 39-15 authorizes the execution of the Infrastructure Agreement contemplated by the approved Development and Tax Increment Finance Agreement.

The developer has recently purchased the development site and the Tuller Flats project has received the required zoning and platting approvals needed to initiate the development process. The Infrastructure Agreement simply provides the mechanisms and performance obligations related to the design, construction and partial reimbursement of the project's key public infrastructure, and is similar to others approved by the City for such purposes. Additionally, the Infrastructure Agreement does establish some slightly later completion dates for both the City's and developer's construction obligations, resulting both from the amount of time that has passed since the dates were established in the original Development and Tax Increment Finance Agreement, as well as both parties having a far better understanding of the needed design and construction time frames required of the various improvements. Otherwise, the terms of the proposed Infrastructure Agreement are consistent with the previous actions of the City, and the provisions of Ordinance 115-14.

Development and Tax Increment Finance Agreement

By way of additional background, the following provides a brief summary of some of the key points that were included within the previously approved and executed Development and Tax Increment Agreement. In that agreement, the developer agreed to develop the property with approximately 420 upscale multiple-family residential units with a minimum taxable value of \$20 million. The actual valuation is expected to be higher, but this value forms the basis for guaranteed minimum TIF Service payments.

The City agreed to design and construct, at its expense, John Shields Parkway, one of the Bridge Street District's "signature" streets, from Tuller Ridge Drive to Village Parkway as well as Graham Street. The estimated cost to design and construct these roadways is \$10.1 million. As part of the current agreement, the City agrees to construct this portion of John Shields Parkway so that it is

open for use October 15, 2016.

Additionally, as provided for within the executed Development and Tax Increment Finance Agreement, the City will contribute to that portion of the cost of constructing McCune Avenue, Watson Street, and Deardorf Street, which exceeds \$1,150,000. However, the City's contribution is limited to \$2,500,000 (i.e. the City will fund the amount that exceeds \$1,150,000 but is less than or equal to \$3,650,000). The Developer will be responsible for any costs in excess of \$3,650,000 that are not the result of the City's desire to include additional improvements/specifications beyond what would otherwise be customary for the BSD street network.

The Developer agreed that it will dedicate or provide to the City, at no cost all rights-of-way and easements located within the Property and necessary for the construction of the Public Improvements. The Development Agreement also established the terms for the exchange of park land and open space between the parties.

Infrastructure Agreement

The authorization for the execution of the Infrastructure Agreement under review on June 8 and June 22 is the final agreement needed in order for this project to move forward. As noted previously, the already approved and executed Development and Tax Increment Finance Agreement authorized the agreement. It is similar in form and requirements to other infrastructure agreements of the City, and places the appropriate bidding, prevailing wage, inspection, insurance, and other related obligations of the parties.

Recommendation

Staff recommends that Ordinance 39-15 be adopted by City Council by emergency at the second reading/public hearing on June 22, 2015.

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. 39-15

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INFRASTRUCTURE AGREEMENT TO PROVIDE FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS RELATING TO A RESIDENTIAL DEVELOPMENT

WHEREAS, Casto Tuller LLC (the "*Company*") has acquired or has the option to acquire certain property in the Bridge Street District and has determined to construct a residential development upon that property; and

WHEREAS, the City and the Company have heretofore entered into a Development and Tax Increment Financing Agreement, dated January 21, 2015, to generally provide for the construction of that residential development and certain related public infrastructure improvements; and

WHEREAS, consistent with the Development and Tax Increment Financing Agreement and to facilitate the construction of the Company's residential development, the City and the Company have determined to enter into the proposed Infrastructure Agreement to specifically provide for the construction of certain public infrastructure improvements relating to that residential development.

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 Infrastructure 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 construction of certain public infrastructure improvements relating to the Company's residential development, 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 Infrastructure 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 Infrastructure 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 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.

RECORD OF ORDINANCES

Ordinance No. 39-15

Passed Page 2 of 2, 20

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: _____, 2015

Effective: _____, 2015

INFRASTRUCTURE AGREEMENT
(Casto Tuller Flats Development)

This INFRASTRUCTURE AGREEMENT (the “*Agreement*”) is made and entered into this ___ day of _____, 2015 (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 CASTO TULLER LLC (“*Developer*” 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, the City has prepared a strategy for comprehensive development within an area of the City generally known as the Bridge Street District (the “*Bridge Street District*”) and that strategy was effected by the approval of the Bridge Street District Area Plan therefor by the City on July 1, 2013; and

WHEREAS, the Developer owns certain real property in the Bridge Street District that is known on the Effective Date as Franklin County Auditor Parcel Number 273-008249 and is identified on **Exhibit A** (attached hereto and incorporated herein by reference and referred to herein as the “*Developer Property*”), and it plans to construct the Private Improvements on the Developer Property; and

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

WHEREAS, the Parties and the Developer have entered into the TIF Agreement to provide generally for the development and financing of the Private Improvements and the Public Improvements; and

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

WHEREAS, City Council passed Ordinance No. 115-14 on January 5, 2015, authorizing the execution and delivery of this Agreement;

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

(END OF RECITALS)

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, capitalized words and terms in this Agreement shall 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 (Casto Tuller Flats Development) by and between the City and the Developer 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 the Developer 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 Developer Representative” means initially Brent Sobczak, in his capacity as Director for the Developer. The Developer may from time to time provide a written certificate to the City signed on behalf of the Developer by its President or General Counsel designating an alternate or alternates or a substitute who has the same authority, duties and powers as the initial Authorized Developer Representative.

“Change Directive” means such instrument executed and delivered pursuant to Section 4.7.

“Change Order” means such instrument executed and delivered pursuant to Section 4.6.

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

“City Contribution” means the sum of (a) the portion of the Cost of the Work of McCune Avenue, Watson Street and Deardorf Street (each as defined in the TIF Agreement) which exceeds \$1,150,000; *provided, however*, the City’s obligation to make payments in accordance with this clause (a) shall not exceed an aggregate payment of \$2,500,000 (*e.g.*, the City shall be responsible for the portion of that Cost of the Work described in clause (a) which exceeds \$1,150,000 but is less than or equal to \$3,650,000) plus (b) any portion of the Cost of the Work which exceeds \$3,650,000 and is due to the City’s desire to include improvements to or specifications for the construction of McCune Avenue, Watson Street and Deardorf Street in addition to those which are listed on **EXHIBIT C-3** of the TIF Agreement and authorized in writing by the City through a Change Order or Change Directive.

“City Council” means the City Council of City.

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

“**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 Developer 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 on **EXHIBIT C**. 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, legal fees related to the review of project construction documents, and other costs necessary and appurtenant thereto, all as further described in the approved Construction Documents.

“**County**” means the County of Franklin, Ohio.

“**Developer**” means Casto Tuller LLC, a limited liability company organized and existing under the laws of the State, including any successors or assigns thereof permitted under this Agreement.

“**Developer Property**” means the real property that is identified on **Exhibit A** to this Agreement.

“**Director of Finance**” means the Director of Finance of the City.

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

“**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 Developer 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, abnormal adverse weather that could not have been reasonably anticipated and which affects critical path work; or any other cause or event not reasonably within the control of the Developer or the City, as

the case may be, excluding, however, the inability of the Developer to obtain financing for its obligations hereunder.

“Private Improvements” means the project proposed to be constructed by the Developer consisting of at least 420 upscale multi-family residential units or such other maximum number of units which are permitted via the City’s review and approval process.

“Project Fund” means an account or fund created by the City, which may but is not required to be the Tuller Flats Municipal Tax Increment Equivalent Fund created in Section 5 of Ordinances No. 116-14 and No. 118-14, each passed on January 5, 2015 by the City Council, to provide for the payment of the City Contribution.

“Public Improvements” means all pavement, curbs, and related improvements to the future public streets to be constructed on and through the Developer Property to be known as McCune Avenue, Watson Street and Deardorf Street, each as generally depicted on **EXHIBIT C-1** of the TIF Agreement, as generally described on **EXHIBIT C-2** of the TIF Agreement and as further specified on **EXHIBIT C-3** of 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. The term “Public Improvements” does not include the installation and construction of John Shields Parkway or Graham Street.

“State” means the State of Ohio.

“TIF Agreement” means the Development and Tax Increment Financing Agreement by and between the City and the Developer dated January 21, 2015.

“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, the Developer 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.

Section 1.6. Conflicts between this Agreement and the TIF Agreement. Where there is a conflict between this Agreement and the TIF Agreement, then this Agreement shall prevail where an exception to the TIF Agreement is specifically made within the provisions of this Agreement; otherwise, the conflict will be resolved by compliance with the more stringent requirement.

(END OF ARTICLE I)

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 the Developer each acknowledge and agree that in fulfilling its obligations under this Agreement and under the TIF Agreement, the Developer 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) To the City's knowledge, 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) To the City's knowledge, there is no litigation pending or 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 reasonable 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.

For purposes of this Section 3.1, the term "knowledge" means the actual knowledge of the City Manager, without further investigation, as of the Effective Date.

Section 3.2. Representations and Covenants of the Developer. The Developer represents and covenants that:

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

(b) To the Developer's knowledge, 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 the Developer 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 the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer 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 the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

(e) To the Developer's knowledge, there is no litigation pending or threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer'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.

For purposes of this Section 3.2, the term "knowledge" means the actual knowledge of Brent Sobczak, in his capacity as Director for the Developer, without a duty to investigate.

(END OF ARTICLE III)

ARTICLE IV

DESIGN AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

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

Section 4.2. Design, Construction and Payment of Costs of the Public Improvements. The Developer will design, based on the specifications set forth on **Exhibit C-3** of the TIF Agreement, the Public Improvements. The Developer will perform the work and pay the Cost of the Work (only such portion not included as part of the City Contribution) in accordance with this Agreement and the other Construction Documents, and Developer will provide all necessary and inferable labor, materials, services and acts in connection with the design, construction and completion of the Public Improvements, regardless of whether or not reflected in the Construction Documents. The Public Improvements must be designed and built in a manner that is consistent with the requirements of the Bridge Street District Zoning Code except as otherwise provided in the TIF Agreement. The Developer will finally complete construction of the Public Improvements, including correction of deficiencies and other punchlist items, by May 15, 2017, subject to Force Majeure Events.

The Parties agree that the Developer will request and receive bids on the Public Improvements in one or more packages, the number and form of which shall be subject to the reasonable approval of the Authorized City Representative. The Developer agrees that with respect to each bid package, the Developer shall request and receive no less than three (3) responsible bids, except as may otherwise be approved in writing by the Authorized City Representative. The Developer shall award the contract for each bid package subject to the reasonable approval of the Authorized City Representative.

The Developer 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.

The Developer agrees that the Public Improvements, including all rights-of-way and easements associated therewith, will be dedicated to the City 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 (the "*Completion Certificate*") from the Authorized Developer 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 the Developer's 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, 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, a letter of conditional acceptance issued by the City of Dublin Engineering and properly dedicated as public rights-of-way and easements to the City;

(b) the City receives the Completion Certificate, the Engineer's Completion Certificate, copies of the approval letters issued by relevant 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 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; and

(d) the Developer has provided the City "as constructed record drawings" consisting of reproducible record drawings showing significant changes in the Public Improvements made during construction and containing such annotations as may be necessary for someone unfamiliar with the Public Improvements to understand the changes that were made to the original Construction Documents.

(e) the above conditions do not alleviate the Developer from City inspections of the Public Improvements during construction. A schedule shall be provided and inspection of the work shall be coordinated with the City at least seventy-two (72) hours in advance for key installations such as, but not limited to, storm sewer and granite curb. Key installations shall be established within two (2) weeks of from the date of submittal of the schedule.

The City agrees to accept the Public Improvements and the rights-of-way allocable thereto upon satisfaction of the conditions listed in (a) through (d) of the preceding sentence. The City acceptance of the Public Improvements does not relieve the Developer of its responsibility for defects in material or workmanship as set forth in Section 5.10.

Section 4.5. Extensions of Time. If the Developer 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 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. The City acknowledges that the Developer's ability to timely fulfill its obligations under this Agreement is dependent upon the City completing the following, and that the failure of the City to complete these items may, at the election of the Developer only by utilizing the procedure set forth in Section 7.1, be deemed to be a default under or breach of this Agreement and shall allow for a delay in the performance of the Developer's obligations as described in the immediately preceding sentence:

- (a) Completion of the construction of sanitary sewer, water main and temporary storm accommodations (ditch) within the John Shields right-of-way prior to March 1, 2016; and
- (b) Completion of the construction of John Shields Parkway through the Developer Property so that it is open for use by the general public to provide vehicular access to the internal public streets within the Developer Property prior to October 15, 2016.

Section 4.6. Changes in the Work. After the execution of this Agreement, and without invalidating this Agreement, the Authorized Developer Representative, 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 B**, be prepared by the Engineer and be signed by the Authorized City Representative, the Authorized Developer 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.

Section 4.7. Changes Directive. In the absence of a Change Order, the City, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or other revisions through a written directive signed by the City and issued to the Developer ("*Change Directive*"). Adjustments in the Cost of the Work and contract time resulting from a Change Directive shall be determined by the Developer's cost of labor, material, equipment, and reasonable overhead and profit, unless the Parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Change Directive, the Developer may request payment for Work completed pursuant to the Change Directive. The City will make an interim determination of the amount of payment due for purposes of certifying the Contractor's Written Requisitions. When the City and Developer agree on adjustments to the Cost of the Work and contract time arising from a Change Directive, the Engineer will prepare a Change Order. The

Developer shall proceed diligently with the performance of the changes in the Work following receipt of and as set forth in the Change Directive pending Developer's receipt of a fully executed Change Order.

Section 4.8. Use of Village Green North for Laydown. The City shall permit the Developer and its contractors to enter upon the Village Green North (as defined in the TIF Agreement) and use such real property for "laydown" in connection with the construction of the Public Improvements; *provided, however*, the Developer agrees that it shall cause any such portion thereof used for laydown to be graded, top soiled and seeded in such a manner which is reasonably acceptable to the City within sixty (60) days following completion of the Public Improvements.

(END OF ARTICLE IV)

ARTICLE V

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

Section 5.1. Construction Documents. The Developer is causing to be prepared the working drawings, plans and specifications that are necessary to be prepared in connection with the Work (collectively, the “*Drawings and Specifications*”). The final version of the Drawings and Specifications shall be in a form that is satisfactory to the Authorized City Representative, and the Construction Documents shall be instruments of service through which the Work to be executed is described. The Developer may retain one record set of the Drawings and Specifications. The City shall own 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 the Developer’s 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 the Developer is for use solely with respect to the Public Improvements. They are not to be used by the Developer on other projects without the specific written consent of the City. The Developer 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 and to facilitate its construction of the Private Improvements; *provided, however*, that any reproduction and distribution of copies of the Drawings and Specifications by the Developer 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 Contract & Procurement Coordinator as the prevailing wage coordinator for the Public Improvements (the “*Prevailing Wage Coordinator*”). The Developer 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. The Developer must comply, and the Developer 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. The Developer (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 the Developer (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator will notify the Developer of the prevailing wage rates for the Public Improvements. The Prevailing Wage Coordinator will notify the Developer of any change in prevailing wage rates within seven (7) working days of receiving notice of such change from the Director of the Ohio Department of Commerce. The Developer must immediately upon

such notification (a) ensure 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) ensure that all contractors and subcontractors make the same necessary adjustments.

The Developer 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 the Developer (or any contractors or subcontractor thereof) is required to pay wages to employees. The Developer (and each contractor or subcontractor thereof) must also deliver to the Prevailing Wage Coordinator a certified copy of its payroll relating to laborers performing the Work within two (2) weeks after the initial pay date, and supplemental reports for each month thereafter and in connection with any Written Requisition exhibiting for each such 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 the Developer must submit such payroll reports weekly if construction of the Public Improvements is contemplated to last less than four (4) calendar months. The certification of each payroll must be executed by the Developer (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.

The Developer 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 within a reasonable amount of time after they become available, and the name and address of the bonding/surety company and the statutory agent (if applicable) for those contractors or subcontractors. The Developer 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, the Developer (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. The Developer 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. The Developer must, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that the Developer is an

equal opportunity employer. The Developer 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. The Developer 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); 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 (1) year after acceptance of the Public Improvements pursuant to Section 2.4, (viii) personal injury with employment exclusion deleted, and (ix) 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. The Developer’s insurance is primary to any insurance maintained by the City.

(d) The Developer 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.

(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 (2) years beyond that date.

(g) The Developer 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.

(h) If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, asbestos abatement, storage-tank removal, or similar activities), or involves hazardous materials, the Developer shall maintain a pollution liability policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the Developer for damages (including from mold) sustained by the City by reason of the Developer's performance of the Work. The policy shall have an effective date, which is on or before the date on which the Developer first started to perform any Work-related services. Upon submission of the associated certificate of insurance and at each policy renewal, the Developer shall advise the City in writing of any actual or alleged claims which may erode the policy's limits.

(i) If the Work includes professional design services, Professional liability insurance from the Developer's design professional without design-build exclusions with limits not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. The professional liability policy shall have an effective date which is on or before the date on which the Developer first started to provide any Work-related services. Upon submission of the associated certificate of insurance and at each policy renewal, the Developer shall advise the City in writing of any actual or alleged claims which may erode the professional liability policy's limits. The Developer's consultants and subcontractors shall similarly maintain such coverage as required by this Subsection, and the Developer and each of its consultants and subcontractors shall maintain the professional liability insurance in effect for no less than five (5) years after the earlier of the termination the Contract or final completion of all Work.

(j) the Developer shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Work is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Cost of the Work, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Work at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final disbursement has been made as provided in Section 6.3 or until no person or entity other than the City has an insurable interest in the property required by this Section to be covered, whichever is later. This insurance shall include interests of the City, the Developer and subcontractors of any tier. The Developer shall provide a copy of a certificate of insurance, upon request, to the City evidencing such coverage before an exposure to loss may occur. Each policy

shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days' prior written notice has been given to the Developer and City.

Each policy of insurance and respective certificate of insurance must expressly provide that no less than ten (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.

Section 5.6. City Income Tax Withholdings. The Developer 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. The Developer 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, the Developer 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. Developer shall prepare and file with the County Recorder, with the assistance of the City, a notice of commencement meeting the requirements of Chapter 1311 of the Ohio Revised Code.

Section 5.9. Security for Performance. The Developer will furnish prior to commencement of construction of the Public Improvements a performance and payment bond that names the City as obligee in the form provided by Section 153.57 of the Ohio Revised Code.

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, the Developer, within five (5) 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 the Developer. The Developer must provide to the City prior to commencement of any Work by any contractor a copy the security for performance provided by the Developer or contractor pursuant to this Section.

Section 5.10. Further Developer Guaranties Relating to the Public Improvements. The Developer 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. The Developer 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 (1) year (two (2) years for existing storm sewer improvements dedicated to the City) after final written acceptance of the Work by City. 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 the Developer in writing and provide a copy of said notice to the Engineer. Within ten (10) days of receipt of said notice, the Developer will visit the site of the Work in the company of one or more representatives of the City to determine the extent of the defective work. The Developer 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 the Developer to visit the site of the Work within one day of receipt of said notice. The Developer is fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If the Developer 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 the Developer or the Developer's surety. Work that is repaired or replaced by the Developer is subject to inspection and acceptance by the Engineer and City and must be guaranteed by the Developer for one (1) year from the date of acceptance of the corrective work by the City.

Section 5.11. Developer Representations as to Personal Property Taxes. The Developer 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, the Developer will require all contractors to execute an affidavit in the form set forth on **EXHIBIT D** (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) The Developer 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, liens of subcontractors and suppliers of any tier, and all activities undertaken by the Developer or the City pursuant to this Agreement in furtherance of the development of the Private 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 and/or the TIF Agreement. Excluded Liabilities include, without limitation, any Liabilities settled without the Developer's consent and

any Liability to the extent that the Developer's ability to defend that Liability is prejudiced materially by the failure of an Indemnified Party to give timely written notice to the Developer 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 the Developer.

(c) Upon receipt of written notice of the assertion of a Liability, the Developer 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 the Developer and the Indemnified Party, the Developer must pay the reasonable legal expenses of the Indemnified Party in connection with its retention of separate counsel. The Developer is not liable for any settlement of any Liability effected without its written consent, but if settled with the written consent of the Developer, or if there is a final judgment for the plaintiff in an action, the Developer 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 Project Fund. The City has established, or will establish prior to commencement of the Work, the Project Fund for the payment of the City Contribution towards the Cost of the Work. Upon the execution of this Agreement, the City covenants and agrees to deposit monies into the Project Fund in an amount equal to the City Contribution. Promptly following the execution and delivery of any Change Order requested by the City, the City agrees to deposit additional monies into the Project Fund as may be required to pay the adjusted City Contribution towards the Cost of the Work, or in the event of a Change Directive, the City agrees to deposit into the Project Fund additional monies as based on the City's interim determination under Section 4.7 and pending the execution of a Change Order.

Section 6.2. Disbursements from the Project Fund.

(a) General. Subject to the limitations in Section 6.2(b), the City agrees to pay the City Contribution towards the Cost of the Work in accordance with the Construction Documents based on Written Requisitions executed by the Authorized Developer Representative substantially in the form set forth on **EXHIBIT E** (which is attached hereto and incorporated herein by reference). Written Requisitions and payments to the Developer shall be subject to the retainage requirements for labor, materials and equipment under Sections 153.12, 153.13 and 153.63 of the Ohio Revised Code. 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 the Developer 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 (1) calendar month, ending on the last day of the month. The Developer will deliver payment requests to the City no more often than once each calendar month during the course of construction of the Public Improvements. 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 fifteen (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.

(b) Disbursements by the City. Unless the City objects to any such Written Requisition and until such time as the City Contribution, or any increase thereto pursuant to a Change Order or Change Directive, has been fully disbursed to the Developer in the form of reimbursements, the City will within thirty (30) days following receipt of the Written Requisition sixty (60) days in case of the final Written Requisition) pay to the Developer the amounts reflected in the Written Requisition. To the extent that the Developer has not theretofore paid the applicable subcontractor(s) and/or supplier(s) the amount requested in such Written Requisition, the Developer will promptly pay to the applicable subcontractor(s) and/or supplier(s) the amounts payable to such subcontractor(s) and/or supplier(s).

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 Project Fund (not to exceed the City Contribution and as may be increased by any Change Orders or Change Directives) in accordance with the TIF Agreement and such monies will be the sole source of monies available from the City for payment of the City Contribution.

(c) Developer Responsibility for Certain of the Cost of the Work. Subject to any limitations expressly set forth in the TIF Agreement, the Developer covenants and agrees that it will be responsible for the Cost of the Work which the City does not pay in the form of the City Contribution, and the Developer will not be entitled to any further reimbursement therefor from the City and the City shall have no obligation to reimburse the Developer for that unreimbursed Cost of the Work from any other City monies.

(d) Other Related Provisions. Upon request of the Authorized City Representative or the Engineer, the Developer will furnish invoices or other documentation in connection with each 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 Developer Representative and approved by the Authorized City Representative that is delivered to the Developer by telegram, e-mail, or facsimile transmission.

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 Developer Representative, execution thereof, and communication thereof by telegram, e-mail, or facsimile transmission, to be conclusive evidence of such approval, and the Developer will indemnify and save harmless the City from any liability incurred in connection with any Written Requisition so executed or communicated by an Authorized Developer Representative.

So long as any Event of Default by the Developer continues, the Developer 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 Project Fund.

Section 6.3. Final Disbursement. Upon final completion of the Work and acceptance by the City, the Developer 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. The Developer 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 the Developer 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 Project 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, the Developer 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 thirty (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: (a) 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; (b) the aggrieved Party may terminate this Agreement; and (c) in addition, if the default or breach is a failure of the Developer to achieve completion of the Work by the date set forth in Section 4.2 herein, as adjusted by Change Order or Change Directive, City may perform the Developer's obligations under this Agreement and pay the costs thereof from any lawfully available monies. The Developer 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 fourteen (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 thirty (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

CONTINGENCIES; DISPUTE RESOLUTION PROVISIONS AS TO AMENDMENTS AND CLAIMS

Section 8.1. Contingencies to Developer's Performance. The Developer's obligations to perform under this Agreement shall be contingent upon (a) the TIF Agreement being fully executed and continuing to be legally effective and binding upon each of the City and the Developer, (b) Developer acquiring title to the Developer Property on or before September 1, 2015 from the present owner (as of the Effective Date) of the Developer Property and (c) the Developer's receipt from the City of all legally effective approvals necessary before it is permitted under applicable City laws, rules, and/or regulations to apply for a building permit to construct a minimum of 420 upscale multi-family residential units (or such other maximum number of units which are permitted via the City's approval process that is acceptable to the Developer in its sole discretion) on the Developer Property.

Section 8.2. Notice and Filing of Requests. Any request by the City or the Developer 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 (10) 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 the Developer.

Section 8.4. Mediation. If no mutually acceptance decision is reached within thirty (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 the Developer 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. Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning party. The City shall not unreasonably withhold its consent to the Developer's assignment of all, but not less than all, of its rights and obligations under this Agreement to a business entity with a majority ownership interest that is owned by a person or entity with a majority ownership interest in the Developer.

Section 9.2. Binding Effect. The provisions of this Agreement shall be binding upon the successors and/or assigns of the Parties.

Section 9.3. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 9.4. Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

Section 9.5. Entire Agreement. Together with the TIF Agreement, this Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter. This Agreement may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 9.6. Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts. Signatures transmitted by facsimile or electronic means are deemed to be original signatures.

Section 9.7. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Developer other than in his or her official capacity, and neither the members of the legislative body of the City nor the members or owners of the Developer nor any City official or authorized representative of the Developer executing this Agreement shall be 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 City contained in this Agreement.

Section 9.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Developer, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

Section 9.9. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall 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 shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

- (i) the City at: City of Dublin, Ohio
5200 Emerald Parkway
Dublin, Ohio 43017
Attention: City Manager

- (ii) the Developer at: Casto Tuller LLC
250 Civic Center Drive
Suite 500
Columbus, Ohio 43215
Attention: General Counsel

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.

Section 9.10. No Waiver. No right or remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

Section 9.11. Ohio Laws. 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 shall include 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 shall be 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.

Section 9.12. 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 9.13. 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 shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 9.14. Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall 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: Dana L. McDaniel

Title: City Manager

Approved as to Form:

By: _____

Printed: Stephen J. Smith

Title: Director of Law

CASTO TULLER LLC

By: _____

Printed: _____

Title: _____

FISCAL OFFICER’S CERTIFICATE

The undersigned, 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 2015 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: _____, 2015

Angel L. Mumma
Director of Finance
City of Dublin, Ohio

EXHIBIT B
FORM OF CHANGE ORDER

Owner Requested Change Order

Project	Description	Date
	<u>Owner Change Order #</u>	
Previous Balance of Contract		
This Change Order:		
Project Change	<div style="border: 1px solid black; padding: 2px; display: inline-block; text-align: center;">Adds to / Deducts from</div> division # <u>See Attached</u>	\$ _____
	<div style="border: 1px solid black; padding: 2px; display: inline-block; text-align: center;">Adds to / Deducts from</div> division # <u>See Attached</u>	\$ _____
	<div style="border: 1px solid black; padding: 2px; display: inline-block; text-align: center;">Adds to / Deducts from</div> division # <u>See Attached</u>	\$ _____
	<div style="border: 1px solid black; padding: 2px; display: inline-block; text-align: center;">Adds to / Deducts from</div> division # <u>See Attached</u>	\$ _____
	Option Total:	
	<div style="border: 1px solid black; padding: 2px; display: inline-block; text-align: center;">Adds to / Deducts from</div>	our Contract _____
Subtotal		
New Balance of Contract		

Description:

Distribution:

Approved by:

Owner Representative

Date

EXHIBIT C

PRELIMINARY COST ESTIMATES

Exhibit C -
Tuller Flats 50' R/W
Preliminary Estimate of Project Cost

<u>Description</u>	<u>Estimated Cost/ Linear Foot</u>
Roadway Subtotal	\$254
Granite Curb Subtotal	\$112
Erosion Control Subtotal	\$28
Drainage Subtotal	\$207
Pavement Subtotal	\$118
Traffic Control Subtotal	\$17
Lighting Subtotal	\$70
Street Trees Subtotal	\$50
Sanitary Sewer Subtotal	\$120
Water Quality & Detention Subtotal	\$72
Miscellaneous Subtotal	\$74
Construction Cost Total	\$1,122
Contingency	\$112
Design & Surveying	\$135
<u>Project Management</u>	<u>\$67</u>
TOTAL COST INCL. SOFT COSTS	\$1,436

* Note City Inspection Fees and Plan Review will be reimbursed as TIF revenue becomes available.

<u>Street</u>	<u>Linear Foot</u>	<u>Total Cost</u>
Watson	857	1,230,789
McCune	857	1,230,789
Deardorff	<u>857</u>	<u>1,230,789</u>
	2571	3,692,367
	Developer Funded	1,150,000
	City Funded	2,500,000

EXHIBIT D

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 E

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 Project Fund

You are hereby requested to disburse from the Project Fund described above, and in accordance with the provisions of Section 6.2 of the Infrastructure Agreement, dated _____, 2015 (the “*Agreement*”) by and between the City and Casto Tuller LLC (the “*Developer*”), 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 the Developer at _____. All capitalized terms not otherwise defined in this Written Requisition have the meanings assigned to them in the Agreement.

The undersigned Authorized Developer 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 the Developer relating to the matters covered by this Written Requisition;

(ii) The amount and nature of the portion of the Cost of the Work that has been completed and requested to be paid, subject to retainage as set forth in Section 6.2 of the Agreement, are shown on Schedule A attached hereto;

(iii) The disbursement herein requested is for an obligation properly incurred, is a proper charge against the Project Fund as a Cost of the Work, has not been the basis of any previous withdrawal from the Project 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 the Developer to meet its obligations under the Agreement;

(v) The Developer 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 the Developer 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, and such amounts that are entitled to be retained are reflected in Schedule A attached hereto;

(x) The Developer 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 the Developer and must be wholly transferable to the City; and

(xi) All money of the Project 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 Developer Representative

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